COURT OF APPEALS
DECISION
DATED AND FILED

September 27, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 00-2489-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

OLLIE B. SMITH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: STEVEN D. EBERT, Judge. *Affirmed.*

Before Vergeront, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Ollie Smith appeals from a judgment convicting him of possession of more than 100 grams of cocaine with intent to deliver, within 1,000 feet of a park, as a repeater. Smith argues that the police illegally expanded the scope of the traffic stop when they asked him whether he had guns or drugs in his car and asked for permission to search. We affirm.

¶2 The police pulled over Smith's car, in which Smith was a passenger, after noticing that the car did not have license plates and that it had made two turns without using a turn signal. Smith concedes the initial stop was appropriate. However, while one police officer was questioning the driver, who was asked to step out of the car because he did not have a driver's license or any other identification, another officer began questioning Smith. That officer asked Smith if he had any guns or drugs and asked to search the car. Smith consented to a search. The police found cocaine and a gun.

¶3 Smith moved to suppress the evidence seized in the car, arguing that the police officer had violated the Fourth Amendment when he asked Smith about guns and drugs and asked for permission to search because the officer's questions were not reasonably related to the purpose of the stop, which was for a potential traffic violation. The trial court denied the motion to suppress.

¶4 When we review a trial court order denying a motion to suppress, the trial court's findings of fact are upheld unless they are clearly erroneous. WIS. STAT. § 805.17(2) (1999-2000).[1] Whether the facts satisfy the constitutional requirement of reasonableness under the Fourth Amendment, however, presents a question of law that we review independently. ***State v. Gaulrapp***, 207 Wis. 2d 600, 604, 558 N.W.2d 696 (Ct. App. 1996).

¶5 Smith argues that the police impermissibly extended the scope of the stop. Because the police violated the Fourth Amendment by asking the questions, argues Smith, the consent that he gave to search was not valid. He relies on ***State***

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

v. Betow, 226 Wis. 2d 90, 94, 593 N.W.2d 499 (Ct. App. 1999), where we stated that "the scope of questions asked during an investigative stop must bear a reasonable relationship to the reasons for which the stop was made in the first place." Smith contends that a traffic stop can broaden beyond its stated purpose only if additional suspicious facts come to the officer's attention, in which case, "[t]he validity of the extension is tested in the same manner, and under the same criteria, as the initial stop." ***Id.*** at 94-95.

¶6 ***Betow*** is distinguishable because the police officer searched Betow's car without consent. The issue in ***Betow*** was whether there was a reasonable and articulable suspicion that Betow was committing a crime so as to warrant detention during *the duration of time the officer searched the vehicle.* ***Id.*** at 91-92. Here, the issue is whether the police acted unreasonably in detaining Smith for *the duration of the time it took to ask him the questions.* After the questions were asked, Smith consented to a search.

¶7 ***Gaulrapp*** is on point. In ***Gaulrapp***, we rejected the appellant's argument that "the very asking of the … question about drugs and firearms, without a reasonable suspicion that [the person] possessed either, transformed the legal stop into an illegal stop, making his consent automatically invalid." ***Gaulrapp***, 207 Wis. 2d at 608. We explained that "[w]hen there is justification for a ***Terry*** stop, it is the extension of a detention past the point reasonably justified by the initial stop, not the nature of the questions asked, that violates the Fourth Amendment." ***Id.*** at 609. In this case, Smith's continued detention for the purpose of asking the questions was of such a brief duration that it was not unreasonable. In fact, the detention was contemporaneous with the driver's discussion with the other police officer about why the driver was not able to

produce a driver's license. Therefore, we conclude that no Fourth Amendment violation occurred.[2]

By the Court.—Judgment affirmed.

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

[2] Smith contends that ***State v. Gaulrapp***, 207 Wis. 2d 600, 558 N.W.2d 696 (Ct. App. 1996), interprets ***Ohio v. Robinette***, 519 U.S. 33 (1996) too broadly. However, we are bound by ***Gaulrapp***. ***Cook v. Cook***, 208 Wis. 2d 166, 190, 560 N.W.2d 246 (1997) ("The court of appeals may not overrule, modify or withdraw language from a previously published decision of the court of appeals.").