COURT OF APPEALS
DECISION
DATED AND FILED

April 26, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP733-CR **Cir. Ct. No. 2009CF62**

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

ANTHONY DOUGLAS CRAWFORD,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Bayfield County: JOHN P. ANDERSON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. The State appeals an order suppressing the contents of Anthony Crawford's duffel bag. In a previous appeal ***State v. Crawford***, No. 2008AP2472-CR, unpublished slip op. (WI App June 23, 2009), this court reversed Crawford's conviction and directed the circuit court to suppress

evidence seized after Crawford's unlawful arrest. The State dismissed the case and immediately filed a new complaint charging the same offenses as those alleged in the initial complaint. Crawford moved to suppress the evidence and the circuit court granted the motion, concluding the earlier appeal compelled that result based on issue preclusion and the "law of the case doctrine." We need not determine whether issue preclusion applies because we conclude that this court's previous direction to suppress the evidence is law of the case.

BACKGROUND

¶2 Police were dispatched to the scene of a one-car rollover accident. An emergency medical technician on the scene saw the injured driver, Crawford, go into a nearby woods. Sergeant Barry Cech followed Crawford's tracks in the snow while Deputy William Kurtz went ahead in the squad car in an attempt to intercept Crawford. Kurtz testified at the suppression hearing that he announced over the squad car loudspeaker that Crawford was under arrest. Kurtz eventually parked the squad car and waited for Crawford to approach. When Crawford came into view, he was carrying something in his hand that was later determined to be a cell phone. Kurtz told Crawford to put his hands in the air and that he was under arrest.

¶3 Cech testified that he heard Kurtz calling for Crawford to get down on the ground. He began running toward them when he observed a duffel bag in a clump of pine trees. He grabbed the duffel bag and continued running toward Kurtz and Crawford. The officers then placed handcuffs on Crawford and led him back to the squad car. They placed the duffel bag on the trunk and frisked Crawford, finding cocaine in his pocket. After Crawford was taken to a

helicopter, they searched the duffel bag and found narcotics, paraphernalia and cash.

¶4 At the initial suppression hearing, the State offered various reasons for validating the searches. The circuit court concluded that Crawford was legally arrested and searched pursuant to the police's community caretaker role. Crawford then entered a plea agreement and pled no contest to a reduced misdemeanor charge.

¶5 On appeal, we concluded that the officers were not acting as community caretakers when they arrested Crawford. Therefore, evidence seized after the unlawful arrest should have been suppressed. We remanded the matter to the circuit court with directions to grant Crawford's suppression motion. In the opinion, we noted, "The State did not argue before the circuit court or before this court any other basis to uphold Crawford's arrest." In a footnote, we observed that, at the suppression hearing, the State contended Crawford had abandoned the duffel bag, but it neither argued to the circuit court nor this court that the abandonment provided a basis, independent of his initial seizure, to search Crawford or his belongings.

DISCUSSION

¶6 The State identifies three reasons why it believes our earlier decision should not be considered law of the case. First, it argues that the footnote regarding its failure to justify the search on any basis other than the caretaker function "only established waiver for purposes of the previous appeal, not for all future appeals." That argument misses the point of the law of the case doctrine. The doctrine provides that a decision on a legal issue by an appellate court establishes the law of the case that must be followed in all subsequent proceedings

in the case both in the circuit and appellate courts. ***State v. Casteel***, 2001 WI App 188, ¶15, 247 Wis. 2d 451, 634 N.W.2d 338. Contrary to the State's argument, the doctrine applies to future court proceedings. The State cannot circumvent the doctrine by dropping the charge and refiling a complaint alleging the same offenses. ***Aon Risk Servs. Inc. v. Liebenstein***, 2006 WI App 4, ¶42, 289 Wis. 2d 127, 710 N.W.2d 715, *abrogated on other grounds*, ***Burbank Grease Servs., LLC v. Sokolowski***, 2006 WI 103, 294 Wis. 2d 274, 717 N.W.2d 781.

¶7 The State's second argument for not applying the doctrine is that our mandate only required suppression of evidence seized after Crawford's arrest. The State contends that the duffel bag was abandoned before Crawford's arrest and its contents would have been inevitably discovered. That argument fails for several reasons. First, it ignores the loudspeaker message that Crawford was under arrest. Second, it ignores Cech's testimony that he heard Kurtz order Crawford to "get down on the ground" before he seized the duffel bag. Third, the argument assumes that the duffel bag was the incriminating evidence rather than its contents. The bag was not opened until well after Crawford was arrested. Therefore, our mandate that required the circuit court to suppress evidence seized after Crawford's arrest included the contents of the duffel bag.

¶8 The State's third argument for not applying law of the case is that we erroneously stated that the theories of abandonment and inevitable discovery were not presented to the circuit court at the initial suppression hearing. The State notes that it made that argument in the circuit court. It contends that our mischaracterization of "salient facts" presents a cogent reason for disregarding the law of the case. We disagree. Whether the issue was raised in the circuit court is not a cogent reason for disregarding the law of the case. The gist of the footnote was that the State failed to pursue any alternative theories in its brief on appeal. A

respondent on appeal has broad latitude to argue that the circuit court's decision was right for a different reason. *See* ***State v. Holt***, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985). By failing to argue any grounds other than the officers' community caretaker function, the State abandoned all other bases for upholding the arrest and searches. The fact that the State made additional arguments in the circuit court that it abandoned on appeal does not constitute a cogent reason for disregarding the law of the case.

¶9 The State correctly notes that courts are not bound to follow the law of the case doctrine and may disregard it in the interest of justice. *See* ***State v. Moeck***, 2005 WI 57, ¶25, 280 Wis. 2d 277, 695 N.W.2d 783. It also urges us to overlook the waiver in the initial appeal that resulted from its failure to brief alternative grounds for upholding the search. In effect, the State seeks a "do-over" to cure the defects in its brief in the initial appeal. This piecemeal approach to resolving issues on appeal is disfavored and squanders judicial resources. *See* ***Culbert v. Young***, 140 Wis. 2d 821, 825-26, 412 N.W.2d 551 (Ct. App. 1987)

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).