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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2014AP002628

COUNTY OF WINNEBAGO,
Plaintiff-Respondent,

v.

JOSHUA R. HUNTER,
Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM THE JUDGMENT OF CONVICTION AND THE
DECISION OF THE TRIAL COURT DENYING THE DEFENDANT-
APPELLANT'S MOTION FOR SUPPRESSION OF EVIDENCE IN THE
WINNEBAGO COUNTY CIRCUIT COURT THE HONORABLE
SCOTT WOLDT, PRESIDING

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I. Statement of Issue Presented for Review

Whether the detention of Mr. Hunter prior to law enforcement actively investigating his conduct was unreasonable.

II. Statement on Oral Argument and Publication

The State is requesting neither publication nor oral argument, as this matter involves only the application of well-settled law to the facts of the case.

III. Standard of Review

When reviewing a motion to suppress evidence, the reviewing court upholds the findings of fact unless they are clearly erroneous, but independently applies constitutional principles. *State v. Hess*, 2010 WI 82, ¶ 19, 327 Wis.2d 524, 785 N.W.2d 568.

IV. Statement of the Case

The State believes Mr. Hunter's Statement of the Case is accurate and provides a nearly sufficient background for the State's argument. The State offers the information that follows to supplement what was provided by Mr. Hunter.

Deputy Roth testified that he was unaware of exactly how close Mr. Hunter's vehicle came to striking the security guard, but that the

information he had received was that it was close enough that the security guard had to jump out of the way. (R28:11-12).¹ Mr. Hunter's vehicle also appeared to proceed past the "stop signs" near the security guard. (R28:6). Deputy Roth later described the "stop signs" as "stop signs or whatever that they have to stop the vehicles before they enter private property." (R28:10). Deputy Roth indicated that while reserve deputies were in the vicinity, they would not be asked to investigate this incident because he did not believe they deal with stopping vehicles on an everyday basis. (R28:7). Deputy Roth testified that "reserves are just there to help us, so the reserves aren't gonna, you know, conduct any field sobriety or make that determination." *Id.*

V. Argument

The delay of ten to fifteen minutes before significant investigation of Mr. Hunter's driving took place was not an unreasonable extension of an otherwise lawful stop.

¹ The State's record citation for the transcript of the Motion Hearing is different than Mr. Hunter's citation. It appears that Mr. Hunter may have inadvertently cited the Statement on Transcript, rather than the Transcript from Motion Hearing on October 25, 2013, filed October 10, 2014, which is listed in the Compilation of Record as number 28.

“The Fourth Amendment provides that “the right of the people to be secure in their persons ... against unreasonable searches and seizures...” *Terry v. Ohio*, 392 U.S. 1, 8 (1968). The U.S. Supreme Court allowed that, although investigative stops are seizures within the meaning of the Fourth Amendment, in some circumstances police officers may conduct such stops even where there is no probable cause to make an arrest. *Id.* at 22.

In reviewing the length of an investigatory detention, courts review whether law enforcement “diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the person.” *State v. Quartana*, 213 Wis.2d 440, 448, 570 N.W.2d 618, 622 (Ct. App. 1997). Courts should not engage in “unrealistic second-guessing.” *State v. Wilkens*, 159 Wis.2d 618, 626, 465 N.W.2d 206, 210 (Ct. App. 1990). Courts must consider the “totality of the circumstances- the whole picture.” *Id.* “There remains no hard-and-fast time limit for when a detention has become too long and therefore becomes unreasonable.” *United States v. Sharpe*, 470 U.S. 675, 685-86, 105 S.Ct. 1568, 1575 (1985).

Mr. Hunter distinguishes the instant set of facts from those in *Quartana*. This is of limited value. While *Quartana* certainly deals with

the issue of the extension of a stop, much of its focus was on transporting a person that was not arrested, for the purposes of further investigation. *Quartana* at 450. The inquiry in the instant case does not have the transportation issues of *Quartana*, and instead focuses primarily on time, which *Quartana* only addresses in a limited way.

The ten to fifteen minute delay in the instant case is attributable to Deputy Roth dealing with an unrelated incident, and Deputy Vinje traveling to the scene from another location. (R28:5,15). The deputies did not act without diligence, the delay was relatively short, and the reasons for the delay were legitimate. It was necessary to detain Mr. Hunter while Deputy Roth dealt with the unrelated arrest. Forcing law enforcement to choose between pursuing one incident or the other is not a reasonable requirement, as long as both can be addressed in short order.

The State offers *State v. Harris*, an unpublished, one judge decision, for persuasive value. 2014 WI App 120, 856 N.W.2d 347 (2014). *Harris* was stopped for following another vehicle closely, swerving within his lane, and lane deviation. *Id.* at ¶ 2. The officer observed glassy eyes and a lack of dexterity. *Id.* at ¶ 3. The officer then returned to his squad to write traffic warnings and wait for a backup officer before conducting field

sobriety tests. *Id.* at ¶ 4. The backup officer arrived ten minutes later, *Harris* performed field sobriety tests, and ultimately was arrested for operating while intoxicated and operating with a prohibited alcohol concentration. *Id.* The delay was held to be reasonable under *Wilkins*. *Harris* at ¶ 9. One factor cited in the analysis was that getting the second officer to the scene would address an officer safety concern. *Id.* The estimated delay in the instant case contains the length of the delay in *Harris*. Both cases involve a delay in the completion of an investigation for legitimate purposes, and both should be held to not unreasonably delay the detention.

VI. Conclusion

For the reasons set forth above, the detention was not unreasonably extended, and the trial court's ruling should be affirmed.

Dated at Oshkosh, Wisconsin this 10th day of February, 2015.

By: _____
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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 6 pages, or 934 words.

I further certify pursuant to Wis. Stat. § 809.19(12) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief, *other than the appendix material is not included in the electronic version.*

I further certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents, (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written findings or decision showing the circuit court's reasoning regarding these issues.

I further certify that if this appeal is taken from a circuit court order of judgment entered in a judicial review of an administrative decision, the

appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of person, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

I further certify that on the date of signature I routed this brief to our office station for first class US Mail Postage to be affixed and mailed to:

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Dated this 10th day of February, 2015, at Oshkosh, Wisconsin by:

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APPENDIX