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

Case No. 2020AP731-CR

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

JOEL R. DAVIS,

Defendant-Respondent.

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

REPLY BRIEF OF PLAINTIFF-APPELLANT

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INTRODUCTION

Davis only briefly discusses the issue presented in this case, instead choosing to focus on matters not presently before this Court. To be clear, the State's position is that this Court should reverse the circuit court's determination that a bond condition check is not an "ordinary inquiry" in a traffic stop and remand the case to the circuit court for a ruling on the validity of the initial stop, which the circuit court did not originally decide. The circuit court based its suppression decision solely on the extension of the stop for a check of Davis's bond conditions. Davis's arguments that the stop was invalid and that the K-9 sniff was problematic are therefore irrelevant for purposes of this appeal, and his accusation that the State "omitted facts critical to understanding this case" (Davis's Br. 5) is incorrect.

ARGUMENT

The circuit court erred when it granted Davis's motion to suppress.

A. The validity of the initial stop and the extension of the stop for the dog sniff are not at issue in this appeal.

Davis makes much of the circumstances surrounding the initial traffic stop, including the fact that Officer Thompson amended his original report to include the seatbelt violation and that the seatbelt violation was not discussed during the course of the original stop. (Davis's Br. 1–8.) The validity of the initial stop is not at issue in this appeal, however. In its decision and order granting Davis's motion to suppress, the circuit court specifically stated that it was not addressing whether Officer Thompson's testimony was truthful. (R. 24:5.) Without that factual finding, the court did not address the validity of the traffic stop; instead, it based its

decision and order solely on what transpired during the stop. (R. 24:5–7.)

Similarly, the circuit court did not “reach the issue of whether waiting for the drug detecting dog to arrive impermissibly prolonged the seizure.” (R. 24:8.) Davis’s arguments involving the extension of the stop for the dog sniff are thus not relevant for purposes of this appeal. Should this Court agree with the State’s position that checking for bond conditions is an ordinary inquiry in a traffic stop, it should reverse and remand the matter to the circuit court for a determination on the legality of the stop and whether police had reasonable suspicion to extend the stop once they learned Davis was not subject to any relevant bond conditions.

B. The issue presented raises a question of law, which is not a matter of the circuit court’s discretion.

Davis argues that “the trial court properly exercised its discretion” when it granted his motion to suppress. (Davis’s Br. 11.) This argument misstates the standard of review applicable to this case. As the State explained in its opening brief, the application of constitutional principles to the facts is a question of law that this Court reviews *de novo*. (State’s Br. 5.) The circuit court based its decision granting Davis’s motion to suppress entirely on a question of law: it found that checking for bond conditions was not an “ordinary inquiry” in a traffic stop. (R. 24:6, A-App. 106.) This legal determination is subject to *de novo* review by this Court. *See State v. Robinson*, 2009 WI App 97, ¶ 9, 320 Wis. 2d 689, 770 N.W.2d 721.

C. Checking a driver’s bond conditions is an “ordinary inquiry” in a traffic stop.

Davis misrepresents the State’s argument when he says that the State “assert[ed] that a dog sniff is justified as a

traffic stop ‘ordinary inquiry.’” (Davis’s Br. 13.) The State made no such assertion, and indeed, it is clear that extending a traffic stop for a dog sniff without reasonable suspicion violates the Fourth Amendment. *See Rodriguez v. United States*, 575 U.S. 348, 356 (2015). To be clear, the State’s argument is that the police developed reasonable suspicion to extend the stop for a dog sniff “once Officer Raasch saw lumps near Davis’s thigh and ankle.” (State’s Br. 7.) Thus, the only question is whether the extension of the stop until that time—that is, the extension to check for Davis’s bond conditions—was unlawful.¹ The State maintains that it was not.

Davis conflates the concept of an ordinary inquiry and the limitations on broadening the scope of an investigation during a traffic stop, as evidenced by his reference to *Betow*.² *Betow* concerned the questions an officer may ask of the driver during a traffic stop, but it did not address when something is an ordinary inquiry. This Court held that “the scope of questions asked during an investigative stop must bear a reasonable relationship to the reasons for which the stop was made in the first place.” *State v. Betow*, 226 Wis. 2d 90, 94, 593 N.W.2d 499 (Ct. App. 1999). But contrary to Davis’s argument, *Betow* did not forbid Officer Thompson’s inquiry into Davis’s bond conditions here. By Davis’s logic, an officer who stopped a driver for a broken taillight would be unable to request the driver’s license or proof of insurance because the initial stop was not related to driving without a license or driving uninsured. But an officer may, of course, ask for these items regardless of the reason for the stop because they are “ordinary inquiries.”

¹ Contrary to Davis’s assertion, the time period in question is thus less than 11 minutes, not 31 minutes. (R. 24:3.)

² *State v. Betow*, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999).

Davis also argues that a bond condition check “is not related to highway safety” and therefore is not an “ordinary inquiry” in a traffic stop. (Davis’s Br. 12.) As support, he cites *Whren*,³ but *Whren* says nothing about the ordinary inquiries an officer may make as part of a traffic stop. Rather, *Whren* stands primarily for the proposition that an officer’s subjective intentions are irrelevant for purposes of Fourth Amendment analysis. See *Whren v. United States*, 517 U.S. 806, 813 (1996) (“Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”). In any event, as the State argued in its opening brief, a check on an individual’s bond conditions—like a check for open warrants—serves the dual purposes of ensuring officer and roadway safety. (State’s Br. 9.) Because police developed reasonable suspicion that Davis possessed drugs while the check for his bond conditions was still pending, there was no constitutional violation.

Davis’s argument that police extended the stop beyond the time necessary to write a citation suffers from the same flaw described above. Davis notes that “[a] traffic stop becomes unlawful when an officer extends the time beyond the time necessary to complete the stop’s ‘mission.’” (Davis’s Br. 15.) But he also notes that “conducting ordinary inquiries incident to the stop” are part of the stop’s mission. (Davis’s Br. 15.) The State has argued that a bond condition check is an ordinary inquiry incident to a traffic stop, so Davis’s argument on this point does nothing more than reiterate the issue presented in this case.

Davis also seems to argue that Officer Raasch’s observations did not amount to reasonable suspicion to extend the stop. (Davis’s Br. 16–17.) As support, he offers possible innocent explanations for his behavior, such as his claim that he was “test driving” the car he was driving when Officer

³ *Whren v. United States*, 517 U.S. 806 (1996).

Thompson pulled him over. (Davis's Br. 17.) But an officer is not required to consider and dismiss every possible innocent explanation for a suspect's behavior before seizing him. *See State v. Waldner*, 206 Wis. 2d 51, 60, 556 N.W.2d 681 (1996).

Ultimately, during each step of the interaction between the police and Davis, the police acted reasonably. Permitting police to check for an individual's bond conditions during a traffic stop advances the purposes of both highway safety and officer safety. By the time Officer Thompson heard back about Davis's bond conditions, Officer Raasch had developed reasonable suspicion to continue detaining Davis until a K9 sniff could be completed. Davis's constitutional rights were not violated.

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 25th day of January 2021.

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 1,359 words.

Dated this 25th day of January 2021.

Electronically signed by:

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CERTIFICATE OF COMPLIANCE

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of the Interim Rule for Wisconsin's Appellate Electronic Filing Project, Order No. 19-02.

I further certify that:

A copy of this certificate has been served with brief filed with the court and served on all parties either by electronic filing or by paper copy.

Dated this 25th day of January 2021.

Electronically signed by:

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