COURT OF APPEALS
DECISION
DATED AND FILED

September 2, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-0070-CR

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JENNIFER K. MATEJKA,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Portage County: FREDERIC W. FLEISHAUER, Judge. *Reversed.*

ROGGENSACK, J.[1] The State of Wisconsin appeals from an order of the circuit court suppressing evidence seized by police officers during a traffic stop. The circuit court concluded that the seizure of marijuana from Jennifer Matejka's coat pocket was unreasonable under the Fourth Amendment. Because we conclude that a driver's unconditional consent to search his or her vehicle

[1] This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

includes the right to search all containers and compartments located in the vehicle, including the belongings of a passenger left in the car, we reverse the circuit court.

BACKGROUND

Jennifer Matejka was a passenger in a van which had been stopped by Wisconsin State Trooper David Forsythe for failing to display a license plate on the front of the vehicle. After receiving identification from the driver, Forsythe told him that he would give him a warning for failing to display the front plate. Forsythe then asked the driver if he had anything illegal in the van, to which the driver responded that he was not aware of anything illegal. Forsythe asked if he could do a quick search of the van. The driver consented.

Forsythe asked each occupant to exit the vehicle. He received consent from each occupant, including Matejka, to conduct a pat down search. He found nothing illegal. While searching the vehicle, the occupants asked if they could have their jackets because it was cold outside. Forsythe got the jackets but checked the pockets before handing them to each occupant. During this process, Forsythe found a dugout container with suspected marijuana. After ascertaining that the jacket belonged to Matejka, he arrested her. Matejka was subsequently searched at the county jail, and was found to be in possession of a small baggie of marijuana. Forsythe also seized her purse from the van which was found to contain LSD.

Matejka filed a motion to suppress the evidence arguing that the warrantless search of her coat violated the Fourth Amendment. The circuit court determined that the officer did not have reasonable suspicion of illegal conduct on behalf of the driver or any passenger when the officer requested to search the vehicle. Further, it concluded that the officer did not have consent by Matejka to

search her personal property. Therefore, it held the search unreasonable. The State now appeals.

DISCUSSION

Standard of Review.

When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. *See* ***State v. Eckert***, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). However, the application of constitutional principles to those facts is a question of law that we decide without deference to the circuit court's decision. *See* ***State v. Patricia A.P.***, 195 Wis.2d 855, 862, 537 N.W.2d 47, 49-50 (Ct. App. 1995). Further, "the constitutional significance of the undisputed facts regarding the issue of consent must receive independent, appellate review." ***State v. Johnson***, 177 Wis.2d 224, 233, 501 N.W.2d 876, 879 (Ct. App. 1993).

Reasonable Suspicion.

The Fourth Amendment prohibits unreasonable searches and seizures. *See* U.S. CONST. amend. IV. The detention of a motorist by a law enforcement officer constitutes a "seizure" of the person within the meaning of the Fourth Amendment. *See* ***Berkemer v. McCarty***, 468 U.S. 420, 436-37 (1984). Statements given and items seized during a period of illegal detention are inadmissible. *See* ***Florida v. Royer***, 460 U.S. 491, 501 (1983). However, an investigative detention is not "unreasonable" if it is brief in nature, and justified by a reasonable suspicion that the motorist has committed, or is about to commit, a crime. *See* ***Berkemer***, 468 U.S. at 439. The same standards which have been established for rights arising under the United States Constitution apply to rights

derived from the Wisconsin Constitution. *See* Wis. CONST. art. I, § 11; ***State v. Harris***, 206 Wis.2d 243, 259, 557 N.W.2d 245, 252 (1996).

According to ***Terry v. Ohio***, 392 U.S. 1 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be bottomed on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot, and that action would be appropriate. *See* ***id***. at 21-22. "The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?" ***State v. Jackson***, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989). The test is designed to balance the personal intrusion into the suspect's privacy occasioned by the stop against the societal interests in solving crime and bringing offenders to justice. *See* ***State v. Guzy***, 139 Wis.2d 663, 680, 407 N.W.2d 548, 556 (1987).

Matejka does not dispute that Forsythe had reasonable suspicion to stop the driver of the van for a traffic violation. Nor does Matejka argue that the expansion of the initial detention when Forsythe asked the driver for consent to a search of the van was unreasonable. Rather, Matejka argues that her Fourth Amendment rights were violated because, although she gave her consent for Forsythe to conduct a pat down search of her person, she did not consent to a search of her belongings. Additionally, she argues that the driver of the van did not "possess common authority" over the jacket, and thus, lacked the ability to consent to a search of the jacket. The State contends, however, that denial of the suppression motion was improper because the driver's consent to search the vehicle included all the containers and compartments found in the vehicle, including Matejka's jacket.

Consent to Search.

Under the Fourth and Fourteenth Amendments, a search conducted without a warrant issued upon probable cause is "per se unreasonable … subject only to a few specifically established and well-delineated exceptions." ***Katz v. United States***, 389 U.S. 347, 357 (1967). Consent is one of the recognized exceptions to the Fourth Amendment warrant requirement. *See* ***State v. Douglas***, 123 Wis.2d 13, 18, 365 N.W.2d 580, 582 (1985).

When asserting the consent exception, the 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." ***Gautreaux v. State***, 52 Wis.2d 489, 492, 190 N.W.2d 542, 543 (1971). "The proper test for voluntariness of consent under the fourth amendment is whether under the totality of the circumstances it was coerced." ***State v. Rodgers***, 119 Wis.2d 102, 114, 349 N.W.2d 453, 459 (1984).

There is no evidence to suggest that the driver's consent to search the vehicle was not voluntary. Instead, Matejka contends that the driver could not consent to a search of her jacket located within the vehicle. She argues that the police officer must either obtain her consent to search any of her belongings located within the van, or he must have probable cause that she committed a crime. We have found no binding authority, and counsel does not identify any such authority, that determines whether an officer who has a driver's consent to search a vehicle may search personal items located within the vehicle that clearly belong to a passenger of the vehicle. However, there are several cases that are instructive on the reasonableness and extent of vehicle searches.

Schneckloth v. Bustamonte, 412 U.S. 218 (1973), is the principal case that addressed the scope and validity of a consent search of an automobile. In that case, a police officer stopped a car when he noticed that one headlight and its license plate light were burned out. *See* ***id.*** at 220. When the driver could not produce a valid license, one of the occupants announced that his brother owned the car and produced a valid license. *See* ***id.*** The officer asked the owner's brother if he could search the car. *See* ***id.*** The owner's brother gave consent, and even assisted the officer by opening the glove compartment and the trunk. *See* ***id.*** Under the rear left seat, the officer found three stolen checks that were later connected to one of the other occupants of the vehicle, Robert Bustamonte. *See* ***id.*** Bustamonte never gave any consent to search, and challenged the admission of this evidence.

Although the Court focused on the voluntariness of the consent given by the owner's brother, it concluded that the search of the car and seizure of the property was legal. *See* ***id.*** at 249. The Court recognized that a search conducted pursuant to a valid consent is constitutionally permissible. *See* ***id.*** at 222. Additionally, by upholding the search, the Court determined that a person with some possessory connection to a vehicle can provide the consent to search that vehicle, even though it results in the seizure of evidence implicating another occupant.

In ***United States v. Ross***, 456 U.S. 798 (1982), the Supreme Court determined that a warrantless vehicle search conducted pursuant to probable cause included a search of all containers and compartments located within the vehicle. *See* ***id.*** at 821. It stated:

> A lawful search of fixed premises generally extends to the entire area in which the object of the search may be

> found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside. *A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search.* When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

Id. at 820-22 (footnotes omitted) (emphasis added). The Court went on to add that the rule applied to all containers because the purpose of the Fourth Amendment barred any such distinction. *See* ***id.*** at 822. The Court also reasoned that prohibiting an officer from opening a container that most likely contained the object of the search and instead requiring that officer to go through the entire vehicle would actually exacerbate the intrusion on privacy interests. *See* ***id.*** at 822 n.28.

Recently, the Court defined the scope of a vehicle search further in ***Wyoming v. Houghton***, 119 S. Ct. 1297 (1999), and held that probable cause to search a car includes the right to inspect not only the driver's but also the passengers' belongings found in the car. *See* ***id.*** at 1304. In that case, a police officer noticed a hypodermic syringe in a driver's shirt pocket during a routine traffic stop. *See* ***id.*** at 1299. After the driver admitted to using drugs, the officer searched the vehicle for contraband. *See* ***id.*** The officer removed a purse from the vehicle which one of the occupants identified as belonging to her. *See* ***id.*** He searched the purse and arrested the occupant after finding drug paraphernalia in it.

See ***id.*** Like Matejka, she argued that the evidence should have been suppressed because once she identified the purse as belonging to her, the officer needed probable cause to believe that she had engaged in a crime in order to search it. She argued that the officer's probable cause did not extend to her or her belongings.

After reviewing a long line of cases upholding similar searches, the Supreme Court held that "police officers with probable cause to search a car may inspect passengers' belongings found in the car that are capable of concealing the object of the search." ***Id.*** at 1304. Balancing governmental interests against personal privacy, it reasoned that passengers possessed a "reduced expectation of privacy" for property that they transported in cars that travel public thoroughfares. *See* ***id.*** at 1302. It noted that cars seldom served as a "repository of personal effects," and that such things as traffic accidents might render all their contents open to public scrutiny. *See* ***id.*** On the governmental interests side, the Court noted that given the mobility of automobiles, there was a substantial risk that evidence or contraband would be lost while a warrant was obtained. *See* ***id.*** Further, a passenger would often be "engaged in a common enterprise" with the driver and would have the same interest in concealing evidence of a crime. *See* ***id.*** Finally, once a "'passenger's property' exception" became known, there would be a great incentive for passengers to claim everything as their own. *See* ***id.*** at 1303. Thus, there were varying policy reasons that supported allowing a vehicle search to encompass all containers and belongings found in the vehicle, regardless of ownership.

In sum, the Supreme Court has determined that a search conducted pursuant to a valid consent is constitutionally permissible, that a vehicle's driver can provide consent to search a vehicle which later leads to the seizure of evidence

implicating another occupant, and that probable cause to search a car includes the right to inspect all compartments of the vehicle, including a passenger's belongings found in the car. Matejka contends that these cases are not controlling. She distinguishes ***Houghton*** on the basis that it involved a search of a passenger's belongings based upon a police officer's probable cause that contraband would be found in the car; that search was not performed pursuant to the driver's consent. Similarly, she distinguishes ***Schneckloth*** because, although it involved a driver's consent to search a vehicle, the incriminating items were not located within a passenger's belongings. We conclude that these are distinctions without a difference.

Matejka is asking us to limit a search of a vehicle based upon the ownership of the belongings found within the vehicle. There is no binding authority which admits a distinction among packages or containers based on ownership. Additionally, we believe that the Supreme Court clearly rejected such a rule as unworkable in ***Houghton*** and ***Ross***. The balancing of governmental interests and personal privacy must take into account practical realities. Requiring an officer to determine the ownership of every container or compartment would greatly hinder law enforcement's ability to conduct such searches. Further, we agree with ***Ross*** that when a legitimate search is under way, "nice distinctions … between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle," or jackets as the case here, must give way to the interest in the prompt and efficient completion of the task at hand. *See* ***Ross***, 456 U.S. at 821. We can find no authority to suggest that a search's legitimacy is any different if the search is based upon probable cause rather than consent. We decline to fashion such a rule here.

CONCLUSION

We conclude that a driver's unconditional consent to search his or her vehicle includes the right to search all containers and compartments, including a passenger's belongings, located in the vehicle. Accordingly, we reverse the circuit court.

By the Court.—Order reversed.

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