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DISTRICT II

June 4, 2025

To:

Hon. Paul V. Malloy
Circuit Court Judge
Electronic Notice

Connie Mueller
Clerk of Circuit Court
Ozaukee County Justice Center
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Nicholas DeSantis
Electronic Notice

Gabriel William Houghton
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You are hereby notified that the Court has entered the following opinion and order:

2024AP293-CR State of Wisconsin v. Dequonis D. Phillips (L.C. #2021CF361)

Before Gundrum, P.J., Neubauer, and Lazar, 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).

Dequonis D. Phillips appeals from a judgment of conviction, entered on his guilty pleas, for possession with intent to deliver narcotics as party to a crime and felony bail jumping. On appeal, Phillips argues the circuit court erred by denying his pretrial suppression motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

At the suppression hearing, an officer testified that, on October 25, 2021, he attempted to stop a vehicle on Interstate 43 after learning the vehicle's owner did not have a valid driver's license. The vehicle, however, did not immediately stop. The officer followed the vehicle with his squad lights and siren activated for approximately one mile. The officer also used his spotlight to try and get the driver's attention. Eventually, the vehicle pulled over.

As the officer approached the vehicle, he observed three occupants in the vehicle. All three had "freshly lit" cigarettes. Phillips was driving, and he advised the officer the vehicle belonged to his aunt. Phillips and one of the occupants did not have a valid driver's license. The remaining occupant had an active warrant.

Police took the occupant with the active warrant into custody. At 9:36 p.m., one officer asked Phillips to exit the vehicle, telling him, "You are not under arrest or anything." As Phillips exited the vehicle, he was talking on the phone with a woman he advised was the vehicle's owner. Phillips told the caller that he needed a licensed driver to come and pick him up. Phillips asked the officers where they were, and the officers provided the location. An officer gave Phillips a citation for operating without a license, discussed it with him, and then asked him a few questions, such as where he was going and how often he drove the car. At 9:39 p.m., the officer asked Phillips whether there was anything illegal in the car, and Phillips advised there was a small amount of marijuana. Officers then searched the vehicle and found a Gucci bag containing narcotics. At that point, Phillips was arrested.

At the suppression hearing, Phillips argued he was in custody for ***Miranda***[2] purposes when he admitted there was marijuana in the vehicle. Alternatively, he asserted the stop was unlawfully extended by the officer's questioning and he was thus unlawfully seized when he admitted there was marijuana in the vehicle. Phillips argued that his un-***Mirandized*** and/or unlawfully-seized admission to marijuana possession and its fruits (the warrantless search of the car) needed to be suppressed. The circuit court disagreed.

The circuit court determined Phillips was not in custody for ***Miranda*** purposes when the officer asked Phillips questions at the front of the squad car. The court stated:

> There's no handcuffs being shown. There is no Taser being drawn. There is no firearm being drawn. There are no loud voices directing somebody to lie down on the pavement. There is none of the kind of authoritative control measures that one might see that converts it to a ***Mirandizing*** situation where you would have to ***Mirandize*** everybody. In fact, it just looked like a fairly routine traffic stop that happens all over the State of Wisconsin on every given day.

The circuit court also observed that, at the time the officer asked the questions, there was no one at the scene who was legally able to drive the car away, that the car's ownership was uncertain, and that arrangements still needed to be made for the owner to pick up the car or have it transported somewhere. Ultimately, the court determined Phillips was not in custody for ***Miranda*** purposes and the stop was not unlawfully extended when he admitted there was marijuana in the vehicle. The court denied the suppression motion. Phillips appeals.

"When reviewing a circuit court's denial of a motion to suppress evidence, we apply a two-step standard." ***State v. Lonkoski***, 2013 WI 30, ¶21, 346 Wis. 2d 523, 828 N.W.2d 552.

[2] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

"We uphold the circuit court's findings of fact unless they are clearly erroneous." ***Id.*** "We then review de novo the application of the facts to the constitutional principles." ***Id.***

On appeal, Phillips first argues the circuit court erred by denying his suppression motion because, at the time he made the incriminating statements, he was "in custody" for purposes of ***Miranda*** and he had not been given his ***Miranda*** warnings. "[N]o one should be subjected to custodial interrogation until he or she is 'warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.'" ***Lonkoski***, 346 Wis. 2d 523, ¶23 (quoting ***Miranda v. Arizona***, 384 U.S. 436, 444 (1966)). "If someone is subjected to custodial interrogation without these warnings and makes incriminating statements, then those statements constitute a ***Miranda*** violation and cannot be used by the prosecution." ***Id.*** "Custody is a necessary prerequisite to ***Miranda*** protections." ***Id.***

¶31 "The test to determine custody is an objective one." ***Id.***, ¶27. "The inquiry is 'whether there is a formal arrest or restraint on freedom of movement of a degree associated with a formal arrest.'" ***Id.*** (citation omitted). "Stated another way, if 'a reasonable person would not feel free to terminate the interview and leave the scene,' then that person is in custody for ***Miranda*** purposes." ***Id.*** (citation omitted). "The custody determination is made in the totality of the circumstances considering many factors." ***Id.***, ¶28. "The factors include 'the defendant's freedom to leave; the purpose, place, and length of the interrogation; and the degree of restraint' used by law enforcement.'" ***Id.*** (citation omitted).

We conclude Phillips was not in custody for ***Miranda*** purposes when he told officers there was marijuana in his vehicle. Police told Phillips that he was not under arrest, Phillips was

on the telephone trying to arrange for someone to pick him up, and police provided him directions so someone could pick him up. As the circuit court found, his interaction with officers was not confrontational, and no handcuffs or other restraints were used. A reasonable person in Phillips' position would not have considered himself to be in custody similar to that of a formal arrest when he told officers there was marijuana in the vehicle. *See* ***Lonkoski***, 346 Wis. 2d 523, ¶28.

Phillips next argues the traffic stop was unlawfully extended and he was therefore unlawfully seized at the time he was questioned. "The reasonable length of a traffic seizure depends on the 'mission' of the stop, including law enforcement's 'ordinary inquiries' and 'related safety concerns.'" ***State v. Brown***, 2020 WI 63, ¶10, 392 Wis. 2d 454, 945 N.W.2d 584 (citations omitted). The length of a stop "becomes unreasonable if extended past the point 'when tasks tied to the traffic infraction are—or reasonably should have been—completed.'" ***Id.*** (citations omitted).

Phillips asserts the traffic stop concluded the moment the officers handed him the citation. He argues he was unlawfully seized when officers continued to question him after handing him the citation, and the drug evidence obtained as a result of his unlawful seizure should be suppressed.

We disagree. At the time Phillips admitted to possessing marijuana, he was not seized—he simply did not happen to have the means to immediately drive away. A traffic stop seizure ends "when a reasonable person, under the totality of the circumstances, would feel free to leave." ***State v. Hogan***, 2015 WI 76, ¶63, 364 Wis. 2d 167, 868 N.W.2d 124. Here, no police action following the issuance of the citation would have led Phillips to believe he was required to

remain at the scene. Rather, the reason Phillips remained on scene was because he did not have a valid license and therefore did not have a means to leave the side of the interstate. In fact, he was arranging to be picked up, and police were helping him by providing directions. The stop was not unlawfully extended. *See* ***Brown***, 392 Wis. 2d 454, ¶10. Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals