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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS – DISTRICT IV
Case No. 2019AP1830-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
v.
KATELYN MARIE LEACH,
Defendant-Appellant.

On Appeal from a Judgment of Conviction
Entered in the Waupaca County Circuit Court, the
Honorable Vicki L. Clussman Presiding

REPLY BRIEF
OF DEFENDANT-APPELLANT

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ARGUMENT

I. Ms. Leach's Motion to Suppress Should Have Been Granted Because Officer Malueg Did Not Have Fourth Amendment Authority to Search Ms. Leach When He Told Her He Was Going to Search Her Regardless of Whether She Consented, and Therefore, Her Consent Was Invalid.

Ms. Leach was unlawfully searched, in violation of the Fourth Amendment, when Officer Malueg claimed to have authority to search her, and used this purported authority to obtain her consent to search. As Ms. Leach demonstrated in her brief-in-chief, this claim of authority was false. Acquiescence to a false claim of authority is not valid consent. The remedy for a Fourth Amendment violation is exclusion of the evidence it produced. Ms. Leach's motion to suppress should have been granted.

In its response brief, the State does not respond to any of these arguments. Instead, the State's sole argument on appeal is that, when Officer Malueg ultimately arrested Ms. Leach, he had probable cause to do so. (Response brief at 3-6). This argument misses the mark. The bulk of the evidence the State relies on as probable cause for Ms. Leach's ultimate arrest was fruit of the poisonous tree, *i.e.* evidence obtained by exploitation of Officer Malueg's unlawful action. *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Dearborn*, 2010 WI 84, ¶15, 327 Wis. 2d 252, 786 N.W.2d 97 (the exclusionary rule applies to both tangible and intangible evidence).

The State concedes Ms. Leach's claims by failing to refute them. "Unrefuted arguments are deemed conceded." *State v. Verhagen*, 2013 WI App 16, ¶38, 346 Wis. 2d 196, 827 N.W.2d 891. This Court "will not abandon [its] neutrality to develop arguments" for the parties. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

The State does not refute that Ms. Leach was searched without a warrant; does not refute that Officer Malueg did not have Fourth Amendment authority to search Ms. Leach when he told her he was going to search her regardless of whether she consented; and does not refute that Ms. Leach's consent was invalid because it was coerced by Officer Malueg's false claim of legal authority to search. Finally, the State does not refute that the remedy is suppression and plea withdrawal. (*See* 6:1; brief-in-chief at 4, 12-13).

In sum, the State concedes that Ms. Leach was unlawfully searched in violation of the Fourth Amendment, and that the proper remedy is to grant her suppression motion and permit her to withdraw her plea.

CONCLUSION

Ms. Leach respectfully asks the Court to reverse the circuit court and remand with directions to grant Ms. Leach's motion to suppress and to permit her to withdraw her plea.

Dated this 5th day of February, 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 448 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 5th day of February, 2020.

Signed:

COLLEEN MARION
Assistant State Public Defender