

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 27, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP1212-CR**

**Cir. Ct. No. 2009CF286**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**KARL J. FREEMAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Jefferson County:  
RANDY R. KOSCHNICK, Judge. *Affirmed.*

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

¶1 PER CURIAM. Karl Freeman appeals a judgment convicting him of possession of narcotics with intent to deliver. The sole issue on appeal is whether drug evidence seized during the search of a vehicle in which Freeman was

an occupant should have been suppressed. We conclude that the evidence was properly admitted, and affirm the judgment of conviction.

## BACKGROUND

¶2 The basic facts of the traffic stop—which was recorded by a squad car video—are undisputed. Freeman was the front-seat passenger in a vehicle that the parties agree was lawfully pulled over by a Wisconsin State Trooper for speeding. During the course of investigating the traffic violation, the trooper discovered that none of the three occupants of the vehicle had a valid driver's license. Additionally, Freeman told the trooper that he had rented the vehicle, but produced a rental agreement that had already expired. At that point, the trooper called for backup, a K9 unit, and a tow truck.

¶3 Shortly after backup arrived, the first trooper directed the driver to exit the vehicle and issued him a citation she had been filling out. After issuing the citation, the trooper returned the driver's identification and advised him that a tow truck would come to remove the vehicle since none of the occupants had a valid license. The trooper then proceeded to question the driver about his relationship with Freeman and the third occupant of the vehicle, who had hitched a ride with them; what they had been doing prior to the stop; and whether there was anything illegal in the vehicle. The trooper eventually asked for and obtained permission from the driver to search the vehicle.

¶4 After the first trooper had obtained permission from the driver to search the stopped vehicle, she conferred with the backup trooper who had been questioning Freeman and the other passenger. The backup trooper related that Freeman had produced a second, current rental agreement, and that Freeman had \$3,000 in cash on him. The first trooper then approached Freeman and also

obtained his permission to search the vehicle, while the backup trooper spoke to the driver and noticed an odor of marijuana.

¶5 The parties disputed how to characterize several aspects of the behavior of the vehicle's occupants. The State asserted that the driver had not immediately stopped his vehicle in the expected place on the shoulder, instead remaining partially in a lane of traffic; that someone had shoved a duffle bag partially underneath a seat to attempt to hide it during the stop; and that the driver seemed particularly nervous and evasive throughout the stop. However, the circuit court resolved all of these disputes in Freeman's favor, explicitly finding that: (1) the driver promptly pulled over to the right shoulder side of the traffic lane upon receiving the signal from the trooper's car in a construction zone, and made no attempt to elude police; (2) the movement of the duffle bag was not unusual since the bag was never hidden from view; and (3) the occupants of the vehicle provided truthful information requested by the police in a respectful and expeditious manner and did not exhibit anything beyond normal anxiety during the stop.

#### STANDARD OF REVIEW

¶6 When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless those findings are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, the application of constitutional principles to the facts as found is a question of law that we decide without deference to the circuit court's decision. *State v. Patricia A.P.*, 195 Wis. 2d 855, 862, 537 N.W.2d 47 (Ct. App. 1995).

## DISCUSSION

¶7 As a threshold matter, we agree with the parties that the first trooper had sufficient grounds to stop the car in which Freeman was a passenger for speeding; that the initial purpose of that stop was completed once the trooper issued the driver a traffic citation; and that the trooper did not obtain permission to search the vehicle from either the driver or Freeman until after the citation had been issued. We further agree with the parties that the occupants of the vehicle were still being detained when two of them gave permission for the search because the troopers had directed all three of the occupants to stand in locations apart from one another and the troopers were actively questioning them.

¶8 Freeman raises two challenges to the validity of the consent he and the driver provided to search the rental car. First, he contends that the consent was per se invalid because it was obtained during a period of illegal detention. *See Florida v. Royer*, 460 U.S. 491, 501 (1983). Alternatively, Freeman argues that the consent did not meet constitutional standards for voluntariness. We address each issue in turn.

*Legality Of Detention*

¶9 When an initially lawful seizure of a motorist extends beyond the purpose of the stop, it becomes illegal. *State v. Griffith*, 2000 WI 72, ¶54, 236 Wis. 2d 48, 613 N.W.2d 72. However, if, during an investigatory detention, an officer becomes aware of facts sufficient to give rise to a reasonable suspicion that the person has committed or is committing a distinct offense, the purpose of the stop may expand and the length of the stop may be properly extended to investigate the new suspicion. *See State v. Colstad*, 2003 WI App 25, ¶¶11-13, 260 Wis. 2d 406, 659 N.W.2d 394.

¶10 The State points to eight factors that it believes justified an extension of the stop in this case:

- (1) the location where the driver pulled over;
- (2) the fact that none of the occupants of the vehicle had a valid driver's license;
- (3) the expired rental agreement;
- (4) the movement of the duffle bag inside the vehicle;
- (5) the nervousness of the driver;
- (6) the fact that neither the driver nor Freeman really knew the third occupant of the vehicle;
- (7) the odor of marijuana on the driver; and
- (8) the \$3,000 in Freeman's possession.

We do not consider the first, fourth, or fifth asserted factors to be relevant because they are inconsistent with the circuit court's determination that nothing in the behavior of the occupants of the vehicle was evasive or out of the ordinary for a routine traffic stop. We do not place much weight on the sixth factor because we are not persuaded that giving a ride to someone known through mutual acquaintances provides objective reason to believe there is criminal activity afoot. We do not consider the seventh factor to be relevant because the odor of marijuana

was not detected until after the driver and Freeman had already consented to the search.<sup>1</sup>

¶11 The remaining issue before us then is whether the troopers had reasonable suspicion, based on the second, third, and eighth factors, to extend Freeman's detention beyond the issuance of the citation to the driver to the time when Freeman gave consent to search the vehicle.<sup>2</sup> We are satisfied that they did.

¶12 First, absent a current rental agreement, the troopers were entirely justified in investigating whether the three occupants were in possession of a vehicle without the owner's consent. That suspicion of criminal activity was distinct from the speeding violation, and provided separate grounds to interrogate Freeman after the traffic citation had been issued. Although Freeman subsequently produced a current rental agreement, it was still suspicious that a person without a valid driver's license would have been able to rent a vehicle, raising the possibility of fraud. Moreover, the suspicious rental activity, in conjunction with the substantial amount of cash that Freeman was carrying, gave rise to a reasonable suspicion that Freeman may have been involved in drug activity. We therefore conclude that Freeman was still being lawfully detained on reasonable suspicion of several possible crimes when he gave permission to search the vehicle.

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<sup>1</sup> The first trooper testified that she did not notice any odor of marijuana because she was congested from a cold.

<sup>2</sup> The parties have not addressed whether the consent of the driver, who was not the holder of the rental agreement, would have been sufficient in and of itself. For the purpose of this opinion, we will assume without deciding that Freeman's consent was necessary.

*Consent*

¶13 In order to be considered “voluntary,” a suspect’s consent to search must be “an essentially free and unconstrained choice” that does not result from any express or implied coercion. *State v. Artic*, 2010 WI 83, ¶32, 327 Wis. 2d 392, 786 N.W.2d 430 (quoted source omitted). Relevant factors under a totality of the circumstances test include whether any misrepresentation, deception, or trickery was used to entice the defendant to give consent; whether the defendant was threatened or physically intimidated; the conditions at the time the request to search was made; the defendant’s response to the agent’s request; the defendant’s general characteristics, including age, intelligence, education, physical and emotional condition, and prior experience with police; and whether the agent informed the individual that consent could be withheld. *Id.*, ¶33.

¶14 Here, the fact that Freeman was in custody when he gave consent weighs in favor of implied coercion, as does the fact that the trooper did not explicitly advise him that he could withhold consent. Those facts are not determinative, however. Rather, they must be balanced against the rest of the factors, which all tend to show that the consent was voluntary. Specifically, the trooper did not use any deception to elicit the consent; she did not make any threats or attempts to physically intimidate Freeman, such as drawing her weapon, and Freeman was not handcuffed or subjected to any other coercive conditions of confinement; and there was no indication that Freeman was particularly susceptible to influence. Finally, the circuit court was able to view Freeman’s demeanor on the squad car video, and was satisfied that Freeman was giving consent freely. We agree with the State that the facts in this case are substantially similar to those in *State v. Bons*, 2007 WI App 124, 301 Wis. 2d 227, 731 N.W.2d 367, where a motorist gave consent while detained but no other factors indicated

coercion. *See id.*, ¶18. Accordingly, we affirm the circuit court's determination that the consent was voluntarily given.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).



