STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT I

Case No. 2017AP2006-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

JOHN PATRICK WRIGHT,

Defendant-Respondent.

On Notice of Appeal from an Order Entered in
the Milwaukee County Circuit Court,
the Honorable Hannah C. Dugan, Presiding

RESPONSE BRIEF OF DEFENDANT-APPELLANT

CARLY M. CUSACK
Assistant State Public Defender
State Bar No. 1096479

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4805
cusackc@opd.wi.gov

Attorney for Defendant-Respondent

TABLE OF CONTENTS

CASES CITED

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

ISSUE PRESENTED

1. Did the officer's concealed carry weapon inquiry detour from the traffic-control mission and impermissibly extend Mr. Wright's traffic stop?

The circuit court said yes and granted Mr. Wright's suppression motion.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Mr. Wright welcomes oral argument if it would be helpful to this court. This case does not meet the statutory criteria for publication. WIS. STAT. RULE 809.23(1)(b)4; § 752.31(2)(f).

SUPPLEMENTAL STATEMENT OF FACTS[1]

Testimony from the suppression hearing established that John Wright was driving home from his parents' house the night of June 15, 2016 when he was stopped by police for having a defective passenger-side headlight. (27:6, 23, 25; Appellant's Appendix p.121, 138, 140). A week before, the 48-year-old had completed his training course for a concealed carry weapon permit ("CCW"). (27:25; App.140). Shortly after he completed his training course, Mr. Wright purchased a firearm. (27:24; App.139). On the very night he was stopped by Milwaukee police officers Kristopher Sardina and

[1] As respondent, Mr. Wright exercises his option not to include a separate statement of the case as he takes no issue with the State's account of the procedural status of the case leading up to the appeal. *See* WIS. STAT. § 809.19(3)(a)2.

his partner, Mr. Wright had picked up his new firearm from the dealer. (27:24; App.139).

Officer Sardina testified that the sole basis for the traffic stop was the burnt-out headlight. (27:7, 13; App.122, 128). He testified that Mr. Wright promptly pulled over after the squad's siren and lights were activated. (27:13; App.128). As Officer Sardina approached the car, he did not observe Mr. Wright make any furtive movements or blade his body. (27:13; App.128).

Officer Sardina asked Mr. Wright for his driver's license; he did not recall whether he asked Mr. Wright for his registration or proof of insurance. (27:14; App.129). He testified he did not know Mr. Wright from any previous contacts nor was he aware of any prior criminal history, and Mr. Wright did not have any outstanding warrants. (27:15-16; App.130-31). Further, Officer Sardina did not see a firearm, any bullets, a holster, or any gun paraphernalia. (27:17; App.132).

Officer Sardina testified that, had nothing else happened, he would have given Mr. Wright a warning about the headlight. (27:7-8; App.122-23). In fact, he noted he had never given a citation for just a headlight violation. (27:8; App.123).

However, after Officer Sardina requested Mr. Wright's driver's license, he also asked if Mr. Wright was a CCW permit holder and whether any weapons were in the vehicle. (27:9; App.124). Officer Sardina acknowledged in his testimony that the weapons questions were unrelated to the burnt-out headlight, but explained that he was trained to ask them for "officer safety." (27:9; App.124).

In response to Officer Sardina's questions, Mr. Wright told him that he had just finished the CCW permit class, and that he did have a firearm in the vehicle. (27:10; App.125). Officer Sardina asked for permission to remove the firearm for the duration of the stop, and Mr. Wright agreed. (27:10; App.125). After Officer Sardina's partner retrieved the firearm from the glove compartment, Officer Sardina took Mr. Wright's license back to his squad to run his information. (27:11; App.126). Officer Sardina testified he also ran a concealed carry permit check. (27:11; App.126).

Upon determining Mr. Wright did not have a valid concealed carry permit, he was arrested and charged with carrying a concealed weapon in violation of WIS. STAT. § 941.23(2). (27:11-12; 1:2; App.102, 126-27).

Mr. Wright filed a motion to suppress, arguing his traffic stop was unlawfully extended when Officer Sardina asked about the CCW permit, as this inquiry was unrelated to the purpose of the traffic stop. (5:5; App.107). Instead, Mr. Wright argued, the CCW permit question constituted a new investigation into the unlawful possession of weapons without the basis of reasonable suspicion. (5:5-6; App.107-08).

In its oral ruling, the circuit court held that while the initial traffic stop was lawful, the subsequent actions of the officer did not follow the principles under ***Rodriguez v. United States***, 135 S.Ct. 1609 (2015). (29:7; Respondent's Appendix 207). While the initial traffic stop was justified on the basis of an undisputed headlight violation, the court found the stop "quickly turned into a different investigation without the kind of pre-requisite concerns of safety, the furtive movements." (29:5-7; Resp. App. 205-07). Further, it found Officer Sardina "moved into an extended stop with purpose of doing additional questions on a gun possession which was not

a basis—which was against the standard of reasonableness in terms of whether or not he was about to commit a crime." (29:7; Resp. App. 207).

The state sought to clarify: "Is the court finding that the question was a violation of the defendant's Fourth Amendment rights or the search after the question was answered? Which was the violation?" (29:8; Resp. App. 208). The court explained there was no reasonable suspicion to ask Mr. Wright whether he was a concealed carry permit holder and if there was a firearm in his vehicle. (29:8; Resp. App. 208). The court elaborated, "The fact that there was training materials does not trump the constitutional provisions about how to go about a seizure. At that point he's being—he is not able to leave at that point. He's not able to not answer that question." (29:8; Resp. App. 208).

The state appealed. (16).

ARGUMENT

I. The Circuit Court Properly Suppressed The Evidence In Mr. Wright's Case Based On The Principles From ***Rodriguez***.

A. Standard of review

Whether evidence should be suppressed is a question of constitutional fact: this Court upholds the circuit court's factual findings unless clearly erroneous, but independently determines whether those facts meet the constitutional standard. ***State v. Knapp***, 2005 WI 127, ¶19, 285 Wis. 2d 86, 700 N.W.2d 899.

While this Court is not bound by the circuit court's decision on questions of law, it benefits from that court's

analysis. ***State v. Kyles***, 2004 WI 15, ¶7, 269 Wis. 2d 1, 675 N.W.2d 449. In addition, when reviewing a circuit court's ruling on a motion to suppress evidence, this Court is "not constrained to the circuit court's reasoning" but "may affirm the circuit court's order on different grounds." ***State v. Smiter***, 2011 WI App 15, ¶9, 331 Wis. 2d 431, 793 N.W.2d 920.

B. Relevant law regarding the scope of a traffic stop

In this case, Mr. Wright was stopped because police observed his vehicle had a defective headlight. A traffic stop is a seizure within the meaning of the Fourth Amendment. ***State v. Popke***, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569.

The Wisconsin Supreme Court recently explained that "[t]raffic stops are meant to be brief interactions with law enforcement officers, and they may last no longer than required to address the circumstances that make them necessary." ***State v. Floyd***, 2017 WI 78, ¶21, 377 Wis. 2d 394, 898 N.W.2d 560. Thus, a traffic stop that exceeds the time "needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." ***Rodriguez***, 135 S.Ct. at 1612. In other words, a "seizure justified only by a police-observed traffic violation 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a ticket for the violation." ***Id.***, quoting ***Illinois v. Caballes***, 543 U.S. 405, 407 (2005).

A routine traffic stop's tolerable duration is determined by the seizure's "mission," which addresses the traffic violation that warranted the stop, ***Caballes***, 543 U.S. at 407, and allows police to attend to related safety concerns,

Rodriguez, 135 S.Ct. 1609, 1614. Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. ***Rodriguez***, 135 S.Ct. at 1614. While the Fourth Amendment may tolerate certain unrelated investigations that do not prolong the detention, a traffic stop becomes unlawful if it is extended beyond the time reasonably required to complete the mission of issuing a ticket. ***Id.*** at 1614-15.

Beyond determining whether to issue a traffic ticket, a traffic stop mission *may* include "ordinary inquiries" such as checking the driver's license, determining whether the driver has outstanding warrants, and inspecting the automobile's registration and proof of insurance. ***Id.*** at 1615 (emphasis added). Checks such as these, like the enforcement of the traffic code, help to ensure that vehicles are operated safely and responsibly. ***Id.***

In ***Rodriguez***, the United States Supreme Court recently held that a dog sniff could not be fairly characterized as part of the officer's traffic mission because it lacked the same close connection to roadway safety as the ordinary inquiries. ***Id.*** It explained that on-scene investigation into other crimes detoured from the officer's traffic-control mission. ***Id.*** at 1615-16. Elaborating further on this idea, the Supreme Court specifically stated, "So too do safety precautions taken in order to facilitate such detours." ***Id.*** at 1616.

C. Officer Sardina's CCW inquiry detoured from the traffic-control mission and impermissibly extended Mr. Wright's traffic stop

The state argues that officers' questions during traffic stops are appropriate so long as they are "negligibly burdensome and related to officer safety and asked in the

normal course of completing the mission of the traffic stop." (State's Brief-in-Chief p.9-10). It argues that Mr. Wright's case is more like ***State v. Floyd***, 2017 WI 78, 377 Wis. 2d 394, 898 N.W.2d 560 and ***State v. Gaulrapp***, 207 Wis. 2d 600, 558 N.W.2d 696 (Ct. App. 1996) than ***Rodriguez***.

It is not. Notably, both ***Floyd*** and ***Gaulrapp*** are consent-to-search cases, whereas ***Rodriguez*** and this case do not involve consent-to-search issues.

Rather, like ***Rodriguez***, this case presents an example of an impermissible detour from the officer's traffic-stop mission. *See* ***Rodriguez***, 135 S.Ct. at 1616. Here, instead of proceeding with the "ordinary inquiries incident to a traffic stop," Officer Sardina asked Mr. Wright a "question…that has nothing to do with the…headlamp": if he was a CCW permit holder. (27:9; App. 124); ***id.*** Officer Sardina also asked whether Mr. Wright had a gun, and received permission from Mr. Wright to remove the gun from the glove compartment. Officer Sardina explained he "took his license, went back to my vehicle to run his information. I also ran a concealed permit carry check to see if he was a valid holder of the permit because he stated he did complete the class." (27:11; App.126).

Officer Sardina's testimony requires this Court to uphold the circuit court's suppression ruling. While the Fourth Amendment tolerates certain unrelated investigations that do not lengthen the roadside detention, a traffic stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the traffic stop mission, including attending to "certain negligibly burdensome precautions in order to complete his mission safely." ***Rodriguez***, 135 S.Ct. at 1616. Here, Officer Sardina's testimony established that he had no particularized suspicion

implicating safety concerns. (27:13-17; App.128-32). Further, Officer Sardina testified he had never given a citation for just a headlight infraction and would have given a warning had nothing else developed during the stop. (27:7-8; App.122-23). Accordingly, Officer Sardina's authority for the traffic seizure ended when tasks tied to the traffic infraction reasonably should have been completed. *See* ***Rodriguez***, 135 S.Ct. at 1612.

In ***State v. Gordon***, 2014 WI App 44, ¶12, 353 Wis. 2d 468, 846 N.W.2d 483, this Court noted, "circumstances must not be so general that they risk sweeping into valid law-enforcement concerns persons on whom the requisite individualized suspicion has not focused." That is what happened here. Detouring from the traffic stop mission by asking Mr. Wright whether he had a CCW permit was unreasonable, because this questioning and the subsequent check went beyond the scope of the original traffic stop mission. A traffic stop's mission cannot extend beyond the amount of time reasonably required to complete it, and an officer must proceed diligently, ***Rodriguez***, 135 S.Ct. at 1616, thereby eliminating the potential for police to delay the ordinary inquiries to delve into unrelated and undiscovered criminal wrongdoing, ***State v. Smith***, 2018 WI 2, ¶19, 379 Wis. 2d 86, 905 N.W.2d 353.

Contrary to the state's argument, ***Floyd*** is distinguishable. ***Floyd***, a consent-to-search case, did not involve a wholly unrelated question that did not bear on either the mission of the traffic stop or on officer safety. In ***Floyd***, the officer discovered that Floyd's registration was suspended and he pulled him over. 377 Wis. 2d 394, ¶2. When the officer approached Floyd's vehicle, he noticed the windows were tinted and that there were air fresheners in every vent of the vehicle as well as hanging from the rear view mirror. ***Id.***

at ¶3. The officer believed the area of the stop was a "high crime" part of the city, known for drug and gang activity, and he believed air fresheners were "often an indicator of drug-related activity because '[u]sually the air fresheners or the amount of them are—is an agent that is used to mask the smell of narcotics.'" ***Id.*** at ¶3.

The officer asked for Floyd's license and insurance information; Floyd did not have either, but gave the officer a Wisconsin identification card. ***Id.*** at ¶4. The deputy returned to his vehicle to begin processing the multiple citations, and called for a canine unit. ***Id.*** at ¶4. After processing the citations, the deputy returned to Floyd's vehicle to explain the citations. ***Id.*** at ¶5. He asked Mr. Floyd to exit the vehicle, and before he explained the citations, the deputy asked Floyd whether he had any weapons or anything that could harm him. ***Id.*** at ¶5. Floyd said no. ***Id.*** The deputy then asked Floyd if he could search him for his safety, and Floyd responded, "yes, go ahead." ***Id.*** The officer discovered illegal drugs. ***Id.***

In ***Floyd***, the Wisconsin Supreme Court explained that, "Generally speaking, an officer is on the proper side of the line so long as the incidents necessary to carry out the purpose of the traffic stop have not been completed, and the officer has not unnecessarily delayed the performance of those incidents." ***Id.*** at ¶22. It explained Floyd's stop "was not complicated—his vehicle's registration was suspended. Deputy Ruffalo then learned Mr. Floyd had neither insurance nor a valid driver's license. At a minimum, this authorized Deputy Ruffalo to take the time reasonably necessary to draft the appropriate citations and explain them to Mr. Floyd. Until that is done, and so long as Deputy Ruffalo does not unnecessarily delay the process, the permissible duration of the traffic stop has not elapsed." ***Id.*** at ¶23.

Mr. Wright's stop was also not complicated. However, unlike in ***Floyd***, here, the officer testified that he had never issued a citation for a defective headlight, and only would have delivered a warning about the violation. Instead of delivering a warning, though, Officer Sardina unnecessarily delayed carrying out the purpose of the traffic stop by detouring into an admittedly unrelated topic—whether Mr. Wright had a CCW permit. (27:9; App.124). This unrelated detour is the type against which ***Rodriguez*** warned, and violated Mr. Wright's Fourth Amendment rights.

Notably, ***Rodriguez*** rejected the argument that an officer may "incrementally" prolong a stop to conduct unrelated tasks so long as "the overall duration of the stop remains reasonable in relation to the duration of other traffic stops involving similar circumstances." ***Id.*** at 1616. In so rejecting, the Supreme Court observed the argument was equivalent to allowing an expeditious officer, who had completed all traffic-related tasks in a timely fashion, to "earn bonus time to pursue an unrelated criminal investigation." ***Id.*** Thus, it does not matter whether the unrelated investigation occurs before or after the officer issues a ticket, but whether engaging in an unrelated inquiry adds time to the stop. ***Id.***

In addition, in ***Floyd***, the officer asked whether Mr. Floyd had any weapons or anything that could harm him, and if the officer could perform a search for his safety. ***Floyd*** is distinguishable from Mr. Wright's case because both questions were closely connected to officer safety. Further, and unlike Mr. Wright's case, ***Floyd*** involved factors suggesting drug activity. *See* ***State v. Wedgeworth***, 100 Wis. 2d 514, 532-33, 302 N.W.2d 810 (1981)(discussing general linkage between guns and the business of drug trafficking).

In contrast, here the officer asked Mr. Wright whether he was a CCW permit holder and then ran a CCW permit check. This question and the subsequent check constituted an impermissible detour into unrelated and unsuspected criminal wrongdoing. The CCW inquiry was not tied to the mission of the traffic stop for the defective headlight warning. Nor was it tied to officer safety. In ***Rodriguez***, the United States Supreme Court specifically identified criminal record and outstanding warrant checks as examples of tasks connected to the traffic mission and to related safety concerns. ***Rodriguez***, 135 S.Ct. at 1614-16. Asking about a person's CCW status is not on par with the checks the ***Rodriguez*** court identified.

To illustrate why, follow the CCW question to its logical conclusion and consider the situation in which a driver is lawfully stopped and subsequently asked by an officer if she is a CCW permit holder. Say the driver tells the officer that she is a CCW permit holder. What does that information do? It does not add to reasonable suspicion that she is armed and dangerous in order to justify a frisk for weapons. *See* ***State v. Johnson***, 2007 WI 32, ¶13, 299 Wis. 2d 675, 729 N.W.2d 182. It does not add to the reasonable suspicion that this driver is otherwise engaged in illegal activity. *See* ***Vill. of Somerset v. Hoffman***, No.2015AP140, unpublished slip op. at ¶20 n.12 (WI App May 17, 2016)(noting "the mere fact a person is carrying a firearm cannot itself be evidence of criminal or malicious intent.")(Respondent's App.211-16)[2]. Nor does it lend itself to reasonable suspicion that this driver even has a gun in the vehicle.

Furthermore, even if the officers determine the driver had a CCW permit and had a gun in the vehicle, would the

[2] Cited for persuasive value only, in accordance with WIS. STAT. §§ 809.23(3)(b) and (c).

officers then be able to seize the lawfully-owned weapon during the traffic stop? CCW permit holders would certainly argue the answer to that question should be no, as they are lawful owners of said weapons. Accordingly, in the converse, if an officer asks a driver whether they have a gun in the car, and the driver answers affirmatively, the follow-up question, "Are you a CCW permit holder?"—still constitutes an "[o]n-scene investigation into other crimes" and is a detour from the traffic stop mission. *See* ***Rodriguez***, 135 S.Ct. at 1616. There can be no automatic presumption of illegality where possession of a firearm is not automatically illegal, due to concealed carry laws.[3] Regardless of order, police inquiry into whether the subject of a traffic stop is a CCW permit holder is not an inquiry tied to the officer's safety mission, but is instead aimed at detecting unlawful gun possession. The Fourth Amendment does not permit such intrusion.

Nevertheless, the state also argues this case is more like ***Gaulrapp*** than ***Rodriguez***. In ***Gaulrapp***, this Court held that an officer's questions about drugs and firearms did not

---

[3] Last spring, the Indiana Supreme Court held a tip that the defendant was carrying a gun was insufficient to justify an investigatory stop and search of the defendant, and that court concluded police were not permitted under the Fourth Amendment to briefly detain a person to ascertain the legality of a weapon and dispel any suspicion of criminal activity. ***Pinner v. State***, 74 N.E.3d 226, 233 (Ind. 2017). The Indiana Supreme Court quoted the United States Supreme Court's observation, "'Were the individual subject to unfettered governmental intrusion every time he [exercised his right to bear arms], the security guaranteed by the Fourth Amendment would be seriously circumscribed.'" 74 N.E.3d at 233 (quoting ***Delaware v. Prouse***, 440 U.S. 648, 662-63 (1979)).

In so holding, the Indiana Supreme Court noted that in a number of other jurisdictions where possession of a weapon is not per se illegal, legislatures and courts have been reluctant to permit a 'firearm or weapons exception' to the constitutional limitations already imposed by *Terry*." ***Id.*** (compiling cases).

transform a legal traffic stop into an illegal detention. 207 Wis. 2d 600, 602. However, Gaulrapp gave police consent to search his person and his vehicle, and the question on appeal concerned the impact of the officer's questions on Gaulrapp's consent. ***Id.*** at 603. Like the Supreme Court in ***Floyd***, this Court found that Gaulrupp freely and voluntarily gave police consent to search his person and vehicle. ***Id.*** at 607.

Moreover, ***Gaulrapp*** preceded ***Rodriguez***, which explained in no uncertain terms that measures outside an officer's traffic stop mission, aimed at "detect[ing] evidence of ordinary criminal wrongdoing[,]" are unlawful if the tasks tied to the traffic stop reasonably should have been completed. 135 S.Ct. at 1614-15. Thus, to the extent that ***Gaulrapp*** is inconsistent with ***Rodriguez***, Mr. Wright submits that it is no longer good law, as questions outside the mission of the traffic stop and officer safety are plainly prohibited, and cannot be justified as *de minimis*. *See* ***Rodriguez***, 135 S.Ct. at 1615-16 ("Thus, even assuming that the imposition here was no more intrusive than the exit order in *Mimms*, the dog sniff could not be justified on the same basis. Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular.").

Because an investigation into other crimes detours from the mission of the traffic stop, an officer may not extend a traffic stop without independent reasonable suspicion of criminal activity. *See* ***Rodriguez***, 135 S.Ct. 1609, 1615-17; ***State v. Hogan***, 2015 WI 76, ¶¶35-7, 364 Wis. 2d 167, 868 N.W.2d 124. Asking Mr. Wright if he was a CCW permit holder was a detour aimed at detecting evidence of ordinary criminal wrongdoing and unlawfully prolonged the traffic stop. In contrast to the cases on which the state relies, here, the officer's inquiry about whether Mr. Wright had a CCW

permit was not tied to officer safety or to the mission of the traffic stop for the defective headlight. *See* ***State v. Betow***, 226 Wis. 2d 90, 501-02, 593 N.W.2d 499 (Ct. App. 1999)(noting that, during a traffic stop, a driver may be asked questions "*reasonably related* to the nature of the stop")(emphasis added).

This case is more analogous to ***United States v. Evans***, 786 F.3d 779, 786 (9th Cir. 2015), where, following a traffic stop, the officer performed vehicle records and warrants checks—tasks commonly considered ordinary inquiries incident to a traffic stop. *See* ***Rodriguez***, 135 S.Ct. at 1615. After completing those record checks, the officer then requested an additional check: an ex-felon registration check on the driver to determine the driver's criminal history and confirm whether he was registered at the address he provided to the officer. ***Evans***, 786 F.3d at 786. Shortly after calling in the ex-felon registration check, dispatch reported that the driver had been convicted two times for "drug-related charges," and that he was properly registered at the address he had provided. ***Id.***

In keeping with ***Rodriguez***, the Ninth Circuit determined the ex-felon registration check, unlike the vehicle records or warrants checks, was wholly unrelated to the officer's mission of "ensuring that vehicles on the road are operated safely and responsibly." ***Id.*** at 787 (quoting ***Rodriguez***, 135 S.Ct. at 1616). Instead, the ex-felon registration check was "a measure aimed at 'detect[ing] evidence of ordinary criminal wrongdoing.'" ***Id.*** at 786 (quoting ***Rodriguez***, 135 S.Ct. at 1615; ***Indianapolis v. Edmond***, 531 U.S. 32, 40–41 (2000)). The Ninth Circuit noted all "tasks tied to the traffic infraction [had been]—or reasonably should have been—completed" by the time the officer instigated the eight-minute ex-felon registration check.

Evans, 786 F.3d at 787. Consequently, the court in that case concluded the officer "violated Evans' Fourth Amendment rights to be free from unreasonable seizures when he prolonged the traffic stop to conduct this task, unless he had independent reasonable suspicion justifying this prolongation." ***Id.***

Like in ***Evans***, the duration of the traffic stop in this case was not justified by the traffic offense and the ordinary inquiries incident to such a stop because of the officer's detour into an unrelated CCW investigation; therefore, the seizure became unlawful when it was prolonged beyond the time reasonably required to complete the mission of the traffic stop. *See* ***Rodriguez***, 135 S.Ct. at 1612.

Absent the "same close connection to roadway safety as ordinary inquiries," the question about the CCW permit was not related to the officer's traffic mission, nor can it be justified as a negligibly burdensome intrusion outweighed by the government's interest in officer safety. *See* ***Rodriguez***, 135 S.Ct. at 1615-16. Under ***Rodriguez***, even a *de minimis* extension is too long an extension if it is unrelated to the mission of the traffic stop and prolongs the stop beyond the time needed to complete the mission; therefore, there must be an alternative basis to prolong the stop. ***Id.***

The state does not argue that it had reasonable suspicion to lawfully extend the traffic stop. The record makes clear the officer did not. Likewise, the state does not allege, nor does the evidence show, that the encounter became consensual. A consensual encounter is one in which "a reasonable person would feel free to disregard the police and go about his business." ***Florida v. Bostick***, 501 U.S. 429, 434 (1991)(citations omitted). The circuit court specifically found that at the point of Officer Sardina's questions, Mr. Wright

was not able to leave, and was not able to ignore the questions or decline to answer. (29:8; Resp. App.208); *see* ***id.*** at 434-35. (citations omitted).

Thus, where the testimony established no concerns implicating officer safety, and where the court found Mr. Wright was not free to leave, ignore the officer's questions or decline to answer, the officer's CCW question was unreasonable and unlawfully extended his stop past the time reasonably required to complete the mission of delivering a warning about the defective headlight.

CONCLUSION

Officer Sardina's inquiry into Mr. Wright's CCW status was not a negligibly burdensome question related to officer safety. Because the CCW inquiry was not otherwise a part of the traffic stop mission, it constituted an impermissible detour from the mission of the traffic stop, in violation of Mr. Wright's Fourth Amendment rights. Accordingly, this Court should affirm the circuit court's decision granting Mr. Wright's suppression motion.

Dated this 28th day of March, 2018.

Respectfully submitted,

CARLY M. CUSACK
Assistant State Public Defender
State Bar No. 1096479

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4805
cusackc@opd.wi.gov

Attorney for Defendant-Respondent

CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rules 809.19(8)(b) and 809.62(4) 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 4,330 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 28th day of March, 2018.

Signed:

CARLY M. CUSACK
Assistant State Public Defender
State Bar No. 1096479

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4805
cusackc@opd.wi.gov

Attorney for Defendant-Respondent

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; (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 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 28th day of March, 2018.

Signed:

CARLY M. CUSACK
Assistant State Public Defender
State Bar No. 1096479

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4805
cusackc@opd.wi.gov

Attorney for Defendant-Respondent

A P P E N D I X

I N D E X
T O
R E S P O N D E N T'S
A P P E N D I X