

RECEIVED

09-10-2013

WISCONSIN COURT OF APPEALS
DISTRICT IV

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Case No.: 2013 - 000430 - CR

Plaintiff-Respondent,

vs.

Patrick Hogan,

Defendant-Appellant.

ON APPEAL FROM DENIAL OF MOTIONS TO SUPPRESS AND
CONVICTIONS ENTERED IN THE CIRCUIT COURT, GRANT COUNTY,
THE HONORABLE CRAIG R. DAY, PRESIDING

REPLY BRIEF OF DEFENDANT-APPELLANT

Moen Sheehan Meyer, Ltd.

201 Main Street, Suite 700

PO Box 786

La Crosse, WI 54602-0786

608-784-8310

Attorneys for Defendant-Appellant

By: Nicholas J. Passe

State Bar No. 1061509

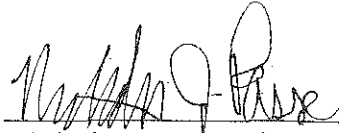
ARGUMENT

The gist of Defendant-Appellant Patrick Hogan's argument on this appeal is twofold: For important public policy reasons outlined in our initial brief, Circuit Court Judge Day's denial of Hogan's Motions to Suppress should be overturned because, 1. the traffic stop was illegally extended into a criminal investigation without reasonable suspicion to do so and, in context, there was effectively no break between when Hogan and Deputy Smith parted ways until Deputy Smith reapproached his vehicle a mere 16 seconds later, and 2. again, considering the context, even if a court were to ascribe some weight to those 16 seconds, the wrong of the ~15 minute illegal detention preceding those 16 seconds can safely be said to have bled over so as to impermissibly taint the consent given by Hogan to the search of the truck.

Again, Hogan was a probationer being asked to give permission to search his truck. He had just been put through field sobriety tests and detained for 24 minutes (including a certain period of time he was legitimately detained for a seatbelt violation.) The officer may have theoretically released him from the "first stop" but reapproached before Hogan had any reasonable chance to go back to his truck, get in, review and/or put away the citation he had received, get buckled in, address his wife or child passengers, start the truck, buckle up, check for traffic and safely pull away from the scene. An officer asking for permission to search a vehicle under those circumstances goes directly to voluntariness, so we do dispute the State's assertion that we do not claim the consent was not voluntarily given in our initial brief. See Defendant-Appellant's Brief pp. 13, 15 for articulation of legal standards and pp. 17, 18-19 for argument as to how Deputy Smith's emergency lights remaining on and Hogan's status as a probationer impacted on voluntariness. Hogan asserts that all of the facts in the record should be the subject of the taint analysis followed in *Brown v. Illinois*, *State v. Phillips*, *State v. Bermudez* and *U.S. v. Ienco* on p. 18 of Hogan's initial brief. The taint analysis is, in large part, about analyzing voluntariness of consent to a search after a 4th

amendment violation and weighing whatever quantum of voluntariness there was against the public policy interests of protecting individual liberties by deterring law enforcement overreaching and the need to allow law enforcement to do their jobs of trying to keep the community safe. The issue of voluntariness was raised and addressed in that analysis at a minimum.

Dated this 10th. day of September, 2013.

A handwritten signature in black ink, appearing to read "Nicholas J. Passe", written over a horizontal line.

Nicholas J. Passe (SBN 1061509)
Attorney for Appellant-Defendant
MOEN SHEEHAN MEYER LTD.
201 Main St., Suite 700
La Crosse, WI 54601
Phone: (608)784-8310
Fax: (608)782-6611

SIGNED CERTIFICATE OF WORD/PAGE COUNT

I hereby certify that this reply brief conforms to the rules contained in Wisconsin Statutes §809.19. **This version of the brief corrects the previous version in that the previous version had 12 point font for the body. No change has been made to the substance of the text.** This reply brief is in a proportional serif font (Times New Roman) with 1.5 line spacing and a 13 point font for the body and headers and 11 point font for quotations. The total word count for this document is 737 words, comprising 6 pages including front and back cover and certifications.

Dated this 10th day of September, 2013



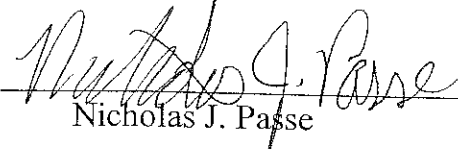
Nicholas J. Passe

Attorney for Defendant-Appellant

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this reply brief, which complies with the requirements of 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served by fax to the Court of Appeals and will be served by mail on the AG's office this day.

Dated: September 10, 2013.



Nicholas J. Passe