



**WISCONSIN SUPREME COURT
WEDNESDAY, SEPTEMBER 13, 2006
9:45 a.m.**

05AP1516-CR State v. David Allen Bruski

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a ruling of the Douglas County Circuit Court, Judge Michael T. Lucci presiding.

This case involves a police search of a travel bag. The Supreme Court is expected to determine if the search was legal.

Here is the background: At about 8 a.m. on March 3, 2005, a City of Superior police officer found David Bruski passed out in a parked car. The officer awakened him and attempted to question him, but reported that Bruski continued to nod off. He told the officer that he was waiting for a friend and had no idea how he had gotten into the car. Police called the vehicle's owner, who said she did not know Bruski, but that her daughter had borrowed the car. Bruski later indicated that he knew the daughter, but could only give her first name.

Police accompanied the owner to claim the car. When Bruski claimed that he did not have the car keys, the officer said he would search the car, and neither the owner nor Bruski objected. The search turned up a "makeup travel case" on the floor of the front passenger side. The officer opened the case, found drug paraphernalia and marijuana inside, and arrested Bruski. A search of Bruski revealed the car keys and more drugs.

Bruski was charged with possession of drugs. He filed a motion to suppress the evidence, arguing that the search was illegal. The State responded in two ways. First, it argued that Bruski had no expectation of privacy because he was in someone else's vehicle; second, it argued that the car's owner had given implied consent for the search. The circuit court concluded that the search had been illegal and barred the evidence.

The State appealed and the Court of Appeals reversed the circuit court.

Now in the Supreme Court, Bruski argues that individuals have a reasonable expectation of privacy in their personal belongings, and that an opaque travel case stowed next to its owner, inside a car parked behind a residence was clearly meant to be private. He argues that the issue of whether he had been invited to occupy the car was irrelevant to the question of whether the officer had the authority to search his bag.

The State, on the other hand, argues that a person who cannot demonstrate a legitimate claim to a vehicle can hardly expect that vehicle to be a private repository for his personal effects. The State also agreed with the Court of Appeals' conclusion that the question of whether a person has an expectation of privacy in a container that is searched is not answered by determining whether the person believed the container to be private.

The Supreme Court will decide if the police search of Bruski's travel bag was legal.

