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SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

Case No. 2021AP1067-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BRADLEY C. BURGESS,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

This Court should deny Burgess's petition for review of the Wisconsin Court of Appeals' unpublished opinion in *State of Wisconsin v. Bradley C. Burgess*, No. 2021AP1067-CR, slip op. (Wis. Ct. App. Apr. 21, 2022) (unpublished). The court of appeals did not break any new legal ground and instead applied well-established precedent in this unpublished opinion. It does not warrant this Court's review.

BACKGROUND

Burgess, a passenger during a lawful traffic stop, voluntarily provided a police officer with two false identities to avoid disclosing potential warrants. After a search of the vehicle, the officer discovered individually packaged marijuana and drug paraphernalia. Burgess pleaded no contest to possession of drug paraphernalia as a party to a crime (repeater), identity theft, possession with intent to deliver as a party to a crime (repeater), and carrying a concealed knife as a party to a crime.

On appeal, Burgess challenged the denial of his suppression motion, asked for reversal, and sought to vacate his judgment of conviction. His sole legal theory was 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.)

The court of appeals affirmed and applied established United States Supreme Court and Wisconsin precedent to conclude that the officer's request for passenger identification and routine record checks constituted "ordinary inquiries" and did not impermissibly extend the length of the traffic stop. *Burgess*, slip op., ¶ 36.

Burgess petitions this Court for review.

ARGUMENT

This case does not warrant this Court's review under Wis. Stat. § (Rule) 809.62(1r).

Burgess argues this Court should accept review for two reasons. First, Burgess argues that the court of appeals “expand[ed] the definition of ‘ordinary inquiries’” contrary to the Fourth Amendment. (Pet. 7.) Second, he argues the court of appeals incorrectly affirmed the circuit court’s denial of his suppression motion. (Pet. 12.) Neither reason is meritorious, and this Court should affirm the court of appeals’ decision.

First, Burgess misunderstands the court of appeals’ holding here. The court of appeals’ decision did not break any new legal ground. Instead, it applied established United States Supreme Court precedent in *Rodriguez v. United States*, 575 U.S. 348 (2015), this Court’s decision in *State v. Griffith*, 2000 WI 72, 236 Wis. 2d 48, 613 N.W.2d 72, and its own precedent in *State v. Gammons*, 2001 WI App 36, 241 Wis. 2d 296, 625 N.W.2d 623, to conclude that the officer’s questions constituted “ordinary inquiries” and did not impermissibly extend the traffic stop. *Burgess*, slip op., ¶ 36. The court of appeals’ decision applied established precedent to the facts of this case. There is not a “real and significant” question of constitutional law here; nor is there a need to clarify or harmonize the law; and the decision is harmonious with precedent. (Cf. Pet. 3–4.) This unpublished opinion applied the correct principles of law, has no precedential authority, and does not warrant this Court’s review.

Second, Burgess seeks error correction. Error correcting is not a special or compelling reason for this Court to accept review of this case. *State ex rel. Swan v. Elections Bd.*, 133 Wis. 2d 87, 93, 394 N.W.2d 732 (1986) (noting this Court is not an error-correcting court but a court “intended to make final determinations affecting state law, to supervise the development of the common law, and to assure uniformity of

precedent throughout the state”). Moreover, the court of appeals correctly affirmed the decision because the officer’s questions and routine record checks constituted “ordinary inquires” and therefore did not impermissibly extend the stop. *Burgess*, slip op., ¶ 36. There was no Fourth Amendment violation here so, even if this Court engaged in error correction, there is nothing to correct.

CONCLUSION

This Court should deny Burgess’s petition for review.

Dated this 6th day of June 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm), and 809.62(4) for a response produced with a proportional serif font. The length of this response is 631 words.

Dated this 6th day of June 2022.


LORYN L. LIMOGES
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE WITH
WIS. STAT. §§ (RULES) 809.19(12) and 809.62(4)(b)
(2019-20)**

I hereby certify that:

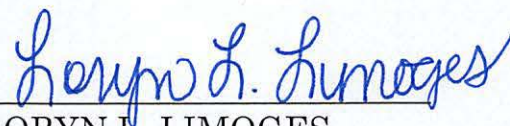
I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.19(12) and 809.62(4)(b) (2019-20).

I further certify that:

This electronic response is identical in content and format to the printed form of the response filed as of this date.

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

Dated this 6th day of June 2022.


LORYN L. LIMOGES
Assistant Attorney General