

STATE OF WISCONSIN

COURT OF APPEALS  
DISTRICT II

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State of Wisconsin,  
Plaintiff-Respondent,

Case No. 2017AP000331 CR

V.

Michael A. Johnson,  
Defendant-Appellant.

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REPLY BRIEF OF DEFENDANT-APPELLANT

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ON NOTICE OF APPEAL FROM THE ORDER DENYING DEFENDANT'S  
MOTION TO SUPPRESS EVIDENCE  
CALUMET COUNTY CIRCUIT COURT  
THE HONORABLE JEFFREY S. FROELICH, PRESIDING

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**CASES CITED**

State v. Williams, 2002 WI 94, 255 Wis. 2d 1,  
646 N.W.2d 834

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I. Argument

1. A reasonable person would not have felt free to leave in Mr. Johnson's situation.

In its brief, the State argues that an appellate court must give deference to a trial court's findings of fact unless clearly erroneous. St's Br. 11. That is well-settled law which Johnson does not dispute. However, insofar as this case is concerned, Mr. Johnson stands by the accuracy of his original testimony regarding what occurred on December 19, 2015, specifically that he made a series of refusals in response to Officer Baldwin's repeated requests to search his vehicle. Furthermore, while Mr. Johnson acknowledges that the trial court in fact did call into question the accuracy of some of his testimony, it never went so far as asserted by the State to conclude that his overall testimony was "not credible." St's Br. 11.

With regards to the issue of whether a seizure had occurred, the State asks this court to review the findings and facts outlined in State v. Williams, 2002 WI 94, 255 Wis. 2d 1, 646 N.W.2d 834. St's Br. 13. Undeniably, similarities exist between the two cases. Nevertheless, Mr. Johnson maintains now, as he did in his brief-in-chief, that the *repeated* nature of Officer Baldwin's requests to

search his vehicle remain a significant difference between the two cases and ultimately the main reason why Mr. Johnson possessed a reasonable belief that he was not free to leave the scene.

**II. Conclusion**

For the reasons stated above, Mr. Johnson respectfully requests that this court find that an illegal seizure occurred and that the evidence obtained following said seizure be suppressed.

Dated at Oshkosh, Wisconsin, this \_\_\_\_\_ day of July, 2017.

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## CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8) (b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 2 pages.

I further certify pursuant to Wis. Stat. § 809.19(b) (12) (f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief, ***other than the appendix material is not included in the electronic version.***

I further certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 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 s. 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 first names and last initials 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.

I further certify that on the date of signature I routed this brief to our office station for first class US Mail Postage to be affixed and mailed to:

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Dated this \_\_\_\_\_ day of July, 2017 at Oshkosh,  
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