Appeal No. 2019AP447-CR **Cir. Ct. No. 2017CF720**

WISCONSIN COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

HEATHER JAN VANBEEK,

DEFENDANT-APPELLANT.

FILED

Aug 12, 2020

Sheila T. Reiff
Clerk of Supreme Court

CERTIFICATION BY WISCONSIN COURT OF APPEALS

Before Neubauer, C.J., Gundrum and Davis, JJ.

Pursuant to WIS. STAT. RULE 809.61, this appeal is certified to the Wisconsin Supreme Court for its review and determination.

ISSUE

Heather Jan VanBeek appeals from a judgment of conviction for possession of methamphetamine and challenges the denial of her motion to suppress evidence. The issue presented is whether a consensual encounter becomes an unconstitutional seizure under the Fourth Amendment when an officer requests and takes an individual's driver's license to the officer's squad car without reasonable suspicion. In a recent Wisconsin Supreme Court decision, ***State v. Floyd***, 2017 WI 78, ¶31, 377 Wis. 2d 394, 898 N.W.2d 560, the court stated that the retention of a person's license during an encounter without

reasonable suspicion provides "reason to believe the person was not 'free to leave' at that time." As we are bound to all statements in our supreme court's decisions, we certify this case seeking clarification of the law on this issue. ***Zarder v. Humana Ins. Co.***, 2010 WI 35, ¶58, 324 Wis. 2d 325, 782 N.W.2d 682 (the court of appeals may not dismiss a statement from an opinion by our supreme court by concluding that it is dictum).

BACKGROUND

On November 12, 2017, at about 12:16 a.m., an anonymous person reported two people sitting in a truck for about one hour. The caller observed a person with a backpack come to the truck and then leave.

Sheboygan Police Officer Sung Oetzel was dispatched to the truck's location, the south side of the intersection of North Sixth Street and Superior Avenue at about 12:22 a.m. After ensuring that there were no other trucks in the area occupied by two passengers, he parked his squad car behind the truck, turned on his spotlight, and approached on foot. Oetzel did not activate his squad's red and blue emergency lights.

VanBeek was in the driver's seat, and Branden Sitzberger was in the passenger's seat. Through the rolled-down window, Oetzel asked, "How you doing?" After identifying himself, Oetzel said that someone had called in to report that two people were "just sitting here" for about an hour. VanBeek said that she had been waiting for Sitzberger, disagreeing that it had been that long. Sitzberger said, "Ten minutes." VanBeek said she lived in Cascade, where they were going after she picked up Sitzberger.

Oetzel told them their story sounds "legit," and asked, "Could I get your guys' information for my report so that I can just get out of here?... [I]f I could have your photo ID ...." Sitzberger suggested that perhaps they could just write down their names, and Oetzel told them, that no, he needed their photo identification to "compare faces." After taking their driver's licenses, Oetzel stated, "Okay, I'll be right back, okay?" VanBeek responded, "All right." The interaction took just over one minute.[1]

Oetzel returned to his squad and ran VanBeek's license through a records check, learning that her license was valid and she had no warrants. Oetzel also learned that VanBeek had overdosed on drugs earlier in the year, and Sitzberger was "on some type of supervision," either probation or parole.

Oetzel called a canine officer to ask him to come to the scene. After more than five minutes, Oetzel returned to VanBeek's truck and asked her to confirm her driver license information, which she did. Sitzberger confirmed he was on probation.

Sitzberger gave a different address (in Waldo, more than twenty miles away) than the one listed on his license (Plymouth). When the officer questioned him as to whether he lived in the area, Sitzberger responded he had come from his friend "Jake's" house, who lived at "Eighth and Superior," but then corrected himself seconds later, saying "Seventh and Superior." Oetzel found that address "funny" and "kind of weird" because they were parked one or two blocks away.

[1] Oetzel testified that it was his standard operating procedure to request identification for a records check whenever he is investigating a complaint.

Sitzberger did not know Jake's last name and had known Jake for five or six months. When asked how he knew Jake, Sitzberger paused for several seconds and then said one of his female friends used to date Jake. Oetzel found it "kind of weird that [Sitzberger] didn't really know his friend, Jake."

Oetzel asked VanBeek how long she had been sitting in her truck. She said that she had been sitting in her truck for about one hour total, for about thirty minutes before Oetzel arrived, and for a while before Sitzberger got to her truck.

Based on his training and experience, Oetzel believes that people "are usually utilizing narcotics" if they are sitting in a parked vehicle for a long period of time. Oetzel asked VanBeek and Sitzberger to step out of the vehicle. They complied and stood on a sidewalk with police officers while a dog sniffed the outside of the truck. After the dog "alerted," two officers searched the inside of the truck. They found a pipe and a white crystal substance that tested positive for methamphetamine. During this entire period, Oetzel retained VanBeek's license.

Oetzel later interviewed VanBeek while she was in custody at the Sheboygan Police Department. She admitted that she had gone to that location to obtain drugs from Sitzberger. VanBeek allowed Oetzel to search her cell phone, which had messages between Sitzberger and her about buying drugs.

The State charged VanBeek with one count each of possession of methamphetamine and drug paraphernalia. VanBeek moved to suppress the evidence found in her truck and her later statements to police. Oetzel testified at two circuit court hearings, and his bodycam video was also introduced into evidence.

Notably, neither party addressed whether the encounter was consensual. Both parties assumed that the initial encounter was a seizure, focusing their arguments on whether the community caretaker doctrine and/or reasonable suspicion rendered the stop constitutional.

The circuit court denied the motion to suppress, determining Oetzel lawfully acted as a community caretaker in initially seizing VanBeek. It further concluded Oetzel lawfully extended the investigatory stop because he had reasonable suspicion of illegal drug activity. VanBeek pled no contest to the methamphetamine charge. VanBeek appeals her judgment of conviction.[2]

DISCUSSION

Did Oetzel's request for and retention of VanBeek's license by taking it to his squad constitute a seizure?

VanBeek argues Oetzel seized her, entitling her to Fourth Amendment protections, when he requested and retained her license, taking it back to his squad for over five minutes. No reasonable person, she contends, would feel free to leave the scene under these circumstances, thus creating the seizure. The State agrees that there was no reasonable suspicion at that juncture, but argues that the encounter remained consensual until the officer asked VanBeek to step out of the vehicle.[3]

[2] The State does not respond to VanBeek's argument that the community caretaker doctrine does not support the seizure, conceding it would not apply after the officer spoke with VanBeek.

[3] We agree with the State that reasonable suspicion arose during Oetzel's subsequent interaction with VanBeek and the passenger after he returned from his squad to the truck.

The United States and Wisconsin Constitutions protect the right to be free from unreasonable searches and seizures. U.S. CONST. amend. IV; WIS. CONST. art. I, § 11. Wisconsin courts have generally construed our state constitutional protections in the same way as the United States Supreme Court has interpreted the Fourth Amendment. ***State v. Kramer***, 2009 WI 14, ¶18, 315 Wis. 2d 414, 759 N.W.2d 598; ***State v. Young***, 2006 WI 98, ¶30, 294 Wis. 2d 1, 717 N.W.2d 729.

The law recognizes three types of police-citizen encounters: (1) consensual encounters, which do not implicate the Fourth Amendment, ***Florida v. Bostick***, 501 U.S. 429, 434 (1991); (2) investigative detentions, which are Fourth Amendment seizures limited in scope and duration and which must be supported by reasonable suspicion of criminal activity, ***Terry v. Ohio***, 392 U.S. 1, 30 (1968); and (3) arrests, which must be supported by probable cause, ***Hayes v. Florida***, 470 U.S. 811, 815-16 (1985).

The State contends that this was a consensual encounter, pointing to well-established law that, absent a restraint on a person's liberty, a seizure, officers may seek a citizen's voluntary cooperation through noncoercive questioning. ***Bostick***, 501 U.S. at 434 ("no reasonable suspicion is required" if "the encounter is consensual"). Thus, officers do not infringe on the right against unreasonable seizures simply by approaching persons on the street or in other public places, including in their vehicles, and asking questions of them if they are agreeable to listen. *See* ***County of Grant v. Vogt***, 2014 WI 76, ¶¶53-54, 356 Wis. 2d 343, 850 N.W.2d 253 (approaching a parked vehicle, knocking on the window, and asking questions is not a seizure); *see also* ***United States v. Drayton***, 536 U.S. 194, 200 (2002). "While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to

respond, hardly eliminates the consensual nature of the response." ***Drayton***, 536 U.S. at 205 (citation omitted).

VanBeek concedes that no seizure occurred when Oetzel parked behind her truck, walked up to her window, and spoke with her. Rather, she argues that she was seized after Oetzel took and retained her license, and therefore reasonable suspicion was needed to make the seizure lawful. Both she and the State agree that there was no reasonable suspicion at the time, and both point to cases involving the retention of a license, primarily ***United States v. Mendenhall***, 446 U.S. 544 (1980), ***Florida v. Royer***, 460 U.S. 491 (1983), and ***State v. Luebeck***, 2006 WI App 87, 292 Wis. 2d 748, 715 N.W.2d 639. We agree that these cases provide guidance.

In ***Mendenhall,*** the defendant was stopped by federal agents in an airport and asked for identification. The names on the ticket and driver's license did not match; the identification was promptly returned, but the defendant was asked to accompany the agents to a room. ***Mendenhall***, 446 U.S. at 548. The defendant did so and there agreed to a search, which uncovered illegal drugs. ***Id.*** at 548-49.

A majority of justices agreed that the defendant's Fourth Amendment rights were not violated due to consent to the search. ***Id.*** at 555, 557-58. Justice Stewart, the author of the lead opinion, which was joined in full by only one other justice, also said that there was no seizure, and in doing so posited the controlling standard: whether a reasonable person in the defendant's position would "have believed that he was not free to leave." ***Id.*** at 553-54. A dissent by Justice White, joined by three other justices, took no issue with the "free to leave" standard but noted that "[n]ot the least of these factors [indicating that a seizure

occurred] is the fact that the DEA agents for a time took Ms. Mendenhall's plane ticket and driver's license." ***Id.*** at 569-70 & n.3 (White, J., dissenting).

Royer reached the opposite result on facts that, up to a point, were similar to those in ***Mendenhall***. The defendant was stopped by police officers in an airport and asked for identification. ***Royer***, 460 U.S. at 493-94. When the names on the ticket and driver's license did not match, the officers asked the defendant to accompany them to a separate room, while retaining both documents and retrieving Royer's luggage without his consent. ***Id.*** at 494. There the defendant consented to a search, and illegal drugs were found. ***Id.*** at 494-95.

Justice White, writing for a plurality of four justices, concluded that the casual encounter had become an illegal seizure by the time the defendant gave permission to search:

> [W]hen the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license and without indicating in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment.

Id. at 501.

The divergent outcomes in ***Mendenhall*** and ***Royer*** seemingly turned on a critical factual distinction: in ***Mendenhall*** the defendant's identification and ticket were returned *before* the defendant was asked to go to a private room and consented to a search; in ***Royer*** the defendant's identification and ticket were retained throughout the episode.

While ***Mendenhall*** and ***Royer*** do not necessarily answer the precise question at issue, they unquestionably provide the controlling test, which has been adopted by Wisconsin courts: a seizure occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." ***Mendenhall***, 446 U.S. at 552 (quoting ***Terry***, 392 U.S. at 19 n.16). A seizure occurs when, in view of all the circumstances surrounding the incident, a reasonable person "would have believed he was not free to leave."[4] *See* ***Royer***, 460 U.S. at 502 (quoting ***Mendenhall***, 446 U.S. at 554); ***Luebeck***, 292 Wis. 2d 748, ¶7. ***Mendenhall*** further explained:

> Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Mendenhall, 446 U.S. at 554-55 (citations omitted); *see* ***Vogt***, 356 Wis. 2d 343, ¶23.

[4] Because it did not command a majority on any single rationale, ***Royer***'s precedential value beyond its holding could be questioned. *See* ***State v. Royer***, 460 U.S. 491, 493 (1983). Likewise, Justice Stewart's lead opinion in ***Mendenhall*** is a mere two-justice plurality, with three justices not reaching the all-important "seizure" issue and four justices dissenting. ***United States v. Mendenhall***, 446 U.S. 544, 546, 560, 566-67 (1980). Both opinions, however, have been cited and relied upon by our supreme court, suggesting that they are binding precedent in this state. *See, e.g.*, ***County of Grant v. Vogt***, 2014 WI 76, ¶¶19-22, 356 Wis. 2d 343, 850 N.W.2d 253. (subsequent cases have "bolstered and confirmed" the tentative acceptance of Justice Stewart's formulation). Moreover, his "free to leave" standard has become ubiquitous in Fourth Amendment jurisprudence.

Current Wisconsin law provides some, but not dispositive, guidance. In ***Luebeck***, the defendant was pulled over for a lane deviation. ***Luebeck***, 292 Wis. 2d 748, ¶2. The police officer initially said he would issue the defendant a warning but then obtained permission to search the vehicle. ***Id.***, ¶¶3-4. The officer found drugs, and the defendant was arrested. ***Id.***, ¶¶5-6. The issue was whether the stop was unlawfully extended without reasonable suspicion after the ***Terry*** stop, such that the defendant was illegally seized when he consented to the search of his vehicle.

By the time the officer requested consent, the defendant had been detained for over twenty minutes with no citation or warning, passed all field sobriety tests, and passed a preliminary breath test indicating a blood alcohol content well below the legal limit. ***Luebeck***, 292 Wis. 2d 748, ¶¶3, 14-15. Additionally, at that point, the officer still had the defendant's driver's license. ***Id.***, ¶¶3-5, 15.

This court found an illegal seizure. ***Id.***, ¶¶15-16. We cited to several Tenth Circuit cases, including ***United States v. Lambert***, 46 F.3d 1064, 1068 (10th Cir. 1995), for the proposition that "where an officer does not return documents to the driver, the driver will not reasonably feel 'free to leave or otherwise terminate the encounter.'" ***Luebeck***, 292 Wis. 2d 748, ¶16 (citation omitted). With this precedent as a guide, we went on to say that "in a traffic stop context, where the test is whether a reasonable person would feel free to 'disregard the police and go about his [or her] business' … the fact that the person's driver's license or other official documents are retained by the officer is a key factor in assessing whether the person is 'seized.'" ***Id.*** (alteration in original) (quoting ***Bostick***, 501 U.S. at 434).

More recently, our Supreme Court weighed in on this issue in ***Floyd***. There a deputy properly stopped the defendant in his vehicle for a suspended registration. ***Floyd***, 377 Wis. 2d 394, ¶2. Like ***Luebeck***, the issue was whether the stop was unreasonably extended while the deputy held the defendant's identification. ***Floyd***, 377 Wis. 2d 394, ¶4. Although the court found no unreasonable extension occurred (because the mission of the stop was not complete), the court recognized that if not for that conclusion, the retention of Floyd's identification would have likely been an unlawful seizure. ***Id.***, ¶31. This is because where "an officer withholds a person's documents, there is good reason to believe the person was not 'free to leave' at that time. That, in turn, helps us decide whether the person was seized." ***Id.***

Both ***Luebeck*** and ***Royer*** make clear that, under Wisconsin law, the request for, and examination of, the license, in and of itself, is not a seizure. ***Royer***, 460 U.S. at 501 ("Asking for and examining [the defendant's airplane] ticket and his driver's license were no doubt permissible in themselves.") However, the retention of a driver's license is an important factor when determining whether the person is seized under the "totality of the circumstances." ***Luebeck***, 292 Wis. 2d 748, ¶¶1, 7, 12, 14, 17-18.[5] *See, e.g.*, ***United States v. Black***, 675 F.2d 129, 136 (7th Cir. 1982) ("As several courts have realized … the retaining of the documents beyond the interval required for the appropriate brief

[5] VanBeek relies on ***United States v. Lambert***, 46 F.3d 1064, 1066 (10th Cir. 1995), where the officers believed Lambert to be a drug courier, followed, approached, and questioned him, asking for his license. The court held: "[W]hat began as a consensual encounter quickly became an investigative detention once the agents received Mr. Lambert's driver's license and did not return it to him." ***Id.*** at 1068. As the State points out, ***Luebeck*** embraced a "totality of the circumstances" analysis and did not adopt ***Lambert***'s apparent bright-line test—a seizure occurs when an officer takes and retains a driver's license. ***State v. Luebeck***, 2006 WI App 87, ¶16, 292 Wis. 2d 748, 715 N.W.2d 639 (noting the ***Lambert*** decision, but not adopting its test).

scrutiny, may constitute a 'watershed point' in the seizure question." (citations omitted)); ***United States v. Borys***, 766 F.2d 304, 310 (7th Cir. 1985) ("Officers' retaining airline tickets and driver's licenses has been a crucial factor in finding that a seizure has occurred.").

Here, Oetzel did not simply retain the license, he took VanBeek's driver's license to his squad car for over five minutes while she remained in her car.

As noted, the parties agree that, prior to that time, Oetzel's initial approach and ensuing discussion were consensual and casual. VanBeek was parked, and Oetzel pulled in behind her without his emergency lights activated. When Oetzel made contact, he explained that he was following up on a citizen report of suspicious activity, i.e., a truck parked with two passengers for an hour. In slightly more than a minute, Oetzel asked for their driver's licenses, which they both provided. He then stated that he would be right back, followed by an "okay," to which VanBeek responded, "All right."[6] None of this is disputed.

The State suggests Oetzel was acting as a conscientious officer by taking a closer look at the reported conduct. *See* ***Vogt***, 356 Wis. 2d 343, ¶51 (investigating suspicious conduct reflects the reasonable and diligent efforts of the police). Indeed, Oetzel testified that it was his standard practice to request

[6] Notably, neither the State nor VanBeek identify or discuss the precise back and forth of this portion of the discussion, treating Oetzel's statement that he would "be right back" as a declaration. It is also undisputed that Oetzel did not advise that he would be taking the licenses to the squad when he asked for them. It follows that the State has made no argument that VanBeek consented when Oetzel stated he was taking the license to his squad. *See* ***State v. Artic***, 2010 WI 83, ¶32, 327 Wis. 2d 392, 786 N.W.2d 430 (the State has the burden to show "by clear and convincing evidence" that any consent was "given freely and voluntarily.").

identification under these circumstances, as he explained to VanBeek, for his report.

Moreover, none of the ***Mendenhall*** examples of behavior demonstrate a seizure was present. As the video shows: Oetzel did not use threatening language or an intimidating tone of voice. He did not physically touch VanBeek or handcuff her. Nor does VanBeek assert that there was any other show of force, such as a threatening presence of several officers or a display of a firearm.

Thus, the State contends that these circumstances differ significantly from those presented in ***Luebeck*** and ***Royer***. In ***Luebeck***, the encounter had already lasted for over twenty minutes, Luebeck passed all the field sobriety tests and a preliminary breath test indicated his blood alcohol content was below the legal limit, he gave consent to a search of his person which turned up nothing, and the officer had not yet given him the written warning he advised was coming. In ***Royer***, the detectives identified themselves as narcotic agents, told Royer that he was under suspicion for transporting narcotics, took him to a private police room, and seized his luggage without his permission.

VanBeek counters that, while none of the typical coercive factors were present, an objective person would not feel free to leave or otherwise terminate the encounter under these circumstances. Identification is necessary in order to engage in all kinds of everyday activities, including purchasing groceries, cashing checks, purchasing tickets and boarding an airplane, and driving.

As one court aptly noted, to decide whether a reasonable person would feel free to "disregard the police and go about [their] business," it becomes "crucial to focus on what the person's immediate 'business' is, in order to decide

if the police retention of [their] papers would likely impede [their] freedom to proceed with it." ***United States v. Jordan***, 958 F.2d 1085, 1087 (D.C. Cir. 1992) (seizure occurred when identification was taken when Jordan intended to board a waiting car and depart the terminal parking lot; "[O]nce the identification is handed over to police and they have had a reasonable opportunity to review it, if the identification is not returned to the detainee [it is] difficult to imagine that any reasonable person would feel free to leave without it." (alteration in original; citation omitted)).

Where the detainee is in a parked car, his or her options to leave are limited. Namely, to leave, a person would be required to abandon his or her vehicle as departure would violate Wisconsin's statutory requirement that one must possess a driver's license when driving. *See* WIS. STAT. § 343.18(1) (2017-18). Under these circumstances, VanBeek argues, one cannot conclude that a reasonable person, at this point, would believe that they were "free 'to disregard the police and go about [their] business.'" ***Bostick***, 501 U.S. at 434 (quoting ***California v. Hodari D.***, 499 U.S. 621, 628 (1991)). The retention of her license effectively restricted her movement. ***Young***, 294 Wis. 2d 1, ¶39 (an officer makes a show of authority when his or her "words and actions would have conveyed ... to a reasonable person" that the person "was being ordered to restrict his [or her] movement" (citation omitted)).

The State counters that, while she may not have been free to leave while Oetzel retained her license, VanBeek did not seek to "decline the officers' requests or otherwise terminate the encounter." ***Drayton***, 536 U.S. at 202 (citation omitted); ***Luebeck***, 292 Wis. 2d 748, ¶7. Namely, she did not ask for the return of her license. Indeed, even after Oetzel returned and re-engaged with questions and VanBeek's answers established reasonable suspicion, VanBeek never sought to

leave or ask for her license back. In other words, the State appears to argue that VanBeek must manifest her reasonable belief in her ability to leave with a request for the return of the license.

The majority of cases looking at this issue have determined that a reasonable person would not feel free to leave or otherwise terminate the encounter when an officer takes one's license to the squad for a records check. *See, e.g.*, ***United States v. Thompson***, 712 F.2d 1356, 1359 (11th Cir. 1983) ("Without his driver's license [the defendant, who had been sitting in a parked car,] was effectively immobilized. A reasonable person in these circumstances would not have believed himself free to leave. If [the defendant] had tried to drive away he could have been arrested for driving without a license."); ***Finger v. State***, 799 N.E.2d 528, 533 (Ind. 2003) ("[A] reasonable person in [the defendant's] position [sitting in the driver's seat of a parked car] would not feel free to leave after [the officer] retained his identification."); ***State v. Daniel***, 12 S.W.3d 420, 427 (Tenn. 2000) (encounter between officer and pedestrian became a seizure when the officer retained the pedestrian's identification to run a warrants check, since "[a]bandoning one's identification is simply not a practical or realistic option for a reasonable person in modern society."); ***Keller v. State***, 2007 WY 170, ¶¶3, 13, 169 P.3d 867 (Wyo. 2007) ("[T]he request to see identification does not convert a consensual encounter into a seizure …. Consequently, the appellant [who had been sitting in the passenger seat of a parked car was] not 'seized' until [the deputy] actually took [his] driver's license[] and walked back to his patrol vehicle to run records checks." (citation omitted)); ***United States v. Villa-Gonzalez***, 623 F.3d 526, 533 (8th Cir. 2010) (one of the "factors weigh[ing] most heavily in [its] analysis" as to whether the defendant was seized was that "there is no indication that [the officer] ever returned [the defendant's] identification

card"); ***State v. Thomas***, 955 P.2d 420, 423 (Wash. Ct. App. 1998) ("Once an officer retains the suspect's identification or driver's license and takes it with him to conduct a warrants check, a seizure within the meaning of the Fourth Amendment has occurred.").[7]

These courts have explicitly found that a reasonable person would not feel free to request that his or her license be returned and to leave the scene. *See, e.g.*, ***Daniel***, 12 S.W.3d at 427. As one court pointed out, implicit in the reasonable person standard is the notion that if a reasonable person would feel free to end the police encounter, but does not, and is not compelled to remain, then he or she has consented to the encounter. ***Golphin v. State***, 945 So. 2d 1174, 1182-83 (Fla. 2006). When an officer states that he is taking the driver's license to the squad, would a reasonable person be expected to zealously protect his or her rights by confronting the officer and requesting return of the license?[8]

[7] Cases involving the retention of a license within the vicinity of the individual, and/or running a warrants check in the vicinity, go both ways, but several finding no seizure have noted that the license was not taken away. *See* ***Golphin v. State***, 945 So. 2d 1174, 1193 (Fla. 2006) (defendant was not seized when police officer used the identification voluntarily provided by the defendant to conduct a warrants check in his vicinity); ***United States v. Analla***, 975 F.2d 119, 124 (4th Cir. 1992) (no seizure where the officer stood beside the car and used his walkie-talkie to run a check); ***United States v. Cordell***, 723 F.2d 1283, 1285 (7th Cir. 1983) (officer's mere request for identification and airline ticket was "nothing that could be construed as a Fourth Amendment seizure," but when one officer handed the documents to another and told the defendant they were conducting a narcotics investigation "the encounter had become a detention").

[8] The State suggests VanBeek could have manifested a belief that she was free to leave by asking for her license back, when, before the circuit court, all parties and the court apparently believed that VanBeek was seized from the outset. As many courts have noted, "One may reasonably inquire whether the 'reasonable person' standard has in reality become the 'reasonable person trained in the law' standard." ***Golphin***, 945 So. 2d at 1190. Here, the State suggests VanBeek should have had a better understanding of her legal situation than the prosecutor, defense counsel, and the court.

This case presents an important issue that arises when officers investigate citizen complaints that are not, as yet, supported by reasonable suspicion to believe a crime is afoot: during an initial consensual encounter, may an officer request identification to run a warrants check in the squad without turning the encounter into a seizure? Here, the officer testified that it was his standard practice to obtain identification information under these circumstances. This makes sense, as a diligent officer would do so in order to ensure that the complaint was appropriately investigated and documented. While ***Floyd*** indicated that the retention of a license outside of a ***Terry*** stop would indicate a seizure is taking place, the discussion was not dispositive to its decision. The supreme court's clarification of this important and recurring issue will provide great benefit to the bench, the bar, law enforcement, and the public by providing further predictability in our Fourth Amendment jurisprudence.