

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2014AP002628
Winnebago County Circuit Court Case Nos.
2013TR10638 and 2013TR10639

COUNTY OF WINNEBAGO,

Plaintiff-Respondent,

v.

JOSHUA R. HUNTER,

Defendant-Appellant.

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

THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT JOSHUA R. HUNTER

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CASE

Wisconsin Court of Appeals

State v. Quartana, 213 Wis.2d 440, 570 N.W. 2d 618
(Ct.App. 1997). 3,4

State v. Wilkens, 159 Wis.2d 618, 465 N.W.2d 206
(Ct.App. 1990). 3

United States Constitution

Fourth Amendment. 6

Wisconsin Constitution

Article 1, Section 11. 6

ARGUMENT

The County argues that *State v. Quartana*, 213 Wis.2d 440, 570 N.W. 2d 618 (Ct.App. 1997) is of limited value, and proceeds to point the court to an unpublished, *State v. Harris*, 2014 WI App 120, 856 N.W.2d 347 (2014) to support its argument that Mr. Hunter's detention was reasonable. However, *Quartana* like *Wilkins supra*, establishes

“For the stop of a person to pass constitutional muster as investigatory, the detention must be temporary and last no longer than is necessary to effect the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.” A hard and fast time limit rule has been rejected. In assessing a detention for purposes of determining whether it was too long in duration, a court must consider “whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it is necessary to detain” the suspect. In making this assessment, courts “should not indulge in unrealistic second-guessing.” In assessing a detention's validity, courts must consider the “totality of the circumstances-the whole picture,” because the concept of reasonable suspicion is not “readily, or even usefully, reduced to a neat set of legal rules.”

State v. Wilkins, 159 Wis.2d 618, 625-26, 465 N.W.2d 206 (Ct.App. 1990). Officers must “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, 570 N.W. 2d 618 (Ct.App. 1997). Here, officers did not diligently pursue a means of investigation to quickly confirm or dispel their suspicions.

Furthermore, *Harris* is easily distinguishable from Mr. Hunter’s case. In *Harris*, an officer stopped the vehicle for driving erratically. The officer approached the vehicle, identified the driver and observed additional indicia of intoxication. Subsequently, the officer called a back-up officer to scene. The Court held that delay was reasonable. In *Harris*, there was immediate contact after the initial detention. The officer diligently pursued the investigation.

Unlike *Harris*, here, deputies did not diligently pursue their investigation. Deputy Roth’s own testimony reveal that he did not immediately contact Mr. Hunter inasmuch as Roth was conducting an unrelated investigation and did not even initiate contact with Mr. Hunter until at least five to ten minutes had passed. (R.27:23-24/ ReplyApp. 2-3). As Mr. Hunter sat in his vehicle waiting for authorities to contact him, “a big pile of guys”, “five or six deputies and reserve deputies” and “a good four EAA security guards” stood around his vehicle preventing

him from leaving. (R.27:9/ ReplyApp. 1). By Deputy Vinje's own testimony, Mr. Hunter was clearly not free to leave. (R.27:24/ ReplyApp. 3). Furthermore, the record is silent as to whether officers or security personnel advised Mr. Hunter what was happening or if they had told him that he was being temporarily detained. Mr. Hunter sat in his vehicle for at least five to ten minutes before Deputy Roth contacted him. Moreover, the OWI investigation was conducted by Deputy Vinje, who was at least five minutes away. Thus, that investigation did not commence until at least 10 to 15 minutes after the initial detention.

Unlike *Harris*, here, officers failed to diligently pursue a means of investigation that quickly confirmed or dispelled their suspicions. Because of the above, the detention did not pass constitutional muster.

CONCLUSION

Because failed to diligently pursue the investigation, the detention of Mr. Hunter violated the Fourth Amendment of the United States Constitution, and Article I Section 11 of the Wisconsin Constitution, the trial court erred in denying his suppression motion. The Court should reverse the trial court's ruling and vacate the judgment of conviction.

Dated this 25th day of February, 2015.

Respectfully Submitted

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FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 10 pages. The word count is 1602.

Dated this 25th day of February, 2015.

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**CERTIFICATION 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 s. 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 with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 25th day of February, 2015.

Respectfully submitted,

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APPENDIX CERTIFICATION

I hereby 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: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or a 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 persons, 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.

Dated this 25th day of February, 2015.

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APPENDIX