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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2016AP2059

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SARA ANN PONFIL,

Defendant-Appellant.

On Notice of Appeal from a Judgment
Entered in the Brown County Circuit Court,
the Honorable Timothy A. Hinkfuss, Presiding

REPLY BRIEF

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ARGUMENT

Ms. Ponfil was seized without reasonable suspicion; the cocaine discovered by way of the seizure must therefore be suppressed.

Ms. Ponfil argued in her opening brief that the totality of the circumstances did not create a reasonable suspicion that she was committing a crime. Appellant's Brief at 5-9. She will not repeat those arguments here, particularly as the state's brief does not mention, much less refute them.

Ms. Ponfil does not disagree with the state's recitation of the law in the first two sections of its brief; all of it is well-settled. Respondent's brief at 1-2. Nor does she dispute the recitation of facts, which largely repeats her own. Respondent's brief at 1-3. On appeal, she is not relying on (indeed, did not even refer to) the defense exhibit which the state attacks as unpersuasive. Respondent's brief at 3. Regarding the state's brief discussion of *State v. Young*, 2006 WI 98, 294 Wis. 2d 1, 717 N.W.2d 729, she will only note that that case involved an important fact absent here: the officer observed five people remaining in their vehicle for five to ten minutes, late at night (which the court called "not usual," ¶63), before initiating the stop. Here, by contrast, Ms. Ponfil and her compatriots were observed in the parking lot of an open bar for only a minute or so before the officer stopped them.

In the end, the parties agree on both the facts and the law. The thrust of the state's brief is that the officer's observations add up to reasonable suspicion. Ms. Ponfil disagrees. As she said in her opening brief, what the officer came upon that night—a group of people lingering for a

minute in the parking lot of an open tavern, who reacted with concern to being spotlighted and approached by the police—was utterly ordinary. Regardless of the officer’s experience or any history of issues at Nic’s, the facts available to the officer did not justify a reasonable belief that Ms. Ponfil was committing a crime. The stop was unlawful and its fruits must be suppressed.

CONCLUSION

For the foregoing reasons, Ms. Ponfil respectfully requests that this court vacate her conviction and sentence and remand with directions that the cocaine be suppressed.

Dated this 24th 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 373 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 24th day of March, 2017.

Signed:

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