COURT OF APPEALS
DECISION
DATED AND FILED

January 23, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1411-CR **Cir. Ct. No. 2006CF77**

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JUSTIN J. CAMERON,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Washburn County: EUGENE D. HARRINGTON, Judge. *Reversed and cause remanded.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. The State appeals an order suppressing narcotics seized from Justin Cameron's vehicle following a traffic stop. The trial court found that the search occurred after the traffic stop was completed and the officer had no legal basis for further action at that point. The court did not address the

State's additional argument that Cameron validly consented to the search. Because we conclude that Cameron gave valid consent to search his vehicle, we reverse the order and remand the matter for further proceedings.

¶2 Sheriff's Deputy Tyler Walsh first observed Cameron's vehicle when Walsh's and Cameron's vehicles passed in opposite directions and Cameron failed to dim his lights. Walsh turned around and followed Cameron's vehicle, noting erratic driving and lane deviations that suggested Cameron was trying to evade him.

¶3 Walsh activated his emergency lights and stopped Cameron's vehicle. As Walsh approached the vehicle, he saw two people who appeared to be moving around a lot, alarming Walsh. Walsh explained to Cameron the reason for stopping him and asked for his driver's license. Cameron produced his license and explained he was looking for Hayward and was lost. Cameron appeared very nervous and his lips were quivering.

¶4 After checking Cameron's driver's license, Walsh returned to Cameron's vehicle and cautioned Cameron about driving with high beams in the face of oncoming traffic. Walsh returned Cameron's license, gave him directions to Hayward and told him to "have a good evening." Walsh then took three to four steps toward his patrol car, turned back to Cameron's vehicle and asked whether he had anything illegal like weapons or drugs in his vehicle. Cameron replied he did not. Walsh asked for consent to search the vehicle and Cameron gave consent.

¶5 At some point after Walsh returned Cameron's license, Deputy Shawn Sutherland arrived to back up Walsh.[1] Walsh asked Cameron and his passenger to exit their vehicle and stand over by Sutherland's vehicle. In Cameron's vehicle, Walsh found two baggies in the middle console, each containing approximately 500 pills. Walsh contacted a pharmacy and determined the pills were Vicodin, a controlled substance. Cameron did not have a prescription for this medication and the pills had tags indicating they were from a pharmacy where Cameron worked. Walsh then asked Cameron for consent to search the trunk. Cameron consented. Cameron began acting very nervous, pacing back and forth from the driver's side door to the trunk. Walsh then asked Cameron and his passenger to wait in Sutherland's vehicle during the rest of the search. Walsh advised them that they were not under arrest. They were not handcuffed. Walsh found additional Vicodin pills in the trunk.

¶6 The trial court concluded that the initial traffic stop was justified by reasonable suspicion, but that Walsh lacked reasonable suspicion or probable cause to justify the search. The court relied on ***Knowles v. Iowa***, 525 U.S. 113, 117-119 (1998), which held that Iowa's "search incident to citation" statute violated the Fourth Amendment. The trial court also relied on ***Illinois v. Caballes***, 543 U.S. 405, 410 (2005) which upheld the use of dog sniffing evidence that

[1] The State asserts Sutherland arrived after Cameron gave consent to search. Cameron contends Sutherland arrived when Walsh was asking for consent. The testimony on this point is not entirely clear. However, it is clear that Sutherland was not near Walsh when Walsh asked for consent.

occurred during a traffic stop.[2] However, these cases do not address the issue of consent to search.

¶7 We conclude this case is controlled by ***State v. Williams***, 2002 WI 94, ¶¶20-22, 29-35, 255 Wis. 2d 1, 646 N.W.2d 834. As here, Williams was stopped for a traffic violation. After the officer issued Williams a warning citation and returned his driver's license, they shook hands and the officer headed back to his squad car. After two steps, the officer abruptly turned around and began questioning Williams about whether he had any guns, knives, drugs or large amounts of money in the car, and asked for permission to search. Williams consented. ***Id.***, ¶2. The court noted that the traffic stop had ended when the officer told Williams, "good, we'll get you on your way then okay." ***Id.***, ¶11. In fact, the court observed, "That the officer had just invited Williams to 'get on [his] way' strongly influences our conclusion." ***Id.***, ¶29. The court reversed the trial court's suppression order, rejecting its conclusion that the consent to search was invalid because Williams was illegally "seized" at the time he gave consent.

¶8 A seizure occurs when an officer restrains a citizen of liberty by physical force or show of authority. ***Id.***, ¶20. The question is whether a reasonable person would have believed he or she was not free to leave. ***Id.***, ¶12. Further questioning by an officer does not alone effectuate a seizure. ***Id.***, ¶22. Unless the surrounding conditions are so intimidating as to demonstrate that a reasonable person would have believed the person was not free to leave if he or she had not responded, one cannot say the questioning resulted in a detention

[2] Sutherland had a dog in his squad car at the time of the search. The dog never left the car and had no role in the search.

under the Fourth Amendment. ***Id.*** Because the officer did nothing, verbally or physically, to compel Williams to stay, the fact that Williams stayed and answered questions and gave consent to search is not constitutionally suspect. ***Id.***, ¶29.

¶9 As in ***Williams***, Cameron's consent was given after the initial traffic stop ended and under circumstances where a reasonable person would have felt free to leave. Walsh returned Cameron's driver's license, gave him directions to Hayward, said "have a good evening," and headed back toward his patrol car. Giving directions and bidding Cameron to "have a good evening" were equivalent to the officer in ***Williams*** inviting Williams to "get on [his] way." Only after this occurred did Walsh turn back and ask permission to search the vehicle. Walsh did not brandish a weapon and there was no language or tone of voice to compel Cameron to answer questions or consent to the search. Because Cameron was not "seized" at the time he gave consent, the search was valid.

¶10 This case is distinguishable from ***State v. Jones***, 2005 WI 26, ¶22, 278 Wis. 2d 774, 693 N.W.2d 104, where this court affirmed a suppression order because the officer did not sufficiently communicate permission to leave by word or action. In ***Jones***, the transition from the traffic stop to the consensual encounter was so "seamless" that it would be imperceptible to a reasonable person. ***Id.***, ¶7. Here, Walsh's giving directions to Hayward and saying "have a good evening," along with taking three or four steps back toward his patrol car, constitute verbal and physical demonstration that the traffic matter had concluded and Cameron was free to leave.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).