COURT OF APPEALS
DECISION
DATED AND FILED

January 27, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP2108-CR **Cir. Ct. No. 2008CM512**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD M. LANSER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Ozaukee County: PAUL V. MALLOY, Judge. *Affirmed*.

¶1 BROWN, C.J.[1] Ronald M. Lanser pled no contest to and was convicted of operating a vehicle while intoxicated (2nd offense). He did so after

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

his motion to suppress, arguing that the sheriff's deputy lacked reasonable suspicion to stop him, was denied. He contends on appeal that the stop occurred after an unreliable, anonymous tip and any information the deputy obtained thereafter cannot be considered. But we agree with the State that information the deputy gained from a voluntary encounter in a grocery store, coupled with the information he had obtained from the tipster and a store clerk, formed the basis for the ultimate seizure. We affirm.

¶2 On Tuesday, May 13, 2008, an unidentified woman came into a grocery store and told a clerk that she had followed a truck to the store and that the driver of that vehicle was weaving all over the road. The unidentified person told the clerk that she thought the driver was drunk. The clerk informed the manager and the manager called the Ozaukee County Sheriff's Department. The manager informed the dispatch operator what the unidentified person had told the clerk, added her own observations that the driver of the truck was sitting in his truck which was parked "all crooked" and was possibly talking on a phone, and described the truck as a blue F250 (a Ford) with a license number of 463750. A sheriff's deputy responded and went to the store.

¶3 Upon arriving, the sheriff's deputy observed a blue Ford pickup truck parked in the lot, which fit the description that had been provided. The deputy noticed that the truck was parked across two parallel stalls, divided by yellow paint markers. The deputy then did a registration check and obtained the name of Ronald Lanser. The deputy went into the store and talked to the manager, who indicated that a woman had followed this vehicle which appeared to be weaving and that the man driving the pickup was inside and acting unusual. The manager told the deputy that the man was now in aisle two. The deputy went to aisle two and met with the only subject who was in that aisle. The deputy

identified himself, and asked the man if he was Lanser and if he was the owner of the blue Ford pickup that was parked outside. Lanser replied that he was. The deputy observed that his stance was uneasy, he swayed back and forth, he was holding onto the cart in a manner suggesting that he was using it to help maintain his balance, his eyes were red and glassy, his speech was slurred, and he had a strong odor of intoxicants on his breath. The deputy then asked Lanser if the two of them could speak outside, and Lanser agreed. They then went outside to the rear of Lanser's truck. The deputy asked how much he had been drinking, and Lanser said three or four beers. It was at that time that the deputy decided to have field sobriety tests performed.

¶4 Lanser casts this as a "stop" case. But there was no stop until the deputy decided to have field sobriety tests. Up until then, we agree with the State that the encounter in the grocery store was nothing more than the situation described in ***United States v. Mendenhall***, 446 U.S. 544, 553 (1980), as follows:

> "[T]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." Police officers enjoy "the liberty (again, possessed by every citizen) to address questions to other persons," although "ordinarily the person addressed has an equal right to ignore his interrogator and walk away." (Plurality opinion) (citations omitted).

As cogently articulated by the State, "[t]here is no legal barrier to a police officer simply making contact with someone in a public place, regardless of what other thoughts may be in the back of the officer's mind."

¶5 While in the store, Lanser was never told that he was not free to leave, that he had to identify himself, that he was under arrest, or even that he was being detained for questioning. The deputy had a right to be in the store, had a

right to go into aisle two and had a right to walk up to Lanser, identify himself, and ask if he was Lanser.

¶6 As such, the deputy had a right to be where he was when he saw that Lanser was unsteady, looked as though he was using the shopping cart for support, had alcohol on his breath, slurred his words and had glassy eyes. He had a right to ask Lanser how much he had been drinking after Lanser voluntary accompanied the deputy to the parking lot. In addition, the deputy had earlier corroborated that there was indeed a blue Ford pickup, and it was parked across two parallel stalls with yellow lines separating them. And he already had information that an anonymous person had followed Lanser to the store, had observed Lanser weaving all over the road, and saw that Lanser looked drunk when he was parked at the grocery store. All of this information, added together, gave the deputy plenty of reasonable suspicion that Lanser was driving while intoxicated. The stop was effectuated after the deputy obtained all of that information. That is why this is not really a "stop" case. The stop was anti-climatic.

¶7 We acknowledge, as Lanser argues, that we must look at the totality of the circumstances to determine whether a reasonable person in his position would have believed he was under arrest. *See* ***State v. Quartana***, 213 Wis. 2d 440, 449-50, 570 N.W.2d 618 (1997). But Lanser's argument is that the stop was effectuated the moment he was asked to perform field sobriety tests. At that point, he asserts, a reasonable person in his position would know he was not free to leave. We fully agree. At that point, there could be no doubt that Lanser was not free to leave. But, as we have already stated, by the time the deputy had decided to have field sobriety tests conducted, "this bird had flown," as the Beatles once sang in "Norwegian Wood."

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.