

**STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II**

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**Case No. 2017AP1807CR**

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**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**JASETTA M. SMITH**

**Defendant-Appellant.**

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**AN APPEAL FROM THE DENIAL OF SMITH'S MOTION TO  
SUPPRESS ENTERED ON JUNE 22, 2016 AND THE JUDGMENT  
OF CONVICTION ENTERED AND SENTENCE IMPOSED ON  
DECEMBER 9, 2016, IN THE CIRCUIT COURT OF WAUKESHA  
COUNTY, BY THE HONORABLE MICHAEL J. APRAHAMIAN**

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**REPLY BRIEF OF DEFENDANT-APPELLANT**

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## ARGUMENT

### I. THE TRIAL COURT ERRED WHEN IT DID NOT GRANT SMITH'S SUPPRESSION MOTION

A traffic stop is a form of seizure triggering Fourth Amendment protections from unreasonable searches and seizures. *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987); *State v. Longcore*, 226 Wis. 2d 1, 6, 594 N.W.2d 412 (Ct. App.1999), *aff'd*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620. “[A]n officer may perform an investigatory stop of a vehicle based on a reasonable suspicion of a non-criminal traffic violation” *State v. Colstad*, 2003 WI App 25, 260 Wis. 2d 406, ¶11, 659 N.W. 2d 394.( citing *State v. Griffin*, 183 Wis.2d 327, 331-34, 515 N.W.2d 535 (Ct. App. 1994). “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. Betow*, 226 Wis.2d 90, 94–95, 593 N.W.2d 499 (Ct.App.1999). “The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop.” *Id.*¶8.

The officer did not have reasonable suspicion to extend the investigation. “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *See Rodriguez v. United States*, 135 S. Ct. 1609, 1614(2015). In the context of a traffic stop, “the tolerable duration of police inquiries” is determined by the mission of the seizure, the mission being “to address the traffic violation that warranted the stop ... and [to] attend to related safety concerns.” *Id.* at 1614. (citing *Illinois v. Caballes*, 543 U.S. 405 (2005). Besides “determining

whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop,'" such as checking the driver's license, determining whether the driver has any outstanding warrants, and inspecting the vehicle's registration and proof of insurance. *Rodriguez*, at 1615. Once the tasks tied to the traffic infraction are completed, or within the time it should have reasonably taken to complete them, the authority for the seizure ends. *Id.* at 1614.

The overpowering smell of perfume cigarettes glassy eyes and the driver not wanting to make eye contact are not additional suspicious factors that are sufficient to give rise to an articulable suspicion that Smith has committed or is committing a crime. Even coupled with the fact of the prior OWI for drug related offense it was not enough additional suspicious factors that are sufficient to give rise to an articulable suspicion that Smith has committed or is committing a crime. There was no odor of marijuana when the officer came up to the car. Smith was able to answer questions and speak in a normal manner. Smith had a valid driver's license and was only going to be given a compliance order. The traffic stop was extended unreasonably as the officer could have easily handed Smith the compliance order and been on his way. Instead the seizure of Smith was extended in order to effectuate the drug sniff.

## **II. THE OFFICER DID EXTEND THE LENGTH OF THE TRAFFIC STOP BEYOND THE TIME NEEDED TO EFFECTUATE THE STOP WHEN THE DOG SNIFF WAS CONDUCTED**

"[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *See Rodriguez v. United States*, 135 S. Ct. 1609, 1614(2015). In the context of a traffic stop, "the tolerable duration of police inquiries" is determined by the mission of the seizure, the mission being "to address the traffic

violation that warranted the stop ... and [to] attend to related safety concerns.” *Id.* at 1614. (citing *Illinois v. Caballes*, 543 U.S. 405 (2005)). Besides “determining whether to issue a traffic ticket, an officer’s mission includes ‘ordinary inquiries incident to [the traffic] stop,’” such as checking the driver’s license, determining whether the driver has any outstanding warrants, and inspecting the vehicle’s registration and proof of insurance. *Rodriguez*, at 1615. Once the tasks tied to the traffic infraction are completed, or within the time it should have reasonably taken to complete them, the authority for the seizure ends. *Id.* at 1614.

The officer extended the length of the traffic stop beyond the time needed effectuate the stop when the drug sniff was conducted. On January 27, 2016, Officer Lemanczyk testified that he initiated a traffic stop at 1:08am of Smith, after he saw the vehicle in front of him, ran a license plate check which revealed that the registered owner's drivers license was suspended. (38:5,29; App.112,136). Officer Lemanczyk testified that he didn't stop the car for bad driving, speeding or deviating within the lane of travel. (38:30; App.137). Officer Lemanczyk approached the vehicle and asked if she was "Gladys" the owner of the vehicle and she said she wasn't. (38:8-9; App.115-116). Officer Lemanczyk was able to learn that Smith has a valid driver's license. (38:9; App. 116). Therefore at this time the initial reason for the stop that the registered owner had a suspended driver's license had dissipated as Smith had a valid driver's license.

At this point, Smith is not able to find her insurance and the officer was going to run a temporary compliance order for her. (38:11; App. 118). Officer Lemanczyk also testified that he didn't smell marijuana at the time of the stop. (38:41,46; App. 148,153). Officer Lemanczyk then decides to have Officer Petz remove the passengers from the vehicle based on the eyes and the overpowering odor of perfume and cigarettes. (38:43; App. 150).

At the time that Officer Lemanczyk was able to learn that Smith had a valid driver's license and that he needed to run her a temporary compliance order the reason for the stop had been resolved. Once these tasks were completed, the authority for the seizure ended. The stop was then unreasonable extended to complete a drug sniff. There was no odor of marijuana when the officer came up to the car. Smith was able to answer questions and speak in a normal manner. Smith had a valid driver's license and was only going to be given a compliance order. Officer Lemanczyk did not ask Smith to step out of the vehicle when he first initiated the traffic stop. Instead only after the reasons for the initial traffic stop had dissipated did he then decide that Officer Petz should remove the passengers from the vehicle. This unreasonably extended the traffic stop in order to effectuate the drug sniff.

## **CONCLUSION**

For, the reasons stated above Smith asks this Court to grant her suppression motion.

Respectfully submitted this  
14<sup>th</sup> day of March, 2018.

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## **FORM AND LENGTH CERTIFICATION**

I hereby certify that this brief conforms to the rules 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 **1,123** words.

Respectfully submitted this 14th  
day of March, 2018.

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## **CERTIFICATION OF ELECTRONIC FILING**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief report 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: March 14, 2018

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