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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2019AP1830 CR

Court Case No. 2018CT56

STATE OF WISCONSIN,

Plaintiff-Respondent,

V.

KATELYN MARIE LEACH,

Defendant-Appellant.

ON APPEAL FROM THE CIRCUIT COURT FOR WAUPACA COUNTY
THE HONORABLE VICKI L. CLUSSMAN, PRESIDING

RESPONSE BRIEF OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

Did the trial court err in denying the defendant's motion to suppress ?

STATEMENT ON ORAL ARGUMENT

The State is not requesting oral argument in this case. Rather, the State believes that the issue can be presented and addressed adequately in written argument.

STATEMENT ON PUBLICATION

The State does not request publication. This case can be resolved by applying well-established legal principles to the facts of the case.

STATEMENT OF THE CASE

As the plaintiff-respondent, the State exercises its option not to present a full statement of the case. Wis. Stat. § 809.19(3)(a)(2). Facts additional to those presented in Appellant's brief will be set forth where necessary within the argument section.

ARGUMENT

II. BASED ON THE TOTALITY OF THE CIRCUMSTANCES OFFICER MALUEG HAD PROBABLE CAUSE TO ARREST THE DEFENDANT FOR OPERATING A MOTOR VEHICLE WITH A RESTRICTED CONTROLLED SUBSTANCE IN HER BLOOD.

On 3/10/2018 at approximately 9:20 pm., Officer Justin Malueg #139, with the Weyauwega Police Department, was on patrol in the area of Lakeshore Dr. and W. Main St. in the city of Weyauwega, Waupaca County, Wi., when he observed a vehicle traveling west on W. High St. The vehicle approached a stop sign at the intersection of W. High St. and W. Main St. The vehicle proceeded through the stop sign without stopping. Officer

Malueg watched the wheels on the vehicle continue to roll. The vehicle turned east onto W. Main St. and travelled approximately two blocks until they turned into St. Peter's Church parking lot. It turned around in the parking lot and the began traveling west on W. Main St. It travelled west until approaching Hwy. 10. The vehicle turned east onto Hwy. 10 and proceeded towards Fremont

Officer Malueg followed the vehicle onto Hwy. 10 and monitored driving behavior for approximately two miles. Within these two miles, he observed the vehicle to swerve within its lane of travel. Approximately two times, the vehicle made abrupt movements within its lane of travel. It had also randomly braked two separate times while travelling approximately 60 mph

Officer Malueg initiated a traffic stop on the vehicle and identified the driver verbally as Katelyn M. Leach (DOB of 3/12/1997) and a passenger by Wi ID card as Gina R. Pecha (DOB of 11/1/1999). He informed Katelyn the reason why he was stopping her. She did not realize she didn't stop for the stop sign on W. High St.. While he identified both occupants, he could smell a light odor of unburnt Marijuana, but it seemed to be masked with another odor of some sort.

Officer Malueg asked Gina to exit the vehicle so that he could speak with her further. He informed her that he thought he could smell the odor of unburnt Marijuana when he approached the vehicle. He informed her that if she was honest about any THC related items being on her person, he would simply issue her a municipal citation. Gina immediately informed him that she had a Marijuana grinder with Marijuana inside of it

and a rolled joint inside of her purse. She also informed him of a Meth pipe inside of her purse.

Officer Malueg then turned his attention back to the driver, Katelyn. He asked her to exit the vehicle so that he could speak with her further. He informed her also that if she had any THC related items on her person, he would probably only issue her a municipal citation as well. She informed him that she had a Marijuana pipe on her person and immediately began grabbing for it. She removed it from her chest area underneath her sweatshirt. It did have burnt residue inside of the bowl and it smelled like burnt Marijuana. She said that was the only drug related item that she had.

Upon searching the vehicle, Officer Primising located what appeared to be "shake" on and around the driver seat. Officer Malueg knew shake to be consistent with small leafy flakes of unburnt Marijuana

Officer Malueg began talking with Katelyn further about her drug use. Katelyn first informed him that she hadn't smoked Marijuana since earlier in the day. In speaking with Gina, she informed him that they had just smoked prior to leaving Weyauwega in their vehicle. He asked Katelyn again. Katelyn then was honest and informed him that she had just smoked about "a bowl" prior to driving. She said this would have been approximately 30 minutes ago. He asked her how much a bowl was and she informed him that it was about .25 of a gram. He had asked her if she knew she shouldn't have been driving after smoking Marijuana and she said yeah.

The question of probable cause must be assessed on a case-by-case basis, looking at the totality of the circumstances. Probable cause is a "flexible, common-sense measure

of the plausibility of particular conclusions about human behavior.” In *393 determining whether there is probable cause, the court applies an objective standard, considering the information available to the officer and the officer's training and experience. State v. Lange, 2009 WI 49, ¶ 20, 317 Wis. 2d 383, 392–93, 766 N.W.2d 551, 555.

In looking at the totality of circumstances in this case, Defense has stipulated to Officer Malueg having reasonable suspicion to pull the vehicle over. In addition, Officer Maleug has been employed as a Law Enforcement Officer for approximately three years (App.105 Ln 5). He further indicated that one of his duties as a Patrol Officer is to perform traffic stops and investigate OWI violations (App.105 Ln. 9-12). He further testified that he had been involved in several drug investigations during his three years with the Weyauwega Police Department (App.107 Ln. 10-12), and that based on his training and experience he is familiar with the smell of marijuana (App.107 Ln. 7-8).

One of the first observations that Officer Malueg had made was the light odor of raw marijuana (App.107 Ln. 5-6). Based on those observation he pulled out both occupant separately. He first talked to Gina. Officer Malueg testified that after he had a conversation with Gina he once again re-approached the vehicle to speak with Katelyn (App.109 Ln. 2-4). Officer Malueg testified that he had a conversation with Katelyn about drugs or drug paraphernalia on her person or in the vehicle (App.109 Ln. 7-10). And once again, informed her that if it was minor paraphernalia or low level of THC, that municipal citations could be issued (App.109 Ln. 13-16). At that point, she admitted she had a marijuana pipe on her and she retrieved it off

of her person (App.109 Ln.19-20). After those conversation the vehicle was searched and shake was located throughout the vehicle (App.109 Ln 24-25).

At that point Officer Maleug testified that he once again approached Katelyn and asked her about her prior drug use. She had initially informed him that she had smoked (App.110 Ln.23-25), marijuana earlier in the day and that's when he turned his attention to Gina (App.111 Ln. 1-2). Officer Malueg stated Gina informed him that it was a little sooner -- or a little more recent, I should say, than just earlier in the day. She had stated that it was before they had left Weyauwega, prior to him stopping them (App.111 Ln. 4-7).

Officer Malueg went back to Katelyn to confirm if that was true, and she did say that they had smoked prior to just leaving. So that's when he decided to do field sobriety testing, off of that admission and his prior observations (App.111 Ln. 10-13).

Officer Malueg then testified that he had experience with drivers of vehicle who have been under the influence of THC in the past (App.111 Ln. 14-16).

On December 4th, 2018 the court denied the Defendant's motion. In so doing the court found that the officer testified that upon approaching the vehicle, he could smell a light odor of raw marijuana. I believe he had Ms. Pecha, the passenger, exit the vehicle first, and questioned her regarding the marijuana that he could smell in the vehicle. He testified that he informed Ms. Pecha that if it was just a pipe or a small amount of marijuana, he would issue a citation. He testified that Ms. Pecha turned over a meth pipe to him. He testified that he had Ms. Leach exit the vehicle and had a similar conversation

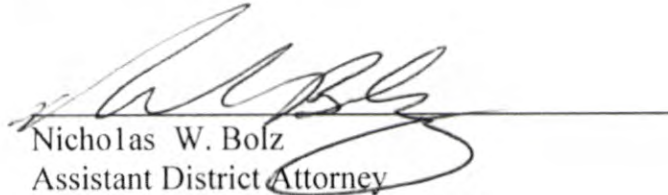
with her. And that Ms. Leach turned over a marijuana pipe. I believe during his conversation with Ms. Pecha, she informed him that she also had a marijuana grinder and a rolled joint inside of her purse. In speaking with Ms. Leach, she initially indicated to the officer that she had smoked marijuana earlier in the day. But I believe the officer indicated that in speaking with Ms. Pecha, Ms. Pecha informed the officer that they had smoked marijuana just before leaving (App.128 Ln.7-25), Weyauwega. And that Ms. Leach then also admitted to smoking just before leaving Weyauwega (App.129 Ln. 1-2).

The Court further found that the officer, based on the totality of the circumstances, the admissions that were made to him, as well as the odor that he smelled, that there was reasonable -- or there was probable cause in this case to search the vehicle, and there was probable cause to arrest Ms. Leach, again, considering the admissions that were made (App.129 Ln. 20-25).

CONCLUSION

Based on the record in this case, this Court should find that the Circuit Court did not err when denying the Defendant's motion to suppress. It is clear based on the totality of the circumstances that Officer Malueg had probable cause to arrest the Defendant for Operating a Motor Vehicle with a detectable amount a restricted controlled substance in her system.

Respectfully Submitted,



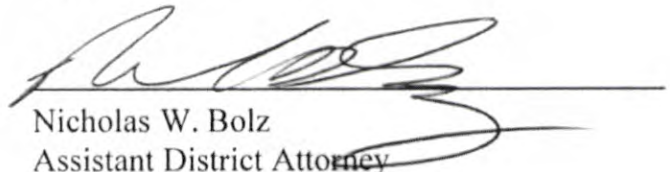
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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and 3b in that it is a monospaced font, 10 characters per inch, double spaced, a 1.5 inch margin on the left side and a one-inch margin on all other sides. The length of this brief is 1.509 words.

DATED this 30th day of January, 2020.

Signed:

A handwritten signature in black ink, appearing to read 'N. Bolz', is written over a horizontal line.

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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 30th day of January, 2020.

Signed,



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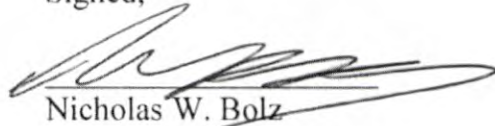
CERTIFICATION OF MAILING

I hereby certify that:

This brief was, on January 30, 2020, deposited in the United States mail for delivery to the clerk by first-class mail, or other class of mail that is at least as expeditious, postage pre-paid.

DATED this 30th day of January, 2020.

Signed,

A handwritten signature in black ink, appearing to read 'Nicholas W. Bolz', written over a horizontal line.

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