

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 3, 2015

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. 2014AP2120-CR

Cir. Ct. No. 2013CM156

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RACHEL L. HUCK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Barron County:
J. MICHAEL BITNEY, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Rachel Huck appeals a judgment convicting her of possession of THC, as a party to a crime. Huck argues the circuit court erred by

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

denying her suppression motion. She concedes the officer who stopped her vehicle had reasonable suspicion for the stop based on his knowledge that her driver's license was suspended. However, she argues reasonable suspicion dissipated after the officer saw that the person driving the vehicle was a male, and the officer was therefore required to terminate the stop without asking the driver for identification. Under *State v. Williams*, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462, we conclude the officer was entitled to ask the driver of Huck's vehicle for his driver's license, even after the reasonable suspicion for the stop had dissipated. We therefore affirm.

BACKGROUND

¶2 The following facts are taken from police officer Nicholas Raiolo's testimony at the suppression hearing and from a video recording of the traffic stop, which was entered into evidence at the hearing. Raiolo was driving his squad car on Highway 8 in the Village of Turtle Lake at 12:08 a.m. on April 27, 2013. He ran a license plate check on the vehicle in front of him. He learned the vehicle was registered to Huck, whose driver's license was suspended. Raiolo could not see who was driving the vehicle or how many people were inside. He activated his emergency lights and stopped the vehicle.

¶3 Raiolo approached the driver's side door of the vehicle and observed a male driver and female passenger. He told the driver he had stopped the vehicle because its owner did not have a valid driver's license, and he needed to confirm that the driver did. The driver responded he did not have a license. However, he produced an identification card identifying him as Brandon Schultz. The female passenger identified herself as Huck.

¶4 Shortly thereafter, Raiolo learned that Schultz was on probation. He contacted the probation office, which placed a probation hold on Schultz. Raiolo then arrested Schultz, pursuant to the probation hold. After Schultz was placed in the squad car, Raiolo returned to Huck's vehicle and issued her citations for operating without insurance and permitting an unauthorized person to drive her vehicle. Huck informed Raiolo someone was coming from Rice Lake to give her a ride, and he told her she was free to wait in her car until that person arrived.

¶5 Raiolo began walking back to his squad car. However, "a few seconds" later, he reinitiated contact with Huck and asked if she had anything illegal in her vehicle. Huck responded she did not, and Raiolo asked to search the vehicle. Huck consented to the search, which uncovered marijuana and drug paraphernalia.

¶6 Following the suppression hearing, the parties submitted briefs in support of their respective positions. In her brief, Huck conceded the initial stop of her vehicle was supported by reasonable suspicion. *See State v. Newer*, 2007 WI App 236, ¶¶5, 7-8, 306 Wis. 2d 193, 742 N.W.2d 923 (law enforcement may stop a vehicle whose owner does not have a valid license as long as the officer is unaware of any facts suggesting the owner is not driving). However, Huck argued reasonable suspicion dissipated the moment Raiolo realized the driver of her vehicle was a male, and "any seizure beyond that point was ... thus unreasonable and unconstitutional." She asserted any evidence obtained from the search of her vehicle was therefore the fruit of an illegal seizure. In response, the State argued there was no illegal seizure because Raiolo was allowed to ask Schultz for his driver's license, even after reasonable suspicion for the initial stop had dissipated.

¶7 The circuit court agreed with the State that Raiolo was permitted to ask Schultz for his driver's license, and doing so did not transform the otherwise lawful stop of Huck's vehicle into an illegal seizure. The court therefore denied Huck's suppression motion. Huck later pled guilty to one count of possession of THC, as a party to a crime, and this appeal follows.

DISCUSSION

¶8 Our review of a circuit court's decision to grant or deny a suppression motion presents a question of constitutional fact. *State v. Hughes*, 2000 WI 24, ¶15, 233 Wis. 2d 280, 607 N.W.2d 621. We uphold the circuit court's findings of fact unless they are clearly erroneous, but we independently apply the law to those facts. *Id.*

¶9 On appeal, it is undisputed that Raiolo had reasonable suspicion to stop Huck's vehicle, based on his knowledge that the vehicle's registered owner had a suspended license. *See Newer*, 306 Wis. 2d 193, ¶¶5, 7. It is also undisputed that the reasonable suspicion justifying the stop dissipated when Raiolo saw that the driver of the vehicle was a male and therefore could not be the registered owner. *See id.*, ¶8. Finally, assuming an illegal seizure did not occur when Raiolo asked Schultz for his driver's license, it is undisputed that Raiolo was permitted to ask Huck whether he could search her vehicle, *see State v. Williams*, 2002 WI 94, ¶¶2-4, 255 Wis. 2d 1, 646 N.W.2d 834, and she validly consented to the search. Thus, the parties agree that this case presents a single issue: whether Raiolo could lawfully continue to detain Huck's vehicle in order to ask for Schultz's driver's license after reasonable suspicion for the initial stop had dissipated.

¶10 In support of her argument that Raiolo was not allowed to ask Schultz for his driver's license, Huck cites a number of cases from other jurisdictions, all of which generally hold that, once reasonable suspicion for a traffic stop has dissipated, it is unlawful for an officer to request identification from the vehicle's driver. Huck urges us to apply this rule from foreign jurisdictions in the instant case. However, we conclude Wisconsin law—specifically, *Williams*, 258 Wis. 2d 395—mandates a different result.

¶11 In *Williams*, an officer stopped a vehicle on the suspicion that the driver was Phillips, a suspect in a domestic abuse case. *Id.*, ¶¶2-3. The officer asked the driver his name, and he identified himself as Williams. *Id.*, ¶3. On appeal, we first determined the officer had reasonable suspicion to stop Williams' vehicle. *Id.*, ¶14. We then concluded that, because Williams was lawfully stopped, it was reasonable for the officer to ask him for his name and driver's license, even if she had already realized he was not the domestic abuse suspect. *Id.*, ¶¶18, 21-22. The request for identification did not transform the lawful stop into an unlawful seizure. *Id.*, ¶¶21-22.

¶12 In support of our conclusion, we cited *State v. Ellenbecker*, 159 Wis. 2d 91, 464 N.W.2d 427 (Ct. App. 1990), which held that an officer's request for a driver's license from a motorist whose vehicle was disabled did not transform a lawful "motorist assist" into an unlawful seizure. *See Williams*, 258 Wis. 2d 395, ¶19. The *Ellenbecker* court gave three reasons identification of a motorist may be necessary: (1) the officer may be required to make written reports of contacts with citizens; (2) the information may be helpful in the event of a later citizen complaint against the officer; and (3) the information may aid in the investigation of a crime, such as theft of a car, even though at the time the activity the officer observes may appear innocuous. *Ellenbecker*, 159 Wis. 2d at 97; *see*

also *Williams*, 258 Wis. 2d 395, ¶19. The *Ellenbecker* court also observed that WIS. STAT. § 343.18(1) gives police authority to require drivers to display their licenses on demand. *Ellenbecker*, 159 Wis. 2d at 97. The court recognized that officers do not have unfettered discretion to stop drivers and request to see their licenses, but it noted the driver in *Ellenbecker* was already stopped when the officer made the request and was not “singled out for a spot check of his license.” *Id.*

¶13 In *Williams*, we acknowledged that *Ellenbecker* involved a motorist assist, whereas *Williams* was stopped based on the suspicion he was involved in a crime. *Williams*, 258 Wis. 2d 395, ¶21. However, we noted that, like the driver in *Ellenbecker*, *Williams* was lawfully stopped at the time the officer requested identification. *Id.* We therefore reasoned the two cases presented essentially the same issue: “whether the request for identification transform[ed] that lawful stop into an unlawful seizure.” *Id.* We concluded the officer’s request for identification in *Williams* was reasonable for the same reasons discussed in *Ellenbecker*. *Williams*, 258 Wis. 2d 395, ¶22.

¶14 Huck argues *Williams* is distinguishable because “[t]he objective need for the police to make a report that was present in *Williams* is absent here.” She asserts a driver who is “simply pulled over and then immediately let go” is unlikely to file a lawsuit or administrative complaint against police. She also asserts police have a greater need to document investigations of domestic abuse incidents like the one in *Williams* than stops of drivers suspected to be operating without valid licenses.

¶15 Despite these factual differences, we have previously applied *Williams*’ holding in circumstances nearly identical to this case. *See State v.*

Winberg, No. 2013AP2661, unpublished slip op. (WI App May 28, 2014); *see also* WIS. STAT. RULE 809.23(3)(b) (unpublished, authored opinions issued on or after July 1, 2009, may be cited for their persuasive value).² In *Winberg*, an officer stopped a vehicle he knew was registered to a female with a revoked license. *Winberg*, No. 2013AP2661, ¶3. The officer testified he could not initially see who was driving the vehicle, but after approaching it he realized the driver was male. *Id.* The officer nevertheless made contact with the driver and asked for identification. *See id.*, ¶¶19-20. On appeal, we concluded the officer’s request for identification was permitted under *Williams*. *Id.*, ¶19. We explained, “As established in *Williams*, if a driver is lawfully stopped, it is reasonable for the officer to ask the driver for his or her name and identification, even if at the time the officer makes this request, the suspicion supporting the stop has been dispelled.” *Id.*

¶16 Further, our supreme court has held that, “[w]hen a person admits that he or she was lawfully seized during a traffic stop but argues that subsequent police conduct violated the Fourth Amendment, ... the focus is on the ‘incremental intrusion’ that resulted from the subsequent police conduct.” *State v. Griffith*, 2000 WI 72, ¶38, 236 Wis. 2d 48, 613 N.W.2d 72 (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977)). “To determine whether the intrusion was reasonable, we must weigh the public interest served by the questioning against the incremental liberty intrusion that resulted from the questioning.” *Id.*

² The State impermissibly relies on an unpublished, per curiam decision, in violation of WIS. STAT. RULE 809.23(3). We caution counsel that future rule violations will not be tolerated and may result in monetary sanctions. *See* WIS. STAT. RULE 809.83(2).

¶17 As noted in *Williams* and *Ellenbecker*, there is a public interest in allowing police to request identification from drivers with whom they lawfully come into contact. Requesting identification allows an officer to make a full report of the incident, which helps to hold the officer accountable and may be useful in the event of a citizen complaint or lawsuit. *Williams*, 258 Wis. 2d 395, ¶19; *Ellenbecker*, 159 Wis. 2d at 97. Requesting identification may also be beneficial if the seemingly innocuous activity the officer observes later turns out to be illegal—for instance, if the vehicle turns out to have been stolen. *Williams*, 258 Wis. 2d 395, ¶19; *Ellenbecker*, 159 Wis. 2d at 97. As the *Ellenbecker* court noted, WIS. STAT. § 343.18(1) “implicitly recognizes this public interest by giving a law enforcement officer the authority to require a driver of a motor vehicle to display his or her license on demand.” *Ellenbecker*, 159 Wis. 2d at 97.

¶18 On the other side of the balance, the incremental liberty intrusion that resulted when Raiolo asked Schultz for his driver’s license was minimal. *See id.* at 98 (“Requesting a license ... is but a momentary occurrence. The intrusion is minimal at best.”). As the State points out, only about ten seconds elapsed between the time Raiolo reached the driver’s side of Huck’s vehicle and the time he asked for Schultz’s license. Raiolo asked Schultz a single, simple question, which was authorized by WIS. STAT. § 343.18(1). *See Griffith*, 236 Wis. 2d 48, ¶53 (noting that, under the circumstances, the “simple questions” “What is your name?” and “What is your date of birth?” were not intrusive enough to render an otherwise reasonable seizure unreasonable). On these facts, we are not convinced the minimal liberty intrusion that occurred when Raiolo asked Schultz for his license outweighed the public interest served by the question.

¶19 We therefore conclude Raiolo’s request for Schultz’s driver’s license did not transform the otherwise lawful stop of Huck’s vehicle into an unreasonable

seizure. Accordingly, the circuit court properly denied Huck's suppression motion.

By the Court.—Judgment affirmed.

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

