COURT OF APPEALS
DECISION
DATED AND FILED

October 22, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal Nos. 2007AP1731-CR
2007AP1732-CR

Cir. Ct. No. 2006CF215
2006CF437

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVEN R. PIERSON,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Walworth County: JOHN R. RACE, Judge. *Affirmed*.

Before Brown, C.J., Anderson, P.J., and Neubauer, J.

¶1 PER CURIAM. Steven R. Pierson has appealed from judgments convicting him upon guilty pleas of operating a motor vehicle while intoxicated (OWI), fifth or greater offense, and felony bail jumping. The OWI conviction was

based on Pierson's act of driving himself while intoxicated to the Walworth County courthouse for an appearance in another case on May 8, 2006. The bail jumping conviction was based on his violation of the conditions of a bond signed by him on April 22, 2006, which prohibited him from consuming alcohol, operating a motor vehicle with any alcohol in his system, or committing a new crime.

¶2 The sole issue on appeal is whether the trial court erroneously denied Pierson's motion to suppress statements made by him to a police officer while stopped in a courtroom hallway on May 8, 2006. In particular, Pierson moved the trial court to suppress his statement that he drove his vehicle to the courthouse on May 8, 2006. We conclude that the trial court properly denied the motion and affirm the judgments of conviction.

¶3 An evidentiary hearing was held on Pierson's motion to suppress. At the hearing, Deputy Kenneth Brauer testified that he was working as a court security officer on May 8, 2006, and was notified by an officer working at a security checkpoint in the courthouse that an individual named Steven Pierson had come through the checkpoint smelling of alcohol. Brauer testified that he was also informed by two other people that Pierson smelled of alcohol. Brauer testified that he then entered the courtroom where Pierson had an appearance in an unrelated pending case and walked behind him. He testified that he could smell alcohol emanating from Pierson.

¶4 Brauer testified that he then waited and approached Pierson in the hallway outside the courtroom as Pierson and his attorney left the courtroom. Brauer testified that he identified himself to Pierson and spoke to him about the smell of alcohol emanating from him. He testified that he asked Pierson whether

he was aware of the conditions of his bond. He testified that Pierson acknowledged having signed a bond, but indicated that he understood that under the bond he was not to consume alcohol while driving. Brauer testified that he showed Pierson a copy of the bond to indicate that he "was not to consume or possess alcohol whatsoever." Brauer testified that he also asked Pierson how he got to the courthouse that day, and Pierson stated that he had driven. Brauer testified that Pierson was nervous and sweating, and asked what was going to happen to him.

¶5 During the questioning in the hallway, a second officer, Thomas Hausner, arrived with a preliminary breath test (PBT) machine, as requested by Brauer. Hausner testified that Pierson's eyes were extremely glassy and bloodshot. Brauer told Pierson he would like to get a PBT reading from him because he could smell alcohol on his breath and wanted to conduct further tests to determine whether Pierson was under the influence of an intoxicant when he drove to the courthouse. Hausner administered the PBT in the hallway, producing a reading of .22.

¶6 Brauer testified that he asked Pierson when he had his last drink and what it was, and Pierson told him he had vodka at 3:00 a.m. Brauer testified that he then told Pierson he was under arrest for felony bail jumping, and moved him to a different location in the building to administer field sobriety tests. After those tests were administered, Pierson was arrested for OWI, handcuffed, searched, and taken to a hospital for a blood draw.

¶7 It is undisputed that neither Brauer nor Hausner informed Pierson of his rights under ***Miranda v. Arizona***, 384 U.S. 436 (1966) during the questioning in the courthouse hallway. The police are required to give ***Miranda*** warnings

before engaging in custodial interrogation. ***State v. Morgan***, 2002 WI App 124, ¶10, 254 Wis. 2d 602, 648 N.W.2d 23. Custodial interrogation is questioning by law enforcement officers after a person's freedom of action has been curtailed in a way that is comparable to an arrest. ***Id.***

¶8 On appeal, Pierson contends that Brauer's stop of him in the hallway was a custodial arrest rather than a valid ***Terry***[1] stop, and that his statements in the hallway therefore must be suppressed because he was not given ***Miranda*** warnings prior to making them. He contends that the trial court's finding that he was not in custody when he made statements to Brauer in the courthouse hallway is clearly erroneous.

¶9 In reviewing a trial court's ruling on a suppression motion, we will uphold its findings of fact unless they are clearly erroneous. ***Morgan***, 254 Wis. 2d 602, ¶11. However, whether a person is in custody for ***Miranda*** purposes is a question of law which we review de novo. ***Morgan***, 254 Wis. 2d 602, ¶11.

¶10 We reject Pierson's argument that the hallway questioning constituted custodial interrogation entitling him to ***Miranda*** warnings. Under appropriate circumstances, the Fourth Amendment and WIS. STAT. § 968.24 (2005-06)[2] permit a law enforcement officer to detain and temporarily question a suspect for investigative purposes. ***State v. Gruen***, 218 Wis. 2d 581, 589-90, 582 N.W.2d 728 (Ct. App. 1998). "[A] law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects

[1] ***Terry v. Ohio***, 392 U.S. 1 (1968).

[2] All references to the Wisconsin Statutes are to the 2005-06 version.

that such person is committing, is about to commit or has committed a crime, and may demand … an explanation of the person's conduct." Section 968.24.

¶11 To execute a valid investigatory stop under ***Terry*** and WIS. STAT. § 968.24, an officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. ***Gruen***, 218 Wis. 2d at 590. The determination of reasonableness depends on the totality of the circumstances existing at the time of the stop. ***Id.*** If the officer has a suspicion, grounded in specific, articulable facts and reasonable inferences from those facts, the officer may temporarily detain an individual to investigate the matter further. ***Id.***

¶12 Applying these standards here, it is clear that Brauer lawfully stopped and questioned Pierson in the courtroom hallway. Brauer was aware that Pierson had appeared in court smelling strongly of alcohol and appearing intoxicated, and was aware that as a condition of his bond he could not consume alcohol. He was therefore entitled to stop Pierson in the public hallway to investigate whether he had violated his bond conditions by consuming alcohol and by driving to the courthouse under the influence of an intoxicant, thereby also committing a new OWI offense.

¶13 Pierson cites to the trial court's statement that Brauer "probably had a very good idea that the defendant was violating his bond conditions when he smelled him," and contends that Brauer confronted him not to conduct a ***Terry*** stop, but rather to conduct accusatory questioning and take him into custody. However, the mere fact that Brauer could strongly suspect that Pierson was guilty of bail jumping at the time of the stop does not mean that Brauer lacked authority to investigate the matter before attempting to make an arrest. Before arresting

Pierson, Brauer had a duty to investigate whether Pierson had, in fact, committed a crime, and could not reasonably perform his duty without asking a few general, investigatory questions. *See* ***Gruen***, 218 Wis. 2d at 592.

¶14 In determining whether a ***Terry*** stop and questioning was reasonable, a court must also consider whether the nature of the officer's actions exceeded the scope justified by the original stop, raising the question of whether the incremental intrusion of additional questions was unreasonable when balanced against the public interest. ***State v. Malone***, 2004 WI 108, ¶26, 274 Wis. 2d 540, 683 N.W.2d 1. In addition, the duration of the law enforcement questioning may not extend the stop beyond the time necessary to fulfill the purpose of the stop. ***Id.*** To determine whether a stop was unreasonably prolonged, the court must consider the law enforcement purposes to be served by the stop and the time reasonably needed to accomplish those purposes. ***State v. Griffith***, 2000 WI 72, ¶54, 236 Wis. 2d 48, 613 N.W.2d 72.

¶15 The detention of Pierson in the hallway was of limited duration, consisting of only a few questions, showing Pierson a copy of his bond, and performing a PBT, culminating in Pierson's arrest. The limited questioning cannot be deemed to have unreasonably extended the stop. Moreover, the questions posed by Brauer addressed whether Pierson had consumed alcohol and driven to the courthouse while intoxicated in violation of his bond. The questions thus directly related to the purpose of the initial stop. In reaching this conclusion we note that the public had a valid interest in investigating whether Pierson had violated his bond both by consuming alcohol and by driving while intoxicated. Brauer was not precluded from asking Pierson how he got to the courthouse merely because driving while intoxicated also constituted a new crime independent of bail jumping.

¶16 We reject Pierson's argument that the investigation became unreasonable after he admitted consuming alcohol because, at that point, Brauer could have arrested him for bail jumping. Regardless of whether Brauer had probable cause to arrest Pierson prior to asking how he got to the courthouse, Brauer was entitled to ask Pierson how he got to the courthouse in order to investigate whether a second crime or bond violation had occurred. As already noted, this question was within scope of the original stop. Moreover, it did not unreasonably prolong the temporary detention. *Cf.* ***Griffith***, 236 Wis. 2d 48, ¶¶55-56 (officers performing traffic stop could ask additional brief questions even after obtaining all necessary information to establish that a traffic violation had occurred.)

¶17 While determining that Brauer's temporary detention and questioning of Pierson constituted a valid ***Terry*** stop, we recognize that even during a ***Terry*** stop, a defendant may be considered "in custody" for Fifth Amendment purposes and entitled to ***Miranda*** warnings prior to questioning. ***Gruen***, 218 Wis. 2d at 593. The issue is whether, under the totality of the circumstances, a reasonable person in the suspect's position would have considered himself to be in custody given the degree of restraint. ***Id.*** at 594. The totality of the circumstances includes such relevant factors as the defendant's freedom to leave the scene; the purpose, place and length of the interrogation; and the degree of restraint involved. ***Id.*** In considering the degree of restraint involved, relevant factors include whether the defendant was handcuffed, whether a gun was drawn on him, whether a frisk was performed, the manner in which he was restrained, whether he was moved to another location, whether questioning took place in a police car, and the number of officers involved. ***Id.*** at 594-96.

¶18 The fact that the defendant was temporarily detained pursuant to ***Terry*** and WIS. STAT. § 968.24 may make it less likely that the defendant was in custody for purposes of ***Miranda*** warnings. ***Gruen***, 218 Wis. 2d at 594. However, it is not dispositive. ***Id.*** at 596.

¶19 Nothing in the evidence provides a basis for concluding that Pierson was in custody when questioned in the hallway prior to being placed under arrest for bail jumping. Questioning was of short duration and limited scope, limited to investigating whether he had consumed alcohol and driven to the courthouse while under the influence of an intoxicant. Although Pierson was being temporarily detained, the hallway was a public place. Pierson, who was accompanied by an attorney who was representing him in another case, was initially approached by Brauer alone. While a second officer subsequently arrived with the PBT machine, that officer did not participate in the investigation until he administered the PBT. The record indicates that Pierson was not handcuffed, frisked, or moved to another location, and no weapons were drawn.

¶20 Under these circumstances, no basis exists to conclude that Pierson was in custody when he was questioned about the terms of his bond, consuming alcohol, and driving to the courthouse. ***Miranda*** warnings were therefore not required, and the trial court properly denied Pierson's motion to suppress.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.