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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2021AP1067-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

BRADLEY C. BURGESS,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION AND
ORDER DENYING A MOTION TO SUPPRESS ENTERED
IN LAFAYETTE COUNTY CIRCUIT COURT, THE
HONORABLE KARL HANSON, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Burgess pleaded no contest to possession of drug paraphernalia as a party to a crime (repeater), identify theft, possession with intent to deliver as a party to a crime (repeater), and carrying a concealed knife as a party to a crime. Burgess appeals his conviction and asks this Court to reverse the order denying his suppression motion and vacate the judgment of conviction. Burgess, a passenger during a lawful traffic stop, provided the police officer with a false identity two times before finally admitting he provided a false identity to avoid disclosing potential warrants. After a search of the vehicle, the officer discovered individually packaged marijuana and drug paraphernalia. Ordinary inquiries—such as identifying the occupants of a vehicle—are part of the original mission of every traffic stop and do not impermissibly extend the stop. At the suppression hearing, the police officer testified that at every traffic stop he asks the driver general questions and requests passenger identification and, if provided, performs a routine record check. Did the officer unlawfully extend the stop by asking the driver routine questions and requesting passenger identification?

The circuit court said: No.

This Court should say: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary as the issue will be fully presented in the briefs. Publication is unwarranted as the issue can be decided by applying established legal principles to the facts of this case.

INTRODUCTION

The police officer's questions to the driver and request for passenger information were part of the original mission of the traffic stop and the circuit court properly denied Burgess's suppression motion. Burgess's sole argument is that the police officer's questions to the driver and request for passenger identification were unreasonable and that the traffic stop "should have ended within seconds." (Burgess's Br. 15.) His argument ignores United States Supreme Court and Wisconsin cases that allow a police officer to make ordinary inquiries as part of the mission of every traffic stop and, moreover, that the Fourth Amendment allows for even "unrelated investigations" so long as they do not measurably extend the length of the stop. *Rodriguez v. United States*, 575 U.S. 348, 354–55 (2015). Accordingly, this Court should affirm the judgment of conviction.

STATEMENT OF THE CASE

Burgess appeals the judgment of conviction and denial of his suppression motion. (Burgess's Br. 5.) He asks this Court to reverse the circuit court's order denying his suppression motion and vacate the judgment of conviction. (Burgess's Br. 15.)

Burgess was a passenger in a lawfully stopped vehicle. (R. 112:7–9.) Officer Mantsch, of the Darlington Police Department, pulled the vehicle over for a defective muffler. (R. 112:7.) Prior to noting the defective muffler, Officer Mantsch observed that the vehicle was parked outside of a known drug user's home at 2:00 a.m. (R. 112:23–29.) Because of the vehicle's location, the time, and that Officer Mantsch regularly patrolled the area, but had never seen the car, he ran a record check on the vehicle. (R. 112:23–25.) After observing the defective muffler and establishing contact with the driver, Officer Mantsch collected the driver's information as well as two of the three passengers' information. (R. 112:5–

8.) He collected the driver's identification and the passengers' information at the same time. (Ex. 1, at 00:50–03:00.)¹ The front seat passenger would not speak with Officer Mantsch or provide information. (R. 112:8.) Officer Mantsch responded, "Nothing? Okay." when the front seat passenger refused to provide her information. (Ex. 1, at 02:00.) Officer Mantsch also asked the driver general questions about where he was coming from and his destination. (Ex. 1, at 03:00–04:00.) The questions occurred within the first 4 minutes of the traffic stop. (Ex. 1, at 00:01–04:00.)

Burgess was one of the passengers that provided Officer Mantsch with identification information. (R. 112:8.) At first, Burgess told Officer Mantsch his name was "Cody Kitsemble." (R. 112:8; Ex. 1, at 02:07.) When Officer Mantsch performed a record check on that name, nothing came back. (R. 112:9; Ex. 1, at 06:22–06:54.) Officer Mantsch then asked Burgess to step out of the vehicle. (Ex. 1, at 07:34.) Burgess told him his "real name" was "Tyler Daly." (R. 112:9; Ex. 1, at 07:57.) When Officer Mantsch asked him why he gave a fake name, Burgess responded "[he] thought [he] had warrants." (Ex. 1, at 07:58.) Officer Mantsch returned to his vehicle and performed a record check on the name "Tyler Daly." (Ex. 1, at 10:47.) Because the date of birth Burgess provided for this identity was incorrect, nothing came back during the record check. (R. 112:9–10.) Officer Mantsch again returned to the vehicle and asked Burgess "what's your name actually?" (Ex. 1, at 11:38.) Burgess again told him his name was "Tyler Daly" and gave him a different date of birth for that identity. (Ex. 1, at 11:38.) Officer Mantsch again returned to his vehicle to check the identity against the updated date of birth. (Ex. 1, at 11:48.)

¹ Exhibit 1 is Officer Mantsch's body camera footage, which was added to the Record on October 1, 2021.

Officer Mantsch returned to the vehicle and asked the driver to step out. (Ex. 1, at 16:04.) Officer Mantsch asked him why Burgess was “lying to [him] about his name?” (Ex. 1, at 17:49.) The driver responded, “I don’t know.” (Ex. 1, at 17:52.) After speaking with the driver, Officer Mantsch again asked Burgess to step out of the vehicle. (Ex. 1, at 19:56.) Burgess then told Officer Mantsch that his name was “Tyler,” but his “street name is Cody.” (Ex. 1, at 21:24.)

After learning that the driver of the vehicle was on parole, Officer Mantsch conducted an “Act 79 search”² based on his belief that “criminal activity had been committed, was being committed, or was going to be committed.” (R. 112:56; Ex. 1, at 22:00.) In the vehicle, under the front passenger seat, was “a vacuumed sealed bag containing three bags of green leafy substance” and a “glass smoking device.” (R. 112:61.) The officer found a backpack near Burgess’s seat, (R. 112:63), that contained individually packaged marijuana and drug paraphernalia (meth pipe), (Ex. 1, at 37:22). In the main compartment of the backpack, Officer Mantsch found a wallet with a “large amount of cash,” (Ex. 1, at 38:00), and a Kwik Trip rewards card registered to Burgess, (R. 112:63; Ex. 1, at 43:11). Officer Mantsch arrested Burgess. (Ex. 1, at 55:40.)

Burgess was charged with two counts of possession of drug paraphernalia as a party to a crime (repeater), two counts of identity theft (repeater), possession with intent to deliver THC as a party to a crime (repeater), and carrying a concealed knife as a party to a crime (repeater). (R. 1.)

At the suppression hearing, Officer Mantsch testified that his “process . . . for a routine traffic stop” includes collecting passenger information and running record checks. (R. 112:5.) He explained that he asks for passenger names and performs record checks for “officer safety” and to determine “if

² Wis. Stat. § 973.09(1)(d).

they have past violent offenses” or “any drug offenses.” (R. 112:17.) He confirmed he stopped the vehicle for a “defective muffler.” (R. 112:7.) Further, that Burgess provided him with a false identity twice before eventually admitting he provided false identities because he was concerned about warrants. (R. 112:8–9, 53.) At that point, Officer Mantsch confirmed he was “investigating something new.” (R. 112:18.) Specifically, “[t]he fact that [he] was provided a fake name.” (R. 112:18.) Officer Mantsch further explained that at this point “the traffic stop was not complete.” (R. 112:18.) Officer Mantsch testified that collecting the passenger information “was pertinent to [the] traffic stop.” (R. 112:39.) Officer Mantsch acknowledged that the passengers were not required to provide their information. (R. 112:41.)

Other than the fact that it was routine to request passenger information at every traffic stop, Officer Mantsch also testified that he is “worried about [his] personal safety with every contact.” (R. 112:41.) Further, that in his experience, “[d]rugs and violence go together.” (R. 112:42.) He also testified that it was his “normal practice” and a part of his “normal duties” to run a record check on passengers and so it did not extend the time of the stop. (R. 112:48.) According to Officer Mantsch, the record check he performed would show if the passenger had a valid driver’s license, if they are on probation or parole, whether they have outstanding warrants, and provides details on “[s]ome prior crimes.” (R. 112:51.)

Officer Mantsch also testified that during a normal traffic stop he asks, “where people are coming from and going to and who they are with and who they were spending time with. It’s common practice.” (R. 112:44.) He acknowledged that people are not required to respond, but if “they’re willing to offer that information,” it is helpful. (R. 112:46.) He testified that his questions did not extend the stop because “[i]t was part of [his] normal traffic stop” and he asks these types of questions at “every single traffic stop.” (R. 112:47.)

The circuit court denied Burgess's suppression motion with findings of fact and conclusions of law on the record. (R. 112:87–102.) The court cited to *State v. Betow*, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999), to establish that Officer Mantsch could ask the “driver’s purpose and his/her destination.” (R. 112:87.) Moreover, that the totality of the circumstances (i.e., rural community, 2:00 a.m., Mantsch’s familiarity with the area), justified any follow-up questions to the driver. (R. 112:88.) The court referred to this Court’s decision in *State v. Gammons*, 2001 WI App 36, 241 Wis. 2d 296, 625 N.W.2d 623, to establish that an officer is permitted to ask for passenger information during a lawful traffic stop. (R. 112:90.) The court viewed *Gammons* as harmonious with *Rodriguez*, 575 U.S. 348. (R. 112:90.)

The court found that when the officer asked for Burgess’s information it was an ordinary inquiry and a part of the mission of the stop. (R. 112:93.) But, at the point Burgess gave the second false identity (Tyler Daly), a second investigation into obstruction began. (R. 112:93.) The court also found that the search of the property under the driver’s control was permissible under Wis. Stat. § 973.09(1)(d) since the driver was on probation.³ (R. 112:95.)

Burgess filed a Motion for Reconsideration. (R. 63.) The court issued a written order reaffirming its decision and providing further detail. (R. 76.) The court reaffirmed its conclusions of law and further explained that *Rodriguez* did not provide a “bright line rule[]” as to what constitutes an “ordinary inquiry.” (R. 76:4.) Further, that *Rodriguez*, by implication, answered the question in this case, because the officer in *Rodriguez* asked the passenger for identification as part of the ordinary inquiries incident to that stop. (R. 76:4–

³ Burgess does not challenge that the search of the vehicle was permissible under Wis. Stat. § 973.09(1)(d). (Burgess’s Br. 11–15.)

5.) Accordingly, because Burgess failed to establish a manifest error of law, the circuit court denied his motion for reconsideration. (R. 76:5.)

Burgess pleaded no contest to Counts 2, 3, 5, and 6 and Counts 1 and 4 were dismissed and read in. (R. 111:16.) For Count 2 (possession of drug paraphernalia as a party to a crime and repeater), Burgess was sentenced to 12 months in the county jail. (R. 111:24–25.) For Count 3 (identity theft as a repeater), Burgess was sentenced to four years of initial confinement followed by three years of extended supervision. (R. 111:25.) For count 5 (possession with intent to deliver THC as a party to a crime and repeater), Burgess was sentenced to three years of initial confinement followed by two years extended supervision. (R. 111:25.) For count 6 (carrying a concealed knife as a party to a crime), Burgess was sentenced to 12 months in jail. (R. 111:25.) All of Burgess’s sentences were ordered concurrent with one another. (R. 111:25.)

Burgess appeals the denial of his suppression motion.

STANDARD OF REVIEW

“Whether evidence should be suppressed is a question of constitutional fact.” *State v. Floyd*, 2017 WI 78, ¶ 11, 377 Wis. 2d 394, 898 N.W.2d 560 (quoting *State v. Knapp*, 2005 WI 127, ¶ 19, 285 Wis. 2d 86, 700 N.W.2d 899). Under this standard, this Court will uphold the circuit court’s findings of historical fact unless they are clearly erroneous. *Id.* This Court reviews independently the court’s application of constitutional principles to those facts. *Id.*

ARGUMENT

- I. The circuit court properly denied Burgess’s suppression motion because Officer Mantsch’s general questions, request for passenger information, and routine record checks were all part of the original mission of the stop.**
- A. During a traffic stop, an officer may address the traffic violation and attend to ordinary inquiries, which include asking for passenger information and running record checks.**

The Fourth Amendment of the United States Constitution and article I, section 11 of the Wisconsin Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; Wis. Const. art. I, § 11. “The temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of the Fourth Amendment.” *State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 765 N.W.2d 569 (quoting *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996)). “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.” *Betow*, 226 Wis. 2d at 93–94; *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*, 575 U.S. at 354–55. That said, an officer may extend a stop and begin a new investigation when reasonable suspicion of a new crime develops during the stop. *Betow*, 226 Wis. 2d at 94–95.

Other than “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 (alteration in original) (quoting *Illinois v. Caballes*, 543 U.S. 405, 408 (2005)). Inquiries typically include checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s proof of insurance. *Id.* Inquiries such as these serve two purposes: (1) “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 (citation omitted); see also *Floyd*, 377 Wis. 2d 394, ¶ 26 (“[O]fficer safety [is] an integral part of every traffic stop’s mission.”).

The Wisconsin Supreme Court has long held that “when a passenger has been seized pursuant to a lawful traffic stop, the seizure does not become unreasonable . . . simply because an officer asks the passenger for identification during the stop.” *State v. Griffith*, 2000 WI 72, ¶ 65, 236 Wis. 2d 48, 613 N.W.2d 72. Passengers are free to decline to answer such questions, but if a passenger chooses to answer but gives the officer false information “the passenger can be charged with obstructing an officer.” *Id.* This Court has further held that asking for a passenger’s identification and running a record check “reasonably relate[s] in scope to the purpose of a traffic stop.” *Gammons*, 241 Wis. 2d 296, ¶¶ 12–13. Wisconsin precedent is harmonious with *Rodriguez*’s guidance that ordinary inquiries incident to a traffic stop do not impermissibly extend the stop. See *Rodriguez*, 575 U.S. at 348 (noting the officer checked both Rodriguez’s driver’s license and the passenger’s license during the traffic stop as part of

normal inquiries). Like in *Rodriguez*, inquiries outside of normal inquiries incident to a stop that impermissibly extend its duration, and are thus unconstitutional, can include a dog sniff. *Id.* at 357. Recently, this Court has held that checking the bond conditions of the driver is not an “ordinary inquiry.” *State v. Davis*, 2021 WI App 65, ¶ 2, 399 Wis. 2d 354, 965 N.W.2d 84.

B. Officer Mantsch did not impermissibly extend the stop by making ordinary inquiries incident to the traffic stop.

As a preliminary matter, Burgess is not challenging the legality of the traffic stop, the search of his bag, or that Officer Mantsch had probable cause to arrest him. (Burgess’s Br. 11–15.) Burgess’s sole argument on appeal is that Officer Mantsch unlawfully seized Burgess when he “extended the traffic stop beyond the time reasonably necessary to complete the mission” and therefore “the circuit court erred when it denied [his] motion to suppress. (Burgess’s Br. 11.) Thus, Burgess’s argument rises and falls on whether Officer Mantsch’s questions to the driver and request for passenger information constitute ordinary inquiries and, if they did not, whether they measurably extended the length of the stop.

Burgess’s argument fails because asking routine questions, requesting passenger information and, if provided, performing a routine record check on the occupants’ identification were part of the original mission of the stop, and the circuit court properly denied his suppression motion.

1. The mission of the traffic stop was not complete before the officer requested passenger identification.

Burgess erroneously argues that the mission of the traffic stop was complete before Officer Mantsch even approached the vehicle and that the “traffic stop reasonably

should have ended within seconds.” (Burgess’s Br. 15.) This argument is inconsistent with both United States Supreme Court and Wisconsin precedent.

First, the mission of the traffic stop was not complete when Officer Mantsch asked the driver questions. It is unreasonable to conclude that the officer would have approached the driver, asked no questions, and simply stated he was giving him a warning before any interaction with the driver or passengers, including checking the identification of the driver. *See Smith*, 379 Wis. 2d 86, ¶ 2 (“[W]hen an officer conducts a valid traffic stop, part of that stop includes checking [the driver’s] identification, even if the reasonable suspicion that formed the basis for the stop . . . has dissipated.”).

Second, asking for passenger information is a permissible ordinary inquiry under Wisconsin law and part of the original mission of a traffic stop. *Griffith*, 236 Wis. 2d 48, ¶ 65; *see also Gammons*, 241 Wis. 2d 296, ¶¶ 12–13. Wisconsin precedent is harmonious with *Rodriguez*’s holding that ordinary inquiries do not impermissibly extend the length of a traffic stop. *Rodriguez*, 575 U.S. at 355. While *Rodriguez* listed *typical* inquiries incident to a stop (i.e., checking the driver’s license, checking for warrants), its holding did not limit ordinary inquiries to only those enumerated in that case. *Id.* And, as noted by the circuit court in this case, *Rodriguez* indirectly answers the question of whether asking for passenger information is permissible under United States Supreme Court precedent as the passenger in that case was asked for identification as part of the ordinary inquiries incident to that stop. *Id.* at 348. What the court found impermissible in *Rodriguez* was when the police officer extended the stop so his police dog could conduct a dog sniff around the vehicle. *Id.* at 357–58.

Here, the police officer asked for Burgess’s identification as part of the ordinary inquiries incident to the

stop. As Officer Mantsch testified, his “process . . . for a routine traffic stop” includes collecting passenger information and running record checks. (R. 112:5.) Burgess was free to decline to provide his information, but instead provided the officer with two false identities to avoid disclosing potential warrants. (R. 112:8–10; Ex. 1, at 07:58.) Thus, reasonable suspicion arose that Burgess was obstructing the officer’s investigation. *See Griffith*, 236 Wis. 2d 48, ¶ 65 (noting when a passenger is lawfully seized and chooses to answer an officer’s questions, but provides false information, the passenger can be charged with obstructing an officer). However, this Court need not even address that component of the traffic stop since Burgess’s sole argument on appeal is that the officer’s questions and request for passenger information do not constitute “ordinary inquiries.” (Burgess’s Br. 5.) Because the law is clear that the officer’s questions and request for passenger information are ordinary inquiries, Burgess’s argument fails, and this Court should affirm the judgment of conviction.

2. Officer Mantsch’s questions related to officer safety.

Burgess also argues that there was “no evidence presented” that Officer Mantsch’s questions had anything to do with officer safety. (Burgess’s Br. 14 n.5.) His assertion is directly contradicted by the record. At the suppression hearing, the officer explained that he is “worried about [his] personal safety with every contact.” (R. 112:41.) Further, that in his experience, “[d]rugs and violence go together.” (R. 112:42.) He also testified that it is his “normal practice” and a part of his “normal duties” to run a record check on passengers and so it did not extend the time of the stop. (R. 112:48.) According to Officer Mantsch, the record check he performed would show if the passenger had a valid driver’s license, if they are on probation or parole, whether they have

outstanding warrants, and provides details on “[s]ome prior crimes.” (R. 112:51.)

Negligibly burdensome inquiries that support officer safety during traffic stops are permissible under both United States Supreme Court and Wisconsin precedent. *Rodriguez*, 575 U.S. at 354; *see also State v. Wright*, 2019 WI 45, ¶ 29, 386 Wis. 2d 495, 926 N.W.2d 157. In *Wright*, the court concluded that a defendant’s Fourth Amendment rights were not violated when the officer asked a question about the presence of weapons because the question itself was “negligibly burdensome” and related to officer safety. *Wright*, 386 Wis. 2d 495, ¶ 29. While the court did view the officer’s question about whether the defendant had a concealed carry weapon (CCW) permit as unrelated to the mission of the stop, it further held that the question and subsequent check did not measurably extend the stop. *Id.* ¶ 44.

Here, the officer’s general questions to the driver about his travel and request for passenger information were negligibly burdensome. Both the questions and the request for passenger information occurred within the first 4 minutes of traffic stop, and before the officer even returned to his patrol vehicle to check the driver’s identification. (Ex. 1, at 00:01–04:00.) And again, the passengers were not required to answer. However, as noted by the officer, he asks for passenger identification at every stop for “officer safety” so he knows whether anyone has any “violent offenses” or “drug offenses” to anticipate any issues during the stop. (R. 112:17.)

Unlike in *Davis*, where this Court held an officer impermissibly prolonged a stop by asking dispatch to inquire about the bond conditions of the driver, Officer Mantsch’s questions and actions fall well within the confines of ordinary inquiries and, moreover, were negligibly burdensome to ensure officer safety. *Davis*, 2021 WI App 65; *cf. Griffith*, 236 Wis. 2d 48, ¶ 65; *see also Gammons*, 241 Wis. 2d 296, ¶¶ 12–13.

Accordingly, Burgess's argument that *no evidence* was presented that Officer's Mantsch's actions and questions had to do with officer safety is without basis.

II. Even if this Court concludes the officer's questions and request for passenger information were not ordinary inquiries, they did not measurably prolong the stop and were therefore permissible.

A. Unrelated investigations are permissible so long as they do not measurably prolong the stop.

United States Supreme Court and Wisconsin precedent tolerate "unrelated investigations" during a lawful traffic stop so long as the unrelated investigations do not measurably prolong the stop. *Rodriguez*, 575 U.S. at 354–55; *see also Wright*, 386 Wis. 2d 495, ¶ 45 (noting that the CCW permit question did not measurably extend the duration of the stop because the question and check occurred while mission-related activities were ongoing).

B. Officer Mantsch's questions and request for passenger identification occurred while mission-related activities were ongoing.

Even if this Court concludes that Officer Mantsch's questions and request for passenger identification were not ordinary inquiries incident to the traffic stop, they occurred while mission-related activities were ongoing and were therefore permissible.

In *Caballes*, the United States Supreme Court concluded that a dog sniff did not violate the Fourth Amendment because it occurred while mission-related activities were ongoing. *Caballes*, 543 U.S. at 407. Specifically, while one officer was in the process of writing a warning ticket, a different officer arrived at the scene and

walked his K-9 around the car. *Id.* at 407–08. In *Wright*, the Wisconsin Supreme Court cited to the United States Supreme Court’s decisions in *Caballes* and *Rodriguez* for the principle that the Fourth Amendment tolerates even unrelated investigations so long as they do not measurably extend the length of the traffic stop. *Wright*, 386 Wis. 2d 495, ¶ 38. In *Wright*, the court held that although the officer’s CCW permit question and the CCW permit check were not ordinary inquiries, they did not measurably extend the length of the stop and were therefore permissible. *Id.* ¶ 45. There, the officer asked whether Wright had a CCW permit *at the same time* he asked for Wright’s driver’s license and whether there were any weapons in the vehicle. *Id.* ¶¶ 46–47.

Here, all of Officer Mantsch’s challenged questions and request for passenger information occurred while mission-related activities were ongoing. Just like in *Wright*, Officer Mantsch asked the driver general questions and requested passenger information at the same time he requested the driver’s information, (Ex. 1, at 00:01–04:00.), and before he returned to his vehicle to check the driver’s identification. (Ex. 1, at 00:01–04:00.) Accordingly, Officer Mantsch did not measurably prolong the stop.

* * * * *

Burgess’s overall argument is that Officer Mantsch’s actions and questions were unreasonable and that the traffic stop “should have ended within seconds.” (Burgess’s Br. 15.) This argument ignores both United States Supreme Court and Wisconsin cases that allow officers to complete the mission of a traffic stop and conduct ordinary inquiries, which include general questions and requests for passenger identification.

Moreover, even if this Court finds the officer’s questions and request for passenger identification were not a part of ordinary inquiries incident to the stop, the Fourth

Amendment tolerates even “unrelated investigations” so long as they do not measurably extend the length of the stop. *Rodriguez*, 575 U.S. at 354–55. The officer’s questions and request for passenger identification occurred while mission-related activities were on-going. Accordingly, they were permissible, and the circuit court properly denied Burgess’s suppression motion.

CONCLUSION

This Court should affirm the judgment of conviction.

Dated this 10th day of November 2021.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,288 words.

Dated this 10th day of November 2021.

Electronically signed by:

Loryn L. Limoges
LORYN L. LIMOGES
Assistant Attorney General

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 10th day of November 2021.

Electronically signed by:

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