STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2015AP756-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

FREDERICK S. SMITH,

Defendant-Appellant.

On Review of a Decision of the Court of Appeals, District IV, Reversing a Judgment of Conviction Entered in the Dane County Circuit Court, the Honorable Stephen E. Ehlke, Presiding

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RESPONSE BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

1. Do police violate a person's Fourth Amendment right to be free from unreasonable seizures when an officer detains a driver during a traffic stop after reasonable suspicion justifying the stop has dissipated?

Relying on ***State v. Williams***[1], the circuit court answered no.

The court of appeals assumed, without deciding, that police can prolong a traffic stop and continue to detain a driver after reasonable suspicion justifying the stop has dissipated to ask the driver for identification and explain the reason for the stop.

In light of well-established United States Supreme Court precedent in ***Delaware v. Prouse,*** 440 U.S. 648 (1979), ***Florida v. Royer***, 460 U.S. 491 (1983), ***Illinois v. Caballes***, 543 U.S. 405 (2005), and ***Rodriguez v. United States***, 135 S. Ct. 1609 (2015), this Court should conclude that once the reasonable suspicion justifying a traffic stop has dissipated, police cannot prolong the stop and continue to detain the driver of a car.

2. After reasonable suspicion supporting the traffic stop dissipated, did the officer violate Mr. Smith's Fourth Amendment rights against unreasonable searches and seizures when he opened the passenger side door to communicate with Mr. Smith?

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[1] ***State v. Williams***, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462.

The circuit court said no and denied Mr. Smith's suppression motion.

On appeal, the court of appeals concluded that the State failed to provide a meaningful rebuttal and therefore conceded Mr. Smith's argument that the officer was not permitted to open the passenger side door after reasonable suspicion supporting the traffic stop had dissipated. The court of appeals ordered the circuit court to vacate the judgment of conviction, allow Mr. Smith to withdraw his plea, and grant the suppression motion.

This Court should conclude that the officer did not have probable cause to search the car and thus was not permitted to open the passenger side door after reasonable suspicion supporting the stop dissipated.

POSITION ON ORAL ARGUMENT AND PUBLICATION

By granting review, this Court deemed this case appropriate for both oral argument and publication.

STATEMENT OF THE CASE AND FACTS

As respondent, Mr. Smith exercises his option not to include separate statements of the case and facts. *See* Wis. Stat. § 809.19(3)(a)2. However, Mr. Smith would like to clarify the following facts for the record:

- Sergeant Gonzalez was five to ten feet from the car when he realized the driver, Mr. Smith, was male and not the female registered owner of the car who had a suspended driver's license. (36:17-18; Petitioner's Br. App. 130-131).

- Sergeant Gonzalez was able to communicate with Mr. Smith through the closed door and window on the driver's side of the car and hear and understand Mr. Smith's responses without having to repeat himself. (36:9, 18-19, 21-22; Petitioner's Br. App. 122, 131-132, 134-135).

- The circuit court found that Sergeant Gonzalez opened the passenger side door of the car during the traffic stop, not Mr. Smith. (37:2-3, 9; Petitioner's Br. App. 105-106, 112).

Mr. Smith will include additional relevant information where appropriate in his argument.

ARGUMENT

I. Police Cannot Prolong a Traffic Stop After Reasonable Suspicion Supporting the Stop Has Dissipated.

A. General principles of law and standard of review.

The Fourth Amendment to the United States Constitution and Article I, section 11 of the Wisconsin Constitution guarantees citizens the right to be free from unreasonable searches and seizures. This Court, in construing the Wisconsin Constitution, consistently follows the United States Supreme Court's interpretation of the Fourth Amendment. ***State v. Betterley***, 191 Wis. 2d 406, 416, 529 N.W.2d 216 (1995).

When police stop a car and detain its occupants, the police have seized the car's occupants, which 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 (1979). A routine traffic stop is analogous to an investigative ***Terry***[2] stop, and police must have reasonable suspicion that a driver has committed a traffic violation to stop and detain the driver. ***Knowles v. Iowa***, 525 U.S. 113, 117 (1998). During an investigatory stop, police may not detain a person "even momentarily without reasonable, objective grounds for doing so." ***Florida v. Royer***, 460 U.S. 491, 498 (1983). Therefore, a traffic stop "exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." ***Rodriguez v. United States***, 135 S. Ct. 1609, 1612 (2015).

In an appeal from a ruling on a motion to suppress evidence, this Court applies a two-step standard of review to determine if an individual's Fourth Amendment rights were violated during a traffic stop. ***State v. Hogan***, 2015 WI 76, ¶ 32, 364 Wis. 2d 167, 868 N.W.2d 124. First, this Court will uphold the circuit court's factual findings unless they are clearly erroneous. ***Id***. Second, this Court independently determines whether those facts demonstrate a constitutional violation. ***Id***.

Here, there is no dispute that Sergeant Gonzalez legally seized Mr. Smith under the Fourth Amendment when he pulled his vehicle over for suspected driving with a suspended license. ***State v. Newer***, 2007 WI App 236, ¶ 2, 306 Wis. 2d 193, 742 N.W.2d 923; (Petitioner's Br. at 8); (36:7-8; Petitioner's Br. App. 120-121). Further, when Sergeant Gonzalez spoke with Mr. Smith at the driver's side window and walked to the passenger side door and opened it, there is no dispute he continued to detain Mr. Smith without reasonable suspicion that he had committed a traffic offense.

[2] *See* ***Terry v. Ohio***, 392 U.S. 1 (1968).

(Petitioner's Br. at 8); (36:9-10, 18-23; Petitioner's Br. App. 122-123, 131-136).[3] The first issue in this case is whether Sergeant Gonzalez could prolong the traffic stop and continue to detain Mr. Smith after the reasonable suspicion justifying the traffic stop dissipated. Mr. Smith argues the answer is "no."

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[3] In a footnote, the State suggests for the first time that Sergeant Gonzalez had justification to stop Mr. Smith's car under Wis. Stat. § 346.51, which states "[n]o person shall park, stop or leave standing any vehicle, whether attended or unattended, upon the roadway of any highway outside a business or residence district when it is practical to park, stop or leave such vehicle standing off the roadway. . ." Wis. Stat. § 346.51; (Petitioner's Br. at 8 n.4). The State forfeited this argument because it failed to assert this basis for the traffic stop in both the circuit court and the court of appeals. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980) (superseded on other grounds); *see also* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979).

Additionally, because the State failed to assert Wis. Stat. § 346.51 as a basis for the traffic stop, the factual record developed in the circuit court as to whether Mr. Smith violated Wis. Stat. § 346.51 is insufficient. At the suppression hearing, Sergeant Gonzalez testified that in the dark from a block away he saw a car stop in the middle of the street, off the curb for several moments to drop off a passenger. (36:6-7, 16-17; Petitioner's Br. App. 119-120, 129-130). Sergeant Gonzalez said he stopped the car after learning the registered owner had a suspended license. Sergeant Gonzalez offered no testimony that he believed Mr. Smith violated Wis. Stat. § 346.51. (36:7-8; Petitioner's Br. App. 120-121). Further, Sergeant Gonzalez provided no specific testimony discussing the roadway and its surroundings where the car stopped to drop the passenger off, whether it was practical for the car to stop somewhere off the roadway, or the distance the car was from the curb when it stopped. Because the record is underdeveloped and the State forfeited this argument, this Court should decline to find that Sergeant Gonzalez had reasonable suspicion that Mr. Smith violated Wis. Stat. § 346.51.

B. Well-established United States Supreme Court precedent does not permit police to prolong a traffic stop after reasonable suspicion supporting the stop has dissipated.

1. ***Prouse, Royer, Caballes,*** and ***Rodriguez***

In a line of well-established precedent, the United States Supreme Court has placed tight restrictions on the duration of traffic stops. In ***Prouse***, the Supreme Court held that police could not perform random traffic stops to check a driver's license and registration without reasonable suspicion or probable cause that a violation of the law was occurring. ***Prouse***, 440 U.S. at 650. The Court emphasized:

> [T]hat except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

Id. at 663.

Following its decision in ***Prouse*** the Court in ***Royer*** clarified the limited scope and duration of an investigatory ***Terry*** stop. ***Royer***, 460 U.S. at 500. The scope of an investigatory stop "must be carefully tailored to its underlying justification" and "last no longer than is necessary to effectuate the purpose of the stop." ***Id***. The Court underscored that a person "may not be detained even *momentarily* without reasonable, objective grounds for doing so." ***Id***. at 498 (emphasis added).

Further, in ***Illinois v. Caballes***, the Court expounded on the legal requirement that an investigatory traffic stop be

limited in its duration. 543 U.S. 405, 407 (2005). The Court explained that when police detain occupants of a car during a traffic stop to issue a traffic ticket, the seizure can become "unlawful if it is prolonged beyond the time reasonably required to complete that mission." ***Id***.

Recently, in ***Rodriguez***, the Court advanced the narrow restrictions on the duration of an investigatory traffic stop established in ***Caballes***. ***Rodriguez***, 135 S. Ct. at 1612. In ***Rodriguez***, the defendant was stopped for driving on the shoulder of a highway. ***Id***. During the stop, the police gathered Rodriguez's license, registration, and proof of insurance, and ran a records check on Rodriguez and a passenger in the car. ***Id***. at 1613. Police issued Rodriguez a warning citation for the traffic violation, and then asked if they could walk a drug-sniffing dog around his car. ***Id***. Although Rodriguez declined, police ordered the occupants out and led the dog around the car. ***Id***. The dog indicated on the car, which police then searched, finding a large quantity of methamphetamine. ***Id***.

The Court determined that absent some other reason to justify the extension of the traffic stop, police unlawfully prolonged the traffic stop to conduct the dog sniff because the mission of the stop—to write a warning traffic ticket—was over. ***Id***. at 1616-17. The Court held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." ***Id***. at 1612. The Court emphasized "a seizure justified only by a police-observed traffic violation…'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." ***Id***. (quoting ***Caballes***, 543 U.S. at 407).

In light of the Supreme Court's decisions in ***Prouse***, ***Royer***, ***Caballes***, and ***Rodriguez***, once the reasonable suspicion supporting a traffic stop dissipates, police can no longer continue to detain the driver of a car and must terminate the stop. Continuing the detention of a driver after reasonable suspicion justifying the traffic stop has dissipated illegally prolongs a traffic stop because police no longer have reasonable, objective grounds for detaining the car's occupants. *See* ***Royer***, 460 U.S. at 498. The "mission" of a traffic stop based on reasonable suspicion that a traffic violation has occurred is to write a traffic ticket. *See* ***Caballes***, 543 U.S. at 407; ***Rodriguez***, 135 S. Ct. at 1612. The moment reasonable suspicion of a traffic violation dissipates, the "mission" to issue a ticket is over because police know at that point that they have no reason to write a traffic ticket and have nothing further to investigate. When a driver is detained after reasonable suspicion dissipates, ***Royer***'s finding that police cannot detain a person even *momentarily* without reasonable suspicion is violated. *See* ***Royer***, 460 U.S. at 498.

Accordingly, this Court should conclude that under well-established United States Supreme Court precedent, police must end a traffic stop when reasonable suspicion supporting the stop has dissipated.

2. Police are not permitted to conduct "ordinary inquiries" related to typical traffic stops when reasonable suspicion supporting the stop has dissipated.

When the reasonable suspicion supporting a traffic stop has dissipated, police can no longer conduct the "ordinary inquiries"—checks of driver's licenses, registration, insurance, and outstanding warrants—that police perform during a typical traffic stop.

In ***Rodriguez***, the Supreme Court noted that "[b]eyond determining whether to issue a traffic ticket" police may take part in "ordinary inquiries" incident to a typical traffic stop, including "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." ***Rodriguez***, 135 S.Ct. at 1615. However, both the facts of ***Rodriguez*** and its holding require this Court to conclude that police can perform "ordinary inquiries" as part of a traffic stop *only* when there is an ongoing, valid stop supported by reasonable suspicion that a traffic violation has occurred, *not* when reasonable suspicion supporting the traffic stop has dissipated. *See* ***State v. Coleman***,___ N.W.2d___, 2017 WL 541063, at 15 (Iowa 2017); (Appellant's Br. App. 118-119).

The facts of ***Rodriguez*** require the conclusion that the United States Supreme Court's statement in ***Rodriguez*** that police are permitted to take part in "ordinary inquiries" incident to a traffic stop applies *only* to ongoing, valid traffic stops supported by continuing reasonable suspicion. In ***Rodriguez***, the police had reasonable suspicion that the defendant illegally violated a traffic law throughout the entire course of the traffic stop. ***Rodriguez***, 135 S.Ct. at 1612-13. That suspicion never dissipated. During the stop and before the police wrote Rodriguez a warning ticket for the traffic violation, the police gathered Rodriguez's license, registration, and proof of insurance, and ran a records check on Rodriguez and a passenger. ***Id***. at 1613.

The ***Rodriguez*** Court observed that in this context and particular set of facts where there is an ongoing, valid traffic stop supported by reasonable suspicion of a traffic violation, "ordinary inquiries" incident to the traffic stop were permissible as part of the traffic ticket writing process. Unlike Mr. Smith's case, the Court did not have before it a

traffic stop where reasonable suspicion justifying the traffic stop had dissipated. Therefore, the facts of ***Rodriguez*** necessarily limit "ordinary inquiries" to ongoing, valid traffic stops supported by continuing reasonable suspicion of a traffic violation.

The holding in ***Rodriguez*** also requires this Court to conclude that "ordinary inquiries" incident to a traffic stop are *only* permissible in ongoing, valid traffic stops supported by continuing reasonable suspicion of a traffic violation. Advancing on the ***Caballes*** Court's statement that it is unlawful for police to prolong a traffic stop beyond the time needed to complete the mission of writing a traffic ticket, the United States Supreme Court in ***Rodriguez*** held that a traffic stop cannot exceed the "time needed to handle the matter for which the stop was made," and police cannot prolong a stop justified only by an alleged traffic violation beyond the time required to issue a ticket. ***Caballes***, 543 U.S. at 407; ***Rodriguez***, 135 S. Ct. at 1612. Accordingly, once reasonable suspicion of a traffic violation has dissipated, the traffic stop is handled and the police mission is over, because police do not need additional time to write a ticket. Allowing police to continue with the traffic stop and perform "ordinary inquiries" after reasonable suspicion supporting the stop has dissipated directly contradicts ***Rodriguez***'s holding because this would result in the duration of the stop extending beyond the time needed to handle the traffic violation.

The Iowa Supreme Court's decision in ***Coleman*** supports the conclusion that "ordinary inquiries" are only permissible in ongoing, valid traffic stops supported by continuous reasonable suspicion. ***Coleman***, 2017 WL 541063, at 15; (Appellant's Br. App. 118-119). In ***Coleman***, police ran the license plate of a car, and the check revealed that the female registered owner had a suspended license. ***Id***. at 1; (Appellant's Br. App. 107). Police pulled the car over,

and as an officer walked towards the car, he realized that the driver was male, not female. ***Id***.; (Appellant's Br. App. 107). Instead of ending the stop at that point, the officer asked the driver for his license, registration, and proof of insurance. ***Id***.; (Appellant's Br. App. 107). The driver gave the officer identification, which allowed the officer to determine the driver was driving while barred under Iowa state law. ***Id***.; (Appellant's Br. App. 107).

The Iowa Supreme Court determined that once reasonable suspicion for a traffic violation dissipates, the traffic stop must end and police must allow the driver to go. ***Id***. at 16; (Appellant's Br. App. 119). Additionally, the court concluded that when reasonable suspicion supporting a traffic stop has dissipated, police cannot conduct "ordinary inquiries" such as requiring the defendant to produce a license, registration, and proof of insurance. ***Id***. at 15-16; (Appellant's Br. App. 118-119). In reaching this conclusion, the court observed that the decision in ***Rodriguez*** supported this result because the Supreme Court in ***Rodriguez*** was "referring to a valid, ongoing traffic stop, not a traffic stop in which the underlying reasons for the stop has been satisfied" when it discussed the "ordinary inquiries" incident to a traffic stop. ***Id***. at 15; (Appellant's Br. App. 118).

In contrast, in ***People v. Cummings***, the Illinois Supreme Court found that police under ***Rodriguez*** may ask a driver for his or her license during a traffic stop even after reasonable suspicion for the traffic stop has dissipated. ***People v. Cummings***, 46 N.E.3d 248, 252 (Ill. 2016). The Illinois court's reading of ***Rodriguez***'s holding is, however, far too broad. That court failed to recognize the context in which the Supreme Court in ***Rodriguez*** noted that an officer can typically take part in "ordinary inquiries" incident to a traffic stop. Again, the case before the Supreme Court in ***Rodriguez*** involved a valid, ongoing traffic stop, not a traffic

stop in which the underlying reasons for the stop had been satisfied.

For the reasons discussed above, this Court should reach the same conclusion as the Iowa Supreme Court and hold that police are not permitted to prolong a traffic stop and perform "ordinary inquiries," including asking a driver for his or her license, after reasonable suspicion supporting a traffic stop has dissipated.

Previously, the Wisconsin Court of Appeals addressed the question of whether police can prolong a traffic stop after reasonable suspicion for the stop has dissipated in ***State v. Williams***, 2002 WI App 306, ¶ 1, 258 Wis. 2d 395, 655 N.W.2d 462. In ***Williams***, the court held when the initial detention during a traffic stop is lawful, police can prolong the traffic stop and ask a driver for his or her name and identification even after reasonable suspicion supporting the stop has dissipated. ***Id***. The ***Williams*** decision relied on another court of appeals decision, ***State v. Ellenbecker***, 159 Wis. 2d 91, 95-98, 464 N.W.2d 427 (Ct. App. 1990). In ***Ellenbecker***, the court of appeals determined that "a request for a driver's license from a driver whose vehicle was disabled and a status check on the license did not transform a lawful 'motorist assist' into an unlawful seizure." ***Williams***, 258 Wis. 2d at ¶ 19.

Ellenbecker and similar cases have been criticized as "questionable authority." Wayne R. LaFave, *Search and Seizure: A treatise on the Fourth Amendment* § 9.3(c), at 511 n.162 (5th ed. 2012). That criticism is justified because both ***Williams*** and ***Ellenbecker*** allow police to detain the

occupants of a car without "reasonable, objective grounds for doing so." ***Royer***, 460 U.S. at 498.[4]

Importantly, based on the United States Supreme Court's decisions in ***Prouse***, ***Royer***, ***Caballes***, and ***Rodriguez***, which require a traffic stop to end once reasonable suspicion supporting the stop has dissipated, ***Williams*** and ***Ellenbecker*** were wrongly decided and this Court should issue an opinion overruling those cases. This action would make the law in Wisconsin consistent with well-established United States Supreme Court precedent and align Wisconsin law with the majority of state and federal jurisdictions that recognize that continued detention of an individual during a traffic stop without reasonable suspicion supporting a traffic violation violates the Fourth Amendment's protections against illegal seizures. *See* ***Betterley***, 191 Wis. 2d at 416 (in construing the Wisconsin Constitution, this Court consistently follows the United States Supreme Court's interpretation of the Fourth Amendment).

3. Legal precedent from state and federal appellate courts across the nation hold that police cannot prolong a traffic stop after reasonable suspicion supporting the stop has dissipated.

Many state and federal courts have decided that police cannot prolong a traffic stop after reasonable suspicion supporting the stop has dissipated. In ***State v. Diaz***, the Florida Supreme Court encountered a case where police stopped a car because they could not read a temporary tag on

[4] Both ***Ellenbecker*** and ***Williams*** were decided prior to the United States Supreme Court's decisions in ***Caballes*** and ***Rodriguez*** that clarified the narrow restrictions on the duration of traffic stops.

the car's rear window. 850 So. 2d 435, 436 (Fla. 2003). After an officer walked up to Diaz's car, he realized there was nothing wrong with the temporary tag and reasonable suspicion for the stop dissipated. ***Id***. However, the officer continued the detention and asked Diaz for information, which led to Diaz being charged with driving with a suspended license. ***Id***.

The Florida Supreme Court concluded police unlawfully prolonged the traffic stop after reasonable suspicion had dissipated under the Fourth Amendment. ***Id***. at 440. The court stated:

> Under ***Prouse*** and ***Royer***, it appears that once a police officer has totally satisfied the purpose for which he has initially stopped and detained the motorist, the officer no longer has any reasonable grounds or legal basis for continuing the detention of the motorist.
>
> ***Id*** at 438.

Further, the court indicated that the continued detention of Diaz "equated to nothing less than an indiscriminate, baseless detention, not unlike that held to be inappropriate and unconstitutional by the United States Supreme Court in ***Prouse***." ***Id***. And, "under ***Royer***, when the officer clearly determined the validity of the tag, the purpose for the stop was satisfied, and the continued detention of [the defendant] was improper." ***Id***. at 438-39.

The Florida Supreme Court recognized the important stakes of its decision under the United States Constitution when it said:

> It would be dangerous precedent to allow overzealous law enforcement officers to place in peril the principles of a free society by disregarding the protections afforded by the Fourth Amendment. To sanction further

> detention after an officer has clearly and unarguably satisfied the stated purpose for an initial stop would be to permit standardless, unreasonable detentions and investigations. Further, detentions such as that which occurred here are not sufficiently productive for law enforcement purposes, any more so than the random stops declared unconstitutional in ***Prouse***. Allowing such investigations would result in boundless interrogations by law enforcement officers, unrecognized by the Court before, and also an erosion of Fourth Amendment protections.

Id. at 439-440.

State appellate courts in Colorado, Utah, Indiana, Kansas, Ohio, South Carolina, Texas, Maryland, Washington, South Dakota, and Oklahoma have come to similar conclusions. *See* ***People v. Redinger***, 906 P.2d 81, 85-86 (Colo. 1995)*;* ***Holly v. State***, 918 N.E.2d 323, 326 (Indiana 2009); ***State v. Diaz-Ruiz***, 211 P.3d 836, 844 (Kansas Ct. App. 2009); ***Ferris v. State***, 735 A.2d 491, 500 (Maryland Ct. App. 1999); ***State v. Chatton***, 463 N.E.2d 1237, 1240–41 (Ohio 1984); ***State v. Pichardo***, 623 S.E.2d 840, 852 (Ct. App. South Carolina 2005); ***Davis v. State***, 947 S.W.2d 240, 245–46 (Texas Crim. App. 1997) (en banc); ***State v. Morris***, 259 P.3d 116, 124 (Utah 2011); ***State v. DeArman***, 774 P.2d 1247, 1249 (Washington Ct. App. 1989); ***State v. Hayen***, 751 N.W.2d 306, 307, 311 (South Dakota 2008); ***McGaughey v. State***, 37 P.3d 130, 141-42 (Oklahoma Crim. App. 2001).

In addition, in ***United States v. McSwain***, the United States Court of Appeals for the Tenth Circuit found that police could not prolong a traffic stop after reasonable suspicion supporting the stop dissipated. 29 F.3d 558, 561-62 (10th Cir. 1994). In that case, a police officer pulled a car over because he could not read the date on a registration sticker. ***Id***. at 560. As the officer walked up to the car, he

took a closer look at the registration sticker and realized it was valid. ***Id***. Nonetheless, the officer went up to McSwain, the driver, and asked him some questions, for his identification and registration, and continued to detain McSwain and the other occupants of the car. ***Id***.

The Tenth Circuit concluded that once the officer "approached the vehicle on foot and observed that the temporary sticker was valid and had not expired, the purpose of the stop was satisfied." ***Id***. at 561. The officer's "further detention of the vehicle to question [McSwain] about his vehicle and travel itinerary and to request his license and registration exceeded the scope of the stop's underlying justification." ***Id***.

Further, the government in ***McSwain*** argued that "not allowing an officer to request a driver's license and registration in this type of case will require the officer to stop a vehicle, approach the vehicle on foot, observe it, then walk away, get in his police car, drive away and wave, leaving the stopped citizen to wonder what had just occurred." ***Id***. at 562 (internal quotations omitted). In response, the court said:

> Our holding does not require such absurd conduct by police officers. As a matter of courtesy, the officer could explain to drivers in [McSwain's] circumstances the reason for the initial detention and then allow them to continue on their way without asking them to produce their driver's license and registration.
>
> ***Id.***

In addition, the court in ***McSwain*** recognized the important distinction between police conducting "ordinary inquiries" in cases with and without continuing reasonable suspicion of a traffic violation:

> Though we have held in several cases that an officer conducting a routine traffic stop may inquire about identity and travel plans, and may request a driver's license and vehicle registration, run a computer check, and issue a citation," these cases—cited by the government—are inapposite. They all involve situations in which the officer, at the time he or she asks questions or requests the driver's license and registration, still has some objectively reasonable articulable suspicion that a traffic violation has occurred or is occurring.

Id. (internal quotes and citations omitted).

Other federal courts have also concluded that police violate the Fourth Amendment by prolonging a traffic stop and continuing to detain a driver after reasonable suspicion supporting the stop has dissipated. *See* ***United States v. Valdez***, 267 F.3d 395, 398 (5th Cir. 2001); ***United States v. Jenkins***, 452 F.3d 207, 214 (2d Cir. 2006); ***United States v. Edgerton***, 438 F.3d 1043, 1044-45 (10th Cir. 2006); ***United States v. Pena-Montes***, 589 F. 3d 1048, 1058 (10th Cir. 2009); ***United States v. Trestyn***, 646 F.3d 732, 736, 744 (10th Cir. 2011).

This Court should follow the sound reasoning from both state and federal courts and determine that police cannot prolong a traffic stop after reasonable suspicion supporting the stop has dissipated. And similar to the decision in ***McSwain***, this Court should conclude that police cannot detain a driver to conduct "ordinary inquiries," such as questioning the driver and asking for a driver's license, in traffic stops where there is no longer reasonable suspicion supporting a traffic violation.

4. Sergeant Gonzalez illegally prolonged the traffic stop of Mr. Smith after the reasonable suspicion supporting the stop had dissipated.

Here, Sergeant Gonzalez's actions illegally prolonged the traffic stop of Mr. Smith. Initially, Sergeant Gonzalez had reasonable suspicion that the driver of the car had a suspended license, which justified the traffic stop. (36:7; Petitioner's Br. App. 120). However, that reasonable suspicion dissipated when Sergeant Gonzalez was five to ten feet from the car and realized that the male driver, Mr. Smith, was not the female registered owner of the car who had a suspended license. (36:17-18; Petitioner's Br. App. 130-131).

Instead of ending the stop, Sergeant Gonzalez continued to detain Mr. Smith. (36:17-23; Petitioner's Br. App. 130-136). After speaking with Mr. Smith at the driver's side of the car, Sergeant Gonzalez learned that the driver side window and door were broken, and he walked over to the passenger side of the car and opened the passenger side door on his own. (36:9-10, 18-23; 37:2-3, 9; Petitioner's Br. App. 105-106, 112, 122-123,131-136). However, the moment Sergeant Gonzalez realized the driver was male, Sergeant Gonzalez no longer had any reasonable suspicion of a traffic violation, and his mission of writing a ticket was over. Because reasonable suspicion had dissipated, Sergeant Gonzalez had no further need to investigate and was required to end the stop.

The further detention to speak with Mr. Smith at the driver's side window and then open the passenger side door illegally prolonged the traffic stop because upon learning that Mr. Smith was male and not the female registered owner of the car who had a suspended license, Sergeant Gonzalez did not need additional time to "handle the matter for which the

stop was made"—to write a ticket for driving with a suspended license. ***Rodriguez***, 135 S. Ct. at 1612; (36:17-18, Petitioner's Br. App. 130-131). Sergeant Gonzalez should not have detained Mr. Smith "even momentarily without reasonable, objective grounds for doing so." ***Royer***, 460 U.S. at 498. When he spoke with Mr. Smith at the driver's side window and then opened the passenger side door, Sergeant Gonzalez illegally prolonged the detention of Mr. Smith, in violation of the Fourth Amendment.

In this case, as a matter of courtesy, Sergeant Gonzalez could have explained the reason for the stop through the broken driver's side window and then let Mr. Smith go. *See*, ***McSwain***, 29 F.3d at 562; (36:9, 18-19, 21-22; Petitioner's Br. App. 122, 131-132, 134-135). Instead, Sergeant Gonzalez did not end the stop, he lingered by the driver's side door and then took the invasive step of opening the passenger side door on his own volition, all without any continuing reasonable suspicion that a traffic violation had occurred. (36:9-10, 18-23; 37:2-3, 9; Petitioner's Br. App. 105-106, 112, 122-123, 131-136). In doing so, Sergeant Gonzalez violated Mr. Smith's Fourth Amendment right against unreasonable seizures.

II. After Reasonable Suspicion Supporting the Traffic Stop Dissipated, the Officer Was Not Permitted to Open the Passenger Side Car Door to Communicate with Mr. Smith.

A. Sergeant Gonzalez was not permitted to open the passenger side door to communicate with Mr. Smith after reasonable suspicion supporting the traffic stop had dissipated.

As argued above, Sergeant Gonzalez first violated Mr. Smith's Fourth Amendment rights against illegal seizures

when Sergeant Gonzalez prolonged the traffic stop after reasonable suspicion justifying the stop had dissipated. *Assuming arguendo* that Sergeant Gonzalez was permitted to extend the stop after reasonable suspicion of a traffic violation no longer existed for some limited purpose, Sergeant Gonzalez's additional action of opening the passenger side door violated the Fourth Amendment. By opening the passenger side door on his own volition, Sergeant Gonzalez violated Mr. Smith's Fourth Amendment rights against unreasonable searches and seizures because opening the passenger side door was: 1) not the least intrusive investigative means, 2) an intrusive action taken to illegally force Mr. Smith's compliance with police investigation, 3) not *de minimis*, and 4) an illegal search.

1. Opening the passenger side door was not the least intrusive investigative means.

After the reasonable suspicion supporting the traffic stop had dissipated, Sergeant Gonzalez was not permitted to open the passenger side door because Sergeant Gonzalez's actions were not the least intrusive investigative means to achieve his objective of communicating with Mr. Smith. During a ***Terry*** stop based on reasonable suspicion, police must employ "investigative methods" that are the "least intrusive means reasonably available to police" to complete their objectives. ***Royer***, 460 U.S. at 500. If police do not use the "least intrusive" means available to them to conduct an investigation, a Fourth Amendment violation occurs. ***Id***.

The State bears the burden of proof at a suppression hearing to show that an officer's actions are reasonable under the Fourth Amendment. *See* ***State v. Payano-Roman***, 2006 WI 47, ¶ 30, 290 Wis. 2d 380, 714 N.W.2d 548. Here, the testimony from the suppression hearing falls far short of

showing that Sergeant Gonzalez used the least intrusive investigatory means to complete his objectives.

At the suppression hearing, Sergeant Gonzalez testified that he wanted the passenger door open to communicate better with Mr. Smith. (36:21; Petitioner's Br. App. 134). What remains unclear from the testimony is what exactly Sergeant Gonzalez wanted to communicate with Mr. Smith. If Sergeant Gonzalez wanted to tell Mr. Smith he was free to go, Sergeant Gonzalez was able to do that through the driver's side window, without taking the intrusive investigative step of opening the passenger side door. (36:9, 18-19, 21-23; Petitioner's Br. App. 122, 131-132, 134-136).

And, even if Sergeant Gonzalez's objective was to speak with Mr. Smith to obtain his identification, opening the passenger side door was not the least intrusive way to achieve that result. Sergeant Gonzalez did not testify that he physically needed Mr. Smith's driver's license prior to opening the passenger door, so seeing the driver's license through the broken window might have been sufficient. (36:4-27; Petitioner's Br. App. 117-140). Additionally, because Mr. Smith and Sergeant Gonzalez were able to communicate through the driver's side window, Mr. Smith could have given his information through the window for Sergeant Gonzalez to run a check on without opening the passenger side door. (36:9, 18-19, 21-22; Petitioner's Br. App. 122, 131-132, 134-135)

Moreover, in ***Williams***, the court of appeals determined that police could *ask* a driver for his or her name and identification even after reasonable suspicion supporting a traffic stop had dissipated. ***Williams***, 258 Wis.2d at 399. Therefore, the specific conduct that the court in ***Williams*** deemed acceptable was to *ask* a driver for his or her name and identification and nothing more. ***Id***.

Here, Sergeant Gonzalez never *asked* Mr. Smith for his name or identification or whether he could open the passenger side door first. (36:9-10, 18-23; 37:2-3,9; Petitioner's Br. App. 105-106, 112, 122-123, 131-136). Sergeant Gonzalez took the far more intrusive action of just walking around to the passenger door of the car and opening the door on his own volition. (36:9-10, 18-23; 37:2-3, 9; Petitioner's Br. App. 105-106, 112, 122-123, 131-136).

Assuming, without conceding, that Sergeant Gonzalez had the authority to continue this stop after reasonable suspicion dissipated, Sergeant Gonzalez was required and had the ability to take far less intrusive means to complete whatever his investigative objectives were in this case. The State failed to meet its burden to demonstrate at the suppression hearing that Sergeant Gonzalez's actions were reasonable and the least intrusive investigative means available to him. Because Sergeant Gonzalez opened the passenger side door on his own volition, an unnecessary and intrusive act to achieve his objectives, he violated Mr. Smith's Fourth Amendment rights against unreasonable seizures. (36:9-10, 18-23; 37:2-3, 9; Petitioner's Br. App. 105-106, 112, 122-123, 131-136).

2. Opening the car door was an intrusive action taken to illegally force Mr. Smith's compliance with Sergeant Gonzalez's baseless investigation.

Sergeant Gonzalez was not permitted to take the intrusive action of opening the passenger side door to force Mr. Smith's compliance with his investigation during this traffic stop. When police have no reasonable suspicion that a person has violated the law, the person is free to refuse to listen to or answer an officer's questions. ***United States v. Mendenhall***, 446 U.S. 544, 555-56 (1980); ***State v. Williams***,

2002 WI 94, ¶ 35, 255 Wis. 2d 1, 646 N.W.2d 834; ***Brown v. Texas***, 443 U.S. 47, 52-53 (1979). An officer can only *demand* the name and address of a person "under one particular circumstance—when the person is reasonably suspected of committing a crime." ***State v. Griffith***, 2000 WI 72, ¶ 35, 236 Wis. 2d 48, 613 N.W.2d 72; *see* Wis. Stat. § 968.24. Police violate the Fourth Amendment's protections against illegal seizures when they detain a person without reasonable suspicion of a law violation in order to gain the person's compliance with their investigation. *See* ***Brown***, 443 U.S. at 52-53.

In ***Brown***, police saw Brown walking in an alley and approached him and asked him to identify himself. ***Id***. at 48. Police had no reasonable suspicion to believe Brown had violated any law. ***Id***. at 52-53. Brown refused to identify himself, and an officer detained Brown and frisked him. ***Id***. at 49. After the frisk, Brown continued to refuse to identify himself, and police arrested him. ***Id***. The Supreme Court determined that detaining a person and forcing them to identify themselves when "officers lacked any reasonable suspicion" to believe the person "was engaged or had engaged in criminal conduct" was an illegal seizure under the Fourth Amendment, and the defendant in ***Brown*** could not be punished for refusing to identify himself. ***Id***. at 52-53.

Similar to the illegal police detention in ***Brown*** to force his compliance and reveal his identity, Sergeant Gonzalez illegally detained Mr. Smith when he opened the passenger side door of his own volition. (36:9-10, 18-23; 37:2-3, 12; Petitioner's Br. App. 105-106, 112, 122-123, 131-136). When Sergeant Gonzalez walked over to the passenger side door and opened it, he detained Mr. Smith without reasonable suspicion of a traffic violation. Mr. Smith had no choice but to comply with whatever investigation Sergeant Gonzalez wanted to complete. Because Sergeant Gonzalez

detained Mr. Smith when he opened the passenger side door and forced his compliance with the officer's investigation without reasonable suspicion of a traffic violation, Sergeant Gonzalez illegally seized Mr. Smith.

3. Opening the car door was not an incremental, *de minimis* intrusion.

Officer Gonzalez's action of opening Mr. Smith's passenger side door was not an incremental, *de minimis* intrusion, and it violated Mr. Smith's right against unreasonable seizures. After a person is seized during a traffic stop, subsequent intrusive police conduct that is unreasonable violates the Fourth Amendment. ***Griffith***, 236 Wis. 2d 48, ¶ 38. To determine whether the police intrusion is unreasonable, courts apply a two-part balancing test that weighs "the public interest served…against the incremental liberty intrusion that resulted" from the police conduct. ***Id***

The Supreme Court applied this two-part balancing test in ***Pennsylvania v. Mimms***, 434 U.S. 106, 109-11 (1977). In that case, police saw Mimms driving a car with an expired license plate. ***Id***. at 107. Police pulled Mimms over and ordered him out of the car, and he complied. ***Id***. After seeing a bulge in Mimm's jacket, an officer frisked Mimms and found a gun. ***Id***. At no point did the reasonable suspicion for the traffic violation dissipate. In determining that it was reasonable for police to order the defendant out of the car, the Court found that safety concerns allowed police to establish face-to-face contact with the defendant outside of the car during an *ongoing, valid traffic stop* and the intrusion of asking someone to get out of the car when there is *reasonable suspicion* that the person committed a traffic offense was a minimal invasion and required the driver to expose little more of his person than is already exposed. ***Id***. at 109-11.

Unlike in ***Mimms***, the balancing test here favors Mr. Smith. First, in a case where reasonable suspicion of a traffic violation has dissipated, officer safety as the "public interest served" is unconvincing. And, police safety concerns in a stop for a potential traffic violation are lesser than in the case of a custodial arrest. ***Knowles***, 525 U.S. at 117. In this case, there was no indication that Sergeant Gonzalez had any concerns for his safety or wanted Mr. Smith to exit the car for safety concerns, or that he needed contact without the barrier of the driver's side window. (36:9-12, 18-23; Petitioner's Br. App. 122-125, 131-136).

In addition, prolonging a traffic stop after reasonable suspicion has dissipated—including allowing an officer to ask for identification, order occupants out of a car, or open a car door—actually heightens the danger to police because the continued detention of the driver increases the exposure police have to the driver and potential danger during the traffic stop. If police end the stop after reasonable suspicion has dissipated, and allow the driver to go, any concerns for police safety are eliminated because the driver has left the scene. It is inconsistent and unpersuasive for the State to argue that concerns for officer safety allow an officer to open a car door of their own volition in a stop unsupported by reasonable suspicion, while also arguing for a result—prolonging a traffic stop after reasonable suspicion supporting the stop has dissipated—that actually *increases* the danger to police.

Second, the liberty intrusion that resulted from Sergeant Gonzalez opening the passenger side door was greater than the ***Mimms*** defendant having to get out of his car. In ***Mimms***, when police ordered Mimms to get out of his car, there was an ongoing, valid traffic stop supported by reasonable suspicion that the defendant violated a traffic law. ***Mimms***, 434 U.S at 107. Here, when Sergeant Gonzalez

opened the car door, there was no reasonable suspicion that Mr. Smith violated a traffic law. (36:17-18, 21; Petitioner's Br. App. 130-131, 134). The lack of reasonable suspicion makes the intrusion of opening the car door in this case a far more serious invasion of Mr. Smith's liberty interests. Well-established legal precedent has consistently warned that seizures cannot take place without reasonable suspicion. ***Prouse***, 440 U.S. at 662-63 (a seizure of a person requires reasonable suspicion that the person violated the law); ***Royer***, 460 U.S. at 498 (a person "may not be detained even momentarily without reasonable, objective grounds for doing so").

Thus, Sergeant Gonzalez's action of opening Mr. Smith's car door was not an incremental, *de minimis* intrusion and violated Mr. Smith's right against unreasonable seizures because officer safety concerns did not justify the serious intrusion of Mr. Smith's liberty interests.

4. Opening the car door was an illegal search without probable cause.

When Sergeant Gonzalez opened the passenger side door, he conducted an illegal search of the car. A search occurs under the Fourth Amendment when "an expectation of privacy society is prepared to consider reasonable is infringed." ***Soldal v. Cook County***, 506 U.S. 56, 63 (1992); *see also* ***Kyllo v. United States***, 533 U.S. 27, 32–33 (2001). This Court has recognized that a driver of a car, even when the driver is not the owner of the car, has a reasonable expectation of privacy in the interior of the car. ***State v. Dixon***, 177 Wis. 2d 461, 474, 501 N.W.2d 442 (1993). In order to search a car during a stop, police must have probable cause to believe that the car contains contraband or evidence of a crime. ***State v. Pallone***, 2000 WI 77, ¶ 58, 236 Wis. 2d 162, 613 N.W.2d 568 (*overruled on other grounds by* ***State v.***

Dearborn, 2010 WI 84, 327 Wis. 2d 252, N.W.2d 97); ***United States v. Ross***, 456 U.S. 798, 824 (1982).

Here, Sergeant Gonzalez searched the car when he opened the passenger door. By opening the passenger door, Sergeant Gonzalez exposed the interior of the car and everything inside of the car, including Mr. Smith. (36:10-11; Petitioner's Br. App. 123-124). Mr. Smith possessed a right to privacy in the interior of the car, where he was seated. Sergeant Gonzalez had no probable cause, or even reasonable suspicion, that the car contained evidence of a crime or contraband, and therefore, Sergeant Gonzalez violated Mr. Smith's Fourth Amendment rights against unreasonable searches when he opened the passenger side door on his own.

Other jurisdictions have recognized that an illegal car search occurs when police open a car door during a traffic stop without warning, as Sergeant Gonzalez did here. In ***New Jersey v. Woodson***, police pulled the defendant over for speeding. 236 N.J. Super. 537, 538, 566 A.2d 550 (App. Div. 1989). After the car pulled over, an officer walked up to the defendant's car and immediately opened the door to speak with the driver without making an attempt to communicate with the driver first, and an open can of beer fell out of the car. ***Id***. at 539. The State argued that there was no difference between ordering the driver to exit the car and opening the door for him to get out. ***Id***. at 540. The New Jersey Court of Appeals court disagreed, explaining:

> There is a significant difference between ordering one out of a car and opening a car door without warning. In the former case, the occupant has an opportunity, before opening the door and leaving the car, to safeguard from public view matters as to which he has a privacy interest.

Id. at 540. Like the New Jersey court, this Court should conclude that Sergeant Gonzalez's action of opening

the passenger door was an illegal search without warning. A Fourth Amendment violation is even more compelling here than in ***Woodson*** because unlike the officer in ***Woodson***, Sergeant Gonzalez was without reasonable suspicion that Mr. Smith committed a traffic violation when he opened the passenger side door.

In addition, the court of appeals in this case determined that the State failed to offer a meaningful rebuttal to Mr. Smith's argument that Sergeant Gonzalez's action of opening the passenger side door during the traffic stop violated Mr. Smith's Fourth Amendment rights against unreasonable searches and seizures. ***State v. Smith***, No. 2015AP756-CR, unpublished slip op. ¶¶ 6-12 (WI App Sept. 29, 2015); (Appellant's Br. App. 103-105). An appellant's argument that is not refuted is conceded. ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis. 2d 97, 108–09, 279 N.W.2d 493 (Ct. App. 1979). Therefore, the court of appeals reversed the circuit court's decision to deny Mr. Smith's suppression motion. ***State v. Smith***, No. 2015AP756-CR, unpublished slip op. ¶ 13; (Appellant's Br. App. 105-106). Based on the State's failure to provide a meaningful rebuttal to Mr. Smith's arguments in the court of appeals regarding the officer's intrusive action of opening the passenger side door, this Court should affirm the judgment of the court of appeals. *See generally* ***State v. Huebner***, 2000 WI 59, ¶ 12, 235 Wis. 2d 486, 611 N.W.2d 727 ("waiver rule is essential to the efficient and fair conduct of our adversary system of justice").

III. The State Has Not Established that Sergeant Gonzalez Would Have Inevitably Discovered Mr. Smith was Driving While Intoxicated.

For the inevitable discovery doctrine to apply in this case, the State must establish "by a preponderance of the

evidence" that Mr. Smith's intoxication would inevitably have been discovered by lawful means even if Sergeant Gonzalez did not open the passenger side door. *See* ***State v. Jackson***, 2016 WI 56, ¶ 74, 369 Wis. 2d 673, 882 N.W.2d 422. For multiple reasons, the inevitable discovery doctrine does not apply in this case.

First, the State did not argue inevitable discovery in the circuit court, the court of appeals, or its petition for review. (Respondent's Ct. App. Br. at 7-10; Petition for Review at 5-12). Accordingly, this Court should find that the State has forfeited its inevitable discovery argument. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980) (superseded on other grounds); *see also* ***Charolais Breeding Ranches***, 90 Wis. 2d at 108–09.

Second, the State's inevitable discovery argument is contingent on Sergeant Gonzalez's illegal extension of the traffic stop. Once the reasonable suspicion supporting the traffic stop dissipated, Sergeant Gonzalez was required to end the traffic stop. The record shows that Sergeant Gonzalez was able to speak with Mr. Smith through the closed driver's side door and window. (36:9, 18-19, 21-22; Petitioner's Br. App. 122, 131-132, 134-135). If Sergeant Gonzalez told Mr. Smith through the driver's side window he was free to go without illegally prolonging the stop to walk over to the passenger side door and open it, he would not have discovered Mr. Smith's intoxication.

Third, *assuming arguendo* that Sergeant Gonzalez was permitted to extend the stop after reasonable suspicion dissipated for some limited purpose, the State has failed to prove by a preponderance of the evidence that Sergeant Gonzalez would have inevitably discovered Mr. Smith's intoxication without opening the passenger side door on his own volition. The State claims that by a preponderance of the

evidence in this case there was no series of events during the traffic stop in which Sergeant Gonzalez would not have had a face-to-face discussion with Mr. Smith allowing him to detect Mr. Smith's intoxication. (Petitioner's Br. at 29). The facts from the suppression hearing do not support the State's conclusion.

The State first suggests that if Sergeant Gonzalez had not opened the passenger side door, Mr. Smith's actions in the car demonstrate that Mr. Smith would have opened it, exposing his own intoxication. (Petitioner's Br. at 29). At the suppression hearing, Mr. Smith testified that as Sergeant Gonzalez walked to passenger side of the car, Mr. Smith grabbed a handle on the passenger side door and pulled himself to the passenger side seat. (36:31-33; Petitioner's Br. App. 144-146). The handle Mr. Smith grabbed was not the handle that actually opens the passenger side door. (36:31-33, Petitioner's Br. App. 144-146). Mr. Smith did not testify that his intention in moving to the passenger side seat was to open the passenger side door or window, and the circuit court did not make any factual finding that Mr. Smith moved over to the passenger side seat to open the passenger side door or window. (36:31-33; 37:2-3, 9; Petitioner's Br. App. 105-106, 112, 144-146). Accordingly, it is pure speculation to say that Mr. Smith would have opened the passenger side door himself leading to the discovery of his intoxication, if Sergeant Gonzalez had not opened it.

The State next claims that even if Mr. Smith did not intend to open the passenger side door himself, Sergeant Gonzalez had the authority to order Mr. Smith out of the car, which would have led to either Mr. Smith or Sergeant Gonzalez opening the passenger side door. (Petitioner's Br. at 29-30). However, Sergeant Gonzalez had no reasonable suspicion to support the continued detention of Mr. Smith, therefore, he did not have the authority to continue to detain

Mr. Smith and order Mr. Smith out of the car. Even if he did have that authority, at the suppression hearing, there was no testimony from Sergeant Gonzalez that he would have ordered Mr. Smith out of the car if he was unable to open the passenger side door. (36:21; Petitioner's Br. App. 134). In fact, Sergeant Gonzalez himself testified that he did not know what he would have done, had the passenger door not opened. (36:21; Petitioner's Br. App. 134). Nevertheless, the State asks this Court to speculate about what Sergeant Gonzalez and Mr. Smith would have done had Sergeant Gonzalez not illegally opened the passenger side door. Ultimately, no one can say, by a preponderance of the evidence, what would have happened here. Therefore, the inevitable discovery doctrine does not apply in this case.

CONCLUSION

Consistent with well-established United States Supreme Court precedent in ***Prouse***, ***Royer***, ***Caballes***, and ***Rodriguez***, this Court should conclude that once the reasonable suspicion justifying a traffic stop has dissipated, police cannot prolong the stop and continue to detain the driver of a car. Police officers cannot lawfully detain a driver after reasonable suspicion supporting the traffic stop has dissipated to perform "ordinary inquires," including questioning the driver and asking for identification.

Moreover, this Court should conclude Sergeant Gonzalez did not have probable cause to search the car Mr. Smith was driving and was not permitted to open the passenger side door to communicate with Mr. Smith after reasonable suspicion supporting the stop had dissipated.

Mr. Smith asks this Court to affirm the court of appeals' decision, and remand to the circuit court to vacate the judgment of conviction, allow Mr. Smith to withdraw his plea, and grant the suppression motion.

Dated this 17th day of March, 2017.

Respectfully submitted,

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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 8,374 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 17th day of March, 2017.

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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 circuit 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 circuit 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.

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