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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN THE SUPREME COURT
CASE NO. 2021AP001067-CR

STATE OF WISCONSIN

Plaintiff-Respondent

v.

BRADLEY C. BURGESS

Defendant-Appellant-Petitioner

PETITION FOR REVIEW OF
DEFENDANT-APPELLANT-PETITIONER

John P. Mueller
Attorney at Law
State Bar No. 1091117

The Law Offices of John P. Mueller, LLC
209 Eighth Street
Racine, WI 53403
(262) 843-5646

Attorney for Petitioner

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PETITION FOR REVIEW

Bradley C. Burgess petitions the Supreme Court of Wisconsin, pursuant to Wis. Stat. §808.10 and §809.62, to review the decision of the Court of Appeals, District IV, *State v. Bradley C. Burgess*, Appeal No. 2021AP001067-CR, filed on April 21, 2022.

STATEMENT OF THE ISSUES

Whether the Court of Appeals erred in expanding “ordinary inquiries” related to every traffic stop to include “asking every passenger in the vehicle for identification and running a record check of the information provided such the police may now engaged in these actions during every traffic stop.

Whether the Court of Appeals erred in affirming the Circuit Court’s decision denying Burgess’ Motion to Suppress where he was unlawfully seized beyond the time the mission of the traffic stop reasonably should have been completed.

CRITERIA FOR REVIEW

The criteria for this Court’s review is more than satisfied. Review should be granted because of the following special and important reasons:

1. The issue raised presents a real and significant question of federal or state constitutional law. See Wis. Stat. §809.62(1r)(a);
2. A decision by the Supreme Court on this issue will help clarify and harmonize the law as
 - a. the case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation, and
 - b. the question presented is not factual in nature but rather is a question of law that is likely to recur unless resolved by the Supreme Court. See Wis. Stat. §809.62(1r)(c)1, 3; and

3. The Court of Appeal's decision is in conflict with controlling opinions of the United States Supreme Court and this Court's prior decisions. See Wis. Stat. §809.62(1r)(d).

STATEMENT OF THE CASE AND FACTS

The facts relevant to this Petition are not in dispute. During the early morning hours of January 24, 2019, Officer Mantsch was patrolling in the Town of Darlington when he observed an unoccupied vehicle legally parked outside the residence of a person he believed was a drug user. (R1:4; R112:22-23). Mantsch was unfamiliar with the vehicle so decided to run its plate. (R112:23-25). Upon doing so, Mantsch learned the vehicle was properly registered to Brandon Loken; and that Loken had a valid driver's license, no active warrants, and was under supervision with the State Department of Corrections. (R76:2; R112:24-25.)

About 10 minutes after obtaining this information, Mantsch observed four individuals approach and enter the vehicle. (R112:28). Mantsch could not see if they came from the residence of the person he believed was a drug user or another residence. (R112:26-28). When the vehicle began moving, Mantsch heard what sounded like a defective muffler and lawfully stopped the vehicle to address the traffic violation. (R76:2; R112:30). While Mantsch testified he did not have reasonable suspicion to believe any crime was being or had been committed, before exiting his squad car, he reached out to dispatch and requested a K-9 unit respond to the stop. (R112:29).

Mantsch then exited his squad car and walked to the driver side of the vehicle. (R112:30). As he arrived, the driver of the vehicle Loken had his driver's license in hand and gave it to Mantsch. *Id.* Mantsch explained to Loken the reason for the stop (defective muffler) and Loken responded he knew the muffler was defective and informed

Mantsch he would get it taken care of. (R112:30-35). At this point, Mantsch decided he would give Loken a verbal warning for the defective muffler. (R112:36). There is no dispute that at this time, Mantsch had no reasonable suspicion another crime had been or was being committed by the driver or by any of the occupants of the vehicle, including Burgess. (R76:2; R112:36).

Instead of giving Loken a verbal warning and telling Loken and the passengers they are free to go, Mantsch held on to Loken's license and continued his detention of the individuals. (R112:38). He spent the next two minutes asking each passenger for their name, date of birth, and phone number, recording the information provided on to a notepad. (R112:38). Mantsch acknowledged that when he asked for this information, he did not suspect any of the passengers had committed or were committing any crimes and that the passengers had "[n]othing to do with the muffler investigation *** because they weren't driving." (R112:38-39).

After gathering this information from two of the three passengers (one refused to respond), Mantsch then spent an additional minute asking the driver and passengers where they had been that evening and what they had been doing. (R112:38-39). Approximately three minutes after he completed the investigation into the defective muffler and decided he would give Loken a verbal warning, Mantsch told the occupants of the vehicle to "hang tight" and returned to his squad car with Loken's license in hand.

Once inside his squad car, Mantsch ran a record check on the information provided by the passengers. (R112:50-51). Information provided by Burgess did not yield a "return" and Mantsch testified he was suspicious Burgess may have provided him with false information. (R112:51-53). Although, Mantsch did acknowledge if Burgess was under the age of 16, did not have a valid driver's license, or lived in another state, he would not have gotten a return. *Id.* In any event, neither Mantsch nor the circuit court determined that at this point, reasonable

suspicion had developed that another crime had been or was being committed. (R. 112:52-53; R76:4-5).

Mantsch then returned to the vehicle and asked several follow-up questions to Burgess about his identity. (R112:52). More than six minutes elapsed from when Mantsch asked his final question about the defective muffler and decided he would give Loken a verbal warning to when Burgess admitted the information he originally provided to Mantsch was false. (Court of Appeals decision, ¶¶8, 11). It was at this point Mantsch developed reasonable suspicion Burgess was obstructing his investigation.

Eventually, Mantsch searched the vehicle and found contraband in a backpack linked to Burgess. (R112:53). Burgess filed a motion to suppress the contraband, which was denied, along with his motion to reconsider. (R32:1; R49:1; 63:1; R76:1) Burgess then pled no contest to four offenses and a judgment of conviction was entered. (R85:1; R86:1).

On appeal, Burgess challenged the circuit court's denial of the motion to suppress. Burgess did not challenge the legality of the initial stop for the defective muffler nor did he challenge the legality of the investigation after Burgess admitted to providing false information to Mantsch. The only issue raised by Burgess on appeal was whether the circuit court erred in denying his motion to suppress on the grounds that Mantsch violated his constitutional rights against an unreasonable search and seizure when Mantsch unreasonably prolonged the stop beyond when the stop reasonably should have ended so that he could engage in an unrelated investigation asking the passengers for their identification and running a record check of that information.

In affirming the circuit court's decision, the Court of Appeals departed from well-settled law. The Court of Appeals held that because Wisconsin "recognizes passenger records checks to be ordinary inquiries", it does not matter whether Mantsch's investigation of the muffler

was complete before he asked the passengers for identification and ran record checks of this information. (See Court of Appeals decision, ¶36). The court's ruling was wrong.

Burgess now asks this Court to accept his Petition for Review, to vacate the judgment of conviction, and to remand to the circuit court with directions to grant Burgess' Motion to Suppress.

ARGUMENT

1. The Court of Appeals decision to expand the definition of “ordinary inquiries” to include requesting passenger information and running a record check on that information violates Fourth Amendment rights and established law.

The Fourth Amendment to the United States Constitution and Article 1, Section 11 of the Wisconsin Constitution protects individuals from unreasonable searches and seizures. U.S.Const. amend. IV; Wis. Const. art. I, §11; *State v. Wright*, 2019 WI 45, ¶23, 386 Wis. 2d 495, 926 N.W.2d 157; *State v. Floyd*, 2017 WI 78, ¶19, 377 Wis. 2d 394, 898 N.W.2d 560. A seizure occurs within the meaning of the Fourth Amendment when an automobile is stopped by the police, even if only for a brief period and for a limited purpose. *State v. Popke*, 2009 WI 37, ¶11, 317 Wis.2d 118, 765 N.W.2d 569. Passengers in a seized vehicle have standing to challenge the constitutionality of its duration. *State v. Harris*, 206 Wis. 2d 243, 255-56, 557 N.W.2d 245 (1996); *State v. Malone*, 2004 WI 108, ¶¶27-28, 274 Wis.2d 540, 683 N.W.2d 1.

A routine traffic stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of the traffic stop. *Rodriguez v. United States*,

575 U.S. 348, 354-55, 135 S.Ct. 1609, 191 L.Ed.2d 492 (2015). The “mission” of a traffic stop includes a police officer’s determination to issue a traffic ticket and conducting “ordinary inquiries” incident to the stop. *State v. Smith*, 2018 WI 2, ¶1, 379 Wis.2d 86, 905 N.W.2d 353, at ¶19 (citing *Rodriguez*).

In *Rodriguez* and echoed by this Court in *Smith*, the United States Supreme Court stated “ordinary inquiries” include: “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Rodriguez*, at 1615, *Smith* at ¶19. While there were no limits placed on what can be considered an “ordinary inquiry,” “ordinary inquiries” cannot exceed those inquiries that are part of the mission of **every** traffic stop, which includes (1) ensuring that vehicles on the road are operated safely and responsibly”; and (2) attend to related concerns for officer safety. *Id.* (Emphasis Added). In *Smith*, this Court held that because “ordinary inquiries” are a part of the mission of every traffic stop, upon stopping a vehicle, a police officer can engage in ordinary inquiries even if reasonable suspicion for the initial traffic stop has dissipated. *Smith*, at ¶2.

In this case, Officer Mantsch conducted a record check on the driver of the vehicle before he approached the lawfully stopped vehicle. He determined the vehicle was properly registered, the person it was registered to had a valid driver’s license, and that person had no active warrants. After approaching the vehicle, Mantsch looked at the driver’s license and confirmed it was the same person to whom the vehicle was properly registered. Mantsch then investigated the defective muffler and decided he would give the driver a verbal warning.

At this point, Mantsch did not have reasonable suspicion another crime was being committed and the only thing left for him to do was issue the verbal warning. However, instead of doing so, Mantsch continued the

seizure and began asking the passengers of the vehicle for their name, date of birth, and phone number, and then returned to his squad to run a record check of the information provided. He then continued this investigation for more than six minutes until Burgess admitted he provided false information at which time Mantsch had reasonable suspicion another crime was being committed.

The above facts are not in dispute. However, instead of ruling the seizure was unlawful, Mantsch testified and the circuit court and court of appeals held, that asking for passenger identification and running a check on that information was something that is always performed during a traffic stop and are therefore “ordinary inquiries” incident to every traffic stop. (R112:6; R76:4; Court of Appeals Decision, ¶36, FN8). This holding is contrary to Fourth Amendment protections and established legal principles and must be reversed.

Until now, no Wisconsin Court has expanded “ordinary inquiries” to include the asking of every passenger in a vehicle for their name, date of birth, and phone number, much less permit the police to extend every stop to run a record check of the information provided. This is likely because expanding “ordinary inquiries” to include obtaining passenger information and conducting a separate record check cannot be justified as “part of the mission of every traffic stop.”

While Burgess concedes there may be occasions when passenger information and a subsequent record check may be reasonable, such as if a police officer discovers the driver of the vehicle cannot legally operate the vehicle or if there is a legitimate concern for officer safety, there is simply no legitimate reason an officer needs to do this at every traffic stop. In this case, the investigation into the muffler was complete and the driver was able to safely and responsibly operate the vehicle. In addition, to the extent Mantsch contends this is done for officer safety, taking the time to ask this information and then having to return to the

vehicle, which he would not have had to do had he simply given the verbal warning, did more to jeopardize officer safety than ensure officer safety.

In reaching its decision, the court of appeals improperly relied on *State v. Gammons*, 2001 WI App 36, ¶24, 241 Wis. 2d 296, 625 N.W.2d 623 stating that it “squarely addresses the issues presented in this case” even after acknowledging the case was decided before the United States Supreme Court first started using term “ordinary inquiry.” (Court of Appeals decision, ¶30). The court of appeals claims that the “analysis [in *Gammons*] is consistent with the Supreme Court’s explanation and description of what constitutes an ordinary inquiry” in that when *Gammons* stated “passenger checks are ‘reasonably related in scope to the purpose of a traffic stop,’” this is another way of saying “they are ‘ordinary inquiries incident to [a traffic] stop,’ as that phrase is used in *Caballes*, 543 U.S. at 408, and *Rodriguez*, 575 U.S. at 355.” *Id.*

This is reasoning is circular and again, Burgess does not dispute there may be times when passenger information and record checks of that information may be reasonably related to the mission of a traffic stop. What Burgess does dispute is the court of appeals’ holding that a request for passenger information and record check of that information is a part of the mission of “every” traffic stop such that now, every occupant of every vehicle stopped for a traffic violation can be detained to permit the police to engage in these actions. This is where the decision by the court of appeals fails.

The critical analysis required when determining whether an action is or is not an “ordinary inquiry” was clearly explained by the United States Supreme Court in *Rodriguez* and adopted by this Court in *Smith. Rodriguez* at 1615-1616; *Smith*, at ¶19. The Supreme Court stated the “justification for 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* at ¶19, citing *Rodriguez* at 1615-1616. And as this Court pointed out in its conclusion in *Smith*, “Rodriguez acknowledges that ‘ordinary inquiries’ are part of the mission every lawful and reasonably executed traffic stop.” *Smith*, at ¶37.

It is axiomatic that checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance are checks related to every traffic stop as they “serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly” and pertain to officer safety. *Rodriguez*, 575 U.S. at 355. But asking every passenger in every stopped vehicle for their name, date of birth, and phone number and then running a record check on that information are not checks related to every traffic stop. The court of appeals applied the wrong analysis and as a result has improperly expanded “ordinary inquiries” to allow an officer to engage in actions during every traffic stop when there is no legitimate justification to do so.

The court of appeals’ decision drastically impacts the right of every Wisconsin citizen to be free from unreasonable seizures. Per the decision, every time a vehicle is lawfully stopped in Wisconsin for even the most minor traffic violation, a police officer may extend the seizure by several minutes to ask every passenger in the vehicle for their name, date of birth, and phone number, and to run a record check on all the information provided. Permitting an officer to do so beyond when the stop reasonably should have been completed runs afoul to the protections provided by the Fourth Amendment and precedential case law.

This Court in *Smith* recognized the potential for police to “delay ordinary inquiries to delve into unrelated and undiscovered criminal wrongdoing.” *Smith*, at ¶19. The court of appeals decision has the same impact, as it expands “ordinary inquiries” to allow police to extend

seizures of every person in a vehicle to give the police more time to delve into unrelated and undiscovered criminal wrongdoing.

Again, there may be times that asking for passenger identification and conducting a record check of that information is related to the mission of a traffic stop, but not **every** traffic stop as held by the court of appeals. Burgess asks this Court to accept this Petition for Review and to strike down the court of appeals decision that asking for passenger identification and conducting a record check of that information are ordinary inquiries that are part of the mission of every traffic stop.

2. As Officer Mantsch unlawfully prolonged the traffic stop beyond when it reasonably should have been completed, the circuit court's denial of Burgess' Motion to Suppress was in error and must be reversed.

As noted above, a routine traffic stop becomes unlawful if it is prolonged beyond the time reasonably required to complete the mission of the traffic stop. *Rodriquez*, at 354-55. The "mission" of a traffic stop includes a police officer's determination to issue a traffic ticket and to conduct "ordinary inquiries" incident to the stop. *Smith*, at ¶1 (citing *Rodriquez*).

Mantsch's stop for the defective muffler reasonably should have concluded by giving a verbal warning as soon as he completed his investigation of the defective muffler and decided this is what he was going to do. The subsequent request for passenger information, running a record check on that information, and investigating the identity of Burgess until Burgess admitted he provided false information improperly prolonged the stop as it was not related to a defective muffler and there was no reasonable suspicion that a crime had been or was being committed.

Officer Mantsch had a hunch that some kind of drug activity was occurring when he saw a vehicle he did not recognize parked outside the residence of a person he believed was a drug user. Either it was a slow morning or Mantsch likes to act efficiently as he ran a search of the license plate and found the vehicle was properly registered to Loken and that Loken had a valid license and no active warrants.

When Mantsch saw four occupants approach and enter the vehicle, he had already performed many of the “ordinary inquiries” related to the mission of every traffic stop. All he needed now was to investigate the traffic violation and determine whether he would issue a traffic ticket. He did those things, but instead of actually issuing the verbal warning and ending the seizure, he unlawfully seized the occupants of the vehicle as he searched for evidence of criminal activity.

While the court of appeals seems to take issue with Burgess’ argument that the stop should have concluded within “54 seconds” (Court of Appeals decision, ¶21) it is appropriate to examine whether a police officer diligently pursued an investigation. *United States v. Sharpe*, 470 U.S. 675, 685, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985). What is more improper is an expansion of the law to justify Mantsch’s subsequent behavior.

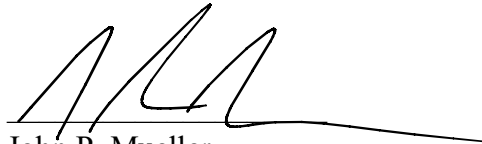
Because Mantsch unreasonably extended the stop beyond when the stop reasonably should have ended, the court of appeals erroneously affirmed the circuit court’s judgment of conviction and denial of Burgess’ motion to suppress. Burgess respectfully requests this Court to grant this Petition for Review, reverse the court of appeal’s decision, and remand with direction that the circuit court grant his motion to suppress.

CONCLUSION

For the reasons stated above, Mr. Burgess respectfully requests this Court grant review and reverse the decision of the court of appeals, vacate the judgment of conviction, and remand to the circuit court with directions to grant Burgess' motion to suppress.

Dated this 23rd day of May 2022.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'JPM', written over a horizontal line.

John P. Mueller

Attorney at Law

State Bar No. 1091117

The Law Offices of John P. Mueller

209 Eighth Street

Racine, WI 53403

Ph: 262.843.5646

Fx: 262.632.3888

Em: Jmueller@JohnMuellerLaw.com

Attorney for Defendant-Appellant-Petitioner

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in §§809.19(8)(b), (bm) and (8g) for a brief and 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 3,109 words.

**CERTIFICATE OF COMPLIANCE WITH RULE
809.62(4)(B) AND 809.19(12)**


I hereby certify that I have submitted an electronic copy of this petition, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.62(4)(b) and 809.19(12). I further certify that:

This electronic petition is identical in content and format to the printed form of the petition filed on or after this date.

A copy of this certificate has been served with the paper copies of this petition filed with the court and served on all opposing parties.

Dated this 23rd day of May 2022.

Respectfully Submitted,



John P. Mueller
Attorney at Law
State Bar No. 1091117

APPENDIX

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