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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2014AP2120-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RACHEL L. HUCK,

Defendant-Appellant.

On Notice of Appeal from a Judgment
Entered in the Barron County Circuit Court,
the Honorable J. Michael Bitney, Presiding

REPLY BRIEF OF DEFENDANT-APPELLANT

ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant

TABLE OF CONTENTS

	Page
ARGUMENT	1
I. The Officer Violated the Fourth Amendment by Continuing to Detain Ms. Huck’s Vehicle After Reasonable Suspicion had Dissipated and the Fruits of This Seizure Must Therefore be Suppressed.....	1
CONCLUSION	4

CASES CITED

<i>Brown v. Texas</i> , 443 U.S. 47 (1979)	3
<i>Delaware v. Prouse</i> , 440 U.S. 648 (1979)	2
<i>State v. Ellenbecker</i> , 159 Wis. 2d 91, 464 N.W.2d 427 (1990)	2
<i>State v. Griffith</i> , 2000 WI 72, 236 Wis. 2d 48, 613 N.W.2d 72.....	1, 2
<i>State v. Morris</i> , 259 P.3d 116 (Utah 2011)	3
<i>State v. Williams</i> , 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462	2

<i>United States v. Brignoni-Ponce</i> , 422 U.S. 873 (1975)	3
<i>United States v. McSwain</i> , 29 F.3d 558 (10th Cir. 1994).....	2, 3

**CONSTITUTIONAL PROVISIONS
AND STATUTES CITED**

<u>Wisconsin Statutes</u>	
§ 343.18(1)	2
§ 809.23(3)(b).....	1

ARGUMENT

I. The Officer Violated the Fourth Amendment by Continuing to Detain Ms. Huck's Vehicle After Reasonable Suspicion had Dissipated and the Fruits of This Seizure Must Therefore be Suppressed.

The state offers no argument that the officer's "Badger stop" maneuver was sufficient to purge any illegality. (Respondent's brief at 8). Ms. Huck and the state thus appear to agree that this case presents a single issue: whether the officer could lawfully continue to detain Ms. Huck's vehicle in order to investigate the driver's license status despite the dissipation of any reasonable suspicion.

In her opening brief Ms. Huck cited an array of cases, many with essentially identical facts, holding such continued detentions unlawful. (Appellant's brief at 5-8). The state does not dispute or distinguish (or even acknowledge) this body of law.

Instead, it relies on three Wisconsin cases: *State v. Griffith*, *State v. Ellenbecker*, and *State v. Williams*.¹ None of these cases is on point. *State v. Griffith* involved an officer's request for identification while the investigation of the underlying driving violation was still ongoing; indeed, the court cited the "public interest in completing the investigation of the traffic violation" as a justification for the request.

¹ The state also relies on a fourth case "for its analysis and persuasive value"; however this case is an unpublished per curiam decision and is thus not citable for these purposes. (Respondent's Brief at 5; Wis. Stat. Rule 809.23(3)(b)). As the rule prevents Ms. Huck from effectively responding to the state's argument about this case, she requests that the court disregard this portion of the state's brief.

2000 WI 72, ¶46, 236 Wis. 2d 48, 613 N.W.2d 72. Here, in contrast, the officer had no reason to suspect any traffic violation when he asked the driver about his license status. It is the absence of reasonable suspicion that renders the continued detention and investigation unlawful. *United States v. McSwain*, 29 F.3d 558, 561-62 (10th Cir. 1994) (distinguishing cases in which officers made similar inquiries while still harboring reasonable suspicion).

State v. Ellenbecker, as the state notes, is a community caretaker case and thus did not involve a question of reasonable suspicion or its absence, instead applying a more general balancing test. 159 Wis. 2d 91, 96, 464 N.W.2d 427 (1990). And as Ms. Huck has already argued, *State v. Williams*, 2002 WI App 306, ¶¶3-4, 22, 258 Wis. 2d 395, 655 N.W.2d 462, in which this court held that the need to make a report would justify the request for identification, involved a lengthier stop for a more serious offense. *Williams* did not announce a general “report-writing exception” to the Fourth Amendment.

The state’s brief suggests, but does not develop, several additional arguments, none of which have merit. It notes that Wis. Stat. § 343.18(1) requires a driver to carry his or her license and present it on demand to any traffic officer. (Respondent’s Brief at 4). But a statute cannot supersede the Constitution, and suspicionless detentions for license checks are unconstitutional. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

Nor do the state’s worries about a hypothetical stolen vehicle override the Fourth Amendment requirement of reasonable suspicion. (Respondent’s Brief at 6). Clearly, an officer having “no idea” about the relationship between

vehicle and occupant cannot have a reasonable suspicion of theft. (Respondent's Brief at 5).

The state finally emphasizes the limited duration of the suspicionless seizure and suggests that it was so "minimal" as not to implicate the Fourth Amendment. (Respondent's Brief at 6-8). But "[t]he Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). Even a brief stop to determine a person's identity is unconstitutional where reasonable suspicion is absent. *Brown v. Texas*, 443 U.S. 47, 52 (1979).

The state finally attributes to Ms. Huck the position that the officer, on realizing that his suspicion was unfounded, was required to "do an about face and walk away without any explanation or communication." (Respondent's Brief at 6).

This is a straw man. Ms. Huck has never suggested such a rule. Instead, she agrees with the view of the Supreme Court of Utah, which held that an officer in such a situation "is entitled to offer an explanation" but "may not ask for identification, registration, or proof of insurance" absent reasonable suspicion of wrongdoing. *State v. Morris*, 259 P.3d 116, 124 (Utah 2011); *see also McSwain*, 29 F.3d at 562 (termination of stop on dissipation of suspicion does not require "absurd" conduct by officers, who may explain reason for detention, but not request license and registration, before sending motorists on their way). This is no more than the Fourth Amendment requires: that when reasonable suspicion terminates, so must the investigative detention.

CONCLUSION

For the foregoing reasons, Ms. Huck respectfully requests that this court vacate her judgment of conviction and remand to the circuit court with directions that all evidence derived from the stop of her vehicle be suppressed.

Dated this 19th day of December, 2014.

Respectfully submitted,

ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant

CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 836 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, 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 on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 19th day of December, 2014.

Signed:

ANDREW R. HINKEL
Assistant State Public Defender
State Bar No. 1058128

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 267-1779
hinkela@opd.wi.gov

Attorney for Defendant-Appellant