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WISCONSIN COURT OF APPEALS
DISTRICT IV
APPEAL FROM THE CIRCUIT COURT
OF ROCK COUNTY
HONORABLE ROBERT DeCHAMBEAU

STATE OF WISCONSIN,
PLAINTIFF-RESPONDENT

V.

CIRCUIT COURT
CASE NO. 13CM440

JOHN D. ARTHUR GRIFFIN,
DEFENDANT-APPELLANT

BRIEF AND ARGUMENT OF APPELLANT

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ORAL ARGUMENT NOT REQUESTED

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ISSUE PRESENTED FOR REVIEW

Whether the circuit court erred in denying Mr. Griffin's Motion to Suppress by finding reasonable suspicion for the investigatory stop of Mr. Griffin's vehicle and for the subsequent extension of the stop.

Mr. Griffin raised the issue in a pretrial motion. The circuit court held a motion hearing, and requested briefs from the parties. The circuit court ultimately denied Mr. Griffin's motion in an oral ruling. Copies of the transcripts from the motion hearing and oral ruling are contained in the Appendix.

STATEMENT OF REASONS FOR ORAL ARGUMENT AND PUBLICATION

Mr. Griffin does not request oral argument. Mr. Griffin does not recommend that the opinion be published.

STATEMENT OF THE CASE

On February 19, 2013, a criminal complaint was filed in the Rock County Circuit Court charging John D. Arthur Griffin with one misdemeanor count of carrying a concealed weapon, contrary to Wis. Stats. § 941.23(2).[1]

Mr. Griffin filed a pretrial motion, requesting that evidence obtained during a search of his vehicle be suppressed. The circuit court held a hearing on Mr. Griffin's motion, and at the conclusion of the motion hearing requested that the parties submit briefs. The court subsequently held a hearing in which the court denied Mr. Griffin's motion in an oral ruling.

Mr. Griffin ultimately entered a plea of no contest to the single count charged in the criminal complaint. A forfeiture was imposed.

Mr. Griffin timely filed a Notice of Intent to Seek Postconviction Relief.

[1] All references to Wisconsin Statutes are to the 2011-12 Edition.

STATEMENT OF FACTS

The relevant facts of this case are not in dispute. On January 20, 2013, Officer Paul Reed of the South Beloit Police Department overheard radio traffic reporting shots fired at the Silver Slipper Saloon in Beloit. (Doc. 34:6-7; Appendix F:6-7). Officer Reed heard that a vehicle suspected of involvement in the shooting had fled and was heading eastbound. (Doc. 34:15; Appendix F:15). The vehicle was described as a silver Chevrolet Impala. (Doc. 34:7; Appendix F:7).

Officer Reed subsequently observed a silver Chevrolet Impala in South Beloit, Illinois, and began to follow the vehicle. (Doc. 34:7; Appendix F:7). Officer Reed observed the vehicle stop at a red light at an intersection, and further observed a passenger exit the rear driver's side of the vehicle. (Doc. 34:7; Appendix F:7). Officer Reed exited his vehicle, drew his weapon, and told the passenger to get back in the vehicle. (Doc. 34:8; Appendix F:8). The individual walked around to

the front and got back into the vehicle. (Doc. 34:8; Appendix F:8). Officer Reed did not observe that the individual had any object(s) in his hands. (Doc. 34:31; Appendix F:31).

Officer Reed then observed the traffic light turn green and the vehicle begin to drive away. (Doc 34:8; Appendix F:8). Officer Reed activated his emergency lights in order to stop the vehicle. (Doc. 34:8; Appendix F:8). The vehicle then pulled over to the side of the road. (Doc. 34:9; Appendix F:9).

Prior to exiting his squad and approaching the vehicle, Officer Reed overheard traffic on the Beloit PD channel indicating that the suspect vehicle had Iowa registration and was possibly a rental. (Doc. 34:9; Appendix F:9). The vehicle that Officer Reed pulled over had Illinois registration. (Doc. 34:9; Appendix F:9).

Officer Reed approached the vehicle, made contact with the driver, and obtained his ID. (Doc. 34:9;

Appendix F:9). When Officer Reed asked the passenger why he had moved to the front seat of the vehicle, the passenger replied that he was cramped in the backseat. (Doc. 34;9; Appendix F:9).

Officer Reed returned to his squad at the time when Officer Sanders arrived on the scene. (Doc. 34:10; Appendix F:10). Officer Reed made contact with Rock Co. dispatch for clarification. (Doc. 34:10; Appendix F:10). Officer Reed was advised by dispatch that the vehicle he had pulled over was not the correct vehicle. (Doc. 34:24; Appendix F:24). Officer Reed was further advised by dispatch that they did not wish the vehicle to be held. (Doc. 34:24; Appendix F:24).

Officer Reed indicated that he intended to let the vehicle go, but wanted to ask the driver if there were any weapons in the car and if he could search the vehicle. (Doc. 34:11; Appendix F:11). Officer Reed then made contact with Mr. Griffin and asked him to step out of the vehicle "so I could speak to him." (Doc.

34:11; Appendix F:11). Mr. Griffin exited the vehicle and walked around to the back with Officer Reed. (Doc. 34:11; Appendix F:11). At that time, Officer Reed heard Officer Sanders indicate that he had observed a gun in the backseat of the vehicle. (Doc. 34:11; Appendix F:11).[2]

Previously, Officer Reed had observed that the vehicle had tinted windows. (Doc. 34:10; Appendix F:10). Officer Reed did not know for sure whether prior to Officer Sanders observing the gun he had instructed the passenger to roll down the window. (Doc. 34:11; Appendix F:11).

APPELLANT'S ISSUE ON APPEAL

I. Whether the circuit court erred in denying Mr. Griffin's Motion to Suppress by finding reasonable suspicion for the initial investigatory stop of Mr. Griffin's vehicle and for the extension of that stop.

[2] It was ultimately confirmed that the vehicle and its occupants were involved in the shooting at the Silver Slipper Saloon, as set forth in the criminal complaint. (Doc. 1:3-4; Appendix B:3-4).

A. Summary of the Argument

Mr. Griffin respectfully submits that the circuit court erred in denying Mr. Griffin's Motion to Suppress when it found reasonable suspicion for the investigatory stop in this case and for its subsequent extension.

Mr. Griffin submits that the initial investigatory stop was not based on sufficient reasonable suspicion. Mr. Griffin further submits that even if the initial investigatory stop was reasonable, the purpose of the initial investigatory stop had been satisfied when dispatch advised Officer Reed that Mr. Griffin's vehicle was not the correct vehicle (i.e. was not the vehicle involved in reported shooting at the Silver Slipper Saloon) and that they did not wish it held.

When Officer Reed returned to the vehicle and asked Mr. Griffin to exit the vehicle so that Officer Reed could speak to him, at that point the initial investigatory stop was extended beyond is original purpose. In order to extend the stop beyond its original

purpose, Officer Reed would have needed new information in addition to that which justified the original investigatory stop. Based on Officer Reed's testimony at the motion hearing, he was not acting on new information or articulable facts but rather on a "hunch" when he requested Mr. Griffin to step out of the vehicle after having consulted with dispatch. (Doc. 34:32; Appendix F:32).

Consequently, Mr. Griffin was being subjected to an unlawful/unreasonable seizure when Officer Sanders observed the gun in plain view. Accordingly, the evidence recovered from the vehicle must be excluded as the fruits of an unlawful/unreasonable seizure and search.

B. Standard of Review

The question whether police conduct violates the constitutional guarantee against unreasonable searches and seizures is a question of constitutional fact. State v. Kieffer, 217 Wis. 2d 531, 541, 577 N.W.2d 352 (1998).

On review, the reviewing court gives deference to the trial court's findings of evidentiary or historical fact, but determines the question of constitutional fact independently. State v. Kieffer, 217 Wis. 2d 531, 541, 577 N.W.2d 352 (1998).

C. Relevant Law

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period of time and for a limited purpose, constitutes a seizure within the meaning of the Fourth Amendment. Whren v. United States, 517 U.S. 806, 809-10, 116 S.Ct. 1769 (1996).

In order for a seizure to be reasonable under the requirement of the Fourth Amendment, the police officer must be able to point to specific and articulable facts, taken together with the rational inferences from those facts, would warrant a reasonable suspicion that the subject of the seizure is committing, has committed,

or is about to commit a crime. Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868 (1968).

The police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is violating the law. State v. Gammons, 2001 WI App 36, 241 Wis.2d 296, ¶6, 625 NW2d, 623 (Ct.App.2001).

The question of what constitutes reasonable suspicion is a common sense test - under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience. State v. Colstad, 2003 WI App 25, 260 Wis. 2d 406, ¶8, 659 N.W.2d 394 (Ct.App.2003).

If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that

prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun. State v. Colstad, 2003 WI App 25, 260 Wis. 2d 406, ¶19, 659 N.W.2d 394 (Ct.App.2003).

The exclusionary rule requires courts to suppress evidence obtained through the exploitation of an illegal search or seizure. Wong Sun v. United States, 371 U.S. 471, 488, 83 S.Ct. 407 (1963).

D. Argument

When Officer Reed first made contact with Mr. Griffin's vehicle, reasonable suspicion to believe that the vehicle might have been involved in the reported shooting at the Silver Slipper Saloon did not exist. Prior to making contact with the occupants of the vehicle, Officer Reed overheard radio traffic indicting that the suspect vehicle had Iowa registration; Mr. Griffin's vehicle had Illinois registration.

At that time, Officer Reed had no other facts (such as a description of the suspects) to formulate a

reasonable suspicion other than the observance of the passenger's behavior in getting out of the backseat and getting into the front seat of the vehicle. Officer Reed noted that he did not observe anything inherently suspicious in the passenger's movements. The totality of the circumstances known to Officer Reed at that time did not constitute reasonable suspicion to detain the vehicle and effectuate a Fourth Amendment seizure/investigatory stop based on a possible connection to the reported shooting.

However, even if Officer Reed had reasonable suspicion to proceed with the investigatory stop, the purpose of the investigatory stop was completed once dispatch advised Officer Reed that this was not the vehicle involved in the shooting. The investigation with respect to Mr. Griffin's vehicle was complete such that dispatch advised that they did not wish the vehicle to be held.

Officer Reed had not been apprised of any new information that would be considered suspicious. In fact, the information that Officer Reed received from dispatch functioned to lessen any suspicion that might have previously been drawn from the passenger's odd behavior.

When Officer Reed asked Mr. Griffin to step out of the vehicle in order to talk, he extended the stop without having sufficient articulable facts to do so. He conceded at the motion hearing that the basis for his actions was essentially a 'hunch.'

An officer's 'hunch' cannot form the basis for a reasonable seizure under the Fourth Amendment, or for the extension of a seizure that was reasonable at its inception. The evidence recovered from the vehicle was obtained as a direct result of the unlawful seizure and should be suppressed.

1. <u>There was insufficient reasonable suspicion to justify the initial detention of Mr. Griffin's vehicle for the purpose of an investigatory stop</u>.

Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period of time and for a limited purpose, constitutes a seizure within the meaning of the Fourth Amendment. Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769 (1996). In order for such a seizure to be reasonable, law enforcement must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, would warrant a reasonable suspicion that the individual is committing, has committed, or is about to commit a crime. Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868 (1968).

Officer Reed initiated the stop of Mr. Griffin's vehicle in order to determine whether it or its occupants were involved in the reported shooting at the Silver Slipper Saloon. Although the vehicle matched a general description of the suspect vehicle, prior to making

contact with Mr. Griffin, Officer Reed received information suggesting that the vehicle they had pulled over was not the suspect vehicle. The vehicle believed to be involved in the shooting had Iowa registration, while the vehicle Officer Reed was detaining had Illinois registration.

Although Officer Reed had observed one of the passengers engage in odd behavior in moving from the back to the four seat of the vehicle, Officer Reed did not identify an articulable reason why such an observation would make it more likely that the vehicle or its occupants were involved in criminal activity, even considering the late hour. Officer Reed did not observe the passenger attempt to dispose of anything or make any inherently suspicious motions.

Although an interference with the liberty of the individuals had already occurred in that Officer Reed had already activated his emergency lights and the vehicle had pulled over in response, the investigatory

stop and subsequent contact with Mr. Griffin was unreasonable. At that time, Officer Reed had no specific, articulable facts from which to reasonably conclude that the occupants of the vehicle were involved in criminal activity.

The record supporting reasonable suspicion for the initial stop in the present case is arguably no less sparse than the record in State v. Young, 212 Wis.2d 417, 431, 569 N.W.2d 84 (Ct.App.1997). In Young, the officer had received information from another officer that a young black male had just made a short-term contact with another subject in the area; the area was known as a high drug trafficking area. The officer made contact with Young, who fit the description he had been provided. Young gave consent for the search of his person, and the officer located marijuana and a small marijuana pipe.

The officer admitted he had stopped Young solely on the basis of what the other officer had told

him, and not based on any personal observations. State v. Young, 212 Wis.2d 417, 421, 569 N.W.2d 84.

The court of appeals noted that the conduct relied on by the officers – meeting people briefly in a high drug trafficking area during daytime hours – might be suspicious, but is also conduct which large numbers of innocent citizens engage in every day for innocent purposes. State v. Young, 212 Wis.2d 417, 429-30, 569 N.W.2d 84. As the court of appeals emphasized, any inference of unlawful conduct must be a reasonable one. State v. Young, 212 Wis.2d 417, 430, 569 N.W.2d 84.

Like the present case, Officer Reed's inference of potential unlawful conduct sufficient to engage in an investigatory stop of the vehicle is not a reasonable inference. The information he had suggested that the Griffin vehicle was not involved in the Beloit shooting. Even odd or marginally suspicious conduct such as the behavior of the passenger in this case must give rise to a *reasonable* inference of criminal activity. The

supporting facts in the present case are even less compelling than those in Young – which the court of appeals described as a "sparse" record insufficient to justify the investigatory stop. State v. Young, 212 Wis.2d 417, 430,433, 569 N.W.2d 84.

Accordingly, Mr. Griffin submits that the initial investigatory stop of his vehicle lacked reasonable suspicion and was therefore unreasonable.

2. Even if the initial investigatory stop was reasonable, it was unreasonably extended beyond its initial purpose without sufficient reasonable suspicion.

If the court concludes that the initial investigatory stop of Mr. Griffin's vehicle was reasonable, Mt. Griffin would respectfully assert that the ensuing extension of the stop beyond its original purpose was unreasonable.

If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that

the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun. State v. Colstad, 260 Wis. 2d 406, ¶19, 659 N.W.2d 394 (Ct.App.2003).

Officer Reed conceded at the motion hearing that once dispatch advised that the Griffin vehicle was not the vehicle involved in the shooting and that they did not wish the Griffin vehicle to be held, the basis for the stop and suspicion about the vehicle was essentially over. (Doc. 34:25; Appendix F:25). Officer Reed further testified that he believed that despite the notification from dispatch, the Griffin vehicle could have been the vehicle involved in the shooting due to possible "confusion" in the original description of the vehicle. (Doc. 34:65-66; Appendix F:65-66). However, Officer Reed also conceded that he had no facts to support his

belief that the information from dispatch might have been inaccurate. (Doc. 34:66; Appendix F:66).

Under that circumstance, Officer Reed needed additional information or facts in order to justify the continued seizure of Mr. Griffin.

The Wisconsin supreme court recently addressed the issue of reasonable suspicion in the context of extending an investigatory stop in State v. Hogan, 2015 WI 76 (2015). In that case, the defendant/driver was initially stopped for a seatbelt violation. After making contact with the driver, the officer observed what he believed to be indicia of drug use. As the officer was writing out the seat belt citations, another officer arrived on the scene and provided uncorroborated information that the driver was engaged in the manufacture of methamphetamines. The first officer requested that the driver perform field sobriety tests; the driver agreed and passed the tests. He was told he was free to leave.

A short time later, the officer re-approached the driver and asked the driver for consent to search the vehicle. Consent was given, and the resulting search yielded supplies used to manufacture methamphetamines, as well as two loaded handguns.

The Wisconsin supreme court concluded that the facts of record did not constitute reasonable suspicion to extend the investigatory stop to request field sobriety tests. State v. Hogan, 2015 WI 76, ¶9.

Since the officer had extended the initial traffic stop for the purpose of requesting field sobriety tests, the court stated that "the legality of the extension of the traffic stop in this case turns on the presence of factors which, in the aggregate, amount to a reasonable suspicion that Hogan committed a crime the investigation of which would be furthered by the defendant's performance of field sobriety tests." State v. Hogan, 2015 WI 76, ¶37.

The court in Hogan found the officer did not have a sufficient basis to extend the stop. The officer believed that the condition of the driver's pupils suggested potential impairment, but offered no specific information as to how pupil size is related to impaired driving or intoxication. State v. Hogan, 2015 WI 76, ¶48. Although the officer had received information from another officer, the court concluded that there was no showing on the record as to why the information should be deemed reliable. State v. Hogan, 2015 WI 76, ¶51.

The court concluded that the case for reasonable suspicion rested primarily on the observations of the driver as being nervous and shaking. Although those observations are consistent with methamphetamine use, the court concluded that as a practical matter police cannot conduct an investigatory stop/field sobriety tests on every motorist who is shaking and nervous when stopped by an officer. State v. Hogan, 2015 WI 76, ¶50.

Likewise in the present case, law enforcement cannot reasonably extend an investigatory stop every time the officer has a hunch that weapons might be present. There were no specific articulable facts to suggest that weapons would be present in the vehicle and justify a new investigation for that purpose. In fact, since the initial stop, Officer Reed had discovered that the vehicle he had detained was not the vehicle suspected in the shooting. Thus the information Officer Reed had acquired actually made it less objectively likely that the Griffin vehicle contained any weapons.

State v. Colstad, 2003 WI App 25, 260 Wis. 2d 406, 659 N.W.2d 394 (Ct.App.2003), illustrates the type of facts that are sufficient to justify the extension of an investigatory stop. In Colstad, the defendant was detained following a traffic accident in which he drove a vehicle that collided with a child. During the initial contact, the officer did not detect any signs of intoxication or impairment. The officer left Colstad in

order to attend to the child. Upon returning to make contact with Colstad, the officer detected the odor of intoxicants, and Colstad admitted to consuming two beers. State v. Colstad, 2003 WI App 25, ¶3-5. The officer requested that Colstad perform field sobriety tests, and he was subsequently arrested.

The court concluded that the officer had reasonable suspicion to continue the detention of Colstad, based on the new information that the officer had detected the odor of intoxicants, and the fact that the officer had new reason to believe that Colstad's original explanation for the accident was incorrect. State v. Colstad, 2003 WI App 25, ¶20-21.

In contrast to the officer in Colstad, Officer Reed neither obtained new information that gave rise to reasonable suspicion nor did he have new facts that put old information in a more suspicious context. Rather than have reason to believe that Mr. Griffin's passenger had provided a false explanation (as the officer in

Colstad), Officer Reed had even more reason to accept the passenger's explanation of why he changed seats, since as far as Officer Reed had been advised those individuals were not involved in the reported shooting. Unlike the odor of intoxicants in Colstad, Officer Reed did not observe anything new that would contribute to reasonable suspicion or even put old facts in a new context.

The decisions in Hogan and Colstatd indicate that some type of new information from which a reasonable inference of criminal activity can be drawn must be present in order to justify the extension of an investigatory stop on reasonable suspicion. In the present case, no such information or facts have been identified.

3. The circuit court erred in denying Mr. Griffin's Motion to Suppress by finding reasonable suspicion for the initial investigatory stop and for the extension of the original stop.

At the conclusion of the motion hearing, the circuit court requested briefs from the parties. The court then held a separate hearing in order to deliver its ruling denying Mr. Griffin's motion.

a. The initial investigatory stop.

The court first addressed the initial investigatory stop, noting that Officer Reed had been advised that a silver Chevrolet Impala had been involved in a shooting, and that the vehicle being driven by Mr. Griffin "matched that car very closely." (Doc. 35:7; Appendix G:7). The court further noted that Officer Reed had observed that "they got out and ran around the car." [3] (Doc. 35:7; Appendix G:7). However, the court did not note in its discussion that Officer Reed had also overheard radio traffic that indicated the suspect vehicle had Iowa registration while the Griffin vehicle had Illinois registration.

[3] The court initially made the reference that "they" had gotten out of the vehicle and run around. The court appeared to accept counsel's subsequent factual correction that only one individual was observed exiting the vehicle. (Doc. 35:9; Appendix G:9).

The court found that Officer Reed had reasonable suspicion to initiate an investigatory stop:

> The purpose of *Terry* and what *Terry* really says is you've got to take a view of the common sense reasonableness of what occurred one way or the other. And I think this officer under the facts and circumstances did what he should have done and what I hope he would do as a police officer and stop the car and get some identification. (Doc. 35:7; Appendix G:7).

Mr. Griffin would respectfully submit that the court erred in reaching its conclusion by omitting a significant factor from its consideration. Officer Reed had indicated that he was aware of the registration discrepancy prior to actually making contact with the vehicle's occupants.

The totality of facts at the time would have suggested that the vehicle Officer Reed had stopped was not the vehicle suspected of being involved in the shooting. Although matching a general description, Mr. Griffin's vehicle differed from the suspect vehicle in one key respect. The possibility that it might be the same vehicle does not amount to a reasonable inference

of criminal activity that could constitute reasonable suspicion.

Accordingly, the court's finding that sufficient probable cause existed for the initial investigatory stop is erroneous.

b. The extension of the initial investigatory stop.

It is unclear from the circuit court's ruling whether the court actually considered the investigatory stop to have been extended. Picking up the court's discussion as set forth in the transcript from the hearing:

> Now, there is law in the State of Illinois – and somebody cited it to me – that says you get the identification and then find out whether it's insured or whatever else you have to do, and then you give the stuff back to them and you get them out of there. That's basically what the law says in the State of Illinois.
>
> I think the officer was doing all that. He was up to the point where he said, I'm just gonna go up and ask whether they'll let me take a look in the car, because I'm not quite sure, I'm a little hesitant over these windows and the activities that took place. He said, I'm going to ask them for that, and then I'm going to let them go. That was his intent. But armed with the information that made – that made it into an investigative stop, and even though there was no actual

> probable cause with regard to the ability to make an arrest of the persons at that time, he did have reasonable suspicion in my opinion, and he used that under the – under the *Terry* rules, if you've got a reasonable suspicion, you have a right to stop the vehicle.
>
> And as I previously indicated, the officer asked for the I.D., the gentlemen cooperated, they saw nothing, he's giving the license back – or the license back and going to let them go until they saw the – the other officer saw the gun through the open window that had apparently been opened in some way or manner. (Doc. 35:7-8; Appendix G:7-8).

Mr. Griffin respectfully submits that the court erred in its discussion and ultimate conclusion.

In its discussion, the court failed to address the fact that Officer Reed had been specifically advised by dispatch prior to approaching the vehicle for the second time that this was not the suspect vehicle. The court did not address the law requiring new facts or information that constitutes reasonable suspicion in order to extend an investigatory stop beyond its original purpose.

As a factual matter, Officer Reed did not testify that he was returning Mr. Griffin's license with the

intent to let them go at the time Officer Sanders observed the gun. Rather, Officer Reed specifically indicated that he did not intend to let the vehicle leave but instead intended to ask about weapons and request consent to search.

Officer Reed further testified that when he approached the vehicle the second time, he requested that Mr. Griffin exit the vehicle so that Officer Reed could speak with him.[4] Only after they had walked to the rear of the vehicle did Officer Sanders observe the gun.

The totality of all the facts, along with the proper sequence of events, is significant because it illustrates the fact that the purpose of the initial investigatory stop was complete when Officer Reed requested that Mr.

[4] Although Officer Reed testified that he intended to ask Mr. Griffin about any weapons being present and to request consent to search the vehicle (Doc. 34:11; Appendix F:11), there is no indication in the record that any questions were asked or that consent to search was actually requested prior to Officer Sanders' observance of the gun. (Doc. 34:62; Appendix F:62).

Griffin step out of the vehicle so that Officer Reed could speak with him.

Officer Reed's hesitation notwithstanding, the objective articulable facts available at the time indicate that the original investigatory purpose had been satisfied. Although Officer Reed was hesitant to let the vehicle go, there was no reasonable inference of criminal activity to be drawn from the facts available to him at the time.

Thus, Mr. Griffin would respectfully submit that the court's ruling did not consider all the relevant facts in sequence as set forth during the motion hearing.

Specifically, although the court stated that "under the facts and circumstances and the totality of circumstances in this matter, I don't think that – I think that the officer had a right to do what he did, he did it", the court did not really discuss those circumstance or how they actually created reasonable suspicion. (Doc. 35:9-10; Appendix G:9-10). The court did not explain

why Officer Reed's hesitation to let the Griffin vehicle go was objectively reasonable given the facts known to him. The court did not explain why that hesitation could be the basis for a reasonable inference that he individuals in the vehicle were or had been involved in criminal activity. The court did not explain how the "activities" observed by Officer Reed combined with tinted windows made it more likely (and reasonable to believe) that the individuals were involved in criminal activity.

Accordingly, the decision and ruling of the circuit court denying Mr. Griffin's Motion to Suppress was erroneous.

4. The evidence seized from Mr. Griffin's vehicle must be suppressed in accordance with the exclusionary rule.

The exclusionary rule requires courts to suppress evidence obtained through the exploitation of an illegal search or seizure. Wong Sun v. United States, 371 U.S. 471, 488, 83 S.Ct. 407 (1963). This rule applies not only

to primary evidence seized during an unlawful search, but also to derivative evidence acquired as a result of the illegal search, unless the state shows sufficient attenuation from the original illegality to dissipate that taint. State v, Carroll, 2010 WI 8, 778 N.W.2d 1, ¶19 (2010).

Under the attenuation doctrine, the determinative issue is whether the evidence came about from the exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. Wong Sun v. United States, 371 U.S. 471, 488.

Based on a consideration of the relevant factors such as the amount of time elapsed, the presence of intervening circumstances, and the degree of the unlawful conduct, the evidence seized from Mr. Griffin's vehicle came about by direct exploitation of an unlawful and unreasonable seizure.

Mr. Griffin has argued that the initial investigatory stop as well as the extension of that stop both constitute an unlawful and unreasonable seizure.

a. Initial investigatory stop

If the court finds that the initial investigatory stop was not supported by reasonable suspicion and was unreasonable, the exclusionary rule would require suppression of any evidence seized from Mr. Griffin's vehicle.

The discovery of the gun came about by direct exploitation of the initial illegal seizure. Although time elapsed between the stop and the observance of the gun, there was no significant intervening event to break the chain of causation. The unlawful seizure produced the circumstances which put Officer Sanders in a place and at a time that allowed him to observe the gun in the backseat of the vehicle.

b. Extension of investigatory stop

If the court concludes that the initial

investigatory stop was reasonable but that it was unreasonably extended beyond its original purpose, the evidence seized from Mr. Griffin's vehicle must still be suppressed.

In that circumstance, the observance of the gun came soon after the moment that the seizure became unlawful, with little elapsed time and no intervening event. Officer Sanders was present and able to observe the gun only as a direct result of Officer Reed's unreasonable extension of the stop.

In either instance, Mr. Griffin asserts that the evidence recovered from his vehicle was recovered as a direct result of an unlawful seizure and search. Accordingly, the evidence should be suppressed.

CONCLUSION TO BRIEF AND ARGUMENT

Mr. Griffin respectfully requests that this court reverse the denial of his Motion to Suppress, vacate the judgment of conviction and permit the withdrawal of the plea, and remand for further proceedings.

Dated this 16th day of September, 2015.

Respectfully submitted,

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Certification of Brief Complaince with Wis. Stats. § 809.19(8)(b) and (c)

I hereby certify that this brief conforms to the rule contained in Wis. Stats. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 5476 words.

_____

Certification of Appendix Complaince with Wis. Stats. § Wis. Stats. 809.19(2)(a).

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 Wis. Stats. § 809.19(2)(a) and contains: (1) a table of content; (2) the findings or opinions of the trial court; (3) a copy of any unpublished opinion cited under Wis. Stats. § 809.23(3)(a) or (b); and (4) portions of the record essential to the 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 required by law to be confidential, the portions of the record included in the Appendix are reproduced using first names and last

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