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DISTRICT IV

December 27, 2024

To:

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Circuit Court Judge
Electronic Notice

Hector Salim Al-Homsi
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Clerk of Circuit Court
Waupaca County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1998-CR

State of Wisconsin v. Tim A. Galminas (L.C. # 2021CF373)

Before Kloppenburg, P.J., Nashold, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Tim Galminas appeals a judgment of conviction for operating a motor vehicle with a prohibited alcohol concentration as a sixth offense. He contends that the circuit court erred in denying his suppression motion, and more specifically that the court erred in concluding that there was reasonable suspicion for the stop that led to his prosecution. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

A police officer was dispatched to respond to the scene of a car accident involving a vehicle that had reportedly been driven into the front yard of a residence in Clintonville. The officer testified that, although he did not know when the owners of the residence discovered that there was a vehicle in their yard, his understanding based on the information he received from dispatch was that one of the owners had told dispatch that the accident had “just occurred.”

When the officer arrived at the scene, the owners of the residence informed him that the vehicle’s driver was a male who appeared drunk, and that he had walked away heading east on West 14th Street. The officer testified that, although the owners did not provide him with a specific time that the driver had walked away, he believed that they told him that the driver had walked away “just” prior to the officer’s arrival.

The officer located a male individual walking east on West 14th Street about a block away from the scene of the accident. The individual was the only male walking in the area at the time. The officer said something like, “Hey, can I talk to you,” to the individual. The individual ignored the officer and kept walking. The officer then yelled to the individual to stop, and the individual obeyed. The officer identified the individual as Galminas. During the course of the stop, the officer observed that Galminas was exhibiting multiple signs of intoxication, and Galminas admitted that the vehicle involved in the accident belonged to him.

Galminas moved to suppress evidence obtained as a result of the stop. He argued that the officer stopped him without reasonable suspicion and that the stop was therefore unconstitutional. The circuit court denied the motion. The court concluded that the totality of the circumstances known to the officer at the time when the officer initiated the stop provided reasonable suspicion.

“This court analyzes the grant or denial of a suppression motion under a two-part standard of review.” *State v. Adell*, 2021 WI App 72, ¶14, 399 Wis. 2d 399, 966 N.W.2d 115. “[W]e uphold the circuit court’s findings of fact unless they are clearly erroneous....” *Id.* However, we “review de novo the ultimate question of ‘whether the facts as found by the [circuit] court meet the constitutional standard.’” *Id.* (alteration in *Adell*) (quoted source omitted).

Here, the relevant constitutional standard is reasonable suspicion, and Galminas argues that the circuit court erred in concluding that the officer who stopped him had reasonable suspicion that Galminas was engaged in illegal activity. More specifically, Galminas argues that when the officer initiated the stop, the officer lacked specific, articulable reasons to believe that Galminas was the driver of the vehicle involved in the accident. We disagree.

“‘The question of what constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of [the officer’s] training and experience.’” *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (quoted source omitted). The test is objective and must be “grounded in specific, articulable facts and reasonable inferences from those facts.” *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). An officer’s “inchoate and unparticularized suspicion or ‘hunch’” will not suffice. *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

Here, we conclude that the totality of the circumstances known to the officer at the time when he initiated the stop of Galminas provided an objective, specific, and articulable basis to believe that Galminas was the driver of the vehicle and involved in unlawful activity. The most salient circumstances include all of the following: (1) the officer was responding to the scene of

a car accident involving a vehicle that had reportedly been driven into the front yard of a residence; (2) the officer's understanding based on the information he had received from dispatch was that one of the owners had told dispatch that the accident had "just occurred"; (3) when the officer arrived at the scene of the accident, the owners informed him that the driver of the vehicle was a male individual who appeared drunk and had walked away heading east on West 14th Street; (4) although the owners did not provide the officer with a specific time that the driver had walked away, the officer believed that they told him that the driver had walked away "just" prior to the officer's arrival; (5) the officer located a male individual walking east on West 14th Street about a block away from the scene of the accident; (6) the individual was the only male walking in the area at the time; and (7) the individual initially ignored the officer and kept walking when the officer asked to talk with him.

Galminas argues that the lack of precise information relating to when the accident occurred and when the driver walked away from the scene precludes a conclusion that there was reasonable suspicion to believe that he was the driver. He points out that the officer acknowledged that the owners of the residence never provided the exact time that these events occurred, and he argues that the officer's testimony regarding the accident having "just occurred" and the driver having "just" walked away does not establish a sufficiently specific timeline to support reasonable suspicion. We are not persuaded.

One reasonable interpretation of the term "just" in this context is that the officer reasonably believed that the events took place only moments before they were relayed. In other words, it is reasonable to infer from the officer's testimony that he reasonably believed that the accident happened only moments before the owners reported it, and it is also reasonable to infer from the officer's testimony that he reasonably believed that the driver walked away only

moments before the officer arrived on the scene. These reasonable inferences are the inferences that the circuit court appeared to draw, and they support our conclusion that the officer had reasonable suspicion to stop Galminas. See *Elkhorn Area Sch. Dist. v. East Troy Cmty. Sch. Dist.*, 110 Wis. 2d 1, 6, 327 N.W.2d 206 (Ct. App. 1982) (“When more than one inference can be drawn from the evidence, a reviewing court must accept the inference drawn by the finder of fact.”).²

Galminas also argues that the officer made an admission that precludes a conclusion that the officer had reasonable suspicion. Specifically, Galminas points to a portion of the officer’s testimony in which the officer agreed that “[o]ther than the fact that this was a male walking on 14th Street, ... there [was no] other reason to believe he was the driver of that vehicle in the yard[.]” It is unreasonable to construe this part of the officer’s testimony in isolation so as to exclude his knowledge of all of the other facts, set forth above, about what he learned from dispatch and the owners. Indeed, it was that set of facts that led the officer to search for a man walking on 14th Street to begin with. However, even if the officer’s testimony could reasonably

² The circuit court’s oral decision included the following findings and conclusions relating to the timeline of events:

[T]he officer indicated ... that the information relayed to him was that the crash had just happened, he used the word “just.” I think [counsel] questioned him about whether or not the word “just” was used. And the officer said I believe so, at least that’s what was portrayed to me over the radio. But then he indicates he didn’t know if those were [the owner’s] exact words. But I think it’s important that the officer believed that this was something that had just taken place.

....

... And it was also relayed ... that the homeowners just saw [the driver] walking east on West 14th Street. Again, that word “just” was used.

be construed as an admission that no other circumstances contributed to his belief that the male individual walking on 14th Street was the driver, the officer's subjective belief is not controlling and does not negate our conclusion that the officer had reasonable suspicion. See *State v. Kramer*, 2009 WI 14, ¶39, 315 Wis. 2d 414, 759 N.W.2d 598 (officer's subjective belief does not negate the officer's objectively reasonable basis for an action); *State v. Gordon*, 2014 WI App 44, ¶12, 353 Wis. 2d 468, 846 N.W.2d 483 (test for reasonable suspicion is not what the officer may have subjectively believed but whether an objective view of the circumstances provides reasonable suspicion).

Galminas also argues that his case is analogous to *State v. Richey*, 2022 WI 106, 405 Wis. 2d 132, 983 N.W.2d 617, in which our supreme court concluded that the police lacked reasonable suspicion for a stop. See *id.*, ¶¶1, 15. We disagree that *Richey* is analogous. There, the court concluded that the asserted basis for the stop of a motorcyclist depended on an “unlikely sequence of events” in which the stopped motorcyclist's location and the direction he was heading were not what would be expected if the stopped motorcyclist had been the same motorcyclist observed engaging in unlawful activity. *Id.*, ¶¶2-3, 13. Here, in contrast, the officer stopped Galminas at a location and heading in a direction that could reasonably be expected if Galminas was the driver of the vehicle involved in the accident.

Therefore,

IT IS ORDERED that the circuit court's judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals