



LEGAL UPDATE

City of Madison

Fall 2007

Lieutenant Victor Wahl

Traffic Stops

***State v. Newer*, 2006AP2388-CR (2007); Decided on October 10, 2007 by the Wisconsin Court of Appeals.**

In *Newer*, an officer observed a vehicle driving slightly above the posted speed limit (twenty-eight miles per hour in a twenty-five mile per hour zone). The officer ran the vehicle plate and determined the name of the registered owner (Newer). The officer then obtained Newer's date of birth and checked his driving status, learning that Newer's license was revoked. The officer caught up with the vehicle and stopped it; Newer was eventually arrested for OMVWI. Prior to the stop, the officer did not know if Newer was driving, nor did he know the gender of the driver.

Newer challenged his arrest, arguing that the officer did not have reasonable suspicion to stop him. The primary issue in the case was whether it was reasonable for the officer to assume that the vehicle's registered owner (Newer) was driving, justifying a stop (based on Newer's revoked driver's license).

The Wisconsin Court of Appeals concluded that the stop was justified. The Court stated, "it is indeed a reasonable assumption that the person driving a particular vehicle is that vehicle's owner." So, if an officer knows the owner of a vehicle to have a suspended or revoked driving status, it will generally be reasonable for the vehicle to be stopped. There are, however, limitations:

If an officer comes upon information suggesting that the assumption (that the driver of a vehicle is the owner) is not valid in a particular case, for example that the vehicle's driver appears to be much older, much younger, or of a different gender than the vehicle's registered owner, reasonable suspicion would, of course, dissipate. There would simply be no reason to think that the nonowner driver had a revoked license.

The *Newer* court concluded by stating:

Here, the officer did not observe the driver of the vehicle and had no reason to think that it was anyone other than the vehicle's owner at any time during the stop. The officer was entitled to rely on the reasonable assumption that the owner of a vehicle is most likely the driver.

Because the Court concluded that the stop was justified under these grounds, it did not consider whether the minor speeding violation was sufficient to justify a stop.

So, if an officer observes a vehicle operating and knows that

the vehicle's registered owner does not have a valid driver's license, it will be reasonable in most circumstances for the officer to assume the driver is the registered owner and stop the vehicle. The only exceptions would be if the officer has information indicating that the driver is not the registered owner (including the officer's observations that the driver is of a different race, gender or age than the registered owner).

Miranda

***State v. Markwardt*, 2006AP2871-CR (2007); Decided on October 31, 2007 by the Wisconsin Court of Appeals.**

In *Markwardt*, Sheboygan police responded to a shooting in which a twenty-two-year-old female was shot in the head and killed. Investigating officers determined that Markwardt and another subject had been involved in the incident, and issued a statewide alert for Markwardt's vehicle.

Later the same day, an officer in Jackson County observed Markwardt's vehicle and attempted to stop it. Almost immediately, the rear window of the vehicle shattered. Markwardt exited the vehicle and was taken into custody. Officers located a male subject in the vehicle who had shot himself in the head as the traffic stop took place.

Markwardt was returned to the Jackson Police Department, and a detective from Sheboygan subsequently arrived to interview her. The detective provided Markwardt with a written copy of her *Miranda* rights, and she signed a form indicating that she was waiving her rights. The detective then began to question Markwardt (the interview was audio recorded).

During the interview Markwardt provided several different and inconsistent versions of what had happened. A little more than an hour into the interview, the detective confronted Markwardt and pointed out that her story conflicted with that provided by others. Markwardt replied by stating, "then put me in jail. Just get me out of here. I don't want to sit here anymore, alright. I've been through enough today."

The detective continued to question Markwardt, and she eventually made several admissions. The entire interview lasted about three hours (and continued for about two hours

after Markwardt made her statement about wanting to go to jail). She was subsequently charged with several felonies.

Markwardt sought to suppress her admissions, claiming that her statements to the detective (about wanting to go to jail) served as an invocation of her right to remain silent. She also claimed that her statement was given involuntarily.

Miranda provides two separate rights to individuals subjected to custodial interrogations: the right to remain silent and the right to counsel. Officers wanting to interrogate someone in custody must seek and obtain a waiver of these rights by the person to be interviewed prior to questioning (Markwardt clearly waived her rights prior to the questioning).

Even if an initial waiver takes place, however, the suspect can invoke either right at any time. Once the suspect invokes his or her right (to counsel or to silence), police questioning must cease. Further questioning is generally not permissible unless the suspect re-initiates communication with police.

Markwardt's primary argument was that her statements ("then put me in jail. Just get me out of here. I don't want to sit here anymore, alright. I've been through enough today.") served to invoke her right to remain silent, and that questioning should have stopped at that point.

An invocation of *Miranda* rights (to counsel or to silence) must be clear: "A suspect must unequivocally invoke his or her right to remain silent before police are required to either stop an interview or to clarify equivocal remarks by the suspect." So, the question in *Markwardt* was whether her statement was an unambiguous invocation of her right to remain silent.

The court concluded that Markwardt's statements were not unequivocal:

An assertion that permits reasonable competing inferences demonstrates that a suspect did not sufficiently invoke the right to remain silent. We therefore reverse the circuit court because Markwardt's comments permit reasonable competing inferences. A reasonable interpretation of Markwardt's comments could be that she was invoking her right to remain silent. However, an equally reasonable understanding of her comments could be that she was merely fencing with (the detective) as he kept repeatedly catching her in either lies or at least differing versions of the events. Markwardt's comments are equivocal as a matter of law because there are reasonable competing inferences to be drawn from them.

Since Markwardt's statements did not serve to unambiguously invoke her right to silence, it was permissible for police to continue questioning her. Note that while it is not constitutionally required for an officer faced with this type of situation to ask clarifying questions (inquiring about whether the suspect is, in fact, invoking his or her rights) it is generally a good practice to do so.

The *Markwardt* court also concluded that the statements had been made voluntarily. Improper police conduct is required

for a statement to be involuntary. The court concluded that none of the factors present (the length of the questioning, the tone of the detectives, etc.) were improper and that the statement was voluntary. Interestingly, the Court of Appeals listened to the audio recording of the interrogation when reviewing the record in this case. It appears that the recording assisted the Court in reaching its conclusion.

Obstructing

***State v. Nieves*, 2006AP1308-CR (2007); Decided on June 6, 2007 by the Wisconsin Court of Appeals.**

In *Nieves*, an officer observed a vehicle parked in a driveway with its lights off and its motor running. The officer ran the plate and learned that it came back to a different vehicle, registered to an individual the officer had recently arrested for delivery of cocaine.

A short time later, the officer observed a 2nd vehicle pull up next to the 1st vehicle, and saw someone exit the 2nd vehicle and approach the 1st. The 2nd vehicle subsequently left, and the officer observed it had temporary plates and very dark-tinted windows. The officer had prior experience with people purchasing drugs at that location, and with vehicles using false temporary plates while doing so.

The officer stopped the vehicle and observed two occupants (neither wearing a seatbelt). He recognized the driver as a suspected drug dealer. The passenger provided the name of "Anthony Otero" from Chicago. The officer attempted to confirm the passenger's identity through computer checks, but was unable to do so. He then proceeded to issue citations (for failing to wear seatbelts) to both subjects, and arrested the passenger. A search of the vehicle incident to arrest yielded a significant amount of cocaine and U.S. Currency. "Otero" was later positively identified as Pedro Nieves.

Nieves challenged the search of the vehicle, claiming that the officer had no justification to arrest him. The court quickly pointed out that Nieves could not be physically arrested for the seatbelt violation (the seatbelt statute expressly forbids physical arrests under any circumstances solely for a seatbelt violation).

However, the court concluded that the officer had probable cause to arrest Nieves for obstructing an officer. The court concluded that the totality of the circumstances—the suspicious behavior observed by the officer, the history of drug activity in the area and connected to the owner of one of the vehicles, the officer's knowledge of people with warrants or involved in criminal activity providing false names, and the inability to verify the identity provided—gave the officer probable cause to arrest Nieves for obstructing. As a result, the subsequent search and arrest were valid.