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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

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

- I. **Officer Mantsch unlawfully seized Mr. Burgess for approximately six minutes, the time the mission for the traffic stop reasonably should have been completed to when he developed reasonable suspicion another crime had been or was being committed, and the circuit court erred in denying Mr. Burgess's motion to suppress.**

Officer Mantsch stopped the vehicle in which Mr. Burgess was a passenger for a defective muffler. (R112:30). Before the stop, Mantsch confirmed the vehicle was properly registered to Brandon Loken, Loken had a valid driver's license, and Loken had no active warrants. (R112:24).

After the stop, Mantsch approached the vehicle, examined Loken's driver's license, verified Loken was driving the vehicle, and completed his investigation of the defective muffler. (R112:30-31). Mantsch also determined he would give Loken a verbal warning, but instead of doing so and ending the seizure, Mantsch conducted an unrelated investigation. Six minutes later, he developed reasonable suspicion another crime had been or was being committed.

During these six minutes, Mantsch did not engage in any actions related to the defective muffler, vehicle safety, or the responsible operation of the vehicle. Mantsch acknowledged that if he did not run a record check on the passengers, the stop would have been completed earlier. (R112:48).

After the investigation into the defective muffler was completed, Mantsch asked the passengers for identification, asked each passenger for his or her name, asked those that responded to spell their name, provide their birthdate, and provide their phone number. (R112:38-39). Mantsch wrote this information in his notebook. (Ex. 1, at 01:05-03:00). Mantsch acknowledged none of this information had any "bearing on a defective muffler" because "they weren't in control of the vehicle." (R112:40).

After obtaining this information, Mantsch asked Loken several questions about where they were that evening and what they did. (R45:2-3). Mantsch acknowledged that some of these questions had nothing to do with

officer safety. (R112:45-46). Mantsch then returned to his patrol car after instructing the occupants to “hang tight” and testified that when he walked back to his car, he was not investigating any new crimes. (R45:3; R112:42).

Mantsch spent several minutes in his car conducting a record check on the information provided by the passengers. (R112:48). This included determining their driving status, prior offenses, probation status, and whether there are any “injunctions against them or things of that nature.” (R112:5-6, 8, 49-51).

It wasn’t until he received “no return” on information provided by Mr. Burgess that he suspected Mr. Burgess was involved in criminal activity, specifically “obstructing my investigation” by providing a false name. (R112:52). Mantsch believed a crime was being committed even though he acknowledged he would have received “no return” on an individual did not live in Wisconsin, who was under 16, or who simply chose not to have a driver’s license. (R112:51-52). Mantsch acknowledged Mr. Burgess also was not obligated to provide any identification information at all. (R112:53).

After Mantsch returned to the vehicle, he asked Mr. Burgess to step outside. (R112:52). Mantsch searched Mr. Burgess and found nothing of evidentiary value, but Mr. Burgess did eventually admit he provided a false name to Mantsch. (R112:53). Mantsch testified that apart from the false name provided by Mr. Burgess, at this time there was no other evidence anyone else in the vehicle had committed or was committing a crime. (R112:54).

The State does not dispute that had Mantsch given the verbal warning immediately after the investigation into the defective muffler was completed, this would have put an end to the traffic stop. Instead, the State argues the prolonged seizure was lawful because Mantsch was performing “ordinary inquiries” related to the “original mission” of the stop. (State’s Brief at p. 14). The State does not point to any facts in the record that during the prolonged seizure the actions of Mantsch related to a defective muffler, vehicle safety, the responsible operation of the vehicle, or officer safety.

The State argues that, in the alternative, “[e]ven 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.” (State’s Brief p. 12, 18). Again, the State does not reveal how the questions and request for passenger identification related to “mission-related activities” and the evidence is clear as Mantsch testified these questions were unrelated to a defective muffler, vehicle safety, and the responsible operation of the vehicle. (R112:40, 45-6).

The issue raised by Mr. Burgess on appeal is clear – was Mr. Burgess unlawfully seized for approximately six minutes, the time the mission of the stop reasonably should have concluded to when Mantsch developed reasonable suspicion another crime had occurred, warranting suppression of the evidence that was eventually discovered. In an attempt to muddy this issue, the State attributes arguments to Mr. Burgess that Mr. Burgess does not make and cites cases that are factually distinguishable and do not stand for the principles espoused by the State.

Contrary to the State’s assertion, at no point does Mr. Burgess contend “the mission of the traffic stop was complete before Mantsch even approached the vehicle[.]” (State’s Brief p. 14). Mr. Burgess also does not contend that is reasonable “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.” (State’s Brief p.15).

To be clear, Mr. Burgess believes Mantsch’s initial interaction with Loken was lawful as they related to the purpose of the stop, a defective muffler. Mr. Burgess agrees Mantsch was lawfully entitled to inquire into the defective muffler, to confirm Loken was the driver of the vehicle, and to reasonably continue the seizure long enough to issue a verbal warning for the traffic infraction. Mr. Burgess believes the seizure became unlawful when Mantsch prolonged the seizure beyond the time reasonably necessary to complete the mission of the traffic stop (issue the verbal warning) and instead engaged in an investigation unrelated to the defective muffler without reasonable suspicion another crime had been or was being committed.

Nowhere in its brief does the State contend the questions asked by Mantsch pertaining to passenger identification, pertaining to the occupants' activities that evening, or the record check of the passengers, had anything to do with a defective muffler, vehicle safety, enforcing the traffic code, or officer safety. Instead, like Mantsch, the State simply contends these questions are appropriate because they are "ordinary inquiries" permitted to be conducted during every traffic stop as "all part of the original mission." (State's Brief p. 14). While the State cites several cases to support this proposition, these cases are factually distinguishable and do not stand for the legal principles espoused by the State.

First, the State cites *State v. Griffith*, 2000 WI 72, ¶65, 236 Wis. 2d 48, 613 N.W.2d 72 claiming a request for passenger identification is an "ordinary inquiry" and a reasonable part of the mission of a traffic stop. (State's Brief p. 13). The State even goes so far as claiming per *Griffith*, our Wisconsin Supreme Court has "long held" a seizure does not become unreasonable simply because an officer asks a passenger for identification during a stop. (State's Brief p.13). This is not a correct reading of *Griffith*.

For one thing, the State fails to point out that in *Griffith*, unlike the instant case, when the officer requested passenger identification, the officer had yet to complete his investigation related to the purpose of the stop. *Griffith*, at ¶46. But more importantly, and again unlike the instant case, the request for passenger identification in *Griffith* related to mission of a traffic stop, to ensure vehicle safety and the responsible operation of the vehicle. *Griffith*, at ¶47.

In *Griffith*, the officer stopped a vehicle he knew belonged to an individual that did not possess a valid driver's license. *Griffith*, at ¶9. During his investigation, the officer asked for passenger identification. *Id.* The Court noted that this question was relevant to the traffic stop because, if the driver did not have a valid license, this information would be helpful to determine whether the passenger could safely and responsibly drive the vehicle. *Griffith*, at ¶¶47, 51. This is substantially different from the instant case in Mantsch's request for passenger identification had nothing to do with vehicle safety as he already determined Loken had a valid driver's license. Unlike *Griffith*, Mantsch's request for passenger identification and subsequent

record check had nothing to do with enforcing the traffic code or ensuring vehicles on the road were being operated safely and responsibly.

The State also cites *State v. Gammons*, 2001 WI App 36, ¶12-13, 241 Wis. 2d 296, 625 N.W.2d 623, for the proposition that asking for passenger identification and running a record check on a passenger is an “ordinary inquiry” that “reasonably relates in scope to the purpose of a traffic stop.” (State’s Brief p. 13). However, the identification and record check of the passenger in *Gammons* not only also occurred before the investigation related to the traffic stop was complete, but was performed at the same time the officer conducted a record check of the driver and related to officer safety. *Gammons*, at ¶2.

In *Gammons*, unlike the instant case, the facts do not indicate that the officer had run a record check on the driver of the vehicle before the stop. *Id.* Presuming the officer runs the record check in his patrol car, the officer has a legitimate concern for his safety to know if the passengers of the vehicle he will be returning to have any active warrants. In the case at bar, the record check on the driver had been completed before Mantsch approached the vehicle. The investigation into the defective muffler had been completed before Mantsch asked for passenger identification and returned to his car to run a record check. Passenger identification and a record check on that information is not related to officer safety in the instant case because had Mantsch given the verbal warning to Loken when he completed his investigation into the defective muffler, he would have no reason to return to the vehicle. By failing to give the verbal warning actually did more to jeopardize Mantsch’s safety. *Griffith* is factually distinguishable and does not stand for the broad proposition espoused by the State.

The State also cites the United States Supreme Court’s decision in *Rodriguez v. United States*, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015) arguing an officer in the *Rodriguez* case “checked both Rodriguez’s driver’s license and the passenger’s license during the traffic stop as part of normal inquiries” and therefore *Rodriguez* is “harmonious” with Wisconsin “precedent” that “ordinary inquiries incident to a traffic stop do not impermissibly extend the stop.” (State’s Brief p. 13). The State misrepresents the holding in *Rodriguez*.

The narrow issue in *Rodriguez* was whether an unlawful seizure occurred when an officer refused to allow *Rodriguez* and a passenger to go after he completed the tasks relating to the traffic stop, but until another officer arrived and K-9 to conduct a dog sniff of the vehicle. *Rodriguez*, at 1612. In *Rodriguez*, the officer stopped a vehicle for driving on the shoulder of the road. *Id.* at 1613. The officer then obtained the license from the driver and returned to his patrol car to run a record check on the driver. *Id.* at 1613. The officer then returned to the vehicle and asked the passenger for his driver's license, along with asking the passenger where they were coming from. *Id.* The officer then returned to his car, ran a record check on the passenger, and wrote a warning ticket for driving on the shoulder of the road. *Id.*

After giving the ticket to the driver, even though "all the reasons for the stop" were "out of the way," the officer continued the seizure for several minutes until another officer arrived with a K-9. *Id.* The United States Supreme Court examined the lawfulness of this seizure. *Id.* At no time did the Court address whether asking for passenger identification or running a record check on a passenger constitutes an "ordinary inquiry" related to the mission of a traffic stop.

In *Rodriguez*, unlike the instant case, when the officer asked for the passenger for identification and ran a record check on the passenger, the investigation into the traffic stop had yet to be completed. But most importantly, as Justice Thomas pointed out in his dissent (joined by Justice Alito), the real issue in this case was whether the officer had reasonable suspicion another crime or violation had been or was being committed to seize the driver and the passenger after the purpose of the stop was complete. *Id.* at 1622. Justice Thomas wrote that when the seizure occurred, the officer had already developed reasonable suspicion another crime had been committed or was being committed. *Id.* In fact, based on Justice Thomas' dissent, he believed reasonable suspicion was present when the officer asked for passenger identification and ran a record check on the passenger. *Id.*

The majority was not as convinced as Justice Thomas that reasonable suspicion had been established before the purpose of the traffic stop was complete. Accordingly, the Court remanded the matter for a determination

as to whether the officer had reasonable suspicion before the mission related to the traffic stop should reasonably have been completed. *Id.* at 1617.

Contrary to the State's argument, the *Rodriguez* decision offers no "guidance" as to whether a request for passenger information and subsequent record check is an ordinary inquiry incident to a traffic stop. In fact, the legal principles set forth in *Rodriguez* provide greater support that Mantsch unlawfully seized Mr. Burgess.

In *Rodriguez*, the United States Supreme Court noted that "ordinary inquiries" typically involve determining whether to issue a traffic ticket, 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.* at 1615. The *Rodriguez* Court was well aware the officer in that case asked for passenger identification and conducted a record check on a passenger, yet notably absent from its stated list of "ordinary inquiries" is "checking passenger identification" and "running record checks on passengers." *Id.*

Furthermore, while the Court in *Rodriguez* acknowledged an officer may "conduct certain unrelated checks during an otherwise lawful traffic stop," it cautioned that an officer "may **not** do so in a way that prolongs the stop **absent the reasonable suspicion** ordinarily demanded to justify detaining an individual." *Id.* Emphasis Added. The Court continued that a dog sniff is not an "ordinary inquiry incident of a traffic stop" because it lacks "the same close connection to roadway safety" and is a measure "aimed at 'detecting evidence of ordinary criminal wrongdoing [citation omitted]'" and therefore, reasonable suspicion must be present to justify the continued seizure. *Id.*

In addition, the Court in *Rodriguez* reaffirmed the legal principle that "tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission' – to address the traffic violation that warranted the stop [citation omitted] and to attend to related safety concerns." *Id.* at 1614. It also reaffirmed the long-standing principle that "authority for the seizure thus ends when tasks tied to the traffic fraction are – or reasonably should have been – completed." *Id.*

In the instant case, Mantsch acknowledged that his request for passenger identification and subsequent record check had no bearing on a defective muffler. (R112:40). Mantsch could articulate no specific concerns pertaining to officer safety but the *Rodriguez* Court's statement that the government's officer safety interest stems from the mission of the stop itself, and "on-scene investigation into other crimes *** detours from that mission" questions those concerns. *Id.* at 1616.

Finally, as noted in *Rodriguez*, the "reasonableness of a seizure *** depends on what the police in fact do" and an officer is not entitled to earn bonus time to pursue an unrelated criminal investigation simply because he completed all traffic-related tasks expeditiously. *Id.* To the extent Mantsch acted expeditiously when he completed most of the ordinary inquiries related to a traffic stop before approaching the vehicle, he is not entitled to bonus time to engage in actions that are not related to the reason for the stop.

In *State v. Smith*, 2018 WI 2, ¶¶ 2, 19, 379 Wis. 2d 86, 905 N.W.2d 353, our Wisconsin Supreme Court, like the United States Supreme Court in *Rodriguez*, explained that ordinary inquiries are justified when they serve to enforce the traffic code by ensuring vehicles on the road are operated safely and responsibly and for officer safety. It further held that ordinary inquiries related in scope to the purpose of a traffic stop must be executed within the time it should have reasonably taken to complete them and notably emphasized, "as did the *Rodriguez* Court, that '[a]uthority for the seizure thus ends when tasks tied to the traffic infraction are – or reasonably should have been – completed.'" *Smith*, at ¶22, citing *Rodriguez*, at 1614.

In the instant case, instead of completing the mission of the traffic stop when it reasonably should have been completed, Mantsch unlawfully extended the stop for approximately six minutes without reasonable suspicion another crime was being committed. His actions were unrelated to the traffic stop and whether it was done to detain the vehicle until the K-9 unit arrived or to allow him to engage in an investigation unrelated to the traffic stop, it was unlawful and the circuit court erred when it denied the motion to suppress filed by Mr. Burgess.

CONCLUSION

Mr. Burgess asks this Court to reverse the circuit court's order denying the Motion to Suppress and to vacate the judgement of conviction.

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 2,953 words.

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