

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

November 11, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 99-1028**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**CITY OF БЕЛОIT,**

**PLAINTIFF-RESPONDENT,**

**v.**

**DANIEL D. BLOOM,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Rock County:  
JOHN W. ROETHE, Judge. *Affirmed.*

¶1 DYKMAN, P.J.<sup>1</sup> Daniel D. Bloom appeals from a judgment convicting him of operating a motor vehicle under the influence of an intoxicant in violation of Beloit Municipal Ordinance No. 13.01, adopting § 346.63(1)(a), STATS. Bloom contends that the trial court erred in holding that the common law

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

permits a “citizen’s investigatory detention.” Hence, Bloom asserts, he was unlawfully seized and all evidence procured as a result of the seizure must be suppressed. Because Bloom was not unlawfully seized, we affirm.

## I. BACKGROUND

¶2 Beloit Community Service Officer Patricia Davis was patrolling in the City of Beloit on May 28, 1998. As a community service officer, Davis’s normal duties included issuing alternate overnight parking tickets, and directing traffic for fire scenes, accident scenes and SWAT operations. She did not have arrest powers. As part of her uniform, Davis wears a radio, and her shirt has emblems consisting of a flag, the Beloit Police patch and the words “Community Service Officer.” Her car is a white Ford Taurus, which has “Beloit Police” written on the sides and back, and has a yellow light bar on the roof.

¶3 At approximately 12:30 a.m., Davis observed a woman get out of Bloom’s vehicle and walk down an unpopulated portion of road. Davis thought that this was odd, as there were no houses in that area. Davis continued her rounds, and shortly upon her return to the area, she observed the same woman walking west and Bloom’s vehicle travelling east. Davis stopped and asked the woman if there was a problem. She said that the man in the car was chasing her. After Davis radioed for assistance, the woman altered her story by saying that the man just would not leave her alone. Observing that the woman was intoxicated, Davis decided to wait with her until the police arrived. Shortly thereafter, while Davis was speaking with the woman, Bloom did a U-turn and parked behind Davis’s vehicle. Davis approached Bloom, informed him that there was a problem and said that police would be arriving. She also asked if he would stay, as the police would probably want to ask him some questions. Davis noticed the smell

of intoxicants and observed that Bloom's eyes were glassy. She asked if she could see his driver's license and Bloom handed it to her. A minute or two later, a police officer arrived, to whom Davis handed Bloom's license.

¶4 Bloom was arrested and issued citations for operating a motor vehicle while intoxicated and with a prohibited blood alcohol content, contrary to Beloit Municipal Ordinance No. 13.01, adopting § 346.63(1)(a) and (b), STATS. He was convicted in the City of Beloit Municipal Court and appealed to the Rock County Circuit Court, pursuant to § 800.14, STATS. Bloom asserted that Davis unlawfully seized him. He moved to suppress all evidence resulting from his contact with her. The circuit court concluded that Davis had made a reasonable citizen's investigatory detention based on her observations. Thus, the court found that a lawful seizure had occurred, denied Bloom's motion to suppress and affirmed the conviction for OMVWI. Bloom appeals.

## II. STANDARD OF REVIEW

¶5 The issues on appeal concern the Fourth Amendment to the United States Constitution and art. I, § 11 of the Wisconsin Constitution. We decide questions of constitutional law independently and without deference to the trial court. See *Bies v. State*, 76 Wis.2d 457, 469, 251 N.W.2d 461, 467 (1977). We are therefore not limited by the circuit or municipal court's view of this case, particularly the circuit court's view that Bloom was seized, albeit lawfully.

## III. ANALYSIS

¶6 The Fourth Amendment to the United States Constitution and art. I, § 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures.

See *State v. Gonzalez*, 147 Wis.2d 165, 167, 432 N.W.2d 651, 652 (Ct. App. 1988).

¶7 The dispositive issue is whether Bloom was seized by Officer Davis and if so, whether the seizure meets the Fourth Amendment’s constitutional requirements of reasonableness. Given the facts of the case, we conclude that Bloom was not seized.

¶8 The Supreme Court has listed examples of factors that may indicate a seizure: the threatening presence of several officers, the display of a weapon by an officer, the physical touching of the person, and the use of tone of voice or language implying that compliance with an officer’s request is compelled. See *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). A police officer may stop a motorist based on a reasonable suspicion that the motorist has committed or is about to commit a crime. See *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). The detention is reasonable if it is brief and if any questioning is reasonably related to confirming or dispelling the officer’s suspicions. See *id.* In *State v. Ellenbecker*, 159 Wis.2d 91, 93, 464 N.W.2d 427, 428 (Ct. App. 1990), we held that the public interest in allowing an officer to request a license and run a status-check outweighs the slight intrusion on the driver. Although these cases deal with police officers, they illustrate what constitutes a reasonable seizure.

¶9 We first consider Bloom’s assertion that he was seized. He claims that he was seized because a seizure occurs when, “in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *Mendenhall*, 446 U.S. at 554. He maintains that a reasonable person would not have believed he or she was free to leave once Officer Davis had asked him to stay and had taken his license. However, Davis

did not pull Bloom over; he stopped behind Davis's vehicle of his own accord. But for Bloom's arrival, there would have been no contact between Bloom and Davis. Davis merely asked if Bloom would stay and if she could see his license. Nothing of record indicates that she threatened him or demanded compliance. Also, nothing of record indicates that Bloom was not free to disregard Davis's comments, tell Davis "no" when asked if she could see his license, tell her that he was going to leave, and leave. Nothing indicates that the interchange between Bloom and Davis was not consensual. In short, one cannot voluntarily give one's driver's license to another and then claim to be seized because the license is gone. Davis did not seize Bloom.

¶10 Bloom also contends that Davis's vehicle resembled a police car and that she both looked and acted like a police officer during a traffic stop. Bloom implies that this show of authority compelled him to stay and hand over his license. This argument is not persuasive. While a police uniform inherently exhibits a show of authority, *Mendenhall* makes clear that not all encounters between the police and the public rise to the level of seizures. *Id.* at 553. It is well established that police officers, like all other citizens, enjoy the liberty to address questions to other members of the public. *See id.* Davis was not required to stand mute to avoid seizing Bloom.

¶11 We next consider Bloom's contention that once Davis had possession of his license, it was unlawful for him to leave under § 343.18(1),

STATS.<sup>2</sup> But a Beloit police officer's prompt arrival and not Davis's possession of his license is what prevented Bloom from leaving the scene.

¶12 Bloom further asserts that the seizure was illegal, that only a "real policeman" may seize a person, and that Davis could not execute a valid citizen's arrest in this case. Because Davis neither seized nor arrested Bloom, we need not discuss these assertions.

¶13 Finally, Bloom claims that a citizen's investigatory detention is unknown to Wisconsin law. Because Davis did not make an investigatory stop, we need not discuss whether a citizen could do so.

¶14 We conclude that Officer Davis did not seize Bloom and therefore affirm the judgment convicting Bloom of operating a motor vehicle while intoxicated.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.

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<sup>2</sup> Neither party addressed whether Officer Davis was a traffic officer for the purposes of § 340.01(70), STATS. Such a classification would arguably have authorized Davis to request Bloom's driver's license per § 343.18(1), STATS. Because neither party argued this point, our inquiry stops here.



