

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

February 24, 1999

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

**No. 98-2424-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TERRY LANDO,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Waukesha County:  
JOSEPH E. WIMMER, Judge. *Affirmed.*

NETTESHEIM, J. Terry Lando appeals from a judgment of conviction for possession of marijuana pursuant to § 961.41(3g)(a)3, STATS. Lando pled guilty to the offense following the trial court's denial of his motion to suppress evidence.<sup>1</sup> On appeal, Lando contends that the search of his automobile

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<sup>1</sup> An accompanying charge of possession of drug paraphernalia pursuant to § 961.573(1), STATS., was dismissed and read in for sentencing purposes.

which produced the contraband was illegal because it went beyond the scope of his consent. We affirm the judgment of conviction.

The relevant facts are brief. Detective Michael Hecht of the Waukesha County Sheriff's Department stopped Lando's vehicle to investigate whether the vehicle was properly registered.<sup>2</sup> Lando explained to Hecht that he had recently purchased the vehicle, and he provided Hecht with supporting documentation. Hecht returned to his squad car and confirmed that Lando's information and documentation were correct. However, Hecht wrote Lando a warning citation for failing to notify the Department of Motor Vehicles of his address change.

Hecht returned to Lando's vehicle and gave Lando the citation. Hecht then engaged Lando in a conversation about searching Lando's vehicle. The testimony on this point is disputed. Lando testified that Hecht asked for permission to search the vehicle for weapons, guns or bombs and that he consented. Hecht testified on direct examination that he asked Lando whether he had any "guns, drugs, bombs or narcotics in the vehicle." On cross-examination, Hecht testified that he could not remember if he specifically asked for permission to search for these items, but that he did ask Lando if he could "search his vehicle" and Lando consented.

What happened next is not in dispute. Hecht searched the passenger compartment of the vehicle and found a pack of cigarettes in the console between the front seats. When he picked up the pack, Hecht sensed that it weighed "an

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<sup>2</sup> The vehicle carried dealer or "advertisement" plates, not regular Wisconsin registration plates.

inordinate amount.” He opened the pack and found a small pipe with suspected marijuana residue and a marijuana odor. Hecht then searched the remaining portions of the passenger compartment and also the trunk. In the trunk, Hecht located a backpack which he opened. There, he discovered a glass jar containing marijuana.

Lando argued to the trial court that the search of the cigarette pack was unreasonable because Hecht had asked for permission to search for guns, weapons or bombs. Lando contended that a cigarette pack could not reasonably be suspected of containing such items. As such, Lando argued that Hecht had exceeded the scope of the search to which he had consented.

The State responded that Hecht’s request for permission to search also extended to drugs and that Hecht reasonably suspected that drugs might be in the pack given its unusual weight.

For purposes of its ruling, the trial court adopted Lando’s contention that Hecht had not asked for permission to search for drugs. But the court nonetheless denied Lando’s suppression motion because the court determined that “a weapon could have been located, a knife or anything, folding knife, could have been located inside of the cigarette package.”

We begin by addressing what is not before us. On appeal, Lando does not contest the initial stop of his vehicle or Hecht’s request for permission to search. Instead, he contends that Hecht exceeded the scope of the search to which he consented.

Lando relies on *State v. Johnson*, 187 Wis.2d 237, 522 N.W.2d 588 (Ct. App. 1994). There the defendant had consented to a vehicle search for

firearms and weapons. The officer found a film canister in the glove compartment and determined that it might contain marijuana. The court of appeals held that a reasonable officer would not infer that the canister contained a firearm. *See id.* at 242, 522 N.W.2d at 590. The court also observed that the officer did not testify that he suspected the canister contained a firearm. *See id.* As a result, the court concluded that the officer had embarked on a new invasion of the defendant's privacy to which he had not consented. *See id.*

We view this case as different from *Johnson*. Hecht did not testify that he suspected that drugs were contained in the cigarette pack. To the contrary, he had been given permission to search for weapons and the record establishes that he was engaged in that process when he located the cigarette pack. We do not agree with Lando that a reasonable officer could not infer the possible presence of a weapon in a cigarette pack under the facts of this case simply because the *Johnson* court concluded otherwise as to a film canister under the facts of that case. Obviously, each case must be decided on its own facts. We cannot disagree with the trial court's reasoning that a small weapon could be located in a cigarette pack.

However, even if we were to invalidate the discovery of the pipe and suspected marijuana residue, Lando's consent nonetheless extended to Hecht's search of the trunk which produced the marijuana. Guns, weapons or bombs can certainly be stored in the trunk of a vehicle. The same is true of the backpack which Hecht discovered in the trunk which revealed the glass jar containing the marijuana. Therefore, although Lando's consent was limited and qualified by the purpose stated by Hecht, the action of Hecht in searching the trunk was within that purpose. On this further basis we uphold the trial court's ruling.

Although we uphold the trial court's ruling, we disagree with the State's reliance on *Florida v. Jimeno*, 500 U.S. 248 (1991). There, the United States Supreme Court held that a general consent to search a vehicle allowed the officer to search a paper bag lying on the floor of the vehicle. *See id.* at 251. However, as the court of appeals explained in *Johnson* when distinguishing *Jimeno*, a consent to search for firearms and weapons is a qualified, not an unqualified, consent. "By requesting permission to search Johnson's car for firearms and weapons, the warden limited the search." *Johnson*, 187 Wis.2d at 241, 522 N.W.2d at 589. The consents in *Johnson* and here were not general. Therefore, *Jimeno* does not apply.

*By the Court.*—Judgment affirmed.

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

