COURT OF APPEALS
DECISION
DATED AND FILED

July 7, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP3131 **Cir. Ct. Nos. 2010TR214, 2010TR215**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

COUNTY OF JEFFERSON,

PLAINTIFF-RESPONDENT,

V.

KARLA J. RAUE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County: WILLIAM F. HUE, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Karla Raue appeals a judgment convicting her of operating a motor vehicle while under the influence of an intoxicant and for

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

operating a motor vehicle with a prohibited alcohol concentration. Raue argues that the circuit court erred when it denied her motion to suppress. In particular, Raue argues that she was unlawfully detained by a private citizen and that, as a result, all subsequently obtained evidence of her intoxicated driving should have been suppressed. I disagree and affirm.

Background

¶2 While at a bar in Jefferson County, a patron observed Karla Raue, who was also present at the bar, exhibit signs of intoxication, such as stumbling when she walked. Raue at some point left the bar, and the bar patron followed her out. The patron saw Raue get into a car parked outside of the bar and back the car into another vehicle parked nearby. Raue nonetheless proceeded to back out onto the roadway and to drive to a nearby intersection, where she came to a stop at a stop sign. At this point, the bar patron approached Raue in her car, opened the driver's side door, shut off Raue's car, and took her keys. The patron then reentered the bar, taking Raue's car keys with him.

¶3 The police were contacted and, on arriving, an officer found Raue sitting in her car, with the car turned off. The officer obtained evidence of Raue's intoxication, and Raue was cited for operating a motor vehicle while under the influence of an intoxicant and for operating a motor vehicle with a prohibited alcohol concentration.

¶4 Raue moved to suppress the evidence of her intoxication for a violation of her Fourth Amendment rights based on the bar patron's actions. The State argued that the patron's actions did not implicate Raue's Fourth Amendment rights, and the circuit court agreed. The court also offered what was essentially an alternative reason to reject Raue's suppression motion when it concluded that the

patron's actions did not constitute a citizen's arrest. Accordingly, the court denied the motion to suppress. Raue was found guilty after a court trial, and she appeals.

Discussion

¶5 Raue seeks suppression of the evidence of her intoxicated driving based on the actions of the bar patron. As Raue puts it, the bar patron was acting as a "private citizen." Raue believes that she was unlawfully seized by the bar patron and assumes that any evidence obtained as a result must be suppressed under the Fourth Amendment. Specifically, Raue argues: "Because the actions of the citizen opening Ms. Raue's vehicle, turning it off, removing the keys and taking possession of the keys until officers showed up amounted to a seizure, and because the citizen did not have the requisite level of probable cause to effectuate the seizure, the defendant's motion for suppression of evidence should have been granted."

¶6 Raue's argument addresses the circuit court's alternative reason for denying her suppression motion, but ignores the circuit court's primary reason for denying it—that Raue did not have a right to suppression of the evidence based on non-government actions. The circuit court was correct.

¶7 The legality of the bar patron's actions do not matter for purposes of analyzing whether suppression is required under the Fourth Amendment. That is because, as explained in ***State v. Butler***, 2009 WI App 52, 317 Wis. 2d 515, 768 N.W.2d 46, Fourth Amendment protections only apply where there is government action. *See* ***id.***, ¶12.

¶8 In ***Butler***, a private security guard saw Butler driving recklessly in a parking lot. ***Id.***, ¶4. The security guard detained, handcuffed, and searched

Butler, and then called the police after discovering that Butler was wearing an empty gun holster. ***Id.*** Police officers who arrived on the scene found a loaded pistol in Butler's glove compartment. ***Id.***, ¶¶5-6. Among other arguments, Butler contended that suppression of the gun evidence was required because the security guard acted unlawfully. ***Id.***, ¶¶8, 11. We explained that it was not necessary to resolve whether the security guard acted lawfully in detaining Butler because the security guard did not act in concert with the government. *See* ***id.***, ¶¶12-14. We observed that "'the Fourth Amendment applies only to government action'" and that "unless state-action is involved, a defendant detained by another citizen has no right to suppress the fruits of the citizen's search." ***Id.***, ¶12 (citation omitted).

¶9 It follows that Raue is not entitled to suppression regardless whether the bar patron acted improperly because the patron's actions, like the security guard's actions in ***Butler***, did not implicate Raue's Fourth Amendment rights.

¶10 Raue's argument based on ***City of Waukesha v. Gorz***, 166 Wis. 2d 243, 479 N.W.2d 221 (Ct. App. 1991), misses the mark. Raue cites this case for the proposition that a private citizen may only make a citizen's arrest in certain circumstances, and then Raue proceeds to argue that the bar patron's actions constituted an improper citizen's arrest. As explained above, this line of argument is irrelevant to suppression because there is no government action that could support suppression. *See* ***State v. Keith***, 2003 WI App 47, ¶9, 260 Wis. 2d 592, 659 N.W.2d 403 (explaining that nothing in ***Gorz*** changes "the well-established rule that suppression is required only when evidence is obtained in violation of a constitutional right or in violation of a statute providing suppression as a remedy").

¶11 For the reason discussed, I affirm the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.