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**COURT OF APPEALS**

STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
DISTRICT III  
Case No. 2018AP1764-CR

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STATE OF WISCONSIN,  
  
Plaintiff-Respondent,  
  
v.

KIMBERLY DALE CRONE,  
  
Defendant-Appellant.

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

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SUPPLEMENTAL REPLY BRIEF OF  
DEFENDANT-APPELLANT

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## ARGUMENT

The Continued Detention of Ms. Crone After the Mission of the Stop was Completed Was Not Supported by Reasonable Suspicion of Criminal Activity or Related to Officer Safety and Therefore Evidence Obtained During the Unlawful Seizure Must Be Suppressed.

The state and Ms. Crone agree that the Wisconsin Supreme Court's recent decision in *State v. Brown*, 2020 WI 63, 392 Wis. 2d 454, 945 N.W.2d 584, does not impact the analysis in Ms. Crone's case. (State's Brief at 1).

The state and Ms. Crone also agree that the reasonableness of the officer's conduct during a traffic stop is measured by mission of the stop. *Rodriguez v. United States*, 575 U.S. 348 (2015). The state concedes that the mission of the stop was for a traffic violation, the officer had no reasonable suspicion of criminal activity and the officer's request had nothing to do with officer safety. (State's Brief at 4).

With the mission of the traffic stop completed, no reasonable suspicion and no officer safety concerns, all the state can argue to try and justify the extension of the stop is duration. But the state's duration argument fails because *Rodriguez* is clear that police may not extend the duration of a traffic stop without reasonable suspicion – even for a de minimis amount of time – for reasons unrelated to the mission of the traffic stop. *Rodriguez*, 575 U.S. at 371.

In *Rodriguez*, police stopped the defendant when his car veered onto the shoulder. After running a records check and issuing a written warning, the officer walked his dog around Rodriguez' car to sniff for drugs. *Id.* at 351-352.

The United States Supreme Court held that the dog sniff violated the Fourth Amendment because it was conducted after the completion of the "matter for which the stop was made..." *Id.* at 351. The court ruled that addressing the traffic infraction is the purpose of the stop, therefore the stop cannot last longer than is necessary to effectuate that purpose. *Id.* at 354.

Specifically rejecting the concept of an allowable extension as long its duration is de minimis, *Rodriguez* held that the Fourth Amendment only tolerates certain unrelated investigations that "did not lengthen" prolong or extend the stop. *Id.* at 354-355. The court defined "prolongs" as "adds time to." *Id.* at 357.

So the question in Ms. Crone's case is whether the officer's request to see the pill bottles inside Ms. Crone's purse added time to the stop. It did. The officer's inquiry lengthened and extended the stop. This prolonging, lengthening and extension violated the Fourth Amendment.

The state blames the extension of the stop on Ms. Crone's compliance with the officer's request to hand over the pill bottles. (State's Brief at 4). But the mission of the stop was completed *before* the officer asked to see the pill bottles inside her purse. The stop was illegally extended when the officer asked the

question; Ms. Crone's response is irrelevant to the legal analysis.

Further, the state's reliance on *State v. Wright*, 2019 WI 45, 386 Wis. 2d 495, 926 N.W.2d 157, isn't persuasive. (State's Brief at 4). The court in *Wright* held that the officer's question of whether the driver had a concealed carry (CCW) permit did not impermissibly extend the traffic stop. *Id.* at ¶45. The state argues that the same is true in Ms. Crone's case. (State's Brief at 5). The state is wrong.

*Wright* and Ms. Crone's case are factually distinct because the *Wright* court specifically held that "the CCW permit question and the CCW permit check in the instant case were conducted *while mission-related activities were occurring*." *Id.* at ¶45. (emphasis added). The officer in *Wright* asked about CCW before he returned to his squad car and therefore while he was conducting mission-related activities. *Id.* The officer asked the question about the permit and then returned to his squad car in order to "run [Wright's] information." *Id.* at ¶48. Like the dog sniff in *Illinois v. Caballes*, 543 U.S. 405, 409 (2005), the question was asked simultaneous to mission-related activities.

In Ms. Crone's case, however, the officer had finished running Ms. Crone's information in his squad car and then returned to Ms. Crone with the mission-related activities completed. Thus his question about the pill bottles in her purse extended the stop beyond its mission and did so in a measurable way. The mission was over and the seizure continued because the officer asked an additional question. The time it took to ask that

question is absolutely measurable. In the time it took to ask that question Ms. Crone could have been pulling on the road and back on her way to work. That is measurable time.

Finally, the state's reliance on *State v. Gaulrapp*, 207 Wis. 2d 600, 558 N.W.2d 696 (Ct. App. 1996), is misplaced. *Gaulrapp* was decided 19 years before the United States Supreme Court decision in *Rodriguez*. The *Gaulrapp* court relied on *Ohio v. Robinette*, 519 U.S. 33 (1996). But *Ohio v. Robinette* was not about the legality of an extended stop. The court in *Robinette* held that the Fourth Amendment did not require that a lawfully seized person be told she is free to go before her consent to search will be deemed voluntary. *Id.* at 40. In *Gaulrapp*, the court acknowledged that *Robinette* did not expressly decide whether the officer's request to search violated the Fourth Amendment. *Gaulrapp*, 207 Wis. 2d at 608.

*Rodriguez*, unlike *Robinette*, squarely addresses the issue presented in Ms. Crone's case: "we hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." 575 U.S. at 350. The request to see the pill bottles inside Ms. Crone's purse exceeded the time needed to handle the speeding violation. The extension of the stop violated the Fourth Amendment's protections against unreasonable seizures and the evidence obtained as a result of that constitutional violation must be suppressed.

## CONCLUSION

For the reasons set forth above, as well as those in the previously filed briefs, 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 25<sup>th</sup> day of August, 2020.

Respectfully submitted,

*Electronically signed by Susan E. Alesia*

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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 1,035 words.

### **CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief, including the appendix as a separate attachment, if any, which complies with the requirements of Wisconsin Supreme Court Order 19-02: Interim Court Rule Governing Electronic Filing in the Court of Appeals and Supreme Court.

Dated this 25th day of August, 2020.

*Electronically signed by Susan E. Alesia*  
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