

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

March 12, 1996

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(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-1788-CR

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**STATE OF WISCONSIN,**

**Plaintiff-Appellant,**

**v.**

**ANTHONY E. KOHEL,**

**Defendant-Respondent.**

APPEAL from an order of the circuit court for Brown County:  
DONALD HANAWAY, Judge. *Reversed and cause remanded.*

MYSE, J. The State appeals an order suppressing evidence based on the trial court's conclusion that the police had unlawfully seized Anthony E. Kohel. The State contends that the suppression order was improper because Kohel was not seized by the officer and, even if he was seized, the officer was permitted a limited seizure of Kohel based upon the community caretaker function of the police. Because this court concludes that Kohel was not seized when the police officer asked Kohel for identification and that the police were authorized to stop Kohel and ask for his identification as part of their community caretaker functions, the order is reversed. However, because Kohel alleged a seizure and the court did not resolve the factual dispute as to whether Kohel was placed in the squad car while the record check was conducted, the matter must be remanded to resolve disputed evidence.

Further, the evidence whether a reasonable person would have felt compelled to remain in the officer's presence during the record check was not fully developed. On remand, the trial court must determine whether Kohel was seized while the record check was conducted, and if so whether the seizure was reasonable as incident to the community caretaker function.

Officer James Runge was investigating a loud music complaint at 3 a.m. in the City of Green Bay. As he was knocking on the door of the residence in question, Kohel drove into the driveway and got out of his car. When Kohel approached Runge at the front door of the house, Runge asked him what he was doing there and Kohel said he lived there. Runge then asked him for his name and Kohel identified himself as Anthony Kohel. Runge then used a hand-held radio to check Kohel's record. The record check disclosed that Kohel's driving status was revoked. Runge subsequently issued Kohel a citation for operating a motor vehicle after revocation.

Kohel alleges that during the time the record check was conducted he had been placed in the rear of Runge's squad car. Runge testified that the record check was made while Kohel was standing in front of him outside the house and that he did not physically restrain Kohel or tell him he could not leave.

Although the trial court made findings of fact, it did not address the conflict whether the record check was conducted while Kohel was detained in the rear of the squad car or while standing with Runge outside the house. The trial court also made no finding whether Kohel was compelled to remain there while the record check was conducted. The suppression order was based upon the court finding that Runge had unlawfully seized Kohel when Runge asked Kohel his name and what he was doing there. Runge admitted that before the record check, he had no basis for suspicion that Kohel had engaged in any illegal conduct.

Because the issues raised require application of constitutional principles of law, this court is presented with questions of law that are reviewed without deference to the trial court's determination. *State v. Goebel*, 103 Wis.2d 203, 209, 307 N.W.2d 915, 918 (1981). However, in reviewing the suppression order, this court must accept the factual findings of the trial court unless they

are clearly erroneous. *State v. Guzy*, 139 Wis.2d 663, 671, 407 N.W.2d 548, 552 (1987).

The State first contends that Runge did not seize Kohel merely by asking him his name and why he was there. This court agrees. A seizure of the person is subject to the Fourth Amendment reasonableness requirement. *Terry v. Ohio*, 392 U.S. 1, 9 (1968). However, not every encounter between a citizen and law enforcement involves a seizure protected by the Fourth Amendment. *United States v. Mendenhall*, 446 U.S. 544, 552 (1980). A seizure occurs only if a reasonable person would have believed he was not free to leave considering all of the circumstances surrounding the incident. *State v. Goyer*, 157 Wis.2d 532, 536, 460 N.W.2d 424, 425 (Ct. App. 1990). A police officer may ask questions, including asking for identification, even though there is no basis for suspecting that individual of criminal activity. *Florida v. Bostick*, 501 U.S. 429, 434-35 (1991). "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred." *Id.* at 434 (quoting *Terry*, 392 U.S. at 19 n.16).

In this case, after Kohel got out of his car and approached Runge, Runge merely asked Kohel what he was doing there and what his name was. Nothing at this point would indicate that Kohel had been seized by Runge. The record is devoid of any evidence that Runge verbally or nonverbally compelled Kohel to stay there when he asked him for identification. In fact, the court found that it was almost a conversational situation between the two individuals. Therefore, this court concludes that the officer's request for identification did not constitute a seizure. See *id.*; *Mendenhall*, 446 U.S. at 555.

Because this court concludes that Kohel was not seized by Runge's request for identification, there is no requirement that Runge have a reasonable suspicion that Kohel had engaged in criminal conduct at the time he asked Kohel his name and what he was doing there. See *Bostick*, 501 U.S. at 434. Accordingly, there is no basis for suppressing evidence unless Runge seized Kohel by placing him in the squad car while the record check was conducted or a reasonable person would have believed he was not free to leave while the record check was conducted.

As an alternative basis, this court also agrees with the State that Runge's request for identification was a proper exercise of the police community caretaker function. The police may conduct a limited investigation as part of their community caretaker function. See *State v. Ellenbecker*, 159 Wis.2d 91, 96, 464 N.W.2d 427, 429 (Ct. App. 1990). "A community caretaker action is one that is totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute." *Id.* The police's community caretaker function includes investigating noise complaints. *Bies v. State*, 76 Wis.2d 457, 471, 251 N.W.2d 461, 468 (1977).

"In a community caretaker case, reasonableness is determined by balancing the public need and interest furthered by the police conduct against the degree of and nature of the intrusion upon the privacy of the citizen." *Ellenbecker*, 159 Wis.2d at 96, 464 N.W.2d at 429. This court concludes that the reasonableness test is passed by balancing the police's responsibility for general maintenance of peace and order by investigating the noise complaint against the minimal intrusion of asking Kohel his name and what he was doing there when he approached the house that was subject to the noise complaint. Accordingly, even if a seizure occurred when Runge asked Kohel to identify himself, that seizure was justified under the circumstances of this case based upon the community caretaker function of the police.

There is a factual dispute, however, concerning whether Kohel was placed in the rear of Runge's squad car while the record check was taking place. If the trial court makes a factual determination that Runge placed Kohel in the rear of the squad car while he was conducting a record check, it could properly conclude that Kohel had been seized by Runge at that point. Because Runge concedes he had no reasonable suspicion of criminal conduct by Kohel at the time, the seizure would be improper unless it was justified by the community caretaker function. While the community caretaker function was reasonably exercised in this case by asking for identification and why Kohel was there, the community caretaker function does not authorize Runge to place Kohel in the rear of the squad car while a record check is conducted. Placing Kohel in the squad car while conducting a record check is totally unrelated to the community caretaker function because it was unnecessary to the investigation of the noise complaint.

Therefore it is necessary to remand this matter to the trial court for a determination of whether Kohel had been placed in the rear of the squad car while the record check was conducted. If the trial court concludes that Kohel was seized and placed in the rear of the squad car while the record check was conducted, the seizure was improper.

Further, even if the trial court finds that Kohel was not placed in the squad car while the record check was conducted, the trial court may conclude that Kohel was seized if it determines that a reasonable person would have believed he was not free to leave during the record check. See *Goyer*, 157 Wis.2d at 536, 460 N.W.2d at 425. If the trial court finds that Kohel was seized because a reasonable person would have believed he was required to remain in the officer's presence during the record check, it must then consider whether the seizure was a proper exercise of the community caretaker function by balancing the public need and interest furthered by the police conduct against the degree and nature of the intrusion upon the privacy of the citizen. See *Ellenbecker*, 159 Wis.2d at 96, 464 N.W.2d at 429.

If the trial court determines that there was an unreasonable seizure, it may then suppress evidence. However, it is clear that the evidence of Kohel's identification and the officer's observation of Kohel driving were obtained before any seizure took place and may not be suppressed. In deciding to suppress any remaining evidence, the trial court may consider whether the doctrine of inevitable discovery applies, which this court does not address because neither party raised the issue. Based on the foregoing, this court reverses the order and remands for further proceedings consistent with this opinion.

*By the Court.* – Order reversed and cause remanded.

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