

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II  
APPEAL FROM THE CIRCUIT COURT  
OF WAUKESHA COUNTY  
HONORABLE MARIA LAZAR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

Waukesha County  
Case No. 2019AP001650-CR  
Circuit Court No. 17CT1665

KELLY RICHARDSON,

Defendant-Appellant.

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REPLY BRIEF OF DEFENDANT-APPELLANT

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**Argument**

- a. Officer Monreal could not Objectively Discern a Reasonable Inference that Ms. Richardson was Committing Criminal Activity

In its response, the State relies primarily on this Court's holding in State v. Powers, 2004 WI App 143, 275 Wis. 2d 456, 685 N.W.2d 869. In Powers, this Court held that "the information given by the citizen informant and the police officer's corroboration of the information before the investigatory stop were sufficiently reliable to provide the officer with a reasonable suspicion of criminal activity." Id. at ¶15. However, the State's reliance on that holding is misguided.

In State v. Young, 212 Wis.2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997), the court applied a standard of reasonable suspicion that considered the conduct of the individual who was stopped by law enforcement. The court noted that criminal activity may be afoot even if the individual is observed engaging in innocent activity "if reasonable inference of unlawful conduct can be objectively discerned." Id. at 430.

Thus, a reasonable inference of criminal conduct on the part of the person being stopped is necessary, as such an inference must be "objectively discerned" if the observed conduct appears innocent.

In Powers, an Osco Drug Store clerk notified police that an intoxicated man made purchases and drove away in a truck. Powers, at ¶2. The responding officer arrived on scene and parked his squad so he would have a clear view of the defendant's vehicle. Powers at ¶3. As the defendant approached the vehicle, the responding officer found observed the defendant carrying a case of beer and walking unsteadily to the truck. Id. Due to those observations, the responding officer performed a traffic stop and this Court held he had reasonable suspicion to do so.

Unlike in Powers, Sergeant Monreal did not make any observations that could lead him to objectively discern Ms. Richardson was engaged in criminal conduct.

The responding officer in Powers specifically observed the defendant carrying beer and walking unsteadily towards his vehicle prior to making the investigatory stop. Therefore, the officer

viewed objectively discernable conduct that would lead to a reasonable inference that criminal activity was afoot.

In this case, Sergeant Monreal did not independently observe any conduct that would lead to a reasonable inference that Ms. Richardson was intoxicated. She was not driving erratically, she was not walking unsteadily, and she was not carrying alcohol or other objects that would lead an observer to conclude consumption of alcohol was taking place. In short, Sergeant Monreal did not observe any conduct prior to the investigatory stop that would have given him a reasonable inference that Ms. Richardson was in fact intoxicated.

For those reasons, the State's reliance on Powers is misguided. Unlike the responding officer in Powers, Sergeant Monreal did not independently observe any conduct prior to the investigatory stop that would have led him to believe Ms. Richardson was intoxicated. Therefore, Sergeant Monreal did not have a reasonable suspicion that Ms. Richardson was intoxicated and the stop violated her Fourth Amendment rights.

b. There were no Exigent Circumstances that Necessitated an Investigatory Stop

The State argues in its brief that the exigency of the situation necessitated Sergeant Monreal's stop. But for the PNC Bank employee's vague assertions regarding Ms. Richardson's demeanor, the State failed to point to any factors that indicated there were exigent circumstances present.

Again, the State's reliance on Powers for this argument is misguided. The responding officer in Powers quite clearly observed the defendant in an intoxicated state then further observed him drive away. *Id.*, at ¶¶2-3. Without question, those observations would have led to an exigent circumstance of an intoxicated driver on the road.

However, Sergeant Monreal did not have any independent observations that Ms. Richardson was intoxicated. He also followed Ms. Richardson's vehicle and did not observe any traffic violations. He eventually found Ms. Richardson's vehicle parked correctly in a parking lot. When he observed Ms. Richardson approach the vehicle, Sergeant Monreal did not see Ms. Richardson walking unsteadily.



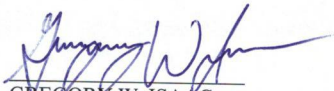
Therefore, Sergeant Monreal had no reason to believe there was an urgent need to stop Ms. Richardson from driving. Sergeant Monreal gave no indication that Ms. Richardson was putting the community at risk with erratic or poor driving and he had no personal knowledge that Ms. Richardson was intoxicated. Therefore, there were no exigent circumstances that necessitated the investigatory stop.

### Conclusion

Ms. Richardson respectfully requests that this court reverse the denial of her motion to suppress, vacate the judgment of conviction and remand this case for further proceedings.

Dated this 9<sup>th</sup> day of January, 2020.

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 1,214 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.