STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Appeal No. 2015AP000756-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

FREDERICK S. SMITH,

Defendant-Appellant.

On Appeal from the Judgment of Conviction, Entered in the Circuit Court for Dane County, the Honorable Stephen Ehlke, Presiding

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BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. Once the reasonable suspicion initially justifying the traffic stop had dissipated, was Smith's continued seizure unlawful?

   The circuit court upheld the sergeant's actions.

2. Did Sergeant Gonzalez conduct an unlawful search when he opened the car door in order to communicate more effectively with Smith?

   The circuit court upheld the sergeant's actions.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

As the issues can be fully presented in briefing, Smith does not request oral argument. Publication may be warranted for lack of Wisconsin cases directly on point, and the bench, bar and law enforcement would benefit from a published decision clarifying the proper boundaries of a traffic stop like the one in this case.

STATEMENT OF THE CASE AND FACTS

At about 10:45 p.m. on April 6, 2014, Madison Police Sergeant Gonzalez was in his parked squad car on routine patrol, monitoring a neighborhood due to gang-related shots the night before. 36:5-6; App.102-103. Gonzalez saw a car stop in the middle of the street for several seconds about a block away. 36:6; App.103. It appeared that the car had just stopped to discharge a passenger and left without delay. 36:16-17; App.109-10. Gonzalez followed the car, ran the license plate number, and learned that the owner of the car had a suspended driver's license. 36:7-8; App.104-05. At this point, Gonzalez could not see who was driving the car. 36:8;App.105. Gonzalez activated his squad car's emergency lights, and the car he was following turned into a parking lot and pulled into a stall. 36:8; App.105.

The officer walked up to the car and, when he was about five to ten feet away, realized that the driver – later identified as Defendant-Appellant Frederick Smith – was male and thus could not be the suspended female owner. 36:17-18; App.110-11. Gonzalez testified that, at that point, he had no reason to believe Smith was unlicensed. 36:18; App.111.

Gonzalez continued toward the driver's side door, and Smith made it clear that the window was broken. 36:9; App.106. Gonzalez then requested that Smith open the door, to which Smith replied that the door was broken and would not open. 36:9, 19, 25-26; App.106, 112, 118-19.

At this point, on his own volition, Gonzalez walked around to the passenger's side door and put his hand on the door handle. 36:9-10; App.106-07. Gonzalez did not ask Smith to open the passenger side door. 36:25; App.118. Gonzalez testified that Smith leaned over toward the passenger's side and that he and Smith simultaneously opened the door. 36:10,19; App. 107,112.

Gonzalez testified that he wanted to have the door opened so he could speak to Smith more effectively, although he also testified that he was able to communicate with Smith through the closed window and was able to hear and

understand Smith's responses. 36:9,18-19,21-22; App.106,112-13,114-15. Gonzalez did not have to repeat himself due to the closed door and window. 36:21; App.114.

Smith's testimony differed from Gonzalez's regarding the opening of the door. Smith testified that when Gonzalez got to the passenger side of the car, Smith leaned over and tried to pull himself to the passenger seat by pulling on the door handle. 36:31-32; App.121-22. This handle was a bracing handle that had nothing to do with opening the door. 36:33; App.123. When Gonzalez pulled the door open, it caused the handle to slip out of Smith's hand. 36:35; App.125. Smith testified that he did not assist Gonzalez in unlocking or opening the door. 36:32; App.122. Smith testified that, when speaking through the broken window, he could hear what Gonzalez was saying, that he was able to respond, and that Gonzalez appeared to understand what Smith was saying. 36:30-31; App.120-21.

The court noted in its oral decision that there was a difference in testimony regarding whether both men opened the door simultaneously or whether Gonzalez opened the door. 37:2; App.127. The court made the finding of fact that Gonzalez opened the door. 37:8-9; App.133-34.

After the car door was opened and they started talking, Gonzalez smelled intoxicants and noticed that Smith's eyes were red and bloodshot. 36:10,20-21; 107,113-14. Based on those observations, Gonzalez conducted a further investigation and had Smith perform field sobriety tests, the results of which provided a basis for probable cause. 36:11; App.108.

Smith moved to suppress the evidence obtained based upon the unreasonable search, extension of the stop, and seizure of Smith's vehicle and person. 18. The circuit court denied the motion. 37:2-9; App.127-34. The court found that, under *State v. Williams*, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462, it is reasonable for an officer to request identification after a vehicle has been stopped pursuant to reasonable suspicion. 37:6-7; App.131-32. Furthermore, the court found that Gonzalez's act of opening the car door was reasonable because he was trying to better communicate with

Smith and have the license presented to him. 37:7-9; App.132-34.

Smith pled guilty to operating while intoxicated (7th offense). 30. This appeal follows.

ARGUMENT

I. Sergeant Gonzalez lacked any legal authority to detain Smith once the reasonable suspicion initially justifying the stop of the vehicle had dissipated. Smith's continued detention was thus unlawful, and the fruit of this seizure should have been suppressed.

A. General principles of law

Under the Fourth Amendment of the United States Constitution, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…" U.S. Const. amend. IV. The Wisconsin Constitution contains the same language. Wis. Const. art. I. § 11. A person has been seized within the meaning of the Fourth Amendment when, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); *State v. Young*, 2006 WI 98, ¶ 37, 717 N.W.2d 729.

Stopping an automobile and detaining its occupants is a "seizure" that triggers Fourth Amendment protections, even if the detention is only for a brief period and for a limited purpose. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 1395, 59 L.Ed.2d 660 (1979); *State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 756 N.W.2d 569. A traffic stop will only be valid if the officer, at a minimum, has reasonable suspicion based on specific articulable facts to believe the person stopped has committed a crime. *United States v. Hensley*, 469 U.S. 221, 229, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985); *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987).

Questions of constitutional fact are determined subject to a two-step standard of review. See *State v. Popke*, 2009 WI 37, ¶ 10, 317 Wis. 2d 118, 756 N.W.2d 569. An appellate court will uphold the circuit court's findings of fact unless they are clearly erroneous. *State v. Fields*, 2000 WI App 218, 239 Wis. 2d 38, 619 N.W.2d 279. The application of constitutional principles to the facts is decided without deference to the circuit court. *State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516 (2001).

B. Once the reasonable suspicion initially justifying the traffic stop had dissipated, there no longer existed any legal basis to continue to detain Smith.

Smith was seized within the meaning of the Fourth Amendment for the duration of the traffic stop. A seizure occurs if "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). A reasonable person in Smith's situation would not have believed he was free to leave: it was late at night, Smith was pulled over by a marked police car with its lights activated, Gonzalez was armed and in full uniform, and the location of Smith's vehicle in the parking lot was not conducive to simply driving away. 36:5,8,24,28. Furthermore, Gonzalez testified that he would have pursued Smith if he had driven off and that, based on his experience, people in this type of situation do not typically drive away because they are yielding to the officer's authority. 36:26-28. Smith testified that he believed he was not free to leave the officer's presence. 36:33.

In *Terry v. Ohio*, the United States Supreme Court adopted a dual inquiry for evaluating the reasonableness of an investigative stop. 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Under this approach, the Court examined "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place." 392 U.S. at 20; see also *United States v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985) (applying dual *Terry* analysis to traffic stop); see also *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

As to the first part of the inquiry, Smith does not dispute that the initial stop of the car in this case was valid. Gonzalez ran a check of the car's license plate, learned that the owner's license had been suspended, and made the reasonable – albeit incorrect – assumption that the owner was driving illegally. Pursuant to *State v. Newer*, 2007 WI App 236, 742 N.W.2d 923, when an officer observes a vehicle on the road and knows that the owner of that vehicle is unlicensed, the officer may draw the reasonable conclusion that the owner is driving illegally.

As the *Newer* court noted, however, this assumption no longer applies when an officer learns facts that disprove it. *Id*. ¶8. Specifically, the *Newer* court held that "if an officer comes upon information suggesting that the assumption 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." *Id*. (emphasis added).

In the instant case, although the stop was justified at its outset by reasonable suspicion that the driver of the vehicle was unlicensed, that reasonable suspicion dissipated at the beginning of the stop when Gonzalez was still five to ten feet away from the car and observed that the driver was male, and was therefore not the unlicensed female owner. 36:17-18. Gonzalez's actions after this point exceeded the conditions of a reasonable seizure and constituted an unreasonable extension of the stop.

Even when a seizure is lawful at its inception, a continued investigative detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). Once Gonzalez learned the driver of the car was male, the purpose of the stop – to investigate whether the unlicensed female owner was driving – had been fulfilled. At this point, Gonzalez had no reasonable suspicion to believe that Smith was violating any law, and the Fourth Amendment required Gonzalez to terminate the stop.

Instead of terminating the stop, Gonzalez continued the seizure. After Gonzalez learned that the driver side window and door were broken, he went over to the passenger side of the car and, without asking, opened the door.[1] 36:9-10, 25. Upon opening the car door and talking to Smith, Gonzalez smelled intoxicants and noticed that Smith's eyes were bloodshot. 36:10-11. The scope of a detention must be carefully tailored to its underlying justification. *Florida v. Royer*, 460 U.S. 491, 500, 103 S.Ct. 1319, 1325, 75 L.Ed.2d 229 (1983); see also *United States v. Sharpe*, 470 U.S. 675, 682, 105 S.Ct. 1568, 1573, 84 L.Ed.2d 605 (1985). This further detention to question Smith and to open the car door exceeded the scope of the stop's underlying justification – the suspected suspension of license, which had already been resolved.

Gonzalez's continued detention of Smith violates the Fourth Amendment under a substantial body of law from federal and state appellate courts across the nation, which hold that the police must terminate a stop as soon as reasonable suspicion has dissipated.

In *United State v. McSwain*, 29 F.3d 558 (10th Cir. 1994), a trooper stopped a vehicle upon reasonable suspicion that the car's temporary registration sticker was invalid. 29 F.3d at 559-61. As the trooper walked up to the car, he took a closer look and realized that the sticker was in fact valid. *Id*. at 560. Nevertheless, the trooper requested identification and registration from the driver simply because it was part of his routine when conducting a traffic stop. *Id*. The driver was unlicensed, and the trooper continued his investigation, eventually discovering a gun and drugs. *Id*. The Tenth Circuit suppressed the evidence, holding that although the detention was justified at its inception, it should have ended once the trooper saw the valid sticker and reasonable suspicion was dispelled. *Id*. at 561.

In *United States v. Valadez*, 267 F.3d 395 (5th Cir. 2001), a trooper stopped a car that appeared to have an expired vehicle registration sticker and illegal window tinting

[1] The circuit court made the finding of fact that Gonzalez opened the door. 37:8-9; App.105-06.

on the windows. After approaching the car, the trooper realized that the sticker was valid, but he was still concerned about the windows. *Id*. at 396. The trooper obtained Valadez's driver's license, went to his patrol car to get a window tint meter, and entered Valadez's information into his computer system, which later turned up inconclusive. *Id*. The trooper went back to Valadez's car and determined with his meter that the window tint was valid. *Id*. However, the trooper continued to ask Valadez if he had any weapons in the car and if he had ever been convicted of a felony. *Id*. Valadez incriminated himself by answering the questions. *Id*. The Fifth Circuit suppressed the evidence. The court reasoned that the trooper stopped Valadez for the purpose of investigating the sticker and windows, and that once the trooper had determined they were both legal, there was no remaining evidence to support a claim of reasonable suspicion and it was unlawful to continue to detain Valadez. *Id*. at 398-99.

Minnesota has reached the same result. In *State v. Hickman*, 491 N.W.2d 673 (Minn. Ct. App. 1992), an officer stopped a car when he thought the car's vehicle registration sticker was expired. After the car pulled over, the officer noticed a valid, properly placed temporary permit. *Id*. at 674. The deputy approached Hickman and asked to see his driver's license, to which Hickman admitted he did not have one. *Id*. The court suppressed the evidence, holding:

> …[D]etaining Hickman to check his driver's license constituted an unlawful intrusion because [the officer's] suspicions about the vehicle's registration had been dispelled before he approached the driver. After seeing the valid temporary permit, the officer no longer had articulable and reasonable suspicion that the vehicle was unregistered, that the driver was unlicensed, or that any criminal activity was afoot.
>
> That the initial stop was constitutional did not establish the constitutionality of the later intrusion…

Id. at 675.

Numerous other state courts agree: *People v. Cummings*, 2014 IL 115769, 6 N.E.3d 725 (Ill. 2014) (male registered owner of van had outstanding warrant; unlawful for officer to request license from driver once he realized she was

female); *People v. Redinger*, 906 P.2d 81 (Colo. 1995) (when officer realized the car had a valid license plate, the stop should have ended and it was unlawful to request driver's license); *Holly v. State*, 918 N.E.2d 323 (Ind. 2009) (though initial stop was lawful, when the officer determined the driver was a male – whereas the suspended owner was female – checking driver's license was unlawful); *McGaughey v. State*, 37 P.3d 130 (Okl.Crim.App. 2001) (after lawful stop for no operational taillights, officer saw that the taillights were working; continuing the detention thereafter to check the driver's license was illegal); *State v. Penfield*, 22 P.3d 293 (Wash. Ct. App. 2001) (after officer pulled over a car registered to a woman with a suspended license, officer realized the driver was a man; it was unlawful to then ask for his driver's license); *State v. Chatton*, 11 Ohio St. 3d 59, 463 N.E.2d 1237 (1984) (officer stopped car for lack of license plate and, upon approaching the car, saw a valid temporary placard; subsequent check of driver's license, which revealed a suspension, was unlawful); *State v. Diaz*, 850 So.2d 435 (Fla.2003) (when car stopped because officer could not read temporary tag, but realized upon approaching the car that the tag was clear and valid, continuation to check driver's license and registration was unconstitutional); *State v. Farley*, 775 P.2d 835 (Or. 1989) (unlawful to request license after seeing lawful temporary license); *State v. Amick*, 831 N.W.2d 59 (S.D. 2013) (officer who stopped car for reasonable suspicion of lack of license plate but then saw valid tag could not ask for identification absent other reasonable suspicion).

In the instant case, Gonzalez's actions went even further than the officers in these listed cases because he actually opened the passenger side door before requesting Smith's driver's license.

The circuit court denied Smith's suppression motion based on *State v. Williams*, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462. In *Williams*, a police officer stopped Williams' car because it resembled a car belonging to a man named Phillips, who was an armed suspect wanted in connection with a domestic abuse incident. *Id*. ¶¶2-3. The driver identified himself as Williams, but he did not have a driver's license or other identification on him to prove his identity. *Id*. ¶3. The officer radioed for another officer to

come identify the driver. *Id*. ¶4. The second officer came and confirmed that the driver was Williams, not Phillips. The officer ran a check on Williams and discovered that he did not have a valid driver's license. *Id*. ¶4.

The court of appeals found that even if the officer realized the driver was not Phillips before she asked his name and requested identification, it was reasonable for her to do this for the reasons provided in *State v. Ellenbecker* – namely, so that the officer can document the contact. *Id*. ¶¶19, 22.[2]

Williams is distinguishable from the instant case for at least two reasons. First, the specific conduct that the *Williams* court deemed acceptable was the request for identification. In the instant case, Gonzalez opened the car door first without having asked for identification or a license, which presumably could have been held up to the broken window. *Williams* did not involve the officer taking the liberty of opening the car door, which is a greater intrusion than solely asking for a license, and which grossly exceeds the scope of a reasonable seizure. *Florida v. Royer*, 460 U.S. 491 (the investigative methods used in a seizure must be "the least intrusive means reasonably available to verify or dispel the officer's suspicion…").

Second, the concerns that would justify the police in making a report of the incident in *Williams* are absent in this case. *Williams* involved a domestic abuse suspect who was reportedly armed and dangerous. *Id*. ¶2. Although making a detailed record of all investigative efforts may be justified with the violent offense in *Williams*, the same concern is not present in the investigation of a mere operating while suspended. Furthermore, the potential threat to public safety in *Williams* justified the prolonged detention in which the driver was made to wait until another officer could arrive to identify him. The driver in that instance would be more likely

[2] *Ellenbecker* and similar cases have been criticized as "questionable authority." Wayne R. La Fave, Search and Seizure: A treatise on the Fourth Amendment § 9.3(c), at 511 n.162 (5th ed. 2012). Smith believes *Ellenbecker* and *Williams* are wrongly decided, but acknowledges that this court may not overrule them. They are distinguishable from the instant case nonetheless.

to file a complaint against the police than where the officer realizes his error at the *commencement* of the stop and then immediately lets the person go.[3]

As soon as Gonzalez learned that the driver was male, there was no longer any reasonable suspicion to extend the stop, further detain Smith, open the car door, or inquire into his identity and license status. In doing so, Gonzalez violated Smith's right against unreasonable seizures.

II. By opening the car door, Sergeant Gonzalez conducted an unlawful search under state and federal constitutions. All evidence discovered subsequent to that search must be suppressed as fruit of the poisonous tree.

A. General Principles of Law

Whether police conduct constitutes a "search" within the meaning of the state and federal constitutions, and whether that search passes constitutional muster, are questions of law which this court reviews de novo. See *State v. Rutzinski*, 2001 WI 22, ¶ 12, 241 Wis. 2d 729, 623 N.W.2d 516. A circuit court's findings of fact, however, must be upheld unless they are clearly erroneous. See *State v.*

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[3] Judging solely from the facts present in *Williams*, a third arguable basis exists: In *Williams*, reasonable suspicion of some violation existed, without interruption, from the initial stop to the discovery of evidence. The officer first asked the driver for his license *while reasonable suspicion still existed* to believe that the driver was Phillips. *Id*. ¶¶3-4. Indeed, the fact that the driver had no license in his possession to prove his identity was the very reason the officer was forced to call another officer to come identify him. *Id*. Furthermore, during the time when there was still reasonable suspicion to believe the driver was Phillips based on the vehicle description and location in the neighborhood, there also developed reasonable suspicion that – regardless of who this driver was – he was driving without a valid license or a license in his possession, since he could not produce one. See Wis. Stat. §§ 343.05(3)(a) & 343.18(1). Thus, unlike in the instant case, there was no point in time during the *Williams* stop when reasonable suspicion of a violation dissipated.

That being said, Smith acknowledges the *Williams* court's wider holding, but still wishes to preserve this argument in the event further review is granted. Even under the wider holding, *Williams* is distinguishable on the other two stated grounds.

Williams, 2001 WI 21, ¶20, 241 Wis. 2d 631, 623 N.W.2d 106.

In order to search a vehicle during a stop, an officer must meet the higher standard of probable cause to believe that the vehicle contains contraband or evidence of a crime. *State v. Pallone*, 2000 WI 77, ¶58, 236 Wis. 2d 162, 613 N.W.2d.568; *United States v. Ross*, 456 U.S. 798, 806-808, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982). For the purposes of the Fourth Amendment, a search "occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *Soldal v. Cook County, Ill*., 506 U.S. 56, 63, 113 S.Ct. 578, 121 L.Ed.2d 450, (1992). An officer need not have a subjective intent to search in order for a search to occur. See *Soldal*, 506 U.S. at 69.

B. Sergeant Gonzalez conducted an illegal search when he opened the car door without probable cause. All evidence obtained after Gonzalez opened the door was the fruit of this search and must be suppressed.

Gonzalez's opening of the car door constituted a search. Opening the door provided Gonzalez with access to smells and sights that he was not able to access before he opened the door. 36:10-11,20-21; App.107-08,113-14. Indeed, it provided him with access to the very evidence that caused Gonzalez, for the first time, to suspect Smith was driving while intoxicated – the odor of intoxicants and the sight of Smith's red, bloodshot eyes. 36:20-21; App.113-14.

Gonzalez's search lacked probable cause and did not fall within any exception to the warrant requirement. Between the point that Gonzalez learned the driver was male and the opening of the car door, the record shows no indication that Gonzalez had any reason to believe Smith had committed a crime. 36:17-18,20-21; App.110-11,113-14. It was only when Gonzalez opened the door that he noticed the clues that led him to believe Smith was intoxicated. 36:20-21; App.113-14.

To undersigned counsel's knowledge, the closest published case in Wisconsin involving an officer opening a vehicle door is *State v. Dunn*, 158 Wis. 2d 138, 462 N.W.2d 538. In *Dunn*, an officer was getting gas in the middle of the

night when she observed another vehicle pull into the lot and stop. 158 Wis. 2d at 142. The officer then observed the driver open the car door and stick his head out to either spit or look under the door. *Id*. The car then remained stationary for several minutes. *Id*. The officer thought her assistance might be needed, so she approached the vehicle. *Id.* Upon approaching the vehicle, the officer observed the driver slumped over in the seat. *Id*. at 143. The officer then opened the car door, smelled intoxicants, and requested Dunn's driver's license. *Id*.

The court of appeals held that the officer's initial entry into the vehicle was justified under the emergency exception to the warrant requirement. *Id*. at 144-45. The driver was slumped over in the seat, which would have alerted the officer that the driver was in need of emergency assistance. *Id*. Because the initial entry (the opening of the car door) was justified, the officer was legally in a position to detect the odor of intoxicants after the door was open. *Id*.

Dunn is clearly distinguishable from the instant case because, in this case, Gonzales had not observed anything prior to opening the door that would have suggested an emergency situation or that Smith was in need of assistance. Gonzalez's only explanation for opening the door was so he could speak with Smith more effectively. 36:21; App.114. However, Gonzalez admitted during cross-examination that he was able to communicate with Smith through the broken window, that Smith responded to Gonzalez, that Gonzalez could hear and understand Smith, and that Gonzalez did not have to repeat himself. 36:18-19,22; App.111-12,115. Under the circumstances in this case, opening the door was not necessary in order to communicate with Smith, and it certainly was not justified for Gonzalez to take the liberty of doing it.

A driver has an expectation of privacy in the passenger compartment of his automobile. *State v. Harris,* 206 Wis. 2d 243, 251, 557 N.W.2d 245 (1996). When Gonzalez opened the front passenger door, he breached the passenger compartment and infringed upon Smith's privacy. By opening the car door, Gonzalez commenced an unreasonable and unlawful search that was not justified by

probable cause or any exception to the warrant requirement. All the evidence obtained after opening the door was the fruit of this search and must be suppressed. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

CONCLUSION

WHEREFORE, for all the reasons stated above, Frederick Smith respectfully requests that this Court vacate his judgment of conviction and remand to the circuit court with directions that all evidence derived from his stop be suppressed.

Dated this 24th day of July, 2015.

Respectfully submitted,

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CERTIFICATION AS TO FORM AND LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) for a brief in proportional serif font. The length of the brief is 4,349 words.

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 § 809.19(12). I further certify that:

This electronic brief is identical in context 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 24th day of July, 2015.

Signed:

_____

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CERTIFICATION AS TO MAILING

I hereby certify pursuant to Wis. Stat. § 809.80(4) that this brief was deposited in the United States mail for delivery by first class or priority mail on July 24, 2015. Postage has been pre-paid. This brief is addressed to: Gregory Weber, P.O. Box 7857, Madison, WI 53707-7857 and Clerk of Court, WI Court of Appeals, P.O. Box 1688, Madison, WI 53701-1688.

Dated this 24th day of July, 2015.

Signed:

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APPENDIX

INDEX TO APPENDIX

CERTIFICATION AS TO APPENDIX

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 § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the trial court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); 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 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 one or more initials or other appropriate pseudonym or designation instead of full names of person, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 24th day of July, 2015.

Signed:

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