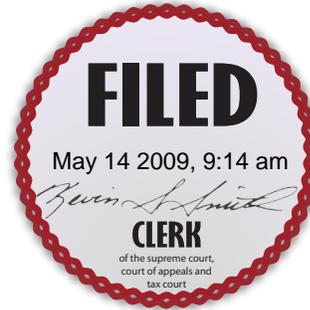


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**IN THE
COURT OF APPEALS OF INDIANA**

GARY VANVLEET,)
)
Appellant-Defendant,)
)
vs.) No. 24A01-0807-CR-318
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE FRANKLIN CIRCUIT COURT
The Honorable J. Steven Cox, Judge
The Honorable Clay M. Kellerman, Magistrate
Cause No.24C01-0709-FD-823

May 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Gary Vanvleet brings this interlocutory appeal from the denial of his motion to suppress certain evidence. Concluding that Vanvleet's encounter with the Indiana State Troopers was consensual and therefore did not implicate the Fourth Amendment, we affirm.

FACTS AND PROCEDURAL HISTORY

At approximately 10:15 a.m. on September 3, 2007, Indiana State Troopers Pete Cates and Steven Sexton encountered a green Chevrolet pickup truck at the intersection of U.S. 52 and State Route 1 in Brookville. Trooper Sexton, who was on duty with Trooper Cates for training purposes, pulled his marked State Police vehicle behind the truck while Trooper Cates verified that the truck's registration was valid. Trooper Cates learned that the truck was registered to Joyce M. Stickler, that the truck's registration was valid, and that a protective order had been issued on Stickler's behalf against Vanvleet. Neither Trooper Cates nor Trooper Sexton could identify the occupants of the truck as Vanvleet and Stickler. Nevertheless, having observed an unknown male driving the truck and an unknown female in the passenger seat, Troopers Cates and Sexton were concerned that the protective order was being violated and decided to follow the truck through Brookville.

Eventually, the truck stopped at a gas station along U.S. 52. Troopers Cates and Sexton, who conceded that the driver of the truck had committed no traffic violations, "pulled in [] behind the pickup truck at the gas pump." Tr. p. 6. Troopers Cates and Sexton observed the female exit the truck and enter the gas station's convenience store. Trooper Sexton followed the female while Trooper Cates approached the male who remained in the

truck's driver's seat. Trooper Cates approached the driver's side door, spoke to the male through the driver's side window, and requested the driver's identification. The male complied with Trooper Cates's request for identification, and Trooper Cates determined that the male was Vanvleet. Trooper Cates "checked [Vanvleet's] driver status through [Indiana State Police] radio" and was notified that Vanvleet was a habitual traffic violator. Tr. p. 7. After determining that Vanvleet was a habitual traffic violator, Trooper Cates advised Vanvleet that a protective order had been filed against him by Stickler, who Trooper Sexton determined to be the truck's female passenger. Vanvleet indicated that he was aware of the protective order. Having determined that Vanvleet was a habitual traffic violator and that he was in violation of the protective order, Trooper Cates placed Vanvleet under arrest.

On September 10, 2007, the State charged Vanvleet with Class D felony operating a vehicle as a habitual traffic violator. On December 14, 2007, Vanvleet moved to suppress all evidence obtained as a result of his encounter with Trooper Cates. Following a hearing, the trial court denied Vanvleet's motion to suppress. On May 28, 2008, Vanvleet filed a petition for certification for interlocutory appeal, which the trial court granted. This court accepted jurisdiction over Vanvleet's interlocutory appeal on July 28, 2008. This appeal follows.

DISCUSSION AND DECISION

I. Standard of Review

We review the denial of a motion to suppress in a manner similar to other sufficiency matters. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. However, unlike the typical sufficiency of the evidence case where only the evidence favorable to the judgment is considered, we must also consider the uncontested evidence favorable to the defendant.

Bentley v. State, 779 N.E.2d 70, 73 (Ind. Ct. App. 2002) (citations omitted). “Although we generally review a trial court’s decision to admit evidence despite a motion to suppress under an abuse-of-discretion standard, the ultimate determination of whether an officer had reasonable suspicion to conduct an investigatory stop is reviewed *de novo*.” *Crabtree v. State*, 762 N.E.2d 241, 244 (Ind. Ct. App. 2002).

II. Whether Vanvleet Was “Seized” in Violation of the Fourth Amendment

The parties dispute whether Trooper Cates “seized” Vanvleet in violation of the Fourth Amendment. We recognize that not every encounter between a police officer and a citizen amounts to a seizure requiring objective justification. *Overstreet v. State*, 724 N.E.2d 661, 664 (Ind. Ct. App. 2000) *trans. denied*. “To characterize every street encounter between a citizen and the police as a seizure, while not enhancing an interest guaranteed by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices.” *Id.* “Indeed, it is not the purpose of the Fourth Amendment to eliminate all contact between police and the citizenry.” *Id.*

As this court explained in *Overstreet*,

[T]here are three levels of police investigation, two which implicate the Fourth Amendment and one which does not. First, the Fourth Amendment requires that an arrest or detention for more than a short period be justified by probable cause. Probable cause to arrest exists where the facts and circumstances within the knowledge of the officers are sufficient to warrant a belief by a person of reasonable caution that an offense has been committed and that the person to be arrested has committed it. Second, it is well-settled Fourth Amendment jurisprudence that police may, without a warrant or probable cause, briefly detain an individual for investigatory purposes if, based on specific and articulable facts, the officer has a reasonable suspicion that criminal activity “may be afoot.” Accordingly, limited investigatory stops and seizures on the street involving a brief question or two and a possible frisk for weapons can be

justified by mere reasonable suspicion. Finally, the third level of investigation occurs when a law enforcement officer makes a casual and brief inquiry of a citizen which involves neither an arrest nor a stop. In this type of “consensual encounter” no Fourth Amendment interest is implicated.

Id. at 663 (citations omitted).

The question presented in this case is whether Troopers Cates and Sexton engaged in an investigatory stop or detention, thereby implicating the protections of the Fourth Amendment, or whether their encounter with Vanvleet was consensual. Vanvleet argues that he was “seized” for Fourth Amendment purposes when Trooper Cates approached the driver’s side door of the truck where Vanvleet sat in the driver’s seat and requested identification. The State responds that the Fourth Amendment was not implicated because Vanvleet was free to leave at any time.

In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court stated that “[o]nly 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.” 392 U.S. at 20 n.16. “[I]n order to determine whether a particular encounter constitutes a seizure, a court must consider all the circumstances surrounding the encounter to determine whether the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.” *Bentley*, 779 N.E.2d at 73-74 (quoting *Florida v. Bostick*, 501 U.S. 429, 439 (1991)). “[T]he crucial test is whether, taking into account all of the circumstances surrounding the encounter, the police conduct would ‘have communicated to a reasonable person that he was not at liberty to

ignore the police presence and go about his business.” *Bostick*, 501 U.S. at 437 (quoting *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988)).

The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation. Moreover, what constitutes a restraint on liberty prompting a person to conclude that he is not free to ‘leave’ will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs.

While the test is flexible enough to be applied to the whole range of police conduct in an equally broad range of settings, it calls for consistent application from one police encounter to the next, regardless of the particular individual’s response to the actions of the police. The test’s objective standard—looking to the reasonable man’s interpretation of the conduct in question—allows the police to determine in advance whether the conduct contemplated will implicate the Fourth Amendment. This “reasonable person” standard also ensures that the scope of Fourth Amendment protection does not vary with the state of mind of the particular individual being approached.

Chesternut, 486 U.S. at 573 (citations omitted).

It is well-established that mere police questioning does not constitute a seizure. For example, the United States Supreme Court has held that “law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.” *Florida v. Royer*, 460 U.S. 491, 497 (1983).

As long as the person to whom questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person’s liberty or privacy to require some particularized and objective justification. Examples of circumstances under which a reasonable person would have believed he was not free to leave include the threatening presence of several officers, the

display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.

Overstreet, 724 N.E.2d at 664 (citations and quotations omitted).

In arguing that the instant facts demonstrate that Vanvleet's encounter with Trooper Cates was consensual, the State relies upon *Overstreet v. State*, 724 N.E.2d 661. In *Overstreet*, the facts establish that while on duty, a police officer observed the defendant "looking into a mailbox and then closing the mailbox door." *Id.* at 662. The defendant "then walked hurriedly toward a parked vehicle and drove away." *Id.* The officer, who did not recognize the defendant or his vehicle, observed as the defendant drove a short distance before stopping at a gas station, exited his vehicle, and began to pump air into one of his tires with an air hose. *Id.* at 662-63. The officer pulled his marked police vehicle into the gas station behind the defendant's vehicle without activating the vehicle's flashing police lights, and approached the defendant. *Id.* at 663. When the officer requested the defendant's identification the defendant volunteered that his operator's license was suspended. *Id.* The court determined that in light of these facts, the defendant's encounter with the police officer was consensual and therefore the encounter did not implicate the Fourth Amendment. *Id.* at 664.

The facts of the instant matter establish that Troopers Cates and Sexton parked their marked state police vehicle behind Vanvleet, who had stopped at a gas station, after observing him drive a pickup truck that was registered to Stickler and learning that a

protective order was issued on Stickler's behalf against Vanvleet.¹ Trooper Cates approached Vanvleet while Trooper Sexton went inside the gas station's convenience store to speak with Stickler. Neither Trooper Cates nor Trooper Sexton activated the police vehicle's flashing lights before Trooper Cates approached Vanvleet. Trooper Cates requested identification and Vanvleet provided Trooper Cates with his state-issued identification card. Upon learning of Vanvleet's identity, Trooper Cates checked Vanvleet's driver status through Indiana State Police radio and was notified that Vanvleet was a habitual traffic violator. Having determined that Vanvleet was in violation of the protective order issued on Stickler's behalf and also that Vanvleet was a habitual traffic violator, Trooper Cates placed Vanvleet under arrest.

Nothing in the record indicates that Trooper Cates displayed a weapon, touched Vanvleet, or used language or a tone that suggested that compliance with any request made by Trooper Cates may be compelled. In absence of some such evidence, we conclude that Trooper Cates's encounter with Vanvleet was consensual and did not amount to a seizure of Vanvleet. We further conclude that the trial court properly denied Vanvleet's motion to suppress.

The judgment of the trial court is affirmed.

CRONE, J., and BROWN, J., concur.

¹ While the troopers had parked their vehicle behind Vanvleet, they were not blocking Vanvleet's ability to drive forward and away upon his choosing.