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STATE OF WISCONSIN
COURT OF APPEALS

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OF WISCONSIN**

DISTRICT I

Appeal Case No. 2017AP002006-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

vs.

JOHN PATRICK WRIGHT,

Defendant-Respondent.

ON NOTICE OF APPEAL FROM AN ORDER
GRANTING A MOTION TO SUPPRESS EVIDENCE
ENTERED ON SEPTEMBER 1, 2017, IN THE
CIRCUIT COURT OF MILWAUKEE COUNTY,
THE HONORABLE HANNAH DUGAN, PRESIDING

REPLY BRIEF OF PLAINTIFF-APPELLANT

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ARGUMENT

**I. Officer Sardina Did Not Extend the Traffic Stop
by Inquiring About the Presence of Weapons.**

Wright argues that his case is analogous to *Rodriguez v. United States*, 135 S. Ct. 1609 (2015) and *United States v. Evans*, 786 F. 3d 779 (9th Cir. 2015), (Brief of Defendant – Respondent 7, 14), two cases where courts held that officers improperly extended a traffic stop into a criminal investigation. Comparisons of Wright’s case to each of these cases fail for the following reasons:

As to the comparison to *Rodriguez*, Wright attempts to equate Officer Sardina's questions regarding the presence of a weapon and a CCW permit to an officer completing a traffic stop, only then to begin a new inquiry into potential criminal activity. (Brief of Defendant-Respondent 7). This analysis is flawed.

First, as noted prior, the officer in *Rodriguez* had completed his traffic stop mission as evidenced by his issuing a written warning to Rodriguez and his passenger and returning all license, registration, and insurance documentation. *Rodriguez*, 135 S. Ct. 1609 at 1613. This is a material difference between Wright's case because Officer Sardina had only just begun his interaction with Wright and was asking for Wright's driver's license in conjunction with the questions regarding the presence of weapons and whether Wright was a Concealed Carry Permit holder. Therefore, Officer Sardina had not completed his business regarding the traffic stop as the officer in *Rodriguez* stated he had prior to beginning a new investigation. *Id.* In fact, Officer Sardina had just begun his work of taking care of the traffic stop and was asking questions relating to both missions of the traffic stop, the traffic violation as well as Officer Sardina's safety concerns.

Second, the *Rodriguez* case dealt with prolonging a traffic stop for launching a new mission not tied to the original traffic stop. *Id.* at 1614. Notably, the officer in *Rodriguez* approached Rodriguez' vehicle on three separate occasions during the execution of the traffic stop mission. *Id.* at 1613. In none of these approaches to Rodriguez' vehicle did the officer ask about the presence of any weapons; rather the officer completed the business of the original traffic stop and then launched a new mission of investigating possible drug activity. *Id.* Officer Sardina's actions, however, cannot be compared to the officer in *Rodriguez*. Officer Sardina was not launching a new investigation, nor delaying the mission of the traffic stop; Rather, Officer Sardina was addressing both the mission of the traffic stop as well as the mission present in all traffic stops – officer safety.

Wright's comparison of his case to *Rodriguez* ignores the well-settled law that officer safety is an inherent mission of every traffic stop. Even the *Rodriguez* Court acknowledged that fact. *Rodriguez*, 135 S. Ct. at 1616. So long as officers take only negligibly burdensome steps to ensure they can complete the traffic stop safely, then no impermissible detour has occurred. *Id.* The mere questioning about the presence of weapons while asking for documents needed to complete the traffic stop can only be viewed as negligibly burdensome. Thus, the very case that Wright tries to compare his to weighs in favor of this Court reversing the trial court's decision.

Likewise, Wright's comparison of his case to *United States v. Evans*, 786 F.3d 779 (9th Cir. 2015) is flawed. Here, Wright attempts to compare an officer conducting an ex-felon check of Evans to Officer Sardina asking Wright if he had any weapons or a CCW permit. (Brief of Defendant-Respondent 14). However, the officer in *Evans*, like the officer in *Rodriguez*, had approached Evans' car at least two times and never inquired about anything related to officer safety. *Evans*, 786 F.3d 779 at 782. After speaking with Evans and his passenger on multiple visits to Evans' vehicle, the officer conducted an additional search of the ex-felon database. *Id.* The officer did so, however, not to ensure his safety during the remainder of the traffic stop, but to determine whether Evans was actually registered at the address he had earlier given the officer and to see if Evans would change his story about where he had been coming from. *Id.* at 783. That entire traffic stop was conducted under the umbrella of a long running investigation by the officer involved in the stop into Evans' suspected drug dealing. *Id.* at 781-82.

Wright's comparison of his case to *Evans* again falls woefully short. Officer Sardina was not taking part in a larger, far-reaching investigation into Wright. Additionally, Officer Sardina did not ask Wright whether he had any weapons to determine if he was telling the truth or not, he asked the questions to ensure he could complete the traffic stop safely. Finally, and it cannot be stated enough, Officer Sardina asked the questions regarding the presence of weapons on his first visit to Wright's vehicle at the same interaction where Officer Sardina gathered the necessary documentation pertinent to the traffic stop. In no way can Officer Sardina's two questions be

compared to an officer calling in an additional search of an ex-felon record. Even if the two actions could be compared, the rationale for Officer Sardina's questions was completely different from the motivation of the officer in *Evans*. Officer Sardina was ensuring his safety while the officer in *Evans* was trying to catch Evans in a lie.

The *Evans* case offers little if anything for this Court to rely on in deciding Wright's case. *Rodriguez* is not factually similar to Wright's but does assist the State in asking this Court to reverse the trial court's decision because of its discussion regarding the inherent mission of officer safety at all traffic stops and officers' ability to take negligibly burdensome actions to ensure their safety during traffic stops. *Rodriguez*, 135 S. Ct. 1609 at 1616.

II. Wright's Case is Similar to *Floyd and Gualrapp* and Wright Errs When Characterizing the Issues Presented in Those Cases.

Wright argued that comparisons to *State v. Floyd*, 2017 WI 78, 377 Wis. 2d 394, 898 N.W.2d 560 and *State v. Gualrapp*, 207 Wis. 2d 600, 558 N.W.2d 696 (Ct. App. 1996) are flawed because he characterizes those cases as "consent-to-search" cases. (Brief of Defendant-Respondent 8, 12-13). However, this characterization is in error because, although the cases did deal with consent to search, both cases directly addressed officers questions pertaining to weapons at traffic stops. *Floyd*, 2017 WI 78 at ¶¶27-28. *Gualrapp*, 207 Wis. 2d 600 at 608.

The Plaintiff-Appellant will not restate the arguments in its original brief save to say that both *Floyd* and *Gualrapp* held that the types of questions put to Wright by Officer Sardina are permissible because they are negligibly burdensome and relate to the inherent mission of officer safety. *Floyd*, 2017 WI 78 at ¶28. *Gualrapp*, 207 Wis. 2d 600 at 609 (Gaulrapp's detention was not unreasonably prolonged by the asking of one question).

CONCLUSION

For the aforementioned reasons, the State respectfully requests this Court reverse the trial court's decision.

Dated this _____ day of April, 2018.

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 word count of this brief is 1,157.

_____	_____
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I have submitted an electronic copy of this brief, excluding the appendix, if any, 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 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.

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