

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 24, 2009

David R. Schanker
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. 2008AP2228-FT

**Cir. Ct. Nos. 2008TR432
2008TR433**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CITY OF WASHBURN,

PLAINTIFF-APPELLANT,

V.

NATHAN R. KREINBRING,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Bayfield County:
JOHN P. ANDERSON, Judge. *Order reversed and cause remanded.*

¶1 PETERSON, J.¹ The City of Washburn appeals an order granting Nathan Kreinbring's suppression motion. The City argues the circuit court erred

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). Furthermore, this is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

by concluding Kreinbring was seized when a police officer shined a spotlight on his car. We agree. We therefore reverse and remand.

BACKGROUND

¶2 The facts of this case are not disputed. While patrolling one night, officer Nicholas Suminski noticed an occupied, parked vehicle. When Suminski later encountered the same vehicle pulled over to the curb in a different location, he slowed down and shined his spotlight on it. He then stopped, exited his squad car, and approached the vehicle. Although he continued to shine his spotlight, he did not activate the car's red and blue lights. As Suminski approached, Kreinbring rolled his window down. Suminski detected a strong odor of intoxicants, and asked Kreinbring whether he had had anything to drink. Kreinbring replied that he had. Suminski administered field sobriety tests, concluded Kreinbring was operating while intoxicated, and placed him under arrest. An Intoxilyzer test subsequently confirmed Kreinbring had a blood-alcohol concentration above the legal limit.

¶3 Kreinbring moved to suppress the evidence, arguing he was seized before Suminski had reasonable suspicion to stop him. The City did not dispute Suminski lacked reasonable suspicion to conduct a traffic stop, but argued Kreinbring was not seized when Suminski approached his parked car to question him. The circuit court disagreed. It held that Suminski's spotlighting of Kreinbring's vehicle was a seizure, and that Kreinbring was therefore seized before Suminski had reasonable suspicion.

DISCUSSION

¶4 “Whether evidence should be suppressed is a question of constitutional fact.” *State v. Johnson*, 2007 WI 32, ¶13, 299 Wis. 2d 675, 729 N.W.2d 182 (citation omitted). We review questions of constitutional fact under a mixed standard of review. We will uphold the circuit court’s findings of historical fact unless clearly erroneous, but we review independently the application of these facts to constitutional principles. *Id.*

¶5 The only issue before us is whether Suminski seized Kreinbring by pulling up behind his parked car and illuminating it with a spotlight. A seizure occurs when “a person submit[s] to a police show of authority [and] under all the circumstances surrounding the incident, a reasonable person would not have felt free to leave.” *State v. Young*, 2006 WI 98, ¶37, 294 Wis. 2d 1, 717 N.W.2d 729 (citing *U.S. v. Mendenhall*, 446 U.S. 544, 553 (1980)). A show of authority is generally defined as “conduct [which] would ... communicate[] to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.” *Florida v. Bostick*, 501 U.S. 429, 439 (1991).

¶6 The City argues the circuit court erroneously based its conclusion on inferences about Suminski’s subjective intent. We agree.

¶7 In a written decision, the court stated: “[T]his is a case where the citing officer clearly made a decision to focus attention on the defendant’s vehicle.... The only evidence of why the officer was in that section of Washburn was because he decided to follow the defendant’s car.” Citing the lack of “a reasonable explanation for the use of [the] spotlight,” the court concluded “the most logical inference” was that Suminski “intended to show authority,” and “a reasonable person would respond to said authority by not feeling free to leave.”

¶8 The question of whether an officer’s actions constituted a show of authority, however, is objective; the officer’s motives are irrelevant. *See State v. Luebeck*, 2006 WI App 87, ¶12, 292 Wis. 2d 748, 715 N.W.2d 639. Thus, the salient question here is whether Suminski’s illumination of Kreinbring’s car with a spotlight, viewed objectively, was a show of authority.

¶9 “[N]ot every display of police authority rises to a ‘show of authority’ that constitutes a seizure.” *Young*, 294 Wis. 2d 1, ¶65. An officer may “question someone as long as the questions, the circumstances and the officer’s behavior do not convey that compliance with the requests is required.” *Luebeck*, 292 Wis. 2d 748, ¶10 (citation omitted). This extends to an officer’s authority to question individuals in cars. If an officer walks up to an individual seated in a vehicle located in a public place, this alone does not constitute a seizure. 4 WAYNE R. LAFAYE, SEARCH AND SEIZURE § 9.4(a), 419-20 (4th ed. 2004).

¶10 An officer’s use of a spotlight when approaching an individual in a vehicle does not itself transform the interaction into a seizure. *Young*, 294 Wis. 2d 1. In *Young*, an officer stopped his squad car in the middle of a street behind an occupied parked car, illuminated it with his spotlight, and turned on his flashing emergency lights—but not his red and blue lights. The court characterized these actions as “consistent with a concern for the safety of passing motorists and the safety of the officer,” and concluded they did not constitute a show of police authority sufficient to constitute a seizure. *Id.*, ¶¶68-69.

¶11 Decisions from other jurisdictions also support the conclusion that shining a spotlight on a parked car, by itself, is not a seizure. *See United States v. Steele*, 782 F. Supp. 1301, 1312 (S.D. Ind. 1992) (officer’s illumination of defendant with overhead lights “not objectively threatening or coercive”);

Baldwin v. Virginia, 413 S.E.2d 645, 649 (Va. 1992) (use of floodlight is not an intimidating show of authority); and *State v. O'Neill*, 62 P.3d 489, 497 (Wash. 2003) (“illuminat[ing] at night what is plainly visible during the day is not an unconstitutional intrusion into a citizen’s privacy interests”); *see also State v. Licks*, 914 A. 2d 1246, 1249 (N.H. 2006) (shining flashlight into the rear window of a parked car is not a show of authority).

¶12 Kreinbring’s brief focuses almost entirely on Suminski’s reasons for investigating Kreinbring’s car, and hyperbolically characterizes Suminski’s actions as “hunting or stalking” and “a fishing expedition.” Kreinbring misses the point. Suminski’s suspicions prior to his engagement with Kreinbring are neither disputed, nor the pertinent issue. Rather, the issue is simply whether Suminski’s illumination of Kreinbring’s parked vehicle with a spotlight was, viewed objectively, a show of authority which would lead a reasonable person to believe he or she was not free to leave. We conclude it was not.

By the Court.—Order reversed and cause remanded.

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

