

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 12, 2018

Sheila T. Reiff
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. 2017AP2006-CR

Cir. Ct. No. 2016CM2845

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JOHN PATRICK WRIGHT,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
HANNAH C. DUGAN, Judge. *Affirmed.*

¶1 KESSLER, P.J.¹ The State of Wisconsin appeals an order of the circuit court granting John Patrick Wright's motion to suppress evidence. We affirm.

BACKGROUND

¶2 On July 29, 2016, Wright was charged with one count of carrying a concealed weapon. The charges stemmed from a traffic stop that occurred on June 15, 2016. Milwaukee Police Officers Jesus Gloria and Kristopher Sardina stopped Wright's car on the north side of Milwaukee because the passenger-side headlight was out. Wright was asked whether he had a concealed carry permit (CCW permit) and whether he had any weapons in the car. Wright answered that he recently took a CCW permit course and admitted that he had a firearm in the car. Officer Gloria subsequently found a firearm in the glove compartment. Wright was arrested and subsequently charged.

¶3 Wright filed a motion to suppress evidence seized as a result of the traffic stop, arguing that police violated his Fourth Amendment rights by questioning him about whether he held a CCW permit and whether there was a weapon in the car. Wright argued that police lacked reasonable suspicion to question him about a CCW permit and weapons in the car, the questions were unrelated to the purpose of the traffic stop, and the police conduct transformed an initially lawful stop into an unreasonable seizure.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶4 At a hearing on the motion, Officer Sardina testified that he pulled Wright over for a defective headlight on the night of June 15, 2016. Sardina stated that Wright pulled over immediately and responsibly and did not make any furtive movements. Sardina stated that upon approaching Wright's driver-side window, Sardina identified himself, told Wright the reason for the stop and asked for Wright's identification. Sardina also asked Wright if he was a CCW permit holder and whether there were any weapons in the car. Sardina stated that he asked these questions "[e]arly in the traffic stop" because "[i]t's one of the things that we're trained to ask during traffic stops." The following exchange occurred:

[The State] Is it considered a violation of protocol if you don't ask those questions?

[Sardina] I don't believe so, but I'm not certain.

....

[The State] And how did Mr. Wright respond to those two questions?

[Sardina] Mr. Wright said that he had just taken the CCW permit class, that he had finished it I believe he stated, and that he does have a firearm in his vehicle.

[The State] And what was your response to his response?

[Sardina] I asked him if we had his permission to remove the firearm from the vehicle just for the traffic stop.

[The State] And how did he respond to that request?

[Sardina] He granted.

¶5 On cross-examination, Wright's counsel questioned Sardina about the length of the stop, the order in which Sardina questioned Wright, the lack of suspicion that Wright committed or was committing a crime, and standard police procedures.

[Counsel] I believe you testified that Mr. Wright pulled over pretty much immediately, right?

[Sardina] That is correct.

[Counsel] Okay. And as you were approaching the car, you didn't see any furtive movements or blading of his body, right?

[Sardina] No, sir, I did not.

[Counsel] All right. And when you got to the driver's side door, was the window already down or did you lower it when you were right there?

[Sardina] I believe it was all the way down.

....

[Counsel] And you didn't smell alcohol or marijuana or anything like that, right?

[Sardina] No, I did not.

[Counsel] All right. And you asked Mr. Wright for his driver's license; is that right?

[Sardina] That's correct.

....

[Counsel] And you didn't know Mr. Wright from any previous contacts, did you?

[Sardina] No, sir.

[Counsel] Okay. You weren't aware of any prior criminal history at the time that you pulled his car over?

[Sardina] No, I was not.

[Counsel] Okay. He didn't have any outstanding warrants, correct?

[Sardina] No. I believe not.

[Counsel] Okay. But your first question I guess after maybe your second question after license was ... are you a CCW permit holder, right?

[Sardina] I do not know how many questions I asked and I don't know where that fell in.

[Counsel] Would you say it was within a few moments of you approaching his vehicle?

[Sardina] Those questions do come pretty fast, so that's a fair estimate.

....

[Counsel] You're trained to ask during a traffic stop if somebody is a carrying concealed weapon permit holder.

[Sardina] If they have a CCW permit.

[Counsel] Okay. And is that part of Milwaukee Police Department standard operating procedure for field interviews or traffic stops?

[Sardina] For traffic stops, it's one of the questions they would like us to ask.

[Counsel] And do you know if that's written in a Milwaukee Police Department standard operating procedure manual or is this something that's just discussed among officers and superiors?

[Sardina] It's written on a traffic stop question card. I don't know if it's actually in the standard procedures or ... written, but it's -- but it is in a written form on a card for traffic stops.

....

[Counsel] And when you approached the vehicle and you made contact with Mr. Wright, at that point in time you didn't see a firearm, right?

[Sardina] No, sir, I did not.

....

[Counsel] Okay. There was no NRA sticker on the car or anything like that?

[Sardina] That I don't recall.

¶6 The circuit court granted Wright’s motion, finding that police had reasonable suspicion for the traffic stop, but that police unlawfully extended the stop by asking Wright about his concealed carry status without reasonable suspicion that Wright posed a threat to officer safety. The State appeals.

DISCUSSION

¶7 At issue in this appeal is whether Wright’s Fourth Amendment rights were violated when police asked Wright whether he held a CCW permit and whether he had any weapons in his vehicle. The State argues that the circuit court erroneously granted Wright’s motion to suppress because police had a legitimate safety interest when questioning Wright and therefore did not unlawfully extend the traffic stop.

¶8 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 (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 (Ct. App. 1995).

¶9 “There is no question that a police officer may stop a vehicle when he or she reasonably believes the driver is violating a traffic law; and, once stopped, the driver may be asked questions reasonably related to the nature of the stop—including his or her destination and purpose.” *State v. Betow*, 226 Wis. 2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999). “Such a stop and detention is constitutionally permissible if the officer has an ‘articulable suspicion that the person has committed or is about to commit [an offense].’” *Id.* at 93-94 (citation omitted; brackets in *Betow*). Such suspicion cannot be based on an inchoate and

unparticularized suspicion or hunch. See *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). “[T]he scope of questions asked during an investigative stop must bear a reasonable relationship to the reasons for which the stop was made in the first place.” *Betow*, 226 Wis. 2d at 94.

¶10 “Once a justifiable stop is made ... the scope of the officer’s inquiry, or the line of questioning, may be broadened beyond the purpose for which the person was stopped only if additional suspicious factors come to the officer’s attention—keeping in mind that these factors, like the factors justifying the stop in the first place, must be ‘particularized’ and ‘objective.’” *Id.* “If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer’s intervention in the first place, the stop may be extended and a new investigation begun.” *Id.* at 94-95. “The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop.” *Id.* at 95.

¶11 Relying on *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), the circuit court found that Sardina unlawfully extended the traffic stop by asking Wright about his CCW permit and whether Wright had a firearm. The court found that the questions were unrelated to the stop, Wright was not free to leave, and Sardina’s training materials did not preempt Wright’s constitutional rights. We agree.

¶12 In *Rodriguez*, the United States Supreme Court addressed the “question [of] whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff.” *Id.* at 1614. The court concluded that “a police stop exceeding the time needed to handle the

matter for which the stop was made violates the Constitution’s shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, ‘become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a ticket for the violation.” *Id.* at 1612 (citation omitted; brackets in *Rodriguez*). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* at 1615.

¶13 Here, Wright does not dispute that the initial stop for a broken headlight was justifiable. Rather, both his motion and the circuit court’s decision were based on the lack of any articulated “additional suspicious factors” suggesting that Wright “committed or [was] committing an offense or offenses separate and distinct from” the traffic violation. *See Betow*, 226 Wis. 2d at 94-95. The principles articulated in *Rodriguez* support Wright’s position.

¶14 Sardina testified that he asked Wright whether Wright was a CCW permit holder simply because Sardina was “trained” to do so for “officer safety.” Sardina’s testimony established that he had no particularized suspicion suggesting that Wright posed a risk to officer safety. Sardina testified that Wright pulled over promptly and responsibly, was cooperative, and did not make any furtive movements. There was no claim that Wright appeared nervous or was trying to hide anything. Sardina did not see a firearm in the car, nor did he see anything associated with firearms in the car. Simply put, Sardina could not articulate *anything* suspicious about the circumstances of the stop “separate and distinct” from the broken headlight. *See Betow*, 226 Wis. 2d at 94-95.

¶15 Nonetheless, The State contends that Sardina’s questions were lawful because they were negligibly burdensome and did not add much time to the

traffic stop. The State misses the point. Authority for Sardina’s seizure ended when he reasonably could have issued a citation for Wright’s traffic violation. *See Rodriguez*, 135 S. Ct. at 1615. Instead of inquiring about the initial purpose of the stop, however, Sardina asked questions completely unrelated to the traffic violation. Wright was questioned and subsequently arrested with absolutely no articulated reason for Sardina to be concerned for officer safety and apparently only because a department “traffic stop question card” “suggested” that Sardina ask about a CCW permit and possession of a gun. The permissible contact and impermissible questions were muddled together and asked in quick succession while Wright was clearly not free to leave.

¶16 Based on the lack of any articulable facts supporting an actual fear that Wright posed a threat to officer safety, we conclude that police impermissibly expanded the scope of Wright’s traffic stop. Sardina’s testimony confirms nothing about the circumstances of the traffic stop or about Wright which justified inquiry about a firearm. The circuit court properly granted Wright’s motion to suppress.

By the Court.—Order affirmed.

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

