

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 10, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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Appeal No. 2013AP2803-CR

Cir. Ct. No. 2012CF512

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ELISA ESTRADA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
ALLAN B. TORHORST, Judge. *Affirmed.*

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 GUNDRUM, J. Elisa Estrada appeals from a judgment of conviction and the circuit court's denial of her motion to suppress evidence related to a search of her vehicle following a traffic stop. She argues that the police

lacked reasonable suspicion to extend the traffic stop detention and perform a protective search of her vehicle.¹ We disagree and affirm.

Background

¶2 Two city of Racine police officers were the only witnesses to testify at the hearing on Estrada’s motion to suppress. The relevant facts from their testimony are as follows.

¶3 Officer Timothy Bodnar testified that he was dispatched for a robbery around 11:48 p.m. on May 7, 2012. He spoke with a woman (“the victim”) who indicated she was riding in a Chevy Impala driven by her friend Elisa Estrada at approximately 11:30 or 11:35 p.m. when two men approached the vehicle on foot and stole her purse and other items. The victim identified the robber who had approached her at the vehicle as a “black male” with a “handgun” who was wearing “a gray hoodie and black ski mask.” She told Bodnar that she heard the voice of the other robber but did not see him, and she thus did not provide Bodnar with a description of that robber other than his gender. Bodnar confirmed that he transmitted to other Racine police officers the information he received from the victim.

¶4 Bodnar also testified regarding his involvement with the traffic stop of Estrada, which occurred a few miles from the location of and approximately fifty minutes after the robbery. When Bodnar arrived at the traffic stop, multiple officers were already on the scene, some of whom had their rifles out. By the time

¹ Estrada only argues that the police lacked reasonable suspicion to perform these acts. She raises no other challenges to the extension of the detention or to the search of the vehicle. Thus, we address only whether the officers had reasonable suspicion.

Bodnar arrived, he already had informed the officer who performed the stop, Chad Andersen, via radio, that a gun was involved in the robbery, and Bodnar already had received communication from Andersen that Andersen had Estrada at the stop and that two men were with her. Bodnar testified that “[i]t was suspicious ... that [Estrada] never contacted us [to report the robbery] and then there were two males in the vehicle when a robbery had just occurred and two males were involved.”

¶5 As Andersen removed occupants from the vehicle, Bodnar patted down one of the males, assisted with detaining him, and then assisted with the search of the vehicle. Officers found a gun as well as the victim’s purse and other items belonging to the victim in the vehicle.

¶6 In his testimony, Andersen stated that he pulled over a Chevy Impala around 12:20 a.m. due to a suspended registration, and he identified Estrada as the driver. Prior to the traffic stop, Andersen was aware that the robbery had occurred, had received information about the suspects, and was searching the area for them. He had heard a description over the radio of the two men involved in the robbery, one a “black male” with a “thin build” who was wearing a black ski mask and “a gray sweatshirt” and the other a “black male.” Andersen observed that Estrada had two men with her, one in the front seat and one in the back; he testified, however, that when he initially pulled over the vehicle, it was just a routine traffic stop and he did not believe there was anything unusual about two men also being in the vehicle.

¶7 Andersen relayed over the radio a general description of the occupants of the vehicle. As Andersen was speaking with Estrada at the vehicle, Estrada received a call from dispatch. Estrada informed Andersen that she had been a victim of a robbery, indicated to Andersen that dispatch was inquiring

where she was and that Bodnar wanted to speak with her regarding the robbery, and handed the phone to Andersen who then spoke with dispatch.

¶8 After learning Estrada had been involved in the robbery, Andersen “noticed the two gentlemen with her a little more closely,” and believed they might be the robbers. He believed this because the physical characteristics of the passengers were consistent with the descriptions he had received of the two robbers, and because he also observed a gray sweatshirt on the floor behind the driver’s seat. Andersen confirmed that based upon his experience, it is common for suspects to alter their appearance following a crime “by removing an article of clothing worn during a crime.”

¶9 Andersen testified that through an earpiece he was using he was also hearing other officers advise him that he may have the robbery suspects, and he “start[ed] now to get more of a totality of ... what may be happening.”² Because he was aware from radio communications that a gun was involved in the robbery, for safety purposes, Andersen decided to return to his squad car and wait for other officers to arrive before addressing the robbery with the occupants of the vehicle. Once other officers arrived, Andersen ordered the occupants out of the vehicle, they were secured by various officers, and the vehicle was searched, resulting in the discovery of a gun and items that had been taken from the victim.

¶10 Estrada was charged as a party to the armed robbery. She moved to suppress all evidence derived from the search of her vehicle. The circuit court

² Andersen testified in part as to the raising of his suspicion: “I remember one officer was saying, Chad you may have the suspects; looking the vehicle, [sic] seeing the male suspects, seeing the build, seeing the sweatshirt.”

denied the motion and Estrada pled guilty to the charge.³ She appeals the judgment of conviction based on the denial of her motion to suppress.

Discussion

¶11 Estrada does not dispute that she was lawfully stopped by Andersen for a traffic violation. She contends, however, that the police lacked the requisite reasonable suspicion to lawfully extend the traffic stop longer than necessary to address the suspended registration and detain her in relation to the robbery, and further that “[t]he police lacked reasonable suspicion to conduct a protective search” of her vehicle. We disagree.

¶12 The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution protect citizens from unreasonable searches and seizures. *See State v. Rutzinski*, 2001 WI 22, ¶13, 241 Wis. 2d 729, 623 N.W.2d 516. When a defendant challenges the lawfulness of a search or seizure through a motion to suppress evidence, a question of constitutional fact is presented. *State v. Sveum*, 2010 WI 92, ¶16, 328 Wis. 2d 369, 387, 787 N.W.2d 317. We will uphold a circuit court’s findings of fact, unless they are clearly erroneous; but we will independently review whether the facts satisfy the constitutional standard. *Id.* Estrada does not challenge the circuit court’s factual findings.

³ Estrada was on bond in several misdemeanor cases at the time of the robbery. In addition to the armed robbery charge, Estrada was also charged with multiple counts of misdemeanor bail jumping, as well as resisting an officer. These other charges were dismissed but read in.

¶13 A valid traffic stop and detention of an individual may be extended beyond the time necessary to address the traffic issue if, during the stop, the officer becomes aware of additional facts raising a reasonable suspicion that the detained person has committed an offense separate and distinct from the traffic matter. *State v. Betow*, 226 Wis. 2d 90, 94-95, 593 N.W.2d 499 (Ct. App. 1999). The officer's reasonable suspicion must be based on facts that are "specific and articulable [and] which, taken together with rational inferences from those facts," reasonably warrant the intrusion. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). "[R]easonable suspicion' is a 'commonsense' concept that implicates 'factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" *State v. Sutton*, 2012 WI App 7, ¶7, 338 Wis. 2d 338, 808 N.W.2d 411 (2011) (quoting *Ornelas v. United States*, 517 U.S. 690, 695 (1996)). Additionally, "[c]ourts 'decide on a case-by-case basis, evaluating the totality of the circumstances, whether an officer had reasonable suspicion to justify a protective search in a particular case.'" *State v. Buchanan*, 2011 WI 49, ¶9, 334 Wis. 2d 379, 799 N.W.2d 775 (citation omitted). Further, where there is communication among personnel of a police force and an officer acts in good faith upon information received through that communication, an investigatory detention or protective search is based upon reasonable suspicion if sufficient facts collectively exist within the police department. *See State v. Rissley*, 2012 WI App 112, ¶19, 344 Wis. 2d 422, 824 N.W.2d 853. Considering the material testimony from the suppression hearing and giving Estrada the benefit of any discrepancies therein, we conclude that the extended detention of Estrada and the other vehicle occupants, and the protective search of the vehicle, were based upon a reasonable suspicion that the men in the vehicle were the robbers, Estrada was a party to the robbery, and at least one of the men still had a gun in his possession.

¶14 By the time Andersen made the decision to continue detaining Estrada and the men in her vehicle and wait for other officers to arrive, Racine police communicating with each other were aware collectively that (1) Estrada had been the driver of the Chevy Impala when the robbers attacked, and though her friend, the victim, had reported the robbery to the police, Estrada had not; (2) the victim reported that the robbery had been committed by two men, but she could only provide a description of one of those men;⁴ (3) Estrada had no men in the vehicle with her at the time the two men attacked, but at the traffic stop less than an hour later, in the middle of the night, she had two men in the vehicle with her; (4) the physical description given by the victim of the robber she observed was that he was “black” and of “thin build,” and the race and “build” of one of the men with Estrada was consistent with that description, and, in that the victim only described one of the robbers, the characteristics of the other man in the vehicle were not inconsistent with the other male robber; (5) the victim reported that the robber she observed wore a hooded gray sweatshirt and there was a gray sweatshirt in the back of Estrada’s vehicle; and (6) the victim had told the police that the robber she observed had a gun. In arguing police did not have reasonable suspicion, Estrada attempts to attack the relevance of some of this knowledge.

¶15 Estrada argues that “[i]t is not suspicious that there was a gray sweatshirt on the floor of the car,” pointing out that Bodnar indicated in his testimony that the vehicle was “disorganized” with various clothes and papers

⁴ As identified *supra*, while Andersen testified that he received descriptions of the robbers as *both* being “black,” Bodnar testified that the victim only saw of one of the robbers. Because of this potential inconsistency, we give Estrada the benefit of the doubt that she seeks—that the victim provided police with a description of only one of the robbers that included his race.

about the vehicle. We fail to see Estrada's point here. Whether the vehicle was disorganized or organized is of no moment. What matters is that Andersen observed a gray sweatshirt in the vehicle with these men, which was consistent with an item of clothing worn by one of the robbers less than an hour earlier. Estrada also emphasizes that Andersen testified that he "was only able to see that the gray item in Ms. Estrada's car was a sweatshirt. He indicated he did *not* observe the hood part prior to the search." While it would have added yet more to the totality of the circumstances if Andersen had seen a hood on the sweatshirt, the sweatshirt still added to the suspicion of the situation in that Andersen did *not* testify that he observed it to be a gray sweatshirt *without a hood*. Had he so testified, then the article of clothing would have been inconsistent with the type of gray sweatshirt worn by one of the robbers. However, Andersen's testimony was simply that he observed a "gray sweatshirt." Such an observation left open the possibility that upon closer inspection the sweatshirt may have turned out to be a gray sweatshirt with a hood. Thus, Andersen's observation of the gray sweatshirt was consistent with the description of the sweatshirt worn by one of the robbers and contributed to the totality of the circumstances giving rise to reasonable suspicion.

¶16 In addition, Andersen testified that the description of the suspects that he heard via the radio was of a "black male" with a "thin build" in a black ski mask and "a gray sweatshirt" and of another "black male." He further testified that "seeing the male suspects, *seeing the build*, seeing the sweatshirt" contributed to his suspicion. (Emphasis added.) While the circuit court made no finding regarding the "build" of either suspect, the only possible inference from this testimony is that the build of at least one of the men in the vehicle was "thin" and therefore consistent with the build of at least one of the robbers. *See Stern v.*

Thompson & Coates, Ltd., 185 Wis. 2d 220, 237, 517 N.W.2d 658 (1994) (“[I]f there is only one reasonable inference that can be made, the drawing of that inference is a question of law.”). Simply put, had both men in Estrada’s vehicle been of “heavy build” or even “average build,” there would have been less reason to suspect they were the robbers despite the presence of the gray sweatshirt in the vehicle.⁵

¶17 Estrada also asserts that “[i]t is not suspicious that Ms. Estrada had not yet called the police to report the robbery.... There are a variety of reasons why a victim might hesitate to report a crime.” While it is certainly true that there are many innocent reasons why an individual might not report a crime, failing to report the crime in this instance, together with the other facts before the police, lended itself more to suspicion of Estrada’s possible cooperation with the robbery than if she had reported the crime as the victim had done. Furthermore, an officer is not required to rule out the possibility of innocent behavior before temporarily

⁵ Bodnar testified that the victim described the robber who approached her as a “black male” with a “handgun” who was wearing “a gray hoodie and black ski mask,” but no testimony was elicited from him regarding the “build” of the robber. Nonetheless, we do not view Andersen’s testimony relating to the “build” of one of the robbers as being inconsistent with Bodnar’s testimony. While the circuit court made no finding regarding any information Andersen may or may not have received regarding the “build” of either robber, the court at no point questioned Andersen’s credibility and actually relied heavily upon Andersen’s testimony in concluding that reasonable suspicion existed. We further note that during closing argument at the suppression hearing, Estrada’s counsel presented her argument in part as follows: “You have a *skinny* black male, and there’s nothing else in the description of the other male that would lead the officer to reasonably believe that it was the same male.” (Emphasis added.) Thus, we view Andersen’s testimony regarding the “build” of one of the men in Estrada’s vehicle as being consistent with the information he had received regarding the build of one of the robbers, which added to the totality of the circumstances amounting to reasonable suspicion. See *Derr v. Derr*, 2005 WI App 63, ¶40, 280 Wis. 2d 681, 696 N.W.2d 170 (“If the court does not make an express factual finding, we will normally assume fact finding consistent with the court’s ultimate decision.”) (citing *State v. Pallone*, 2000 WI 77, ¶44 n.13, 236 Wis. 2d 162, 613 N.W.2d 568, *overruled on other grounds by State v. Dearborn*, 2010 WI 84, 327 Wis. 2d 252, 786 N.W.2d 97).

detaining an individual for investigation. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990) (“[I]f any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.”).

¶18 We agree with the following assessment by the State:

Confronted with the facts and circumstances as they presented themselves, Officer Andersen acted reasonably when he detained Estrada and her associates for the purpose of further investigating the armed robbery. Under the circumstances, it would have been poor law enforcement work if Andersen had allowed Estrada and her associates to continue on without further inquiry.

Here, the information before the police provided reasonable suspicion that the two men in the Impala were the robbers and that Estrada had not been a “victim” of the robbery committed less than an hour earlier, but rather, that she had cooperated in it. The information possessed by the police also amounted to reasonable suspicion that the gun used in that robbery was on the scene, justifying the protective search of the vehicle.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

