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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
Case No. 2017AP000003-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

JAMES R. STIB,

Defendant-Appellant.

On Notice of Appeal from a Judgment of Conviction
Entered in the Ozaukee County Circuit Court,
the Honorable Sandy A. Williams Presiding

BRIEF AND APPENDIX OF
DEFENDANT-APPELLANT

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ISSUE PRESENTED

Did police violate James Stib's constitutional right to be free from unreasonable searches and seizures by unlawfully prolonging a traffic stop for purposes of conducting a dog sniff?

During the traffic stop in this case, the officer conducting the stop discontinued the process of issuing a written warning after the canine unit he had requested arrived on scene. He then assisted the canine unit with a dog sniff and, after the dog alerted for the presence of drugs, searched the vehicle. The circuit court found that the officers did not prolong the stop for purposes of a dog sniff because, at the time the canine unit arrived, the officer conducting the stop was still in the process of issuing the warning.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The briefs will fully address the issue presented, so Stib does not request oral argument. *See* WIS. STAT. § 809.22(2)(b). He does not request publication because the case can be resolved by applying established legal precedent to the facts. WIS. STAT. § 809.23(1)(b)1., 3.

STATEMENT OF THE CASE AND FACTS

A. Allegations of the criminal complaint.

The State charged James Stib with possession of tetrahydrocannabinol (THC) as a second or subsequent offense, concealing a stolen firearm, resisting an officer, felon in possession of a firearm, and two counts of possession of

drug paraphernalia. (1:1-2; 5:2-3). According to the complaint, Trooper Brendan Braun of the Wisconsin State Patrol initiated a traffic stop of a vehicle traveling at eighty-one miles-per-hour on Interstate 43 (I-43) in the City of Mequon. Stib was the front seat passenger in the vehicle. The complaint alleged that, as the vehicle exited at the nearby off-ramp, Braun observed the vehicle appear to lose control. The vehicle then drove to a nearby gas station and stopped in the parking lot. (1:2).

The complaint further alleged that after stopping the vehicle, Braun called for a canine unit. After the canine unit arrived, the dog was deployed around the vehicle and alerted for the presence of a controlled substance. Braun then searched the vehicle. On the front passenger seat, he found a glass pipe that smelled like burnt marijuana. Under the same seat, he also found a metal grinder containing suspected marijuana. (1:2).

Following the discovery of these items, Braun attempted to take Stib into custody; however, Stib broke away from his grip and ran across the intersection into an empty field. (1:2-3). Stib was located and taken into custody about thirty minutes later. (1:3). Thereafter, Braun continued his search of the vehicle and discovered a coat containing a photo identification belonging to Stib and a small handgun that had been reported stolen. (1:3).

B. Plea and sentencing hearing.

On February 9, 2016, Stib pled guilty to concealing a stolen firearm and resisting an officer. (62:8-9). Pursuant to the parties' plea agreement, the State agreed to dismiss the remaining counts. (62:2, 9). That same day, the court, the Honorable Sandy A. Williams, conducted Stib's sentencing hearing. On the concealing a stolen firearm count, the court

withheld sentence and placed Stib on probation for three years. On the resisting an officer count, the court sentenced Stib to six months in the local jail. (62:19).

C. Motion to suppress and evidence at the suppression hearing.

Prior to pleading guilty, Stib filed a motion to suppress the evidence obtained as a result the traffic stop and subsequent vehicle search. He argued that the stop and search were unreasonable and therefore violated his Fourth Amendment rights. (12). Over a several-day period, the circuit court conducted an evidentiary hearing on the suppression motion. (55, 56, 57; App. 101-174). Two witnesses testified: Braun and Officer Brian Emmerich of the Cedarburg Police Department.

Braun testified that on the day in question, he was on duty in his squad car monitoring traffic on I-43 when he observed a vehicle traveling at a high rate of speed. (55:3; App. 103). Braun stated that he clocked the vehicle at eighty-one miles-per-hour with his radar gun. He then activated his emergency lights and pursued the vehicle. (55:4; App. 104).

According to Braun, as the vehicle was exiting the freeway at the next off-ramp, “the reverse lights briefly came on and then shut off” and the vehicle made “sort of a jerking motion.” (55:5; App. 105). Braun stated this caused him to believe “the driver might lose control briefly.” (55:5; App. 105). He also stated that he believed that the driver may have been “trying to hide something, taking [her] attention off controlling the vehicle and moving about the vehicle.” (55:5; App. 105).

Braun further testified that, after exiting the freeway, the vehicle drove to a nearby gas station and stopped in the

parking lot. (55:6; App. 106). Braun then made contact with the driver, and noted that two other passengers were in the vehicle. (55:6, 13; App. 106, 113). Stib was the front seat passenger. (55:9-10; App. 109-10). Braun stated he obtained the driver's license and returned to his vehicle to issue a citation and warning. (55:6, 13, 17; App. 106, 113, 117).

Before beginning this process, however, Braun contacted the Mequon Police Department and requested a canine to do a walk around of the vehicle. The Mequon Police Department responded that its canine was not available, so Braun contacted the Cedarburg Police Department, and they informed him their canine was available and would be dispatched to his location. (55:6-7; App. 106-07). Braun estimated that these calls took about two minutes to make. (55:7; App. 107).

Thereafter, Braun began the process of writing a citation and warning on his squad car's computer. (55:6-7; App. 106-07). Approximately five minutes later, however, Emmerich, the Cedarburg canine officer, arrived on scene. Braun stated that during this five-minute time period, he was working on filling out and printing the citation. (55:7; App. 107).

Braun testified that at that point, he stopped working on the warning, briefed Emmerich on the situation, and told him he wanted the canine deployed around the vehicle. (55:8; App. 108). He said this took less than a minute. (55:8; App. 108). Emmerich asked Braun to have the driver and passengers exit the vehicle before he deployed the canine. (55:8; App. 108). Braun then asked all the occupants to step out of the vehicle, explained what was going on to the driver, patted all occupants down for weapons, and had them stand outside while the canine was deployed. (55:8; App. 108). He

stated that this process took approximately two minutes. (55:8; App. 108). While Emmerich deployed the canine, Braun stood by with the driver and two passengers. (55:8; App. 108).

Braun further testified that after deploying the canine, Emmerich advised him that the dog had alerted on the vehicle. (55:9; App. 109). Braun then searched the vehicle. Inside, near the seatbelt buckle of the front passenger seat, he found a small black case with a pipe and marijuana inside. (55:9; App. 109). Under the same seat, he found a marijuana grinder with marijuana inside. (55:9; App. 109).

At that point, Braun decided to place Stib under arrest, since the marijuana and paraphernalia were found by his seat. (55:10; App. 110). When Braun put his hand on Stib's arm, however, Stib pulled away and started running across a field. (55:10; App. 110). Braun stated that approximately ten minutes had elapsed from the time he first made contact with the driver to the point where Stib fled the scene. (55:11; App. 111). He further stated that Stib was eventually located and arrested. (55:10; App. 110). After Stib was taken into custody, Braun completed the process of searching the vehicle and completing the traffic stop. (55:10-11; App. 110-11). He stated that he issued one citation for speeding and one warning for having a cracked windshield.¹ (55:11; 61:6-8; App. 111, 163-65).

Braun also testified that the typical traffic stop takes between ten and fifteen minutes. (55:11; App. 111).

¹ Braun originally testified that the warning was for obstructing. (55:11; App. 111). He later clarified, however, that the warning was for a cracked windshield. (61:6-8; App. 163-65; *see also* 15:2).

On cross-examination, Braun admitted that at the time he decided to stop the vehicle, he did not see anything that indicated the driver may have been impaired. (55:12; App. 112). He also stated that he did not see anything illegal going on inside the vehicle while he was following it or when it stopped in the gas station parking lot. (55:12; App. 112). He further testified that the car had valid plates, was registered to driver, and the driver had a valid license. (55:12-13; App. 112-13).

In addition, when Braun made contact with the driver, he did not see anything illegal or strange going on inside the vehicle. (55:13; App. 113). He also stated that the driver answered his questions in a logical and reasonable manner, and he did not smell drugs or alcohol in the vehicle. (55:13-14; App. 113-14). He specifically stated that there “was nothing that would have caused [him] suspicion to believe that there were drugs in the vehicle” based on his contact with the vehicle’s occupants. (55:14; App. 114).

At a continued hearing, Emmerich testified that he responded to the traffic stop in this case, along with a canine that had been trained in drug work. (56:4-5; App. 129-30). Upon arrival, he spoke with Braun, and Braun had the driver exit the vehicle and sit in the back of his squad car. (56:6; App. 131). Emmerich stated that at that point, he could see Stib “moving around in the car, looking back at us like he was worried about what we were doing.” (56:6-7; App. 131-32). He described these movements as follows:

Moving his hands around and stuff like that, kept looking back to the back seat passenger, looking out the windows to see what we were doing.

(56:7; App. 132). Emmerich also stated, however, that he could not actually see what Stib was supposedly doing with his hands. (56:7; App. 132).

Emmerich testified that Braun next had Stib and the other passenger exit the vehicle. (56:8; App. 133). Shortly thereafter, Emmerich walked the dog around the vehicle, and it alerted for the presence of a controlled substance. (56:8; App. 133). Thereafter, he and Braun searched the vehicle. (56:9; App. 134).

During the suppression hearing, the parties also stipulated to the admission of the squad cam video from Braun's vehicle, which was played in open court. (57:2-5; App. 144-47; *see also* 21, Ex. 2). The video shows that after Braun initiated the traffic stop, Emmerich arrived on scene approximately ten minutes after the vehicle stopped in the gas station parking lot. (21, Ex. 2 at 21:06:17 to 21:17:55). At that point, Braun stopped working on the citation and warning and proceeded to brief Emmerich and assist him with the dog sniff. In this regard, the video reflects that Braun had the vehicle's occupants step out of the car and frisked them one by one. He then stood by outside his squad car near Stib and the other passenger while Emmerich conducted the dog sniff. Emmerich completed the dog sniff approximately five minutes after he arrived on scene. (21, Ex. 2 at 21:17:55 to 21:23:07). At that point, Braun announced that he intended to search the vehicle because the dog had alerted. (21, Ex. 2 at 21:23:07 to 21:23:17).

Defense counsel argued that the evidence demonstrated that police had prolonged the stop for the sole purpose of conducting the dog sniff, which they lacked reasonable suspicion to do so. He further asserted that this type of police misconduct is expressly prohibited by the

United States Supreme Court decision *Rodriguez v. United States*, ___ U.S. ___, 135 S.Ct. 1609 (2015). (57:6-9; App. 148-51). In response, the State insisted that *Rodriguez* was distinguishable, as police here had reasonable suspicion to extend the stop due to the vehicle's "jerking motion" before it stopped and Stib's "furtive movements" inside the car after Emmerich arrived on scene. (57:5-6, 9-10; App. 146-48, 151-52).

The circuit court denied Stib's motion in an oral ruling. The court did not make any findings that there were actually "furtive movements" by Stib, as the State had suggested. (57:12; App. 154). Nor did the court conclude that the vehicle's "jerking motion" justified the dog sniff. Instead, the court reasoned that Braun had not actually prolonged the stop, because at the time Emmerich arrived on scene, Braun was still in the process of writing the citation and warning:

And from my notes, he has got – while writing the citation, the canine arrives and he stops writing the citation just to tell the Cedarburg Police Officer what he has and to have the driver and passenger step out of the vehicle. And there is a pat down and this is all, I think, appropriate. He is not prolonging the traffic stop just so the canine can go around the car. He still has not completed the actual traffic citation process by handing the citation, giving the license back, and allowing the person to go on their way.

(57:10-12; App. 152-54).

Stib subsequently filed a motion asking the circuit court to reconsider its decision. (28). In his motion, he asserted that the squad cam video reflects that prior to Emmerich's arrival, the sound of a citation printing can be heard in Braun's vehicle. He therefore argued that because

Braun had only needed to give the citation to the driver to complete the stop, he had unlawfully prolonged the stop for the sole purpose of conducting the dog sniff. (28:1-3).

At a subsequent evidentiary hearing, Braun testified that he had indeed finished writing the speeding citation and had printed it out. (61:6-7; App. 163-64). However, he also stated that after he finished the citation, he began working on a warning for a cracked windshield, and Emmerich arrived while he was still working on the warning. (61:7-8; App. 164-65). Based on this testimony, the circuit court denied Stib's motion for reconsideration. (61:12-13; App. 169-70).

This appeal follows.² (33; 48).

ARGUMENT

I. Police Violated Stib's Fourth Amendment Rights by Unlawfully Prolonging the Traffic Stop for the Sole Purpose of Conducting a Dog Sniff.

This case involved a routine traffic stop for a speeding violation. There was simply no reasonable basis to suspect that Stib – or anyone else in the car – was engaged in any type of criminal behavior. The police, however, extended the traffic stop in order to conduct a dog sniff, and they did so based on nothing more than a hunch. The extension of the stop was therefore unreasonable under the Fourth Amendment and the evidence it produced should be suppressed.

² A defendant may appeal an order denying a suppression motion despite a guilty plea. WIS. STAT. § 971.31(10).

A. General legal principles and standard of review.

The right to be free from unreasonable searches and seizures is guaranteed by the Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution. This court consistently follows the United States Supreme Court's interpretation of the Fourth Amendment in construing Article I, § 11. *State v. Betterley*, 191 Wis. 2d 407, 417, 529 N.W.2d 216 (1995).

“Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of [the Fourth Amendment]. *Whren v. United States*, 517 U.S. 806, 809 (1996); *State v. Harris*, 206 Wis. 2d 243, 258, 557 N.W.2d 245 (1996). “An automobile stop is thus subject to the constitutional imperative that it not be ‘unreasonable’ under the circumstances.” *Whren*, 517 U.S. at 809; *Harris*, 206 Wis. 2d at 258. Where an unreasonable traffic stop occurs, the remedy is to suppress the evidence it produced. *Harris*, 206 Wis. 2d at 254; *see also Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963).

A reviewing court applies a two-part test when reviewing the denial of a motion to suppress. *State v. Popp*, 2014 WI App 100, ¶ 13, 357 Wis. 2d 696, 855 N.W.2d 471. A circuit court’s findings of fact are upheld unless clearly erroneous, but the application of constitutional principles to the facts are reviewed *de novo*. *Id.*

B. Although the traffic stop had not been completed at the time the canine unit arrived, the dog sniff nevertheless prolonged the stop.

When a police officer stops a vehicle for a routine traffic violation, he is permitted to investigate that violation.

Rodriguez, 135 S.Ct. at 1614. A routine traffic stop is therefore “more analogous to a so-called ‘**Terry** stop’ . . . than to a formal arrest.” **Knowles v. Iowa**, 525 U.S. 113, 117 (1998). Like a **Terry** stop, the reasonableness of the duration of the officer’s investigation during a traffic stop “is determined by the seizure’s ‘mission’ – to address the traffic violation that warranted the stop . . . and to attend to related safety concerns. **Rodriguez**, 135 S.Ct. at 1614 (citing **Illinois v. Caballes**, 543 U.S. 405 (2005)).

In **Rodriguez**, the Supreme Court held that a traffic stop that was extended by seven or eight minutes for purposes of a dog sniff constituted an unreasonable and unconstitutional seizure. In that case, an officer stopped the defendant for driving on the highway shoulder. After attending to everything related to the stop, including checking driver’s license and issuing a warning for the traffic offense, the officer requested permission to walk his dog around the car. The defendant refused, so the officer detained him until a second officer arrived and then performed the dog sniff. The dog alerted to the presence of drugs. The officers then searched the vehicle and found a bag of methamphetamines. The defendant was charged with possession with intent to deliver and subsequently sought suppression of the drug evidence. **Id.** at 1613.

To determine whether the extension of the stop was reasonable, the Court in **Rodriguez** applied the following test:

Because addressing the infraction is the purpose of the stop, it may “last no longer than is necessary to effectuate th[at] purpose.” Authority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.

Id. at 1614 (internal citations omitted). In other words, absent reasonable suspicion that a crime has been committed, a routine traffic stop becomes unlawful “‘if it is prolonged beyond the time reasonably required to complete th[e] mission’ of issuing a warning ticket.” *Id.* at 1614-15 (citing *Caballes*, 543 U.S. at 407).

The *Rodriguez* Court noted that an officer’s mission of issuing a traffic ticket includes such typical inquiries as checking the driver’s license, determining whether there are outstanding warrants, and inspecting the vehicle’s registration and proof of insurance. *Id.* at 1615 (citing *Delaware v. Prouse*, 440 U.S. 648, 658-660 (1979)). The Court stated that a dog sniff, however, is not a routine part of a traffic stop, since it is “‘aimed at ‘detect[ing] evidence of ordinary criminal wrongdoing.’” *Id.* (citing *Indianapolis v. Edmond*, 531 U.S. 32, 40-41 (2000)).

The Court therefore rejected the notion that an officer may “‘incrementally” prolong a stop to conduct a dog sniff so long as the officer is reasonably diligent in pursuing the traffic-related purpose of the stop and the overall length of the stop remains reasonable. *Id.* at 1615-16. The Court also stressed that the critical issue “‘is not whether a dog sniff occurs *before* or *after* the officer issues a ticket, . . . but whether conducting the sniff ‘prolongs’ – i.e., adds time to – ‘the stop.’” *Id.* at 1616 (emphasis added).

In this case, the circuit court found that the stop was not extended for purposes of a dog sniff because Braun had not completed the process of writing the ticket and warning and giving them to the driver before Emmerich arrived at the scene. (57:11-12; App. 153-54). But again, *Rodriguez* makes clear that the relevant issue is not whether the dog sniff occurs before or after an officer issues a ticket. It is simply

whether the dog sniff adds time to the stop. The circuit court's decision was thus based on an incorrect interpretation of the law. Its ruling on Stib's suppression motion was therefore erroneous.

The undisputed facts in this case show that the dog sniff did, in fact, measurably prolong the duration of traffic stop. Braun testified that even before beginning the process of writing the citation and warning, he contacted two different police departments in an attempt to procure the assistance of a canine unit. (55:6-7; App. 106-07). These calls in-and-of-themselves prolonged the stop by approximately two minutes, according to Braun.³ (55:7; App. 107).

Additionally, after Emmerich arrived on the scene, Braun further prolonged the traffic stop by attending to the dog sniff, and not the mission of the stop itself. Braun testified that when Emmerich arrived, he stopped working on issuing the warning and began assisting Emmerich with the dog sniff. (55:8; App. 108). Specifically, Braun got out of his vehicle, briefed Emmerich on the situation, and told him where he wanted the canine deployed. (55:8; App. 108). Then, at Emmerich's request, Braun had all the occupants step out of the vehicle one-by-one, explained the situation to them, and frisked them for weapons. (55:8; App. 108). Braun also stood by outside his squad car near Stib and the backseat passenger while Emmerich deployed the dog. (55:8; App. 108). While Braun's actions may have been a necessary component of a proper dog sniff procedure (or an otherwise legitimate safety precaution), that does not change the fact

³ Braun later testified at the hearing on Stib's motion for reconsideration that he was running the driver's record and vehicle record while he was waiting for a response to his calls for a drug dog. (61:9-10; App. 166-70). However, his testimony still reflects that these calls added time to the stop. (55:7; 61:9; App. 107, 166).

that they served to prolong the traffic stop for the sole purpose of conducting the dog sniff. See *Rodriguez*, 135 S.Ct. at 1616 (“On-scene investigation into other crimes, however, detours from th[e mission of a traffic stop]. So too do safety precautions taken in order to facilitate such detours.”).

Braun’s squad cam video shows that just over five minutes elapsed from the time he started briefing Emmerich to the time Emmerich completed the dog sniff. (21, Ex. 2 at 21:17:55 to 21:23:07). During this entire time, Braun was not working on issuing the citation or warning, or any other matter typically associated with a routine traffic stop. Instead, his actions were entirely directed at assisting Emmerich with the dog sniff, and thereby prolonging the stop for that purpose. This five-minute extension of the stop, particularly when coupled with the two minutes Braun initially spent requesting a canine unit, is comparable to the seven-to-eight-minute extension from *Rodriguez*.

Again, the fact that the extension of the stop took place before Braun completed issuing the ticket and warning is immaterial. What matters is that the dog sniff in this case, like the one in *Rodriguez*, “measurably extended the duration of the stop.” See *Rodriguez*, 135 S.Ct. at 1615. Thus, at the moment Braun extended the stop by assisting with the dog sniff, the stop became unreasonable under the Fourth Amendment in the absence of any reasonable suspicion of criminal wrongdoing.

C. Police lacked reasonable suspicion to extend the traffic stop for purposes of a dog sniff.

In the context of a traffic stop, reasonable suspicion must be grounded on specific, articulable facts and reasonable inferences from those facts, that someone in the vehicle has

committed a crime. See *Harris*, 206 Wis. 2d at 259-60. As such, the extension of a traffic stop must be based on more than an “inchoate and unparticularized suspicion or ‘hunch,’” and simple good faith on the part of the officer is not enough. *Terry v. Ohio*, 392 U.S. 1, 22, 27 (1968). Determining whether an officer had reasonable suspicion involves an objective analysis of the totality of the circumstances, considering the facts in the record and rational inferences from those facts. *Ohio v. Robinette*, 519 U.S. 33, 34 (1996).

Here, the police lacked reasonable suspicion to believe that anyone in the vehicle had illegal drugs or was engaged in any other type of criminal activity. While Braun testified that the vehicle’s reverse lights briefly came on and the vehicle made a “jerking motion” as it exited the freeway, those facts alone did not provide a rational or logical basis to suspect that someone in the vehicle was in possession of illegal drugs or somehow involved in criminal activity. (55:5; App. 105). The squad cam video reflects that any “jerking motion” was brief and relatively minor, and that it occurred as the vehicle promptly exited the freeway in response to Braun’s signal to pull over. (21, Ex. 2 at 21:06:17 to 21:07:22).

Furthermore, Braun testified that at the time he decided to stop the vehicle, he did not see anything that indicated the driver may have been impaired. (55:12; App. 112). He also did not see anything illegal going on inside the vehicle as he was following it or when it stopped. (55:12; App. 112). He further stated that the car had valid plates, was registered to the driver, and that the driver had a valid license. (55:12-13; App. 112-13).

Additionally, when Braun made contact with the driver, he did not observe anything illegal or strange in the vehicle. (55:13; App. 113). The driver answered all his

questions in a logical and reasonable manner. (55:13-14; App. 113-14). He also did not smell drugs or alcohol inside the vehicle. (55:14; App. 114). In fact, he testified that there “was nothing that would have caused [him] suspicion to believe that there were drugs in the vehicle” based on his contact with its occupants. (55:14; App. 114). Thus, based on the totality of the circumstances in this case, the brief “jerking motion” of the vehicle did not provide reasonable suspicion that any of its occupants were in possession of illegal drugs or engaged in any other criminal behavior.

Stib’s alleged movements in the car after it parked in the gas station parking lot also did not provide a reasonable basis to extend the stop for purposes of a dog sniff. On this point, Emmerich testified that he observed Stib make the following movements inside the car:

Moving his hands around and stuff like that, kept looking back to the back seat passenger, looking out the windows to see what we were doing.

(56:7; App. 132).

As an initial matter, Emmerich did not even make these observations until after he had arrived on scene, had spoken to Braun, and Braun had had the driver exit the vehicle in preparation for the dog sniff. (56:6-7; App. 131-32). The extension of the traffic stop was therefore already in progress at the time of Stib’s alleged “furtive movements.” Thus, as a matter of law (and common sense), these actions could not have provided reasonable suspicion to extend the stop.

Notwithstanding the temporal problems with the State’s claim in this regard, Stib’s movements were simply not suspicious. They were normal, innocuous actions that any

person might engage in if they were sitting in a car that had just been pulled over by police, particularly if another officer had inexplicably arrived on scene with a drug dog. To permit the extension of a traffic stop under these circumstances – where the occupant of a vehicle simply failed to remain perfectly still for the entire duration of the stop – would expand the notion of reasonable suspicion so far as to render it meaningless.

CONCLUSION

The extension of the traffic stop in this case was unreasonable and unconstitutional. Stib therefore respectfully requests that this court reverse the decision and judgment of the circuit court, order that he be permitted to withdraw his guilty pleas, order the evidence obtained as a result of the unlawful traffic stop to be suppressed, and remand the case to the circuit court for further proceedings.

Dated this 20th 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 4,479 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 20th 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; and (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.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 20th day of March, 2017.

Signed:

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