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STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT III

Case No. 2018AP1764-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KIMBERLY DALE CRONE,

Defendant-Appellant.

On Appeal from a Judgment of Conviction Entered
in the Circuit Court for Sawyer County,
the Honorable John M. Yackel, Presiding

REPLY BRIEF OF
DEFENDANT-APPELLANT

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ARGUMENT

The Continued Detention of Ms. Crone After Resolution of the Speeding Violation Was Not Concurrent or Simultaneous with the Mission of the Stop and Therefore Evidence Obtained During the Unlawful Seizure Must Be Suppressed.

The state concedes that “there was no reasonable suspicion to form the basis for seeking consent to search.” (State’s Brief at 4). The state also appears to agree that officer safety had nothing to do with the extension of the stop. (State’s Brief at 7).

Relying on *State v. Wright*, 2019 WI 45, 386 Wis. 2d 495, 926 N.W.2d 157, the state argues that the deputy’s request to see the pill bottles inside Ms. Crone’s purse is analogous to the officer in *Wright* asking about the status of the defendant’s concealed carry (CCW) permit and checking the status of the CCW permit. (State’s Brief at 7). Therefore, the state argues that the extension of the stop was permissible because “the time between handing the license back and asking for consent would be incapable of measurement.” (State’s Brief at 9).

There is a significant flaw in the state’s argument. Timing. The timing in Ms. Crone’s case is different from that in *Wright* and therefore the extension of the stop is contrary to the United States Supreme Court holding in *Rodriguez v. United States*, 135 S.Ct. 1609 (2015).

The decision in Ms. Crone's case rests upon the Fourth Amendment. Therefore, this court must apply the United States Supreme Court's ruling in *Rodriguez*. *Rodriguez* held that "the 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. The court noted that "on-scene investigation into other crimes, however, detours from that mission." *Id.* at 1616.

The Wisconsin Supreme Court in *Wright* applied the *Rodriguez* "mission" test. The state's reliance on *Wright* fails, because there are critical factual differences between *Wright* and Ms. Crone's case.

In *Wright*, the defendant's car was stopped for a traffic violation. "Officer Sardina asked Wright for his driver's license, asked whether he was a CCW permit holder, and asked whether Wright had any weapons in the car. Officer Sardina testified on cross-examination that although he does not recall how many questions he asked or the order in which he asked them, all of these questions usually 'come pretty fast' after he makes initial contact with a motorist." *State v. Wright*, 2019 WI 45, ¶16. Officer Sardina then took Wright's license and went back to his squad car to run the license and a CCW permit check. *Id.* at ¶18.

The police interaction in Ms. Crone's case played out very differently. The deputy walked to Ms. Crone's car, asked for her license and insurance information, then returned to his squad car to run

the information. (21:5) After confirming that Ms. Crone had a valid license, the deputy got out of his squad car and walked back to Ms. Crone. He returned her license and completed the mission of the traffic stop. (21:5, 8). After all of that, the deputy asked to see the pill bottles inside Ms. Crone's purse. (21:8). The deputy did not ask to see the pill bottles during the initial contact or simultaneous to running her driver's license. Instead, the request happened after the mission of the traffic stop was completed and the deputy had returned Ms. Crone's license. (21:5). This was not concurrent with mission-related activities and therefore is factually distinct from *Wright*.

Ms. Crone's case also differs from *Wright* in regards to the timing of the CCW permit check. The court in *Wright* ruled that the permit check was permissible because the permit check was run concurrently with running the driver's license information "we conclude that the CCW permit check in the instant case did not violate the Fourth Amendment because it was conducted concurrently with mission-related activities, namely, running Wright's information." *State v. Wright*, 2019 WI 45, ¶49.

The court in *Wright* compared the timing in *Illinois v. Caballes*, 543 U.S. 405 (2005) (where the extension of the stop was upheld) and *Rodriguez* (where the extension of the stop was found to be unlawful) by noting that "in *Caballes*, the dog sniff added no time at all to the traffic stop because it was conducted simultaneously with mission-related activities. In *Rodriguez*, all mission-related activities had been completed, and thus, the dog sniff

unlawfully extended the duration of the stop.” *State v. Wright*, 2019 WI 45, ¶43. Applying that reasoning, it is clear that Ms. Crone’s case involved a completed mission like the one in *Rodriguez* thus making the extension of the stop unlawful.

The Supreme Court in *Rodriguez* held that police may not extend the duration of a traffic stop without reasonable suspicion – even for just a “de minimis” amount of time – for reasons unrelated to the “mission” of the traffic stop, which is to address the traffic violation and related vehicular safety concerns. *Rodriguez*, 135 S.Ct. at 1614. The deputy’s question in Ms. Crone’s case was not concurrent with the initial contact questions. It was not concurrent with the running of the driver’s license. The request added time to the stop. The deputy’s request was an improper extension of the traffic stop and therefore the evidence obtained from this improper extension should be suppressed.

CONCLUSION

For the reasons set forth above, as well as those in the brief in chief, Kimberly Crone respectfully asks this court to reverse the judgment of conviction and remand to the circuit court with directions to suppress all evidence obtained during the unlawful seizure.

Dated this 4th day of October, 2019.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 933 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 4th day of October, 2019.

Signed:

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