STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2017AP1397-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

LINDSEY DAWAYNE NEAL,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE TIMOTHY M. WITKOWIAK, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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ISSUE PRESENTED[1]

Did the circuit court properly deny Neal's motion to suppress evidence of drug-dealing found on Neal after police arrested him for running away from a traffic stop?

The circuit court watched the squad car video and determined that police had a lawful basis to stop the car and to get Neal out of it, and the minute-and-15-second duration of the stop before Neal's flight was reasonable. The court then found that the officers properly arrested Neal after he ran and denied the motion.

This Court should affirm the circuit court.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. This case deals only with the application of well-

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[1] The State has reframed the issue, because Neal's statement of the issue ignores the crucial fact that all of the evidence against Neal was uncovered during a search incident to arrest after he fled from police. Neal asserts that four separate Fourth Amendment events occurred here and claims that the issue is whether the State established reasonable suspicion supporting each component part of the stop. (*See* Neal's Br. 9.) But none of evidence introduced against Neal was uncovered during his frisk or the protective search of the car. It was all recovered during his lawful search incident to arrest. The only relevant questions on appeal, then, are whether the police had reasonable suspicion for the initial stop, and if so, whether the ordinary inquiries of a traffic stop should have been completed in the minute and 15 seconds before Neal's flight from police. *See Rodriguez v. United States*, 135 S. Ct. 1609 (2015). In other words, if the initial seizure was lawful, the only remaining question is whether Neal should have been released before the point when he ran. The State therefore addresses only whether the stop was lawful and ongoing when Neal fled.

settled law to the facts, which the briefs should adequately address.

INTRODUCTION

A minute and 15 seconds after Milwaukee police initiated a traffic stop for a parking violation on the car Neal was sitting in, he pulled away from police and fled the scene. Police chased Neal and, after they arrested him for obstructing an officer, he admitted he had crack cocaine in his pocket. Police found 3.77 grams of crack and over $1500 in Neal's pockets. He moved to suppress the evidence, claiming that neither the stop nor any successive action by the officers was supported by reasonable suspicion, and therefore he was unlawfully seized at the time he fled. The circuit court denied his motion.

As he did below, Neal advances a series of inapposite arguments about irrelevant components of the stop in an attempt to paint the minute-and-15-second stop as "unreasonably extended" under the Fourth Amendment. But the plain facts are these: 1) the squad car video shows that police had reasonable suspicion to believe a parking violation was being committed; 2) the squad car video also shows unequivocally that Neal fled long before the "ordinary incidents" of a traffic stop reasonably could have been completed—in other words, Neal fled while he was still lawfully seized; and 3) all of the evidence against Neal was discovered pursuant to his lawful search incident to arrest for obstructing, and not as a result of any police actions before Neal fled. Consequently, there was no Fourth Amendment violation that led to the discovery of the evidence, and the circuit court properly denied Neal's suppression motion. This Court should affirm the circuit court.

STATEMENT OF THE CASE

A. Traffic stop and Neal's arrest.

On April 21, 2016, Milwaukee police officers Sean Mahnke, Mark Dillman, and Ismar Kulenovic were on patrol in a squad car. (R. 1:1.) While driving through an alley, they came upon a silver Toyota parked with its lights off in the middle of the alley, thus blocking traffic. (R. 1:1–2.) The officers activated their emergency lights and walked toward the Toyota to investigate the parking violation. (R. 1:2.) The entire stop was recorded by the squad car's dashboard camera. (*See* Ex. 1.)

The driver, David Kendle, was known to police for carrying firearms. (R. 8:2.) The officers spoke to the two occupants of the Toyota and asked them to get out of the car. (R. 1:2.) The officers asked Kendle and Neal, the passenger, if they had any guns, and they both said no. (R. 8:2.) The officers patted them down for weapons, and moved them to the back of the Toyota. (*See* R. 8:2; Ex. 1 1:06–1:29.) While Dillman and Kulenovic were talking to Neal and the driver, Mahnke found a gun under the front passenger seat. (R. 1:2.) The officers moved to handcuff Neal and Kendle, but Neal pulled away. (Ex. 1 1:44; R. 1:2.) Neal scuffled momentarily with the officers and then broke free and ran away. (Ex. 1 1:45–2:02.) The duration of the seizure from the time Neal stepped out of the car to when Neal began fighting the officers was 34 seconds. (*See* Ex. 1 1:12–1:46.) The total time from when the officers activated their emergency flashers to the beginning of Neal's struggle with the officers was a minute and 15 seconds. (*See* Ex. 1 0:15–1:46.) Two officers ran after Neal while a third stayed with Kendle. (*See* Ex. 1 1:58–3:00.)

Kulenovic tased Neal while chasing him and Neal fell, which allowed the officers to arrest him. (R. 1:2.) Shortly after his arrest Neal told the officers that he had crack

cocaine in his pants pocket. (R. 1:2.) Kulenovic found 3.77 grams of crack and $1518 in Neal's pockets. (R. 1:2.) Kendle was issued a parking citation and released from the scene. (R. 8:2.) Neal was taken to the police station for booking. (R. 8:2.) The State charged Neal with one count of possession with intent to deliver cocaine, and one count of obstructing an officer. (R. 1:1.)

B. Motion to suppress and subsequent hearings

Neal filed a motion to suppress "anything obtained as a result of the stop, frisk and arrest of the defendant and his vehicle." (R. 7:1.) As grounds, Neal claimed that (1) the officers did not have reasonable suspicion that he had violated any traffic laws that justified the stop, and (2) that neither "the officers conduct during the stop nor the extent of the stop was justified." (R. 7:3.) Neal argued that the car was not violating any traffic or parking laws. (R. 7:3.) He also argued that the police acted unreasonably in approaching the car instead of honking at them to get them to move the Toyota. (R. 7:3.) He then claimed that even if the car had been lawfully stopped, all the officers were allowed to do was ask them what they were doing and tell them to move on, and all further actions were beyond the scope of the stop. (R. 7:3–4.) Finally, he asserted that his arrest was unlawful because it occurred "after the protective search of the car." (R. 7:5.) He failed to mention his fight with and flight from the officers or discuss the duration of the stop. (R. 7:5.)

In a written response, the State said that the stop was justified by the Toyota's being illegally parked "in such a manner as to obstruct traffic" in violation of Milwaukee, Wis., Traffic Code, 101-24.2 (2016). (R. 8:3.) It then argued that the totality of the circumstances led to a reasonable suspicion that either Kendle or Neal could be armed,

justifying the frisk; but noted that nothing was found during the frisk, so there was nothing to suppress even if the frisk was unjustified. (R. 8:3–4.) The State also pointed out that because Neal was not the owner of the car he did not have standing to challenge the search of the Toyota, but the same facts justifying the frisk justified the protective search of the car. (R. 8:4.) Finally, the State argued that Neal created probable cause for his arrest for obstructing an officer when he fled from the police and told them he had drugs in his pocket, and that the cocaine was recovered during a search incident to his lawful arrest. (R. 8:4–5.)

The circuit court held a hearing and denied Neal's motion. (R. 45; 46.) There, Neal argued that Milwaukee, Wis., Traffic Code, 101-24.2 (2016) did not apply because although the Toyota was parked in the middle of the alley, no one else was trying to get through at the time. (R. 45:6–8.) Ergo, Neal claimed, because the Toyota was not actively blocking any traffic when the police arrived, there was no parking violation. (R. 45:8–9.) He alternatively argued that the Toyota was not parked "in such a manner as to obstruct traffic" because a car could conceivably have driven around the Toyota on the other side of the alley. (R. 45:4–6.) The court rejected those arguments and found that based on the language of the statute, parking in the alley in a way that did not allow two cars to proceed through it in opposite directions was parking "in such a manner as to obstruct traffic." (R. 45:10–11.)

The State then argued that with the court's ruling on the lawful basis for the stop, there was no need for further argument. (R. 45:11.) Specifically, the State explained that the frisk did not uncover anything so there was nothing to suppress regardless of its legality, and Neal created probable cause for his own arrest by fleeing while the lawful stop was still underway. (R. 45:11.) Neal then admitted to having drugs, which also supported probable cause for his arrest.

(R. 45:11.) Neal disputed this, claiming that all of the officers' actions exceeded the scope of the traffic stop. (R. 45:13–14.) The court watched the squad car video and disagreed with Neal, noting that the case law says that a person cannot be stopped for an unreasonable amount of time, and this stop lasted only about a minute before Neal fled. (R. 45:11–15.) Neal requested that the officers be brought in to testify about the details of the stop. (R. 45:14.) The circuit court gave Neal the opportunity to submit case law indicating that a passenger cannot be stopped even for that short period of time, but said that if Neal could not do so there was no need for the officers' testimony because the squad video would leave no room for dispute about the legality of Neal's arrest. (R. 45:16.) Neal asked for additional briefing, and the circuit court granted the request. (R. 45:19.)

Neal subsequently argued that each individual police action after the stop was a separate Fourth Amendment event that required a weighing of the public interest served by the action against the incremental liberty intrusion. (R. 13:2–3.) He also claimed that the stop was "unreasonably prolonged" because the officers "could have asked the drivers two questions and ended the stop." (R. 13:3.) Neal acknowledged that officers potentially also needed time to write a citation, but did not evaluate whether a minute and 15 seconds was too long for the officers to have done so. (R. 13:3.) He then argued that taking him out of the car was a separate seizure from the traffic stop, that the frisk after he was out of the car was illegal, that his detention while officers searched the car was illegal, and that Neal should have been immediately released from the scene after his pat down revealed nothing. (R. 13:4.) Shortly thereafter, Neal also submitted an "addendum letter" to his motion,

attaching the Seventh Circuit's now-vacated[2] opinion in *United States v. Randy Johnson*, 823 F.3d 408 (7th Cir. 2016). There, Judge Hamilton had dissented from the majority opinion rejecting Johnson's claim that he had been unlawfully seized when the police approached him for parking within 15 feet of a crosswalk. (R. 16:2.) Neal urged the court to follow the reasoning in Judge Hamilton's dissent. (R. 16:4.)

The State responded, noting that the only issue the court had ordered briefing on was whether Neal's detention became unlawful at some point before he ran. (R. 14:1.) The State argued that the United States Supreme Court in *Arizona v. Johnson*[3] had held that a traffic stop lawfully seizes the passengers for the entire reasonable duration of the stop. (R. 14:1.) There, the Court held that "[p]olice actions, including questioning or a frisk for weapons, that are unrelated to the lawful basis of the stop 'do not convert the encounter into something other than a lawful seizure, so long as [they] do not measurably extend the duration of the stop.'" (R. 14:2 (quoting *Arizona v. Johnson*, 555 U.S. 323, 333–34 (2009)).) The State then argued that though there was no bright-line rule for the reasonable duration of a traffic stop, "it is certainly much longer" than the minute and 15 seconds before Neal's flight here, noting that the Wisconsin Supreme Court had found 11 minutes to be a reasonable amount of time. (R. 14:2.) The State concluded that "[t]herefore, the Defendant in this case was lawfully

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[2] The case was reheard *en banc* and the court again determined that police had reasonable suspicion of a parking violation that justified the stop of Johnson's car. *See United States v. Johnson*, 2017 WL 4855658 (7th Cir. Oct. 27, 2017). Judge Hamilton dissented, joined by Judges Rovner and Williams. *Id.*

[3] *Arizona v. Johnson*, 555 U.S. 323 (2009).

seized at the time he fled because the duration of a reasonable stop had not yet expired." (R. 14:2.)

On September 27, 2016, the court in an oral ruling again denied Neal's motion. (R. 46:3.) It distinguished Hamilton's dissent in *Johnson* on the grounds that the ordinance there had a provision that it is legal to stop a car within 15 feet of a crosswalk if people are getting in and out of the car. (R. 46:2.) Hamilton's dissent in that case rested on his determination that the officers had not observed the car long enough to determine that the car was violating the ordinance. (*Id.*) The court noted that the ordinance at issue here never permitted parking so as to obstruct traffic and found that the dissent in *Johnson* was therefore unpersuasive. (R. 46:2–3.) The court then acknowledged that case law indicates that a passenger can be stopped for the duration of a traffic stop as long as the initial stop is legal. (R. 46:3.) The court found that

> The only issue is the duration, the duration of the stop itself can't be extended. In this case it was not a very long stop. The defendant did then, after a short period of time, decided to leave the scene.
>
> The Court is going to find that the stop itself, it was of a reasonable duration, and that, therefore, The Court will deny the defense motion.

(R. 46:3.)

C. The plea and sentence

After the circuit court's ruling Neal reached a plea agreement with the State. (R. 21:2.) In exchange for Neal's guilty plea to the two charges, the State agreed to recommend two years of initial confinement and two years of extended supervision. (R. 21:2.) The court accepted his plea (R. 47) and sentenced Neal to an imposed-and-stayed sentence of two and a half years of initial confinement and two and a half years extended supervision on count one

(R. 48:21.) It placed Neal on three years of probation with five months in the house of corrections on that count. (R. 48:22.) It then sentenced Neal to one month in the house of corrections on count two, consecutive to count one. (R. 48:22.) Neal appeals the circuit court's denial of his suppression motion.

STANDARD OF REVIEW

This Court applies a two-step standard of review to issues concerning the suppression of evidence. *State v. Scull*, 2015 WI 22, ¶ 16, 361 Wis. 2d 288, 862 N.W.2d 562 (citation omitted). The circuit court's findings of fact are upheld unless clearly erroneous. *Id.* The application of constitutional principles to those facts is reviewed de novo. *Id.*

ARGUMENT

The circuit court properly denied Neal's suppression motion because the squad video clearly shows that Neal fled from police, creating probable cause for his arrest and a search incident to arrest, before the lawful traffic stop had terminated.

A. The initial stop was lawful because the squad video shows that police had reasonable suspicion that the Toyota was illegally parked.

1. Relevant law

"The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution protect people from unreasonable searches and seizures." *State v. Young*, 2006 WI 98, ¶ 18, 294 Wis. 2d 1, 717 N.W.2d 729 (footnotes omitted). A traffic stop is a seizure. *State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118,

765 N.W.2d 569. A seizure is reasonable if the officer can point to specific and articulable facts that would lead the officer, in light of the officer's training and experience, to reasonably suspect that the individual violated the law, including parking offenses. *See United States v. Shields*, 789 F.3d 733, 745 (7th Cir. 2015); *State v. Pugh*, 2013 WI App 12, ¶ 10, 345 Wis. 2d 832, 826 N.W.2d 418; *see also* Wis. Stat. § 345.20(1)(b). "[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops." *State v. Houghton*, 2015 WI 79, ¶ 30, 364 Wis. 2d 234, 868 N.W.2d 143. "[A] lawful stop of a vehicle is lawful as to any occupant of the vehicle." *State v. Griffith*, 2000 WI 72, ¶ 27, 236 Wis. 2d 48, 613 N.W.2d 72 (citation omitted).

The State carries the burden of proving that a traffic stop was reasonable. *State v. Post*, 2007 WI 60, ¶ 12, 301 Wis. 2d 1, 733 N.W.2d 634 (citation omitted). In reviewing whether reasonable suspicion supported an investigatory stop, courts employ a commonsense approach, *State v. Rutzinski*, 2001 WI 22, ¶ 15, 241 Wis. 2d 729, 623 N.W.2d 516 (citations omitted), "examining the totality of the circumstances, eschewing bright-line rules and emphasizing instead the fact-specific nature of the reasonableness inquiry." *State v. Sumner*, 2008 WI 94, ¶ 20, 312 Wis. 2d 292, 752 N.W.2d 783.

2. The Toyota was parked "in such a manner as to obstruct traffic" in violation of Milwaukee, Wis., Traffic Code, 101-24.2 (2016).

Here, the officers had reasonable suspicion to believe that the Toyota was illegally parked. Milwaukee, Wis., Traffic Code, 101-24.2 (2016) prohibits vehicles from being "parked or left standing . . . in such a manner as to obstruct traffic." Milwaukee, Wis., Traffic Code, 101-24.2 (2016). The parties do not dispute that Neal "was seized when he exited

the vehicle at the officers' command." (Neal's Br. 18.) However, Neal claims that police could not have reasonably suspected the Toyota was violating the ordinance in order to lawfully seize the car because "there was no traffic in the area being blocked by the Toyota" and "there appears to be sufficient space for traffic to drive around the Toyota on the driver's side." (Neal's Br. 12–13.) Neal is wrong.

As the circuit court correctly determined, the plain language of the ordinance does not require traffic to be actively coming down the alley at the time for a parking violation to occur. (R. 45:9.) The person simply has to be parked in a "in such a manner so as to obstruct traffic." The only reasonable reading of "in such a manner so as to obstruct" is that a person violates the ordinance if they park in a way that would obstruct traffic if any came through. The ordinance would be completely ineffective at preventing traffic from being blocked if the police could only enforce it once traffic was *already* blocked. It would also be inefficient; police who saw a car they knew would block traffic would have to wait until a car came by and was blocked before they could ticket the parked car. That is not a reasonable reading of the ordinance.

Neal's argument that the Toyota was not parked "in such a manner so as to obstruct traffic" because a car could have possibly driven around the Toyota on the driver's side is likewise meritless. (Neal's Br. 12.) The ordinary, dictionary meaning of "obstruct" is 1) "to block or close up by an obstacle," 2) "to hinder from passage, action, or operation." *https://www.merriamwebster.com/dictionary/obstruct*. As the circuit court again correctly observed and as the squad video shows, in this alley there could potentially be cars going in both directions. (R. 45:5; Ex. 1 0:25.) Because of the Toyota, "you couldn't have that happen unless his car was moved." (R. 45:6.) The manner in which the Toyota was parked would "hinder" the passage of cars

down the alley. The fact that cars might have been able to pass the Toyota (on the wrong side of the alley if the traffic was coming from the same direction as the Toyota), does not mean the Toyota was not obstructing the alley. The Toyota did not have to completely block traffic in both directions in order to "obstruct" it. And the squad video clearly shows that the Toyota was parked in the main thoroughfare of the alley. (*See* Ex. 1 0:30.) At the very least, the Toyota was parked in a manner that blocked traffic in one direction.

Consequently, the squad video shows that police had specific and articulable facts that led to reasonable suspicion to believe that the Toyota was illegally parked in such a manner so as to obstruct traffic. *See Pugh*, 345 Wis. 2d 832, ¶ 10. (*See also* Ex. 1 0:30.) Neal's seizure for an investigatory stop of the parking violation was lawful.

B. A minute and fifteen seconds is a reasonable duration for an investigatory stop of a parking violation pursuant to *Rodriguez*, therefore Neal was still lawfully seized when he fled.

1. Relevant law

Because the initial seizure of the Toyota was supported by reasonable suspicion, the only remaining question is whether the police unreasonably extended the stop beyond the time necessary to complete the "ordinary inquiries" of a traffic stop before Neal fled.[4] *See Rodriguez v.*

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[4] Neal is correct that police officers need reasonable suspicion that a person is armed and dangerous to frisk the person for weapons. (Neal's Br. 13.) But here, it is irrelevant whether the police had reasonable suspicion to frisk Neal. None of the evidence against Neal was uncovered during the frisk. Therefore, reasonable suspicion or not, the frisk only matters here if: 1) police unlawfully extended the stop beyond the time it should

United States, 135 S. Ct. 1609, 1615 (2015). "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *Id.* at 1614 (citation omitted). The stop may last no longer than necessary to effectuate the purpose of the traffic stop, i.e., addressing the infraction that is the purpose of the stop. *Id.* "A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission." *Illinois v. Cabales*, 543 U.S. 405, 407 (2005).

The "mission" of any traffic stop, however, also includes all "ordinary inquiries" such as "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 (citation omitted). In addition, because an officer's safety interest stems from the mission of a traffic stop, an officer may take "certain negligibly burdensome precautions" to safely complete the mission. *Id.* at 1616. These include asking the occupants to step out of the car. *See Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977) (creating a bright-line rule that officers are entitled to have occupants exit a

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have taken to write a parking citation and perform the other ordinary inquiries of a traffic stop to perform the frisk; and 2) because of that extension, Neal was unlawfully seized when he ran. As the State will show, neither condition exists. The same is true for the protective search of the car, although as Neal admitted in the circuit court but has apparently ignored on appeal, as a non-owner passenger Neal does not have standing to challenge the search of the Toyota. *Rakas v. Illinois*, 439 U.S. 128, 149 (1978). Therefore, State does not directly address Neal's arguments about the propriety of the frisk or the search of the Toyota.

lawfully stopped vehicle even if there is nothing unusual or suspicious about their behavior); *Maryland v. Wilson*, 519 U.S. 408 (1997) (extending the *Mimms* rule to passengers). They also include the use of handcuffs while officers investigate the scene where particular facts "justify the measure for officer safety or other concerns." *State v. Pickens*, 2010 WI App 5, ¶ 32, 323 Wis. 2d 226, 779 N.W.2d 1. The officer's authority to seize an individual "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez*, 135 S. Ct. at 1614.

2. Neal was still lawfully seized when he ran from police.

Neal created probable cause for his arrest for obstruction by fleeing. *See Young*, 294 Wis. 2d 1, ¶¶ 76–77 (fleeing from a lawful seizure that is based on reasonable suspicion creates probable cause to arrest the person for obstruction). This occurred 34 seconds after the officers removed him from the car, and a minute and 15 seconds into the entire encounter. (Ex. 1 1:11–1:46.) This is long before the ordinary inquiries of the traffic stop "reasonably should have been" completed. *Rodriguez*, 135 S. Ct. at 1614. As the squad video shows, just getting Neal and Kendle out of the car took 40 seconds. (*See* Ex. 1 0:15–1:11.) To conclude that this stop should have been completed before Neal fled, then, this Court would have to hold that all of the other ordinary incidents of a traffic stop, including writing the citation, reasonably should have been completed sometime in the remaining 35 seconds. (*See* Ex. 1 1:11–1:46.) *State v. Floyd*, 2017 WI 78, ¶ 18, 377 Wis. 2d 394, 898 N.W.2d 560 (when assessing whether the duration of a traffic stop is reasonable the Court's "task is to espy the point at which the traffic stop should have ended and assess how the search is related to that point"). That would simply not be a reasonable conclusion.

Neal's arguments about the propriety of the frisk and the protective search of the car are red herrings. (*See* Neal's Br. 13–17.) Nothing was found during the frisk, so there is nothing to suppress even if it was unsupported by reasonable suspicion. (R. 8:4.) Further, passengers who are not owners of the vehicle do not have standing to challenge a search of a vehicle, *Rakas v. Illinois*, 439 U.S. 128, 149 (1978), and anyway, nothing found in the car was introduced against Neal. (*See* R. 1:1–2.) Consequently, the only way the frisk or the search have any relevance to the issue here is if the officers unreasonably prolonged the traffic stop in order to perform them, such that Neal should have been free to leave before he fled. *See Johnson*, 555 U.S. at 333 ("An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop.").

And based on the squad video, there is no other reasonable conclusion than that Neal was still lawfully seized when he fled, regardless of the legality of the frisk and the search of the car. (*See* Neal's Br. 13–17.) There is no question that the police were entitled to have Neal and Kendle exit the vehicle. *Mimms*, 434 U.S. at 111. And while "the use of handcuffs substantially increases the intrusiveness of a *Terry* stop," *Pickens*, 323 Wis. 2d 226, ¶ 30, it "does not necessarily render a temporary detention unreasonable, nor does it necessarily convert that detention into an arrest." *Id.* ¶ 32. Here, particular facts "justif[ied] the measure for officer safety or similar concerns." *Id.* The officers were familiar with Kendle and knew he frequently carried guns and associated with people who carried guns. (R. 8:2.) Kendle and Neal had just lied to them about having a gun. (R. 8:2.) Under these circumstances, handcuffing Kendle and Neal was a reasonable precaution "to protect

themselves, secure the site, and 'preserve the status quo'" while they performed the other ordinary inquiries of a traffic stop and wrote the citation. *State v. Vorburger*, 2002 WI 105, ¶ 66, 255 Wis. 2d 537, 648 N.W.2d 829.

As soon as officers attempted to handcuff Neal he began resisting and fled, creating probable cause for his arrest for obstructing an officer. *See Young*, 294 Wis. 2d 1, ¶¶ 76–77. And his lawful arrest then allowed the police to conduct a wholly constitutional search of Neal's person incident to that arrest, *State v. Sykes*, 2005 WI 48, ¶ 14, 279 Wis. 2d 742, 695 N.W.2d 277, which is when they found the drugs and the money. Neal was still lawfully seized when he fled. The circuit court properly denied Neal's suppression motion.

Neal's arguments to the contrary are meritless and unsupported in law. According to Neal, all the officers could do in relation to this investigatory stop was tell them to move the car or write a ticket. (Neal's Br. 18.) This claim ignores controlling Wisconsin and United States Supreme Court precedent. *Mimms*, 434 U.S. at 111; *Rodriguez*, 135 S. Ct at 1615; *Floyd*, 377 Wis. 2d 394, ¶¶ 21–22; *State v. Hogan*, 2015 WI 76, ¶ 34, 364 Wis. 2d 167, 868 N.W.2d 124. As explained, the mission of any traffic stop includes the "ordinary inquiries" such as "checking the driver's license, determining whether there were outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Rodriguez*, 135 S. Ct at 1615. Neal makes no argument that the police should have completed all of these "ordinary inquiries" of a traffic stop in the 35 seconds after they asked Neal to get out of the car and before Neal fled. (*See* Neal's Br. 17–18.) In fact, he wholly omits any mention of the ordinary inquiries of a traffic stop or any discussion of Wisconsin cases about what a "reasonable duration" to complete them is. *See, e.g.*, *Hogan*, 364 Wis. 2d 167, ¶¶ 11–18, 37, 53 (ordinary inquiries of a

traffic stop for a seatbelt violation were completed 13 minutes later when officer had run the occupants' licenses, checked for warrants, and completed the citations; therefore extending the stop beyond that point for sobriety tests without reasonable suspicion the driver was intoxicated was unreasonable).

But even if Neal were correct that the officers could ask them to move the car or write a citation only, his argument would fail. A minute and 15 seconds is not an unreasonable duration of time to write a parking citation. *Cf. Hogan*, 364 Wis. 2d 167, ¶¶ 37, 53 (thirteen minutes not unreasonable for investigation of a seatbelt violation); *State v. Salonen*, 2011 WI App 157, ¶ 15, 338 Wis. 2d 104, 808 N.W.2d 162 (eleven minutes not unreasonable for investigation of a speeding violation). Indeed, Neal does not put forth any real argument that 75 seconds is unreasonable. (*See* Neal's Br. 17–18.) Instead, he summarily proclaims that the officers' "extended" the stop to conduct the frisk and the search "beyond the time necessary to fulfill the purpose" of the stop. (*Id.*) But he does not even attempt to explain how or why the police should have completed the investigation and issued the citation in under 75 seconds. (*Id.*) He does not identify any point at which the investigation should reasonably have ended before Neal began resisting, nor even make a suggestion of how long the citation should have taken to complete. (Neal's Br. 18.) Neal's conclusory proclamation that the 75 second seizure outlasted the time reasonably necessary to complete a citation does not make it true.

In sum, the officers did not unreasonably prolong the stop. The officers had reasonable suspicion that a parking violation was occurring. They had authority to order Neal and Kendle out of the car. It took them 40 seconds to get Neal and Kendle out of the car. And 35 seconds later, before the officers even had enough time to begin writing the

citation let alone finish all of the ordinary inquiries of a traffic stop, Neal fled. The frisk and the car search are irrelevant; no evidence was obtained from them, and as the video shows, they also took place before the ordinary incidents of a traffic stop could be completed. Consequently, Neal was still lawfully seized when he ran from police and created probable cause for his arrest. Neal's arrest for fleeing during a lawful traffic stop then allowed the subsequent search incident to arrest where the officers found the drugs and the money. The circuit court properly denied Neal's suppression motion.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the decision of the circuit court.

Dated this 14th day of November, 2017.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 5238 words.

_____
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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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 Wis. Stat. § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of 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 14th day of November, 2017.

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