STATE OF WISCONSIN COURT OF APPEALS DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v. Appeal Nos. 22-AP-1855
22-AP-1856
22-AP-1857

RICHARD CHAD QUINLAN,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

Jeri A. Marsolek
Assistant District Attorney
State Bar No. 1022935
Attorney for Plaintiff-Respondent
307 Main St.
Black River Falls, WI 54615
(715) 284-0242
jeri.marsolek@da.wi.gov

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES PRESENTED

I. WHETHER THE TRIAL COURT APPLIED THE CORRECT LEGAL STANDARD TO DETERMINE THAT THIRD PARTY CONSENT WAS NOT APPLICABLE IN THIS CASE.

A. WHETHER ENTRY INTO THE CABIN WAS PROPER UNDER THE FOURTH AMENDMENT.

B. WHETHER THE "KNOCK AND TALK" ENCOUNTER IN THIS CASE WAS A SEIZURE FOR FOURTH AMENDMENT PURPOSES.

C. WHETHER WARDEN HAAS HAD A REASONABLE BELIEF OF PERMISSION TO ENTER THE CABIN FOR PURPOSES OF A KNOCK AND TALK INTERVIEW.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiff-Respondent does not request oral argument in this matter. The briefs will adequately present the issues and legal analysis for this appeal.

This is a one judge appeal and not subject to publication pursuant to Wis. Stat. § 809.23(1)(b)4.

STATEMENT OF ADDITIONAL FACTS

On September 20, 2017, Department of Natural Resources (DNR) Warden Haas received a call about illegal bear baiting on Chad Quinlan's property. Warden Haas testified that he knew Quinlan from a citation that he had issued a year before the citations that are the subject of this appeal. Haas had spoken to the defendant on the phone several times and had spoken to him in person on one occasion. R.43 :10-11; App:21-22.[1] Haas also knew Quinlan from a television show called "Final Pursuit," based out of Texas, with which Quinlan had been affiliated. In observing videos from that show, Haas noted the narrative within the video didn't correspond to the Michigan hunt the videos described, and realized

I References to the Appendix attached to Defendant-Respondent's Appendix are abbreviated "App." herein.

the hunts were actually taking place within restricted areas in Wisconsin. R.43:11-12; App:22-23.

The investigation drew the DNR to Quinlan's Jackson County property. R.43:12-13; App:23-24. Agent Haas went to the property on Arrow Road in Jackson County on December 16, 2018, to speak with Quinlan about the violations. The sole purpose of going to the property was to speak with Quinlan about the tip and get information from Quinlan, if possible. *Id.*

Haas testified that he drove to the property in an unmarked truck. Upon arrival, Haas was told by Quinlan's mother, Joan Quinlan, that Quinlan was in a cabin 50 feet from the house where she was located. R.43:13-14; App:24-25. Haas testified he knocked on the cabin door and a female, Heather Bolin, answered. From outside the door, Haas asked if Quinlan was present inside and Bolin opened the door and answered affirmatively. Haas then asked if he could come inside and Bolin answered affirmatively. R.43:14; App:25. Haas testified that at the time he knocked on the door and entered, he did not know Bolin's relationship to the property; whether she was a guest or had mutual use of the property. He knew, however Bolin was Quinlan's girlfriend. R.43:21-23; App:32-33.

Upon entering, Haas noted that the cabin was comprised of one room. He therefore could see Quinlan sitting, or lying, on the couch. Haas then spoke with Quinlan about concerns from the "Final Pursuit" videos. R.43:14-15; App:25-26.

During the conversation with Haas, Quinlan admitted to each of the allegations in each of the citations written by Haas. Although Haas never identified himself as a game warden, he had prior contacts with Quinlan in his capacity as a game warden and Quinlan acknowledged that he knew Haas. R.42; R.43:17; App:28. Quinlan never asked Haas to leave the cabin. R.43:17; App:28. Haas remained at the cabin speaking with Quinlan for approximately one hour. R.43:24; App:35.

Contrary to what Quinlan asserts in his brief, the trial court did not analyze his motion to suppress by applying the reasonable person standard for arrest. *See*,

Respondent-Appellant's Brief at p. 8. Rather, the trial court rejected Quinlan's argument that the analysis should be whether Haas violated the Fourth Amendment by entering the cabin without consent, specifically without proper third party consent under search and seizure law. The trial court instead determined that the motion to suppress filed by Quinlan hinged on whether the statements made by Quinlan were voluntary. R.43:39-41; R.App:50-52. At the motion hearing, Quinlan conceded that his statements were voluntary. R.43:40; App:51 (Quinlan reiterated that the statements were voluntary in his brief at p. 11).

The trial court stated that the issue was whether the person who was being asked questions would feel free to leave. Since there was no indication Quinlan was compelled or coerced in any fashion to make the statements, the court denied the motion to suppress. *Id.*

STANDARD OF REVIEW

In reviewing the denial of a suppression motion, appellate courts uphold the trial court's findings of fact unless they are clearly erroneous. Wis. Stat § 805.17(2). However, the application of constitutional principles to the facts as found is a question of law the appellate court decides independently. *City of Sheboygan v. Cesar*, 2010 WI App 170, ¶ 10, 330 Wis. 2d 760, 770, 796 N.W.2d 429, 435.

ARGUMENT

I. THE TRIAL COURT APPLIED THE CORRECT LEGAL STANDARD IN THIS CASE WHEN THE COURT PROPERLY DETERMINED THAT THIRD PARTY CONSENT TO ENTER WAS NOT AT ISSUE.

A. THE ENTRY INTO THE CABIN WAS NOT IMPROPER UNDER THE FOURTH AMENDMENT.

In the present case, Warden Haas approached the cabin occupied by Quinlan, first passing the residence of his mother, Joan Quinlan. Ms. Quinlan did not tell Haas that he was trespassing, nor did she order him to leave the property.

R.43:37; App.48. Haas continued past Ms. Quinlan toward the cabin to which she directed him, in order to find Quinlan and speak with him. Ultimately, Haas reached the door of the cabin, knocked and was invited to enter.

The United States Supreme Court recognized that "the knocker on the front door is treated as an invitation or license to attempt an entry, justifying ingress to the home by solicitors, hawkers and peddlers of all kinds." *Florida v. Jardines,* 569 U.S. 1, 8, 133 S.Ct. 1409, 1415, 185 L.Ed.2d 495 (2013); citing *Breard v. Alexandria,* 341 U.S. 622, 626, 71 S.Ct. 920, 95 L.Ed. 1233 (1951). The *Jardines* court went on to state:

> This implicit license typically permits the visitor to approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave. Complying with the terms of that traditional invitation does not require fine-grained legal knowledge; it is generally managed without incident by the Nation's Girl Scouts and trick-or-treaters. Thus, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no more than any private citizen might do. *Kentucky v. King,* 563 U.S. , 131 S.Ct. 1849, 1862, 179 L.Ed.2d 865 (2011).

Jardines, 569 U.S. at 8, 133 S.Ct. at 1415-1416.

Likewise in this case, Warden Haas simply partook in that traditional invitation to knock, waited to be received, and then, when he obtained an invitation to remain longer, spoke with Quinlan for nearly an hour about various hunting violations Quinlan had committed. There was no intent by Haas to search the premises and, in fact, no search occurred. Therefore, the doctrine of third party consent does not apply to this case.

B. THE KNOCK AND TALK ENCOUNTER IN THIS CASE WAS NOT A SEIZURE FOR FOURTH AMENDMENT PURPOSES.

The basic purpose of the prohibition against unreasonable searches and seizures is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. *State v. Boggess,* 115 Wis. 2d 443, 448-449, 340 N.W.2d 516, 520 (1983) (citing *Michigan v. Tyler,* 436 U.S. 499, 504, 98 S.Ct. 1942, 1947, 56 L.Ed.2d 486 (1978)). Nonetheless, a police officer not armed with a warrant may approach a home and knock, precisely because that is "no

more than any private citizen might do." *Kentucky v. King,* 563 U.S. 452, 469, 131 S.Ct. 1849, 1862, 179 L.Ed.2d 865 (2011).

In *Kentucky v. King,* officers conducted a controlled buy of drugs. One officer told the others to hurry, as the subject they were after was retreating into a residence. The subject entered an apartment on the right. The officers following him did not know which apartment he had entered, but smelled marijuana emanating from the apartment on the left. Officers knocked and announced "police" at the apartment on the left, heard noises consistent with disposing of evidence, and forced entry. Officers then saw marijuana in plain view, along with King, whom they arrested. King was charged with trafficking and other offenses. King filed a motion to suppress which was denied by the trial court. The *King* court found that when officers knocked and announced, they had exigent circumstances upon receiving no response to their knocking and hearing noise that could have been evidence being destroyed. *King,* 563 U.S. at 459, 131 S.Ct. at 1856, 179 L.Ed.2d 865.

Although the court in *King* based its decision on exigent circumstances, the court also stated that officers may seek consent-based encounters if they are lawfully present in the place where the consensual encounter occurs. If consent is freely given, it makes no difference that an officer may have approached the person with the hope or expectation of obtaining consent. *Id.,* citing *Immigration Naturalization Service v. Delgado,* 466 U.S.210, 216, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984) ("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.").

Quinlan believes that his Fourth Amendment rights were breached by the knock and talk encounter when Haas entered the cabin. Any analysis regarding whether Fourth Amendment protections have been breached must begin with whether a search and seizure occurred. *Cesar,* 2010 WI App 170 at 11 10, 330

Wis. 2d at 771, citing *United States v. Mowatt,* 513 F.3d 395, 399-400 (4th Cir. 2008).

In the present case, Warden Haas testified that his purpose in seeking to enter the Quinlan cabin was to conduct a "knock and talk" interview. R. 43 at p. 22-23; App. 33-34. To effectuate a knock and talk at a residence, police do not need probable cause or a warrant. *City of Sheboygan v. Cesar,* 2010 WI App 170, 11 9, n. 5, 330 Wis. 2d 760, 796 N.W.2d 429. Thus, Haas did not need probable cause or a warrant to speak with Quinlan.

The court in *Cesar* noted that not all police-citizen encounters constitute a seizure, and therefore, many such contacts do not fall within the safeguards afforded by the Fourth Amendment. One such category of contact involves no restraint on a person's liberty and is characterized by an officer seeking the citizen's voluntary cooperation through non-coercive questioning. This is not a seizure withing the meaning of the Fourth Amendment. *Cesar,* at ¶ 12, 330 Wis. 2d at 770, 796 N.W.2d at435 (citing *United States v. Odum,* 72 F.3d 1279, 1283 (7th Cir. 1995 (citation omitted)). "As long as a reasonable person would have believed that he [or she] was free to disregard the police presence and go about his [or her] business, there is no seizure and the Fourth Amendment does not apply. *Id.,* citing *State v. Young,* 2006 WI 98,11 18, 294 Wis. 2d 1, 717 N.W.2d 729.

In *Cesar,* officers responded to a report of a vehicle striking a fire hydrant, then driving into a driveway. Upon arrival, an officer observed a damaged hydrant and spoke with a witness. The officer then proceeded down the block to a truck with damage consistent with hitting the hydrant. The vehicle was registered to the defendant at the address where it was parked. The officers attempted contact at the door numerous times; and looked in the windows at an individual, who looked back at them but didn't respond. Officers shouted they wanted to speak with him. Eventually, the defendant spoke to the officers through a window. The defendant came out onto the porch, and made incriminating statements. The defendant filed a

motion to suppress those statements, claiming that the officers' actions constituted an unlawful seizure of him.

The court held that a person is considered "seized" if a reasonable person would not feel free to leave or terminate the conversation with an officer, taking into account all of the circumstances surrounding the incident. *Cesar*, at ¶ 13, 330 Wis. 2d **at** 774, 796 N.W.2d at 436 (citing *United States v. Mendenhall,* 446 U.S.544, 554, 100 S.Ct. 1870, 64 L.Ed. 497 (1980). "However, whereas here the situation is such that a person would not wish to leave his location, such as his home, the appropriate inquiry is whether a reasonable person would feel free to decline the officer's requests or otherwise terminate the encounter." *Id.,* citing *Florida v. Bostick,* 501 U.S. 429, 436, 111 S. Ct. 2382, 115 L.Ed.2d 389 (1991).

Thus, a "knock and talk" interview at a private residence that has lost its consensual nature and has effectively become an in-home seizure may trigger Fourth Amendment scrutiny under *Bostick. Id.* That inquiry involves a determination of whether an officer, by means of physical force or show of authority, has in some way restrained a citizen's liberty such that a reasonable person would not feel free to leave or terminate the encounter. *State v. Williams,* 2002 WI 94 11¶ 20, 22, 255 Wis. 2d 1, 646 N.W.2d 834; *See also, Mendenhall,* 446 U.S. 544, 100 S.Ct. 1870, 64L.Ed.3d 497 (1980) ("Only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave"). Questioning by law enforcement officers does not alone effectuate a seizure. *Williams,* 255 Wis. 2d 1, ll 22, 646 N.W.2d 834.

In the present case, Warden Haas, while in plain clothes, displaying no weapon, was invited into the residence and requested to speak with Quinlan. Quinlan agreed to speak with Haas and the two spoke for almost an hour. Quinlan never asked Haas to leave. R.43:16-17. There was no allegation of coercion or coercive tactics by Warden Haas, and the recording of the encounter indicates none. R.42. The encounter had been a friendly one. A reasonable person in

Quinlan's position would have felt free to tell Haas that he no longer wished to speak about the matter, and wanted Haas to leave.

The trial court in this case accurately applied the undisputed facts to the correct rule of law: whether a reasonable person would feel free to leave. There is no dispute that Warden Haas was in plain clothes, not a military style uniform, had no weapon showing, was not speaking in a coercive manner, and was speaking with Quinlan in Quinlan's own home. A reasonable person speaking to a game warden in plain clothes, in a noncoercive mariner, in his or her own home, would feel free to terminate such an interview and ask the warden to leave. Thus, the trial court properly applied the facts to the correct statement of law and this court should uphold the trial court decision.

C. WARDEN HAAS HAD A REASONABLE BELIEF OF PERMISSION TO ENTER THE CABIN FOR PURPOSES OF A KNOCK AND TALK INTERVIEW.

Quinlan argued that Warden Haas was not lawfully in the cabin at the time the knock and talk interview because Heather Bolin, who told Haas to "come in," did not have legal authority to do so. The question according to Quinlan is whether Bolin had authority to give third party consent to enter for purposes of conducting the knock and talk. As previously discussed, third party consent is a concept used to determine whether a search is reasonable under the Fourth Amendment, not whether a "knock and talk" encounter is reasonable. Despite the lack of search, if we analyze the concept of third party consent, the inevitable conclusion is that the entry into Quinlan's cabin was reasonable.

A warrantless entry and search by law enforcement officers does not violate the Fourth Amendment's proscription of "unreasonable searches and seizures" if the officers have obtained the consent of a third party who possesses common authority over the premises. *Illinois v. Rodriguez,* 497 U.S.177, 179, 110 S.Ct. 2793, 2796, 111 L.Ed.2d 148 (1990). The court in *Rodriguez* went on to state that a court must then consider whether the police could rely on a reasonable belief that

they had a valid consent to search. If so, the evidence obtained should not be suppressed. The issue is not whether police officers conducting "a search or seizure under one of the exceptions to the warrant requirement ... [are] correct, but that they always [are] reasonable." *Id.*, 497 U.S. 177 at 185, 110 S.Ct. at 2800.

The Constitution is no more violated when officers enter without a warrant because they reasonably (though erroneously) believe that the person who has consented to their entry is a resident of the premises, than it is violated when they enter without a warrant because they reasonably (though erroneously) believe they are in pursuit of a violent felon who is about to escape. *Illinois v. Rodriguez,* 497 U.S.177, 186, 110 S.Ct. 2793, 2800, 111 L.Ed.2d 148 (1990); citing *Archibald v. Mosel,* 677 F.2d 5 (CA1 1982). As with other factual determinations bearing upon search and seizure, determination of consent to enter must "be judged against an objective standard: would the facts available to the officer at the moment ... `warrant a man of reasonable caution in the belief' " that the consenting party had authority over the premises? *Terry v. Ohio,* 392 U.S. 1, 21-22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968). If not, then warrantless entry without further inquiry is unlawful unless authority actually exists. But if so, the search is valid. *Rodriguez,* 497 U.S. at 189, 110 S.Ct. at 2801.

In this case, when Haas knocked on the door and Bolin told him to "come in," it was reasonable for him to conclude that she invited him inside with authority to do so; particularly since Quinlan was in the same room with Bolin and did not ask Haas to leave. It is unreasonable to expect, and contrary to tradition, a person who knocks, and is invited inside, to then inquire, "Pardon me, but do you have the proper authority to invite me inside?"

The trial court in this case did not reach its decision based on third party consent. But even if such doctrine were appropriate to employ, Quinlan's argument fails. An officer invited inside by an adult opening the door of a residence may reasonably infer that the person has authority to allow him inside. Once inside, that inference is further bolstered by the fact that, when faced with

the owner of the residence, he is not told to leave, but his invitation to a discussion is accepted. Therefore, the "knock and talk" encounter in this case did not violate the Fourth Amendment, and this Court should uphold the trial court decision denying the motion to suppress Quinlan's statements.

CONCLUSION

The trial court in this case applied the correct legal standard (whether a reasonable person would feel free to leave) to the facts of this case to find that there had been no search or seizure for Fourth Amendment purposes in this case. Therefore, Quinlan's insistence on applying third party consent doctrine in this case is misplaced. The investigatory tool used by DNR Warden Haas was a knock and talk interview, in which a reasonable person would have felt free to leave or terminate the interview. Thus, no seizure of Quinlan occurred, and there was no Fourth Amendment violation.

Moreover, even if it could be argued that a seizure under the Fourth Amendment occurred in this case, Warden Haas had a reasonable belief that he had consent to enter the cabin when Bolin opened the door and told him he could enter the one room cabin where Quinlan was located. Therefore, no Fourth Amendment violation occurred.

Absent a Constitutional violation, the entry into the cabin and subsequent knock and talk interview were lawful. Therefore the Plaintiff-Respondent respectfully requests that this Court uphold the trial court's decision denying the motion to suppress Quinlan's statements.

Electronically Signed b
Jeri Marsolek
Assistant District Attorney
Attorney for Plaintiff-Appellant
State Bar No. 1022935

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 3,839 words.

Electronically Signed by:
Jeri Marsolek
Assistant District Attorney
Attorney for Plaintiff-Appellant
State Bar No. 1022935