COURT OF APPEALS DECISION DATED AND FILED

March 23, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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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. 2016AP1609-CR

Cir. Ct. No. 2015CM545

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

FAITH N. REED,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Monroe County: J. DAVID RICE, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] Faith Reed appeals a judgment of conviction for misdemeanor possession of a controlled substance and misdemeanor bail

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

jumping. She contends that the circuit court erred in denying her motion to suppress evidence obtained after an unlawful police entry to her apartment unit. I conclude that the entry was lawful, because the officer entered the unit after receiving uncoerced, unequivocal, and specific consent to enter from someone with actual or apparent authority to give consent. Accordingly, I affirm.

BACKGROUND

¶2 The criminal complaint made the following pertinent allegations. One afternoon, Tomah Police Department Officer Steven Keller responded to a report of a fight. On the scene, Keller encountered Daniel Cannon and Kirk Sullivan, who explained to Keller that two other men, brothers Jerome Harris and Brandon Harris, had recently been arguing at that location. Cannon and Sullivan told Keller that, after the dispute, Jerome Harris ("Jerome") may have gone to Sullivan's residence, 940 Grandview Avenue, Unit 206 ("Unit 206") to watch a football game on television, while Jerome's brother went elsewhere.

¶3 Skipping over allegations that are at the heart of this appeal and are discussed in detail below, Sullivan led Keller to Unit 206, where Keller encountered Jerome and Reed, as well as suspected marijuana. After Reed was arrested and taken into custody on a marijuana charge, a pill containing dextroamphetamine sulfate was found in one of her socks.

¶4 Reed moved to suppress all evidence obtained following Keller's entry to Unit 206 based on the Fourth Amendment.

¶5 Keller was the only witness at the suppression hearing, but his testimony was supplemented by a body camera recording ("the video") derived from equipment attached to Keller's uniform that recorded pertinent events from

the vantage point of his chest. Clear images and audible sound of pertinent activity were later downloaded and made available to the parties and the court. This digital data is on a DVD in the record on appeal. The following summary combines undisputed aspects of Keller's testimony and what the video shows.[2]

¶6 Keller was dispatched during daylight hours to an outdoor location on a report of an altercation between two men on the street. On the scene Keller encountered Cannon and Sullivan, who appeared to voluntarily engage with Keller in response to his questions. Cannon did most of the talking, but Cannon and Sullivan together contributed to the following account: a verbal dispute between the Harris brothers was heated enough that Cannon and Sullivan interceded, after which Brandon had apparently headed for one apartment in the area and Jerome had apparently headed to another, namely, Unit 206, where Sullivan resided.

¶7 At one point, while Keller was focused on Cannon, Sullivan started to walk away. After Keller noticed this, he called out loudly to Sullivan, "Hey, why don't you come back here? Don't just leave." Sullivan turned around and walked back toward Cannon and Keller. As Sullivan approached Keller with his hands in his jacket pockets (it was a December day), Keller told Sullivan, "Keep your hands out of your pockets for me, okay?" About 3-1/2 minutes later, after

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[2] The circuit court did not make any findings of fact that are materially inconsistent with my summary, and neither party contests that this court has a vantage point equal to that of the circuit court in reviewing the video for current purposes. *See* ***State v. Jimmie R.R.***, 2000 WI App 5, ¶39, 232 Wis. 2d 138, 606 N.W.2d 196 (1999) (when the only evidence on a factual question is reflected in a video recording, the court of appeals is in the same position as the circuit court to determine a question of law based on the recording). In addition, there is no dispute that the video captures all pertinent activity (*e.g.*, Reed does not argue that there are gaps in the video, or that Keller testified in a way that casts doubt on what the video appears to show).

other discussion, Keller asked Cannon and Sullivan, "Can you guys just hang around here for a moment?" Both men indicated that they would.

¶8 About five minutes into the discussion on the street between Keller and the two men, Sullivan told Keller, in referring to Jerome, "Yeah, he's supposed to go to my apartment to watch football." About 1-1/2 minutes later, Sullivan repeated his belief that Jerome was in Unit 206.

¶9 One key event occurred nearly eight minutes into the encounter. Keller directed the following comment to Sullivan: "All right, let's go, ah, let's go look over—see if [Jerome's] over here [meaning, in Unit 206]. If anything, we could just talk to him." Sullivan is not heard giving a verbal response to Keller's comment. However, in apparent response, Sullivan started to walk in what turned out to be the direction of the building housing Unit 206.

¶10 Keller told Cannon that Cannon was "good to go," apparently signaling that it was fine with Keller if Cannon left the area.

¶11 As Sullivan led the way, all of the following occurred. Sullivan and Keller walked directly to the entrance of the apartment building containing Unit 206, taking less than one minute to arrive there. Sullivan opened an exterior door and allowed Keller into the building. Sullivan and Keller walked up to the second floor, where Sullivan opened a door leading to a corridor lined with apartment unit doors. Sullivan and Keller walked down the corridor to Unit 206, approximately midway down the corridor on the left. Just before Sullivan reached Unit 206, Keller made a comment, apparently directed into his portable radio, "I'll be in apartment number 206."

¶12 The following then occurred, either simultaneously or over the course of a second or two:

- Sullivan briefly knocked on the door to Unit 206, then opened the apparently unlocked door. The door was inward-opening, with the door knob on the right side as Sullivan approached. Sullivan opened the door only wide enough to allow himself to walk into Unit 206, while gently pushing the door toward a closed position behind him, but without closing the door completely.[3]

- Sullivan called out in a loud voice, “Jerome?”

- A man subsequently identified as Jerome said firmly, “Hey, don’t just walk in like that.”[4]

- Keller used one hand to apply enough pressure to the door to keep it from closing, and then (or simultaneously) pushed the door open wide enough for Keller to enter Unit 206.

- As he entered Unit 206, on Sullivan’s heels, Keller said, “What’s going on?”

¶13 To clarify details regarding the door, the video shows that Keller entered Unit 206 by pushing on the door after it began moving toward the closed

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[3] I agree with Reed that the only logical deduction from the video is that as Sullivan entered Unit 206 he applied slight to moderate pressure to the make the door slowly swing toward the closed position. It is clear that neither Jerome nor Reed pushed on the door from the inside. The only other possibility that I can think of seems unlikely, and is not suggested by either party nor was it apparently considered by the circuit court: that the entrance door to Unit 206 had spring hinges that caused the door to start to close automatically. This would be like many doors leading into hotel rooms but like few doors leading into apartment units.

At the same time, it is not accurate to say, as Reed repeatedly does in briefing, that “when Sullivan entered the apartment, he *closed the door behind him*.” (Emphasis added) The door into Unit 206 never closed during the very brief interval between Sullivan’s opening it and Keller’s entry to Unit 206.

[4] I disagree on this point with Reed, who submits that the video has Keller saying, “Hey, don’t just walk in there.”

position. However, there may or may not have been a moment during which Sullivan applied pressure to close the door while Keller applied opposing pressure to keep the door open, or to open the door further. But, if there was a moment of opposing pressures, it would have been exceedingly brief. In any case, it is clear that Sullivan and Keller were never in anything resembling a pushing match—a battle over opening the door further or closing it further. Summarizing, it appears that Sullivan made a nuanced attempt to momentarily *delay* Keller's entrance, by slipping into the apartment and giving the door a soft backward push. As discussed below, Sullivan's soft push would be consistent with possible last-second concern on Sullivan's part about allowing Keller into Unit 206.

¶14 Although, as referenced below, it is not part of the objective-perspective analysis, I note for context that Keller testified that he "kept the door open" so that he could "see inside the residence as [Sullivan] was entering" "for my safety and [to prevent] the destruction of any type of evidence." Regarding the safety concept, Keller referenced in his testimony the earlier "altercation" between the brothers and Keller's belief, based on radio communications, that there was "a possible warrant" for Jerome.[5]

¶15 Reed's sole challenge is to the circuit court's decision that Keller lawfully entered Unit 206 based on valid consent from Sullivan; Reed does not argue that there was an illegal search or any other unlawful conduct within Unit 206 if Sullivan gave Keller valid consent to enter. Therefore, I need not address

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[5] This was a reference to a "body only" warrant for Jerome, which the video reveals Keller learned about over his police radio during the course of his discussion with Cannon and Sullivan.

any aspect of events that occurred after Keller entered Unit 206. For context, I note the following. The video shows that, as Keller entered Unit 206, Jerome and Reed were standing or walking near counter space by the entrance door. Keller testified that he noticed Jerome "standing at the counter appearing to conceal something in front of him," which Keller discovered was suspected marijuana.

¶16 At the suppression hearing, the State played approximately nine minutes of the video, covering the events summarized above.

¶17 The circuit court denied Reed's motion to suppress. The court concluded that Sullivan "by his conduct" "freely and voluntarily implied that the officer could follow him to [Unit 206] and that [Sullivan] was going to locate and identify [Jerome,] who was one of the suspects in connection with this altercation so that the officer could talk with him," and that "there was nothing about [Keller's] entry" to Unit 206 that "revoked" Sullivan's "consent that the officer follow him" into Unit 206. The circumstances involving the door starting to close in front of Keller would have been "ambiguous" to Keller, and things "happened very quickly," and therefore the door starting to close did not amount to withdrawal of the consent Sullivan gave to Keller to enter Unit 206.[6]

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[6] I do not address an alternative ground to affirm, based on concepts of exigency or emergency. On this topic, the circuit court concluded that it was "reasonable" for Keller to "push the door partially open to make sure he knew who was in front of him and what was going on" for safety reasons, in part because Keller had received word over his portable radio that Sullivan was on probation.

I also do not address arguments about the plain view doctrine or about what conduct by an officer constitutes "entry" to a residence for Fourth Amendment purposes. Keller testified that he "entered" Unit 206 only after he observed, while applying inward pressure to the door, that Jerome was "concealing something." I ignore this testimony, because I assume without deciding, in favor of Reed, that Keller "entered" Unit 206 for Fourth Amendment purposes the moment he applied pressure to the door.

¶18 Reed subsequently entered pleas of no contest to both charges reflected on the judgment of conviction, and now appeals.

DISCUSSION

¶19 Our supreme court recently summarized the law regarding warrantless police entries to residences:

> "It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." ***Payton v. New York***, 445 U.S. 573, 586, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). "Indeed, '[i]t is axiomatic that the physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" ***State v. Richter***, 2000 WI 58, ¶28, 235 Wis. 2d 524, 612 N.W.2d 29 (alteration in original) (internal quotation marks omitted) (quoting ***Welsh v. Wisconsin***, 466 U.S. 740, 748, 104 S. Ct. 2091, 80 L.Ed.2d 732 (1984)).

State v. Dumstrey, 2016 WI 3, ¶22, 366 Wis. 2d 64, 873 N.W.2d 502.[7] In the absence of a warrant, police must have probable cause and exigent circumstances or consent to justify entry to a residence. ***State v. Stout***, 2002 WI App 41, ¶15, 250 Wis. 2d 768, 641 N.W.2d 474.

¶20 The following standards address consent as a justification for warrantless entry to a residence:

> Before consent may operate as a valid exception to the warrant requirement, two conditions must be met. First, the consent must have been "freely and voluntarily given." Second, the consent must be given by an individual having

[7] Reed references Article 1, Section 11 of the Wisconsin Constitution, the state analog to the Fourth Amendment, but makes no separate argument based on case law interpreting Article 1, Section 11.

> either actual or apparent authority over the place to be searched.
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> … [C]onsent [is not established through] mere acquiescence to a claim of lawful authority nor obtained through coercion.

State v. Wantland, 2014 WI 58, ¶¶23-24, 355 Wis. 2d 135, 848 N.W.2d 810 (citations omitted). There is no dispute that Sullivan had actual or apparent authority to give consent for Keller to enter Unit 206.

¶21 Turning to the question of whether Sullivan intentionally, freely, and voluntarily consented to Keller's entry, the State has the burden to demonstrate that Sullivan intended to consent to a warrantless intrusion, *see* ***State v. Douglas***, 123 Wis. 2d 13, 22, 365 N.W.2d 580 (1985), as well as "the burden of proving that consent was, in fact, freely and voluntarily given." ***State v. McGovern***, 77 Wis. 2d 203, 211, 252 N.W.2d 365 (1977) (citing ***Schneckloth v. Bustamonte***, 412 U.S. 218, 222 (1973)); *see also* **Gautreaux v. State**, 52 Wis. 2d 489, 492, 190 N.W.2d 542 (1971) (State bears "the burden of proving by clear and positive evidence the search was the result of a free, intelligent, unequivocal and specific consent without any duress or coercion, actual or implied.").

¶22 Courts use an objective test to measure the scope of consent in this context: "'what would the typical reasonable person have understood by the exchange between the officer and the suspect?'" ***State v. Matejka***, 2001 WI 5, ¶39, 241 Wis. 2d 52, 621 N.W.2d 891 (quoting ***Florida v. Jimeno***, 500 U.S. 248, 251 (1991)).

¶23 Applying these standards, I conclude that the State carried its burden to the requisite levels of proof to show that Sullivan, in the words of ***Gautreaux***, gave "free, intelligent, unequivocal and specific consent" for Keller to enter Unit

206 through conduct that the typical, reasonable person would have understood indicated consent.

¶24 I first address the issue of Sullivan's expression of consent, and then turn to the voluntariness issue.

¶25 As Reed acknowledges, unequivocal and specific consent may be expressed through words, gestures, or other actions, or some combination. *See* ***State v. Tomlinson***, 2002 WI 91, ¶37, 254 Wis. 2d 502, 648 N.W.2d 367. I conclude that, to a typical, reasonable person, both of the following were unequivocally and specifically expressed: (1) Keller's request that Sullivan permit Keller to talk to Jerome in Unit 206, including proposing that "we could just talk to him," and (2) Sullivan's consent, expressed through an extended course of conduct, that Keller enter Unit 206. In sum, Keller suggested that Sullivan take him to Unit 206 so that Keller could talk to Jerome, after which Sullivan led the way to, *and into,* this place where Sullivan indicated Jerome would be.

¶26 The fact that Keller testified, as summarized above, that he pressed inward on the door for safety reasons and to prevent the destruction of evidence does not undermine the State's argument. As stated above, the test is objective.

¶27 Reed effectively acknowledges that a typical, reasonable person would have understood Sullivan to unequivocally and specifically invite Keller to the door of Unit 206, and that Sullivan's leading the way for Keller signaled an agreement to assist in helping Keller to speak with Jerome. Reed contends, however, that the State failed to show that Sullivan consented, "not only to the officer following him *to* the apartment, but *into* the apartment," because "Keller never asked Sullivan for permission to *enter* his apartment, and never even hinted to him that this was his objective. The stated objective was to *speak with*

[Jerome] Harris." (Emphasis in original) In partial support of this argument, Reed cites ***State v. Altenburg***, 150 Wis. 2d 663, 670-71, 442 N.W.2d 526 (Ct. App. 1989), for the proposition that a consenting person may limit the scope of consent to allow police access to some residential areas but not others.

¶28 It is true that, under such precedent as ***Altenburg***, Sullivan could have expressed his consent in ways that would have limited the scope of police access to residential space. However, the video shows that Sullivan failed to do so, and instead through his conduct unequivocally manifested an intent that Keller follow Sullivan to and enter Unit 206. When one person agrees to accompany an individual to the first person's residence *in order to meet with* a third party *who is said to be in the residence*, the typical, reasonable person would expect that this would entail consent that the individual enter the residence to have the planned meeting. It would be strange to think otherwise, absent some indication to the contrary by the person asking for consent or the person asked for consent. It is wrong to say, as Reed does, that Keller "never even hinted" that his objective was to meet with Jerome in Sullivan's apartment. It was far more than a hint. It was the unambiguous meaning of Keller's request.

¶29 I turn to Sullivan's conduct. Whatever reasonable question there might have been about whether Sullivan's response to Keller's request could have entailed something more involved—that it might have involved, say, Sullivan alone entering Unit 206 in order to invite Jerome to leave Unit 206 so that Jerome could meet with Keller elsewhere—Sullivan dispelled this doubt through consistent, unambiguous conduct. Without a word or gesture of protest, question,

or doubt, Sullivan led Keller straight to the building, into the building, up the stairs, and down the correct corridor to Unit 206 (where Keller announced into his radio that he was going into the apartment).[8]

¶30 As for Sullivan's last-second, soft backwards push on the door, as indicated above, this suggests the possibility that Sullivan had last-second concern about agreeing to allow Keller to enter Unit 206. However, "'an intent to withdraw consent must be made by unequivocal act or statement.'" ***Wantland***, 355 Wis. 2d 135, ¶33 (quoted sources omitted). This nuanced possible delaying tactic was an equivocal act.

¶31 Before leaving the topic of how equivocal Sullivan's conduct was in apparently seeking to momentarily delay Keller's entrance to Unit 206, it may bear mentioning that the detailed summary of events given above is the result of multiple, close, frame-by-frame viewings of the video. No doubt, police officers are accountable for the details of their professional conduct as recorded in videos, and those details in some cases may reveal that purported consent was in fact equivocal or non-specific. At the same time, however, frame-by-frame hindsight can obscure the correct answer to the pertinent question: from an objective point of view, did Sullivan communicate unequivocal withdrawal of consent for Keller

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[8] To clarify, Sullivan was not required to protest in order "to gain the Fourth Amendment's protection," because, as stated above, consent "cannot be found by a showing of mere acquiescence...." *See* ***State v. Johnson***, 177 Wis. 2d 224, 234, 501 N.W.2d 876 (Ct. App. 1993) (quoting ***United States v. Shaibu***, 920 F.2d 1423, 1426-1427, amended, 912 F.2d 1193 (9th Cir. 1990)). At the same time, it is pertinent to the analysis that Sullivan was completely cooperative, volunteered to Keller that Jerome was likely in Unit 206, and led Keller straight into Unit 206 in response to Keller's request to talk to Jerome in Unit 206.

to enter Unit 206? Keller did not have the benefit of hitting the "pause" button as events unfolded.

¶32 Reed submits that the facts here are a close match to those in ***State v. Johnson***, 177 Wis. 2d 224, 501 N.W.2d 876 (Ct. App. 1993), in which the court concluded there was a lack of consent for police to enter an apartment unit. I agree with Reed that some facts in ***Johnson*** loosely align with the facts here. However, several differences are critical.

¶33 In ***Johnson***, two police officers were on a dragnet-type assignment in an apartment building plagued by drug dealing. ***Id.*** at 227, 236-39. With apparent permission from the owners and manager of the building, the officers were assigned to "field interview anyone in the apartment building or surrounding area so as to ascertain the nature of their business." ***Id.*** at 236-37.[9] The officers stopped Johnson in a hallway to ask "whether he 'belonged there.'" ***Id.*** at 237. Johnson identified himself and told the officers that he was there to visit his girlfriend in apartment 208. ***Id.*** Johnson had no identification and a name check was delayed because Johnson is such a common name. ***Id***. The pertinent part of the narrative proceeds as follows:

> After waiting several minutes, [one officer] suggested that they proceed to apartment 208 in an effort to verify Johnson's story. Johnson agreed. Upon arriving at the apartment, [one officer] knocked on the door but there was no answer. Johnson indicated that [his girlfriend] must not be home but that he had a key. [The officer] took the key in an effort to ascertain whether it would work in the

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[9] One judge dissented in ***Johnson***, and I quote primarily from the factual summary in the dissent because, as Reed points out, it contains a slightly more robust description of the facts than the majority.

> door.[10] Johnson, however, stated that he wanted to open the door, whereupon [the officer] returned the key.
>
> Upon retrieving the key, Johnson proceeded to unlock the door. Johnson then indicated that he would go look for some identification. [Johnson] proceeded directly into the bedroom of the apartment. [The officer] remained at the threshold of the door ….

Id.

¶34 On these facts, all three court of appeals judges agreed that Johnson did not give the officers consent to enter the unit. ***Id.*** at 233-34, 241-42 (the reason for the dissent involved a point not at issue here). If one hits the theoretical pause button at the moment when Johnson "agreed" to go with the officers to his girlfriend's apartment in order "to verify Johnson's story," this could reasonably have been understood to be limited to an agreement that Johnson would accompany the officers to the girlfriend's apartment so that Johnson could fetch his identification from within the apartment. Elaborating, one could reasonably anticipate that having the officers verify Johnson's story at the apartment *might* have involved police interaction with the girlfriend at, and perhaps even inside, the apartment. At the same time, however, an objective observer could have thought that Johnson conveyed to the officers only that he would make a solo entry to apartment 208 to fetch his identification, which would have accomplished the twin goals of proving both his identity and that he had a tie to one unit in the building.

¶35 The next phase of the ***Johnson*** facts diverges even more dramatically from the facts here. When Johnson and the officers were outside

[10] In the majority's factual summary, the officer "'grabbed' the key" from Johnson (with "grabbed" in quotation marks), indicating a particularly aggressive show of police authority, at least at that moment. *See* ***Johnson***, 177 Wis. 2d at 227-28.

apartment 208, Johnson made clear that he alone wanted to control entry, using his key, and that "*he* would go look for some identification," leaving the officers outside the apartment. After an officer "grabbed" his key, Johnson took it back. The only way to make these facts resemble the facts in ***Johnson*** would be if Sullivan had knocked on the door of Unit 206, and then told Keller that he was going into Unit 206 alone to see if Jerome would come out to meet with Keller.

¶36 In sum, despite loose similarities between some facts in ***Johnson*** and the facts here, ***Johnson*** lends little weight to Reed's argument in this highly fact-dependent area of the law.

¶37 The State points to ***State v. Phillips***, 218 Wis. 2d 180, 196, 577 N.W.2d 794 (1998), in support of its position regarding consent, but as Reed correctly points out, ***Phillips*** involves a largely distinguishable set of facts. While neither party can point to Wisconsin case law that squarely addresses the scenario here, my decision is generally consistent with at least some persuasive federal case law that I have identified. *See, e.g.*, ***United States v. Walls***, 225 F.3d 858, 862-63 (7th Cir. 2000) (citation omitted) ("It is well established that consent may be manifested in a non-verbal as well as a verbal manner and [the defendant's] action in opening the door and stepping back to allow the entry was sufficient to convey her consent in these circumstances"; defendant's consent "further illustrated by her actions after [the agents] entered the residence in motioning for them to follow her to the kitchen where she could speak with them privately.").

¶38 Reed fails to address the voluntariness aspect of consent in her principal brief, but I will address the issue, because the State does not argue that Reed concedes the issue by failing to address it, Reed provides an argument in her reply brief, and I have the significant benefit of the video.

¶39 The only argument that Reed offers on the voluntariness topic not already addressed above is to focus on the moment when Sullivan briefly walked away from Keller and Keller asked that he come back. Reed suggests that this provides evidence that Sullivan was constrained or intimidated by Keller. However, I agree with the circuit court that it is "obvious that the officer was not ordering [Sullivan] to come back," but instead Keller only made a request, which was consistent with Keller's general treatment of Sullivan as a witness, not as a suspect. Keller merely invited Sullivan to continue providing information about the Harris brothers.

¶40 Explaining further, Keller made this request during the course of a consensual encounter with persons treated as citizen witnesses in a public place. At no time did the uniformed Keller try to conceal from Cannon or Sullivan his identity or purpose. Nor did Keller at any point challenge what Cannon or Sullivan told him about merely being witnesses to Keller's investigation of the alleged dispute between the Harris brothers. In addition, Reed does not argue that Keller engaged in illegal or manipulative conduct—such as a ruse, a lie, or intimidation—at any point during Keller's interactions with Cannon or Sullivan before Keller entered unit 206, nor did Keller at any time display a weapon, make threats or give commands, or engage in physical contact. Summarizing, based on all events reflected on the video, when Sullivan walked away it could simply have been because Sullivan mistakenly thought that Keller had no more questions for him about the Harris brothers, and that Sullivan had no reservations about continuing the discussion on this topic when Keller requested it.

¶41 Reed points to Keller's suppression hearing testimony that he did not consider Sullivan free to leave. However, this was Keller's subjective view expressed after the fact, and it is contradicted on an objective basis by the video.

And, as already discussed, Sullivan's conduct after complying with Keller's request that they continue to talk appeared to be free and voluntary consent until the moment when Sullivan entered Unit 206 knowing that Keller was right on his heels.

By the Court.—Judgment affirmed.

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