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DISTRICT IV

June 20, 2018

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

2017AP1222-CR State of Wisconsin v. Ilyas V. Ibragimov (L.C. #2016CF373)

Before Lundsten, P.J., Kloppenburg and Fitzpatrick, 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).

Ilyas Ibragimov appeals from a judgment of conviction for possession of THC with intent to deliver. He contends that the circuit court erred in denying his motion to suppress evidence obtained after police stopped his vehicle. 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 (2015-16).¹ We reject Ibragimov's arguments and affirm.

Officers in Wisconsin Rapids stopped Ibragimov's vehicle in connection with a drug investigation and found marijuana. Ibragimov filed a motion to suppress, arguing that the officers lacked reasonable suspicion to stop his vehicle. The circuit court denied this motion, and Ibragimov pleaded no contest to possession of THC with intent to deliver. Ibragimov now appeals, arguing

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

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that the circuit court erred in denying his motion to suppress.

“[I]n reviewing motions to suppress, we apply a two-step standard of review.” *State v. Scull*, 2015 WI 22, ¶16, 361 Wis. 2d 288, 862 N.W.2d 562. “First, we review the circuit court’s findings of fact, and uphold them unless they are clearly erroneous.” *Id.* “Second, we independently review the application of constitutional principles to those facts.” *Id.*

We take the following facts from the circuit court’s decision denying Ibragimov’s motion to suppress. Police officers in Wisconsin Rapids obtained a warrant to search a residence based on information from a confidential informant about methamphetamine dealing. The informant indicated that the drugs were coming from a Minnesota source. While surveilling the residence shortly before executing the warrant, police observed a maroon Mercury Sable with a green hood and a Minnesota license plate. A few hours later, officers executed the warrant and found drugs and drug paraphernalia inside the home. While the search was underway, officers spotted the Mercury Sable traveling on a perpendicular street. Officers observed the vehicle begin to make a turn toward the residence, but then the vehicle turned back and continued along the perpendicular street, away from the police. Officers stopped the vehicle and conducted a dog sniff, which indicated the presence of drugs.²

² At that point, according to the criminal complaint, Ibragimov admitted that there was marijuana in the vehicle. These

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Ibragimov argues that the police lacked reasonable suspicion to stop his vehicle. For an investigatory stop, an officer must “reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place.” *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Reasonable suspicion for a stop must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21.

The circuit court determined that the information known to the officers was sufficient to justify a brief investigatory stop of Ibragimov’s vehicle. In making this determination, the circuit court pointed to the following facts:

- Officers had information that a Minnesota source was supplying drugs to the residence;
- Officers found drugs and drug paraphernalia in the residence;
- Officers had observed Ibragimov’s vehicle with a Minnesota license plate at the residence earlier in the day; and
- While executing the search warrant, officers saw Ibragimov’s vehicle approach the residence but then change direction, as if to avoid the officers.

additional facts are not relevant to our analysis because Ibragimov only challenges the officers’ decision to stop his vehicle.

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The circuit court determined that while each of these facts, standing alone, had an innocent explanation, they established reasonable suspicion when taken together.

Ibragimov argues that the circuit court overstated the significance of various facts. Specifically, Ibragimov contends that the fact that police found drugs during the search of the residence is not relevant, while Ibragimov's presence at the home and the fact that his vehicle had a Minnesota plate are not indicative of criminal activity. Ibragimov relies on *State v. Young*, 212 Wis. 2d 417, 429, 569 N.W.2d 84 (Ct. App. 1997), in which officers conducted an investigatory stop after observing two individuals engaging in a "short-term contact" on the sidewalk in "a high drug-trafficking residential neighborhood." We reversed the circuit court's denial of the defendant's motion to suppress, concluding that this "ordinary, everyday occurrence during daytime hours in a residential neighborhood" did not give rise to reasonable suspicion of criminal activity. *Id.*

We disagree that our decision in *Young* applies in this case. Here, officers found drugs during the execution of the search warrant, and they had reason to believe that the drugs were coming from Minnesota. In light of this information, the presence of a vehicle with a Minnesota license plate at the residence shortly before the drugs were found is part of the totality of the circumstances giving rise to reasonable suspicion. See *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634 ("The reasonableness of a stop is

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determined based on the totality of the facts and circumstances"). These facts gained increased significance when officers subsequently observed the same vehicle apparently avoiding the residence while police were present. In short, this series of events goes far beyond the ordinary, everyday occurrence in *Young*.

Ibragimov further argues that the fact that he did not complete the turn toward the residence is innocent behavior that is not indicative of criminal activity.³ At the hearing, Ibragimov testified that he slowed down at the intersection and saw several squad cars and people with flashlights. The circuit court agreed that even an innocent driver might choose to avoid an area with so much police activity. However, the court concluded that, when combined with the other indications that the vehicle may be connected to drug activity, Ibragimov's actions gave officers reason to suspect that Ibragimov was avoiding police, which in turn made it reasonable for officers to conduct a brief investigatory

³ Ibragimov also points to various facts that undermine the reliability of the officers' observation that his vehicle made a partial turn, such as the fact that the officers were sixty feet away and did not see a turn signal. However, as explained above, we uphold the circuit court's findings of historical fact unless they are clearly erroneous. *See State v. Scull*, 2015 WI 22, ¶16, 361 Wis. 2d 288, 862 N.W.2d 562. Here, we do not understand Ibragimov to be arguing that the circuit court clearly erred in finding that the officers observed the vehicle begin to turn but then continue the other way. Such an argument would fail in light of our deferential standard of review. *See State v. Young*, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736 (2008) ("[I]t is well settled that the weight of the testimony and the credibility of the witnesses are matters peculiarly within the province of the [circuit] court acting as the trier of fact." (quoted source omitted)).

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stop. The alternative possibility that the driver's behavior was innocent does not render the stop unreasonable. *See State v. Begicevic*, 2004 WI App 57, ¶7, 270 Wis. 2d 675, 678 N.W.2d 293 (in situations involving competing inferences it is "the essence of good police work . . . to freeze the situation" in order to "sort out the ambiguity").

Finally, Ibragimov argues that the circuit court ignored significant facts in making its determination. He contends that the circuit court should have considered the fact that officers "had absolutely no indication who the owner of the Mercury Sable was or who [Ibragimov] was." He also contends that the circuit court ignored the fact that officers had seen a different vehicle with Minnesota plates at the residence during previous surveillance activity. In its response, the State points to additional facts that support reasonable suspicion about this particular vehicle and its driver. Specifically, while executing the search warrant, officers were told that the driver of the Mercury Sable was named Eli, and that Eli planned to return to the residence later that evening. This information, in connection with the other facts known to officers, was sufficient to establish reasonable suspicion that the driver of this particular vehicle with a Minnesota license plate was avoiding police when he turned back and drove away from the residence. Accordingly, under the totality of the circumstances, we conclude that the stop was reasonable.

Upon the foregoing reasons,

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IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE

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

*Sheila T. Reiff
Clerk of Court of Appeals*

STATE OF WISCONSIN CIRCUIT COURT WOOD COUNTY

STATE OF WISCONSIN,

Plaintiff, DECISION
Vs. Case No. 16CF373
ILYAS V. IBRAGIMOV,
Defendant.

TO: Attorney George E. Miller
District Attorney Craig Lambert

This matter is before the Court on the defendant's motion to suppress evidence. The basis for the defendant's motion is that the officer did not have reasonable suspicion to stop and question the defendant, that questioning leading to probable cause for an arrest in this matter.

In this matter, law enforcement had developed evidence and procured a search warrant for 550 8th Avenue North, Wisconsin Rapids. In developing information for the search warrant, officers were informed by a confidential informant that the source for the methamphetamine was coming from Minnesota. Prior to execution of the search warrant, the officers engaged in limited surveillance earlier in the day. Driving by that address, officers noted a maroon Mercury Sable with a green hood and Minnesota license plate at the residence. Later on that same day, August 2, 2016, officers executed the search warrant. No persons were home initially, and officers found drugs and drug

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paraphernalia. During the execution of the search warrant, the homeowners, who are not the defendant, arrived in separate cars and were searched. Twenty (20) grams of methamphetamine were found in one car, and one gram of methamphetamine was found in the other. As officers were dealing with those persons, the defendant drove by on a street perpendicular to that street where the house being searched was situated. Officers described the driver as beginning a turn toward the home in question, and then turning back to continue on, theoretically when he saw officers at that location. Based on the above facts, officers stopped the defendant's vehicle and procured a dog stiff, which indicated drugs in the vehicle, leading to probable cause to arrest the defendant.

Authority exists under §968.24, Wis. Stats., as well as case law developed from *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868 (1968), to engage in investigative stops when officers have reasonable suspicion rounded in specific articulable facts that the individual has committed, was committing or was about to commit a crime or traffic civil forfeiture. When making this determination, the Court is to consider the totality of the circumstances. The officers, and the Court in its analysis, may make reasonable inferences from the articulable facts they cite that unlawful conduct is occurring, but the inferences must be reasonable ones. *State v. Chad Young*, 212 Wis 2d 416, 569 N.W. 2d 84, 91 (Ct. App. 1997)

The defendant points out that reasonable suspicion is not a standard without a basis. There are

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numerous cases that dismiss certain conduct or combinations of conduct as not meeting the standard. For instance, being in a high crime area and witnessing a short term contact on the street did not meet the requisite threshold of reasonable suspicion in the *Young* case. When officers received a complaint for loitering and observed the defendant in an area near a house the officer believed to be vacant, the courts did not find reasonable suspicion for the stop, even though officers referenced and relied on their training and experience as a discerning factor. *State v. Damien Darnell Washington*, 2005 WI App 123. Finally, the Court of Appeals has stated that standing with other people and walking on the sidewalk in a high crime area, and then walking away from officers as they approached but returning when the officer told them to do so, was not enough to establish a reasonable suspicion that the individual observed had or was about to commit a crime. *State v. Bell*, 2007 A.P. 2023.

Applying the law to these facts, officers gained information from a confidential informant that drug possession and trafficking was occurring at 550 8th Avenue North, in Wisconsin Rapids. Officers received information from a confidential informant that methamphetamine was being brought over to Wisconsin from Minnesota by a person who would make contact with 550 8th Avenue North, in Wisconsin Rapids. Officers took that information to a judge, who issued a search warrant for that location. In preparation for execution of the search warrant, they surveilled the residence and noted a maroon Sable with a green hood and

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Minnesota license plates at that address in central Wisconsin, where Minnesota plates aren't as common. When they executed the search warrant, the confidential informant's information was confirmed by the discovery of drugs and drug paraphernalia in the residence, as well as 21 grams of methamphetamine in the vehicles of the homeowners who were targets of that search warrant. During the execution of the search warrant, officers saw the same vehicle they had seen earlier at that residence with Minnesota plates approach the residence and then change direction to stay on their regular course of travel, rather than turn down toward the subject house and police vehicles at that location. Taken separately, any one of these factors has an innocent explanation and would not form a basis for a reasonable suspicion. However, this Court finds that when combined together, it is reasonable for the officers to engage in a very brief investigatory stop of the defendant. The vehicle in question had been at the house, which they now knew did contain drugs and drug paraphernalia, as referred by the confidential information. They believed they were looking for a drug dealer who was coming over from Minnesota, and a car with Minnesota license plates, which had been at the home earlier, now appeared to be avoiding the officers by not completing a turn toward the target home. In such circumstances, it is reasonable for officers to stop that vehicle, which was at a house involved in drug trade, had Minnesota plates on it, and appeared to officers to be avoiding their location. The stop was brief and reasonable and supported by specific articulable facts. Therefore, the motion is denied.

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This is a final order for appeal purposes.

Dated this Twenty-fifth day of January, 2017.

BY THE COURT:

/s/ Nicholas J. Brazeau, Jr.
Circuit Court Judge

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October 9, 2018

To:

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You are hereby notified that the Court has entered the following order:

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No. 2017AP1222-CR *State v. Ibragimov*
L.C.#2016CF373

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner, Ilyas V. Ibragimov, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

Sheila T. Reiff
Clerk of Supreme Court

**This document is a true and correct copy
of the document on file in my office.**

/s/ Jacqueline R. Widing
Clerk of Supreme Court/Court of
Appeals State of Wisconsin

6/6/18

Date
