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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Case No. 2018AP002410-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JACQUELINE A. ZIRIAX ANDERSON,

Defendant-Appellant.

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ON APPEAL FROM ORDERS DENYING ANDERSON'S SUPPRESSION MOTION AND POSTCONVICTION MOTION, ST. CROIX COUNTY CIRCUIT COURT, THE HONORABLE R. MICHAEL WATERMAN, PRESIDING

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# PLAINTIFF-RESPONDENT'S BRIEF

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MEGAN E. KELLY
Assistant District Attorney
State Bar No. 1101227

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
megan.kelly@da.wi.gov

Attorney for Plaintiff-Respondent

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## STATEMENT OF THE ISSUE

Did the circuit court properly deny Jacqueline Ziriax Anderson's motion to suppress the traffic top where the officer observed two traffic violations?

The circuit court answered "yes" in denying Ms. Anderson's motion.

Was Ms. Ziriax Anderson entitled to withdraw her plea due to ineffective assistance of counsel?

The circuit court answered "no" in denying Ms. Anderson's motion.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The parties' briefs will adequately address the issue presented, and oral argument will not significantly assist the court in deciding this appeal.

The State does not take a position on publication of this Court's decision and opinion.

## STATEMENT OF THE CASE

As plaintiff-respondent, the State exercises its discretion to not present a statement of the case. *See* Wis. Stat. § (Rule) 809.19(3)(a)2. The State cites to relevant facts in the Argument section below.

## ARGUMENT

### I. OFFICER JENTS HAD REASONABLE SUSPICION THAT ZIRIAX ANDERSON VIOLATED A TRAFFIC LAW, AND THEREFORE, THE TRAFFIC STOP WAS VALID.

Ziriax Anderson first argues that the circuit court erred when it ruled that the stop of Ziriax Anderson's vehicle was properly justified. Regarding review of a motion to suppress evidence, this Court upholds a circuit court's findings of fact unless they are "clearly erroneous." State v. Pinkard, 2010 WI 81, ¶ 12, 327 Wis. 2d 346, 353–54, 785 N.W.2d 592, 596. This Court also independently reviews the "circuit court's application of constitutional principles to those facts." Pinkard, 327 Wis. 2d 346, ¶ 12.

The Supreme Court of Wisconsin has held that "reasonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops." State v. Houghton, 2015 WI 79, ¶ 30, 364 Wis. 2d 234, 250, 868 N.W.2d 143, 151. To meet this standard, the officer must have specific and articulable facts, "taken together with rational inferences from those facts that reasonably warrant" the stop. State v. Post, 2007 WI 60, ¶ 10, 301 Wis.2d 1, 733 N.W.2d 634 (citation omitted).

In the present case, a motion hearing was held on July 11, 2017 at which Officer Daniel Jents testified. Officer Jents testified that on January 14, 2017 around 2:25 a.m., he was on routine patrol for the City of Hudson Police Department, St. Croix County, Wisconsin. (R98: 5:9-16.) Officer Jents testified that a vehicle caught his attention at the intersection of Vine and Second Street when the vehicle failed to yield for a semi that had the right of way. (Id., at 5:17-19, 6:1-18.) Specifically, Officer Jents testified:

> I was stopped at the intersection, which at that time of day was flashing red for cross traffic on Second Street, which was Vine Street, and a flashing yellow for traffic going on Vine – or, excuse me, Second Street, which means they don't

> have to yield for any traffic, just proceed with caution. The vehicle across the intersection from me going east on Vine Street was stopped momentarily at that intersection and began to proceed through the intersection…

(Id., at 5:21-25, 6:1-3.) Further, Officer Jents stated, "[A]nd then from there, basically forcing the semi to yield to her traffic as she should have yielded to the truck, and that was my initial observation of the contact." (Id., at 6:8-10.) Additionally, Officer Jents clarified that when he saw Ziriax Anderson's vehicle, she was stopped at the stop light, but when she pulled into the intersection, the semi truck had to come to a complete stop to avoid a collision. (Id., at 12:3-14.)

Officer Jents drove around the block and saw the same vehicle as it went through the intersection of Third Street and Vine. (Id., at 6:20-23.) Officer Jents turned onto Vine Street and observed the vehicle "over the centerline in the opposite lane of traffic for approximately about a block." (Id., at 6:23-25, 7:1.) Officer Jents further testified that he knew the vehicle was over the centerline in the oncoming lane of traffic, "because [he] could see the tire was over the centerline, the snow markings, and there was a great enough distance from the passenger's side of the vehicle for the curb." (Id., at 7:14-16.) When further questioned about the centerline, Officer Jents testified that "there's the snow-covered area of the center lane. There's tire tracks on both sides that are down to pavement and easy enough to observe when a vehicle is over that snow-packed center lane." (Id., at 26:15-18.) Officer Jents ultimately stopped the vehicle and ultimately identified Ziriax Anderson as the driver. (Id., at 8:1-2, 26:25, 27:1.)

In the present case, Officer Jents had reasonable suspicion to believe that Ziriax Anderson violated a traffic law. First, Ziriax Anderson violated Wisconsin law by failing to yield to the flashing yellow light on the intersection of Vine and Second Street, contrary to Wis. Stat. § 346.39. This was demonstrated by Officer Jents observing that Ziriax Anderson was subject to the flashing red light, while the semi truck was subject to the flashing yellow light. The semi truck had the right of way, and this was impeded when Ziriax Anderson

drove through the intersection and caused the semi truck to stop.

Further, Officer Jents observed another traffic violation when he saw the same vehicle cross the centerline. Despite snow being on the road, Officer Jents was able to explain why he believed Ziriax Anderson's vehicle crossed the centerline. As the circuit court noted "…the officer was capable of making that determination based on the fact that the actual centerline may have been obscured by snow." (R:98: 31:16-19.) Also, Officer Jents testified that the vehicle was in the lane of oncoming traffic, which is contrary to Wis. Stat. § 346.05(1). The testimony from the motion hearing shows that none of the exceptions set forth in the statute apply in this case.

Officer Jents had two grounds to stop Ziriax Anderson's vehicle. As such, the stop was properly justified. Ziriax Anderson argues that Officer Jents' credibility should also be taken into consideration. However, as discussed below, the incident that led to Officer Jents' resignation occurred after this motion hearing, and it is not relevant.

## II. THE CIRCUIT COURT DID NOT ERR WHEN IT DETERMINED THAT ZIRIAX ANDERSON IS NOT ENTITLED TO WITHDRAW HER PLEA AS SHE WAS NOT PREJUDICED BY COUNSEL'S PERFORMANCE.

Ziriax Anderson next alleges that she should have been made aware of Daniel Jents' resignation and mental health issues prior to entering a plea. She argues this entitles her to withdraw her plea; however, she has not met her burden to show she is entitled to withdraw her plea.

Ineffective assistance of counsel claims present a mixed question of law and fact. State v. Maday, 2017 WI 28, ¶ 25, 374 Wis. 2d 164, 178, 892 N.W.2d 611, 617. The findings of fact are subject to the clearly erroneous standard while the determination of whether counsel's performance was ineffective is a question of law subject to an independent review. Maday, 374 Wis. 2d 164, ¶ 25.

"A defendant is entitled to withdraw a guilty plea after sentencing only upon a showing of 'manifest injustice' by clear and convincing evidence." State v. Bentley, 201 Wis. 2d 303, 311, 548 N.W.2d 50, 54 (1996). Wisconsin courts apply a two prong approach on in effective assistance of counsel claims. The defendant must prove "that (1) counsel performed deficiently and (2) the defendant suffered prejudice as a result of the deficient performance." State v. LeMere, 2016 WI 41, ¶ 25, 368 Wis. 2d 624, 640, 879 N.W.2d 580, 587. In Strickland v. Washington, the United States Supreme Court pointed out the importance of applying deference when reviewing counsel's performance:

> Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.

Strickland v. Washington, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984).

One way of demonstrating manifest injustice is for a defendant to show that the plea was not entered knowingly, intelligently, and voluntarily. State v. Dillard, 2014 WI 123, ¶ 37, 358 Wis. 2d 543, 556, 859 N.W.2d 44, 49–50. For example, Wisconsin appellate courts have found instances of manifest injustice in situations where a defendant is misinformed of the potential punishment. See e.g., State v. Finley, 2016 WI 63, 370 Wis. 2d 402, 882 N.W.2d 761; Dillard, 352 Wis. 2d 543. Conversely, courts have denied motions to withdraw a plea, finding no manifest injustice, where a defendant alleged he was confused during the plea due to pain medication and that the defendant did not believe his counsel was prepared to try the case. State v. Hoppe, 2009 WI 41, 317 Wis. 2d 161, 765 N.W.2d 794.

In the instant case, the circuit court found that counsel's performance was deficient. However, the circuit court found

that the second prong was not met, in that Ziriax Anderson was not prejudiced by the deficiency.

Here, Ziriax Anderson contends that due to her lack of knowledge regarding Mr. Jents' resignation and mental health issues, her plea was not knowingly, intelligently, or voluntarily made. Given Ziriax Anderson's testimony and her trial counsel's affidavit, the State does not dispute that the Ziriax Anderson was not made aware of this information prior to entering a plea. However, the State was not under any obligation to disclose this information to defense counsel in the first place.

It is worth noting that during the evidentiary hearing in this matter, Ziriax Anderson acknowledged the 10th judicial district OWI guidelines, and that she received the statutory minimums in exchange for her plea. (R101:11:8-18, 21:1-8.) She also acknowledged that this incident involved body camera footage. (Id., 18:21-23.) Ziriax Anderson further agreed that she had been pulled over by Mr. Jents, had her blood drawn, and the blood test revealed a BAC over .08. (Id., 17:23-25, 18:5-12.) This is notable, because it relates to the essential facts of an OWI plea.

As stated above, Ziriax Anderson has the burden of showing by clear and convincing evidence that her plea must be withdrawn due to a manifest injustice. Ziriax Anderson has not met this burden. Ziriax Anderson argues that her not being informed of Mr. Jents' resignation and mental health issues reaches this burden to show that she suffered prejudice. This argument is unsupported by law, and Ziriax Anderson never shows *how* this leads to a manifest injustice. Ziriax Anderson does not cite any authority to support her argument. Ziriax Anderson simply alleges that this fact alone constitutes a manifest injustice, and this is not enough to meet her burden.

Moreover, there is no evidence that Mr. Jents was unavailable for trial, despite Ziriax Anderson's contentions. In fact, the record demonstrates the opposite. Ziriax Anderson's trial counsel acknowledges in her affidavit that Mr. Jents was in fact available for trial, but the State wished not to call him to testify to avoid inconveniencing him. (R. 76.)

The paperwork submitted by Ziriax Anderson at the motion hearing on October 11, 2018 never indicates that Mr. Jents' resignation stemmed from dishonesty. (R.74-76.) The State agrees that if the issue was dishonesty, that the State would have to disclose such information to Ziriax Anderson; otherwise that plea may not be knowing, intelligent, or voluntary. However, there is no evidence that the resignation involved dishonesty. This case is dealing with an individual who had a mental health issue, outside of work, and resigned employment—all of which was subsequent to the initial arrest and to the July 11, 2017 motion hearing. Ziriax Anderson does not cite any authority to show how the terms of Mr. Jents' resignation would be deemed relevant and admissible at trial, and Ziriax Anderson has not shown how a manifest injustice has occurred to warrant withdrawal of the plea.

Ziriax Anderson was not prejudiced by her counsel's performance. Therefore, the circuit court correctly denied her motion to withdraw her plea.

## CONCLUSION

For the reasons stated above, the State respectfully requests that this Court affirm the decisions of the circuit court.

Dated this ___ day of July, 2019.

Respectfully submitted,

MEGAN E. KELLY
Assistant District Attorney
State Bar No. 1101227

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
megan.kelly@da.wi.gov

Attorney for Plaintiff-Respondent

**CERTIFICATION AS TO**
**FORM AND LENGTH**

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) 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 1,379 words.

Dated this ____ day of July, 2019.

Signed:

MEGAN E. KELLY
Assistant District Attorney
State Bar No. 1101227

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
megan.kelly@da.wi.gov

Attorney for Plaintiff-Respondent

## CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix which complies with the requirements of Wis. Stat. § (Rule) 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.

Dated this ____ day of July, 2019.

Signed:

MEGAN E. KELLY
Assistant District Attorney
State Bar No. 1101227

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
megan.kelly@da.wi.gov

Attorney for Plaintiff-Respondent

# CERTIFICATE OF MAILING

I certify that this brief was deposited into the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on July 3, 2019.

I further certify that on July 3, 2019, I served three copies of this brief via United State mail upon all opposing parties.

I further certify that the brief was correctly addressed and postage was prepaid.

Dated this ____ day of July, 2019.

Signed:

MEGAN E. KELLY
Assistant District Attorney
State Bar No. 1101227

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
megan.kelly@da.wi.gov

Attorney for Plaintiff-Respondent