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STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
DISTRICT IV

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Case No. 2020AP731-CR

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STATE OF WISCONSIN,  
  
Plaintiff-Appellant,  
  
v.  
  
JOEL R. DAVIS,  
  
Defendant-Respondent.

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ON APPEAL FROM AN ORDER GRANTING A MOTION  
TO SUPPRESS ENTERED IN THE VERNON COUNTY  
CIRCUIT COURT, THE HONORABLE DARCY JO ROOD,  
PRESIDING

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**BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT**

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## **ISSUE PRESENTED**

Did the circuit court erroneously grant Defendant-Respondent Joel R. Davis's motion to suppress the substantial quantity of methamphetamine found on his person during a traffic stop?

The circuit court ruled that police unlawfully extended the traffic stop by running a check on the conditions of Davis's release on bond in a pending case in a neighboring county.

This Court should reverse and hold that a bond condition check is an "ordinary inquiry" police can conduct during a traffic stop.

## **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

The State does not request oral argument as it anticipates that the parties' briefs will fully address the issue presented. However, the State would welcome oral argument if it would assist this Court.

Publication may be warranted. This case presents an issue of general importance with no clearly established binding precedent on point, and publication will therefore promote clarity in the law. *See* Wis. Stat. § (Rule) 809.23(1)(a).

## **INTRODUCTION**

Viroqua Police Officer Tilmer Thompson stopped Davis for driving without a seatbelt. During the course of the stop, Officer Thompson learned that Davis's license was suspended, and that Davis was out on bond in a case from a neighboring county. While Davis was trying to contact someone to give him a ride and Officer Thompson was waiting to hear back on the conditions of Davis's bond, another officer who knew that Davis was a meth dealer with a penchant for stashing drugs in his socks arrived on the scene. That officer approached Davis and saw bulges near his thigh and ankle,

which he believed to be hidden drugs. Shortly after Officer Thompson learned that Davis was not subject to any relevant bond conditions, a third officer arrived on the scene with a drug-sniffing dog. The dog alerted at Davis's car, and a search revealed a substantial quantity of methamphetamine on Davis's person.

After the State charged Davis with possession of the methamphetamine, he moved to suppress the results of the search. He argued that the extension of the stop for the bond condition check was unlawful and that the dog sniff and search therefore violated his Fourth Amendment rights. After a hearing, the circuit court agreed with Davis and suppressed the search.

This Court should reverse. Like asking about insurance or checking for open warrants, determining the conditions of a driver's release on bond is an "ordinary inquiry" that ensures that vehicles are being safely and legally operated on public roads. The time it reasonably takes to conduct an ordinary inquiry does not constitute an unlawful extension of a traffic stop. During that time period here, police developed reasonable suspicion to search Davis and found the drugs. The search was valid, and the drugs should be allowed as evidence in Davis's prosecution.

### STATEMENT OF THE CASE

At 7:40 p.m.<sup>1</sup> on July 29, 2019, Viroqua Police Officer Tilmer Thompson saw Davis drive by at an intersection. (R. 24:1–2, A-App. 101–02.) According to Officer Thompson, he saw that Davis was not wearing a seatbelt. (R. 24:1, A-App. 101.) Davis made a "yawning gesture" and kept below the

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<sup>1</sup> The record contains some inconsistencies in the time stamps on the relevant videos. The State references the times as set forth in the circuit court's opinion and order. (R. 24, A-App. 101–08.)

speed limit as Officer Thompson followed him. (R. 24:1, A-App. 101.) Davis repeatedly braked and looked in the rearview mirror at Officer Thompson. (R. 24:1, A-App. 101.)

Officer Thompson activated his emergency lights and pulled Davis over. (R. 24:1, A-App. 101.) As Officer Thompson approached Davis's car, he saw Davis make "furtive movements" and put his telephone to his ear. (R. 24:1-2, A-App. 101-02.) Officer Thompson asked Davis if there were any drugs or weapons in the car, and Davis replied that there were not. (R. 24:2, A-App. 102.) Officer Thompson returned to his squad car, where he learned that Davis's license was suspended. (R. 24:2, A-App. 102.) He returned to Davis, informed Davis of the suspension, and allowed Davis to call someone to provide a ride. (R. 24:2, A-App. 102.) Officer Thompson then returned to his squad car to write a citation. (R. 24:2, A-App. 102.) At this point, approximately nine minutes had passed since Officer Thompson initiated the stop. (R. 24:2, A-App. 102.)

Upon returning to his squad car, Officer Thompson learned from dispatch that Davis had an open case in La Crosse County for possession of methamphetamine and carrying a concealed weapon. (R. 24:2-3, A-App. 102-03.) Officer Thompson asked whether Davis was out on bond and, if so, whether there were any conditions tied to that bond. (R. 24:3, A-App. 103.) Less than a minute later, Viroqua Police Officer Robert Raasch arrived on the scene. (R. 24:3, A-App. 103.) Officer Raasch told Officer Thompson that he knew Davis to be a "big time drug dealer" who would carry drugs in his socks. (R. 24:3, A-App. 103.) Officer Raasch then approached the passenger side of Davis's car, where he observed "bulges" in Davis's socks and near Davis's thigh. (R. 24:3, A-App. 103.)

About 12 minutes later, dispatch notified Officer Thompson that there were no relevant bond conditions in Davis's open case. (R. 24:3, A-App. 103.) About seven minutes

after that, Viroqua Police Officer Mark Bellacero arrived with drug K9 Myk. (R. 24:3, A-App. 103.) Officer Bellacero had Myk conduct a sniff of Davis's car, and Myk alerted at the passenger side. (R. 24:3, A-App. 103.) The officers ordered Davis out of the vehicle, searched him, and found a large quantity of methamphetamine. (R. 24:3, A-App. 103.)

The State charged Davis with possession with intent to deliver methamphetamine and felony bail jumping. (R. 6:1–2.) Davis moved to suppress the search, arguing both that the stop was illegal<sup>2</sup> and that even if the stop was legal, Officer Thompson illegally extended the stop to wait for the dog sniff. (R. 15:4–5.) The circuit court held a suppression hearing on November 20, 2019, at which Officers Bellacero, Thompson, and Raasch testified. (R. 39:2.) Following the hearing, the circuit court, the Honorable Darcy Jo Rood, presiding, granted Davis's motion to suppress. (R. 24:8, A-App. 108.) The court skipped the question of whether the stop was legal. (R. 24:4–5, A-App. 104–05.) Instead, the court “disagree[d] with the State and [found] that checking for bond conditions . . . falls outside the ‘ordinary inquiries’ related to the traffic violation or officer safety. It neither assures officer safety nor ensures safe vehicles on the road.” (R. 24:6, A-App. 106.) The court therefore ruled that, even if the stop was legal, Officer Thompson illegally extended it by checking Davis's bond conditions. (R. 24:6, A-App. 106.) The State now appeals.

### STANDARD OF REVIEW

This Court typically reviews an order denying a motion to suppress under a two-step analysis. *State v. Robinson*, 2009

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<sup>2</sup> Davis claimed that he had in fact been wearing his seatbelt when Officer Thompson pulled him over and that Officer Thompson's real reason for stopping him had been a missing mirror, which the State later conceded was not a violation. (R. 24:4, A-App. 104.)

WI App 97, ¶ 9, 320 Wis. 2d 689, 770 N.W.2d 721. This Court will uphold the circuit court's findings of historical fact unless those findings are clearly erroneous. *Id.* Under the "clearly erroneous" standard, appellate courts will uphold a circuit court's finding of fact unless the finding goes "against the great weight and clear preponderance of the evidence." *State v. Arias*, 2008 WI 84, ¶ 12, 311 Wis. 2d 358, 752 N.W.2d 748 (quoting *State v. Sykes*, 2005 WI 48, ¶ 21 n.7, 279 Wis. 2d 742, 695 N.W.2d 277). The application of constitutional principles to the facts found, on the other hand, presents a question of law that this Court reviews de novo. *Robinson*, 320 Wis. 2d 689, ¶ 9.

## ARGUMENT

**The circuit court erroneously granted Davis's motion to suppress.**

**A. Police may extend a traffic stop to conduct "ordinary inquiries" related to the mission of a traffic stop.**

"[A] traffic stop is a seizure within the meaning of our Constitutions." *State v. Floyd*, 2017 WI 78, ¶ 20, 377 Wis. 2d 394, 898 N.W.2d 560. "The reasonableness of a traffic stop involves a two-part inquiry: first, whether the initial seizure was justified and, second, whether subsequent police conduct 'was reasonably related in scope to the circumstances that justified' the initial interference." *State v. Smith*, 2018 WI 2, ¶ 10, 379 Wis. 2d 86, 905 N.W.2d 353 (quoting *Terry v. Ohio*, 392 U.S. 1, 19–20 (1968)). A traffic stop is justified when an officer "reasonably believes the driver is violating a traffic law." *State v. Betow*, 226 Wis. 2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999). *See also Floyd*, 377 Wis. 2d 394, ¶ 20 ("Reasonable suspicion that a driver is violating a traffic law is sufficient to initiate a traffic stop.").



The reasonableness of an officer's conduct during a traffic stop is measured by the mission of the seizure, the mission being "to address the traffic violation that warranted the stop" and to attend to the "ordinary inquiries" incident to the stop. *Rodriguez v. United States*, 575 U.S. 348, 354–55 (2015). That said, an officer may extend a stop (i.e., go beyond the initial mission) and begin a new investigation when reasonable suspicion for a new crime develops during the stop. *Betow*, 226 Wis. 2d at 94–95.

"[A] traffic stop 'can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission' of issuing a . . . ticket." *Rodriguez*, 575 U.S. at 354–55 (quoting *Illinois v. Caballes*, 543 U.S. 405, 407 (2005)). Courts considering the reasonableness of the duration of a stop have rejected setting "[a] hard and fast time limit" on stops. *State v. Gruen*, 218 Wis. 2d 581, 590–91, 582 N.W.2d 728 (Ct. App. 1998); see also *Floyd*, 377 Wis. 2d 394, ¶ 22 ("[W]hile the temporal duration of the stop may inform those considerations, it is not in itself dispositive."). Rather, courts consider, under the totality of the circumstances, whether police are diligent in completing their tasks related to the traffic infraction. See *id.*

Besides "determining whether to issue a traffic ticket, an officer's mission includes 'ordinary inquiries incident to [the traffic] stop.'" *Rodriguez*, 575 U.S. at 355 (quoting *Caballes*, 543 U.S. at 408). "Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Id.* "The justification for the ordinary inquiries is two-fold: (1) these checks serve to enforce the traffic code by 'ensuring that vehicles on the road are operated safely and responsibly'; and (2) for officer safety." *Smith*, 379 Wis. 2d 86, ¶ 19; *Floyd*, 377 Wis. 2d 394, ¶ 26 ("[O]fficer safety [is] an integral part of every traffic stop's mission.").

To that end, the “permissible inquiries” also “include warrant and criminal history checks.” *People v. Cummings*, 46 N.E.3d 248, ¶ 17 (Ill. 2016); *see also Rodriguez*, 575 U.S. at 356 (citing approvingly a federal circuit court case that recognized an “officer safety justification for criminal record and outstanding warrant checks”); *State v. Allen*, 779 S.E.2d 248, 257 (Ga. 2015) (surveying courts “throughout the country” and noting that they have held “that an officer generally may reasonably inquire about the identities of persons detained at the scene of a traffic stop and take reasonable steps to quickly verify their identities and to check their criminal histories and for warrants”).

**B. The extension of Davis’s stop was lawful because checking the conditions of the driver’s release on bond is an “ordinary inquiry.”**

There can be no dispute that Officer Thompson’s initial steps during the stop—taking Davis’s information and running a search—were lawful. *See, e.g., Rodriguez*, 575 U.S. at 354–55. Also, Davis did not seem to argue in the circuit court that it was improper for Officer Thompson to take a moment to notify him that his license was suspended and allow him to call someone for a ride. And it is settled law that if police had reasonable suspicion that Davis was committing a crime—in this case, possession of methamphetamine—it was lawful for him to extend the traffic stop until a drug-sniffing dog arrived on the scene. *See, e.g., Betow*, 226 Wis. 2d at 94–95. The sole issue, then, is whether police improperly extended the stop from the time Officer Thompson returned to his squad car until the time they developed the reasonable suspicion necessary to hold Davis until the dog sniff could be completed.

The State maintains that once Officer Raasch saw lumps near Davis’s thigh and ankle, the officers had reasonable suspicion to extend the stop until Officer Bellacero

arrived with Myk. Officer Raasch knew through the Drug Task Force that Davis was a “big-time” meth dealer and that Davis liked to stash drugs in his socks. (R. 39:53–54.) When he contacted Davis, Officer Raasch noticed that Davis seemed very nervous, avoiding eye contact and bouncing his legs. (R. 39:54–55.) He also saw that Davis had suspicious bulges in his socks and near his thigh and that he was operating two cell phones at once. (R. 39:55.) Taken together, Officer Raasch’s observations were “specific and articulable facts that warrant[ed] a reasonable belief that criminal activity [was] afoot”—specifically, that Davis was in possession of methamphetamine. *See State v. Young*, 2006 WI 98, ¶ 21, 294 Wis. 2d 1, 717 N.W.2d 729.

Officer Raasch made his observations and developed reasonable suspicion shortly after Officer Thompson asked dispatch whether Davis had any relevant bond conditions on his pending case in La Crosse County, but before dispatch had returned an answer. It follows that if Officer Thompson’s question to dispatch about Davis’s bond conditions in La Crosse County was an “ordinary inquiry” relative to the mission of the traffic stop, then the officers did not unlawfully extend the stop. *See Rodriguez*, 575 U.S. at 355.

There appears to be no case law directly addressing whether a check of a driver’s bond conditions is an ordinary inquiry within the meaning of *Rodriguez*. However, the analysis in *Rodriguez* and elsewhere indicates that it is. For example, warrant checks are permitted in traffic stops for two reasons: “ensuring that vehicles on the road are operated safely and responsibly” and officer safety. *Rodriguez*, 575 U.S. at 355–56. *See also Delaware v. Prouse*, 440 U.S. 648, 658 (1979) (“States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed”).

Checking bond conditions serves these same interests. Circuit courts have broad discretion to set conditions of bond when a defendant is released pending trial. *See State v. Wilcenski*, 2013 WI App 21, ¶ 9, 346 Wis. 2d 145, 827 N.W.2d 642. For example, a court can place restrictions on a defendant's "travel, association, or place of abode"; prohibit him from possessing a dangerous weapon; require the defendant to return to custody at certain hours; or mandate his participation in mental health treatment. Wis. Stat. § 969.02. Thus, checking a person's bond conditions can reveal—much like a warrant check—that the person should not be driving, that he should be in custody, or that he might carry dangerous weapons. In that way, a bond condition check serves both interests associated with a warrant check—officer safety and safe, responsible operation of vehicles on public roadways.

The circuit court took issue with the fact that a bond check can reveal criminal activity beyond that which led to the stop, commenting that checking for bond conditions "falls squarely within the category of an unrelated investigation of a crime." (R. 24:6, A-App. 106.) But simply because a bond condition check might reveal additional criminal activity does not mean it is not an ordinary inquiry. Determining whether a driver is licensed, for example, may also reveal additional unlawful activity. *See* Wis. Stat. § 343.05 (requiring anyone operating a vehicle to be properly licensed). But even though it may reveal additional criminal activity, checking the license status of a driver is understood to be one of the core "ordinary inquiries" that will take place in any traffic stop. Moreover, understanding that a person he has pulled over is violating the law simply by driving or being out past a certain time can be critical to an officer's decision-making process with respect to his own safety, letting the individual drive away upon completion of the stop, or other decisions.

The circuit court also concluded that a bond condition check was not an ordinary inquiry because it “neither assures officer safety nor ensures safe vehicles on the road,” pointing to the fact that Officer Thompson’s primary motivation seemed to be determining whether Davis had jumped his bail. (R. 24:6, A-App. 106.) But Officer Thompson’s motivations are irrelevant to determining whether bond condition checks are within the scope of “ordinary inquiries.” The Supreme Court has “been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers.” *Whren v. United States*, 517 U.S. 806, 813 (1996). That rule holds true here: Officer Thompson’s subjective intent has no bearing on the objective analysis of whether a bond condition check is an ordinary inquiry and thus permissible during a traffic stop. The State disagrees with the circuit court’s ruling as an objective matter. As stated, a bond condition check both promotes officer safety and ensures the safe operation of vehicles on the road in much the same way as a warrant check.

Ultimately, “courts impose bond conditions with the intent to protect members of the community from serious bodily harm, prevent intimidation of witnesses, assure a defendant’s future appearance in court, and prevent a defendant from violating the law.” *State ex rel. Jacobus v. State*, 208 Wis. 2d 39, 52, 559 N.W.2d 900 (1997). When a police officer learns that someone he has pulled over has a criminal case pending, a check of any bond conditions serves that intent, which is very much in line with the other inquiries understood to be a part of any traffic stop. The circuit court incorrectly concluded that a bond condition check is not an ordinary inquiry, and therefore erroneously granted Davis’s motion to suppress. This Court should reverse and remand for further proceedings.

## CONCLUSION

For the reasons discussed, this Court should reverse the circuit court's order granting Davis's motion to suppress and remand the case for further proceedings.

Dated this 31st day of August 2020.

Respectfully submitted,

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## **CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,941 words.

Dated this 31st day of August 2020.

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## **CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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 Wis. Stat. § 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 31st day of August 2020.

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**Appendix**  
***State of Wisconsin v. Joel R. Davis***  
**Case No. 2020AP731-CR**

Description of Document

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## APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

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This electronic appendix is identical in content to the printed form of the appendix filed as of this date.

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Dated this 31st day of August 2020.

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