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SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT

Case No. 2021AP000142-CR

STATE OF WISCONSIN

Plaintiff-Respondent

v.

CHARLES W. RICHEY,

Defendant-Appellant-Petitioner

PETITION FOR REVIEW

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PETITION FOR REVIEW

Charles W. Richey hereby petitions the Supreme Court, pursuant to Wis. Stats. § 808.10 and § 809.62 to review the decision of the Court of Appeals, District III, *State v. Charles W. Richey*, Appeal No. 2021AP000142, filed on February 15, 2022.

STATEMENT OF THE ISSUE

Whether, at the time of the stop, Officer Meier only had a generalized hunch that Richey's motorcycle may have been the one that committed a traffic violation.

CRITERIA FOR REVIEW

The erosion of Fourth Amendment liberties comes not in dramatic leaps but in small steps, in decisions that seem fact-bound, case-specific, and almost routine at first blush. Taken together, though, these steps can have broader implications for the constitutional rights of law-abiding citizens. This Court should review Mr. Richey's Fourth Amendment issue to re-emphasize the proper standard of review in reasonable suspicion cases.

STATEMENT OF THE CASE

BACKGROUND FACTS

On April 28, 2018, Police Officer Alexis Meier was on routine patrol in the Village of Weston. (R76:5-6). Around 11:00 p.m., a deputy from the Marathon County Sheriff's Office broadcast over the radio that he had stopped to assist a disabled motorcycle near Business 51 and Schofield Avenue in the village. (R76:5). Shortly thereafter the deputy announced he had cleared that scene, but then announced that any other

officers in the area should be on the lookout for a Harley-Davidson motorcycle driving erratically and at a high rate of speed, traveling northbound on Alderson Street. (R76:5).

Officer Meier was in the general vicinity of Alderson Street. (R76:6). About five minutes after hearing the deputy's call, Meier spotted a Harley-Davidson motorcycle traveling eastbound on Schofield, just west of Alderson Street. (R76:7, 12). Although it was not driving fast or erratically, she followed it for two-and-a-half blocks before activating her lights to make a traffic stop. (R76:26). At no time had she observed the motorcycle commit any traffic violations. (R76:23-24). According to Meier, she stopped the motorcycle based solely on the deputy's broadcast that she should be on the lookout for a Harley-Davidson in that general area. (R76:12-13).

As luck would have it, the motorcycle Officer Meier had pulled over was not the motorcycle the deputy had witnessed driving erratically. (R76:14). However, unfortunately for the driver of the motorcycle, the defendant, Charles Richey, this mistake was not very consoling. Because Richey had shown signs of intoxication Officer Meier placed him under arrest for OWI. (R2).

PROCEDURE IN THE TRIAL COURT

Mr. Richey filed a motion to suppress all OWI evidence law enforcement had gathered after the initial traffic stop on grounds that Meier did not have reasonable suspicion to pull him over. (R16). The circuit court denied the motion reasoning that Meier had sufficient grounds. (R76:46-47). Thereafter, Richey pled no contest to the OWI, the court accepted his plea, and found him guilty. (R79). The court sentenced him to nine years of imprisonment, bifurcated four

and five. (R79). Richey timely filed his Notice of Intent and appealed his conviction to the court of appeals.

RESULTS IN THE COURT OF APPEALS

As recast by the court of appeals, the sole issue on appeal was whether the circuit court had properly denied Richey's suppression motion. (Decision at 2). The court of appeals agreed that it had, reasoning that the circumstances cited in support of the traffic stop were sufficient to give Officer Meier reasonable suspicion. (Decison at 5).

ARGUMENT

I. The *Ornelas* standard of review is necessary to assure a unitary body of Fourth Amendment law.

Many years ago, in *Ornelas v. U.S.*, the United States Supreme Court set forth the methodology that appellate courts should use when determining whether a law enforcement officer had "reasonable suspicion" to stop and detain a citizen. *Ornelas v. U.S.*, 517 U.S. 690 (1996). That is, they should review the lower court's findings of historical fact for clear error, but they were to review *de novo* whether the officer had reasonable suspicion. *Id.* at 700. The "*de novo*" standard was grounded in three principals.

First, the Supreme Court felt independent appellate review of the ultimate question would prevent varied results based on interpretations of similar facts by different trial judges. *Id.* at 697. Varied results would be inconsistent with the idea of a unitary system of law, which as a matter-of-course, would be unacceptable. *Id.*

Second, independent review would be necessary if appellate courts were to maintain control of, and to clarify, the pertinent legal principles. *Id.* at 698.

Finally, *de novo* review would tend to unify precedent and would come closer to providing law enforcement officers with a defined set of rules which, in most instances, would allow them to reach a correct determination beforehand. *Id.* Such review would likewise provide unitary guidance to litigants, lawyers, and trial courts. *State v. Hajicek*, 2001 WI 3, ¶18, 240 Wis.2d 349, 620 N.W.2d 781.

The Supreme Court acknowledged that because the mosaic which is analyzed for a reasonable-suspicion inquiry is multi-faceted, one determination seldom would be a useful precedent for another. *Ornelas*, 517 U.S. at 698. But even where one case may not squarely control another one, the two decisions when viewed together may usefully add to the body of law on the subject. *Id.*

Implicit in the *Ornelas* Court's directions was that appellate courts should look to cases with similar fact patterns to guide their reasonable suspicion determinations. In fact, the Court presented several examples where the facts in a prior case were remarkably similar to those in the present case. *Id. De novo* review would allow for a measure of consistency in the treatment of similar factual settings, rather than permitting different trial judges to reach inconsistent conclusions about same or similar facts. *Mahaffey v. Page*, 162 F.3d 481, 484 (7th Cir. 1998).

Wisconsin uses the *Ornelas* standard of review when reviewing reasonable suspicion cases. *See e.g., State v. Powers*, 2004 WI App 143, ¶6, 275 Wis.2d 456, 685 N.W.2d 869. In fact, the court of appeals claimed to have used the *Ornelas* standard

when it reviewed Richey's case, but this claim is doubtful. (Decision at 4).

II. The court of appeals did not employ the *Ornelas* standard of review in Richey's case and therefore the court's decision adds little to the unitary body of Fourth Amendment law.

Aware of the proper standard of review, Richey argued to the court of appeals that his case was factually similar to *State v. Adams*, No. 2018AP174, unpublished slip op., (WI App Jan. 15, 2019). In the *Adams* case, a police officer made a traffic stop and during the stop one of the vehicle's passengers took off on foot. *Id.* ¶2. The officer making the stop broadcast to Deputy William Hujet to be on the lookout for the fleeing individual. *Id.* Hujet immediately began searching the area and about thirty minutes later Hujet encountered Adams driving within a mile or so of where the passenger had fled. *Id.* ¶3. In his mind, Hujet thought that the fleeing individual had called Adams on his cell phone to come and pick him up. *Id.* ¶4.

Hujet continued to watch Adams who somewhat suspiciously drove down a dead-end road, backed up, and returned to where he had started. *Id.*¶3. When Adams turned onto another road which led back to the area of the original traffic stop, Hujet effectuated his stop of Adams. *Id.* Upon making contact, Hujet detected intoxicants and subsequently arrested Adams for OWI. *Id.* ¶5.

In the trial court, Adams unsuccessfully moved to suppress all evidence obtained after the stop on grounds that Hujet did not have reasonable suspicion to stop him, as he had committed no crimes or traffic violations in Hujet's presence. *Id.* ¶11. Adams renewed this claim on appeal and

the court of appeals agreed with Adams. *Id.* ¶5. The court of appeals reversed the circuit court. *Id.* ¶15.

The historical facts in *Adams* were these:

1. Hujet sees Adams one mile away from stop
2. Hujet sees Adams one half hour after initial call
3. Hujet observes a mysterious driving pattern
4. Late at night

Id. ¶¶3-5.

The historical facts in *Richey* were these:

1. Meier sees Richey one-half mile away from stop
2. Meier sees Richey five minutes after initial call
3. Meier sees no other motorcycles, but Richey's Harley
4. Late at night

(Decision ¶7).

What Richey finds disturbing is that the *Adams* court found none of the facts cited by the trial court supported Hujet's hunch, yet in his case strikingly similar facts supposedly supported Officer Meier's.

Moreover, in his case the court of appeals did not distinguish his case from *Adams* in any way. In fact, it did not mention *Adams* at all or mention any other factually similar case that supported a finding of reasonable suspicion. He submits that insofar as the court of appeals stated that it had employed the *Ornelas* standard of review, there is no evidence that it ever did.

CONCLUSION

This Court should use this opportunity to re-emphasize how the court of appeals should be reviewing reasonable suspicion questions. It should grant Mr. Richey's petition for review.

Dated this 28th day of February 2022.

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CERTIFICATION

I hereby certify that this petition conforms to the rules contained in Wis. Stats. § 809.62(4) for a petition produced with a proportional serif font. The length of the petition is 1,506 words.

CERTIFICATE OF COMPLIANCE WITH FORMER RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this petition, excluding appendix, if any, which complies with the requirements of s. 809(19)(12). I further certify that:

This electronic petition is identical in content and format to the printed form of the petition filed as of this date, except the electronic petition is not signed.

A copy of this certificate has been served with the paper copies of this petition filed with the court.

Dated this 28th day of February 2022.

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