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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2021AP1112-CR

STATE OF WISCONSIN,

Plaintiff -Respondent,

v.

CHRISTOPHER ANTONJE TEK,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

Petitioner Christopher Antonje Tek seeks review of the court of appeals' decision that affirmed his judgment of conviction for second-offense operating with a prohibited alcohol concentration. *State v. Tek*, No. 2021AP1112-CR, 2022 WL 964020 (Wis. Ct. App. Mar. 31, 2022) (unpublished). (Pet-App. 3–19.) He argues that review is warranted to ease perceived confusion regarding how to gauge the reasonableness of investigatory seizures, whether a defendant is under arrest, and how officer safety concerns impact either inquiry. (Pet. 3–7.) This Court should decline review because the legal tests guiding those analyses are already established, and the court of appeals properly applied them when it affirmed Tek's conviction.

BACKGROUND

Early one morning, Officer Benito Rocha responded to a civilian report of a white Cadillac that was seemingly involved in an accident. (R. 44:10–11, 20.) He approached the area to find a set of automobile headlights illuminated on the wrong side of the roadway. (R. 44:11.) As he inched closer, the vehicle's lights deactivated, and Officer Rocha noticed there was one occupant in the vehicle, which was visibly damaged. (R. 44:12–14, 24.)

Officer Rocha shined his squad car spotlight on the vehicle, met and greeted the sole occupant, Tek, and asked him several questions, including how he was doing that morning and why his vehicle was damaged. (R. 44:12–14, 28–29.) Tek did not respond. (R. 44:29.) Officer Rocha asked Tek if he could hear him and what was going on. (R. 44:29.) At that point, within seconds of the officer's arrival, Tek exited his car, advised that he had a ride incoming, and that he was leaving unless Officer Rocha put him in handcuffs. (R. 44:15, 29.)

Officer Rocha could detect the odor of alcohol and marijuana coming from Tek and the vehicle. (R. 44:15.) With another vehicle approaching, Tek moving away from him, and having not yet finished his investigation, Officer Rocha "went into control maneuvers of placing [Tek] into handcuffs." (R. 44:15.) Tek became uncooperative and agitated, and he tried to pull away, requiring other assisting officers to help place Tek in the back of a squad vehicle. (R. 44:16–17.)

Officer Rocha insisted that Tek was not under arrest; he was merely detained to allow police to complete their investigation surrounding an uncooperative, unidentified man. (R. 44:16–18.) Officer Rocha also explained that, when he placed Tek in handcuffs, he did not then know who owned the vehicle Tek was driving, where Tek was coming from or going, nor had he reviewed Tek's driver's license or registration. (R. 44:33–34.) However, he recalled that Tek was ultimately arrested at the jail given that he was not yet 21 years old and had the odor of intoxicants on him. (R. 44:19.)

The circuit court denied Tek's motion to suppress, first in an oral ruling, (R. 44:59), and later in a written decision, which the court proclaimed "supersede[d] the decision issued by the court on the record at the conclusion of the hearing," (R. 24:1). The court explicitly found that Officer Rocha's testimony was credible and that Tek's "demeanor and words" during his interaction with Officer Rocha were both "confrontational and uncooperative" and indicative of "consciousness of guilt." (R. 24:2.) Supporting that finding, the court noted that the body camera footage from the incident showed Tek refusing to answer Officer Rocha's questions, instead insisting that his ride was there to pick him up and that he would leave unless placed in handcuffs. (R. 24:2.) The court also recounted from the video that Tek refused to comply with Officer Rocha's commands to turn around face him. (R. 24:2.)

The court of appeals affirmed. (Pet-App. 3–19.) The court concluded that Officer Rocha's initial seizure of Tek was an investigatory stop supported by reasonable suspicion and that handcuffing Tek did not transform that investigatory stop into an arrest. (Pet-App. 13–16.)

Tek petitioned for review.

DISCUSSION

Tek's petition for review does not meet this Court's criteria for review.

Tek insists review of his case is warranted under Wis. Stat. § (Rule) 809.62(1r)(a) and (c)3. because it "implicates both state and federal constitutional law" and because confused courts, police, and defendants like him need clarification to properly assess whether someone is arrested, rather than just seized, under the Fourth Amendment. (Pet. 15–21.) Because the court of appeals correctly applied well-established Fourth Amendment principles that are not nearly as perplexing as Tek suggests, this Court should deny review.

At its core, Tek's main confusion seemingly derives from this Court's decision in *State v. Blatterman*, 2015 WI 46, 362 Wis. 2d 138, 864 N.W.2d 26, which he implies created more confusion than clarity by applying a "mixture" of distinct legal tests. (Pet. 14–15.) But a cursory reading of *Blatterman* reveals that this Court mixed nothing; it applied separate established legal tests to dispose of separate legal issues.

First, this Court was tasked with deciding whether police reasonably conducted Blatterman's initial *Terry* stop. This Court relied upon seminal Fourth Amendment Supreme Court decisions—namely *Terry v. Ohio*, 392 U.S. 1 (1968), and *Florida v. Royer*, 460 U.S. 491 (1983)—when it recognized that police may temporarily detain a person to investigate criminal activity based on reasonable suspicion but must do so in a manner that quickly confirms or dispels the officer's

suspicions and not by means approaching the conditions of arrest. *Blatterman*, 362 Wis. 2d 138, ¶¶ 18, 20–21. Applying those principles, this Court concluded that Blatterman was lawfully seized based on reasonable suspicion of criminal activity—his plan to blow up his home—and that the seizure's duration was reasonable. *Id.* ¶¶ 19, 22.

Moving on, this Court was next tasked with deciding whether transporting Blatterman ten miles from the site of the initial seizure to a hospital fell "within the vicinity of the stop and therefore, within the scope of an investigatory detention." *Id.* ¶ 24. Relying on *State v. Quartana*, 213 Wis. 2d 440, 570 N.W.2d 618 (Ct. App. 1997), and Wis. Stat. § 968.24, this Court determined it did not. *Blatterman*, 362 Wis. 2d 138, ¶¶ 26–28.

Having so decided, this Court finally examined whether the seizure was otherwise supported by probable cause to arrest or a reasonable exercise of the officers' community caretaker function at the time police exceeded the scope of the investigative stop. *Id.* ¶¶ 28–59. To make that assessment, this Court referenced *State v. Swanson*, 164 Wis. 2d 437, 446–47, 475 N.W. 148 (1991), *abrogated on other grounds*, *State v. Sykes*, 2005 WI 48, 279 Wis. 2d 742, 695 N.W.2d 277, which established that the test of whether someone is under arrest asks if a "reasonable person in the defendant's position would have considered himself or herself to be 'in custody,' given the degree of restraint under the circumstances." *Blatterman*, 362 Wis. 2d 138, ¶ 30. This Court also affirmatively dispelled the notion that handcuffing someone necessarily triggers a custodial arrest. *Id.* ¶ 31.

Contrary to Tek's position, it is not difficult to reconcile *Blatterman, Quartana,* and *Swanson*. (Pet. 14–15.) For Fourth Amendment purposes, a suspect is under arrest if the level of restraint and totality of circumstances would lead a reasonable person to consider himself under arrest. *Swanson*, 164 Wis. 2d at 446–47. That test remains good law, and

Wisconsin courts have consistently employed it for the last 30 years without confusion. *See, e.g.*, *State v. Wortman*, 2017 WI App 61, ¶ 7, 378 Wis. 2d 105, 902 N.W. 2d 561; *State v. Anker*, 2014 WI App 107, ¶ 15, 357 Wis. 2d 565, 855 N.W.2d 483; *State v. Vorburger*, 2002 WI 105, ¶ 68, 255 Wis. 2d 537, 648 N.W.2d 829; *Quartana*, 213 Wis. 2d at 450–51.

Quartana and *Blatterman* merely reinforce that some police actions will effectively always exceed the limits of an investigatory stop and approach the conditions of arrest, such as involuntarily moving a suspect ten or more miles from the scene of an initial seizure. *Blatterman*, 362 Wis. 2d 138, ¶¶ 24–28. Review by this Court is unnecessary to clarify what courts across the state have already readily discerned from these cases: a court can safely presume that a reasonable person will always believe he is under arrest when police take certain actions, like involuntarily transporting a suspect ten miles from a traffic stop.

Nor is review warranted to examine how officer safety concerns factor into the equation. Again, police may not conduct a *Terry* stop in a manner that approaches the conditions of arrest. *Blatterman*, 362 Wis. 2d 138, ¶¶ 18, 20–21. Logic dictates that, under the objective standard set forth in *Swanson*, a suspect is certainly more likely to view himself under arrest if police employ an unreasonably intrusive level of restraint not warranted under the circumstances. Indeed, a cool, calm, and collected person subject to a routine traffic stop would logically infer that he is arrested if an officer immediately removed him from his vehicle and slapped handcuffs on him without explanation. Conversely, a person like Tek who insists on calling the shots by telling officers he will leave unless he is handcuffed could logically infer that he was not under arrest but merely gave police no other choice but to apply restraints if they wanted him to remain on scene.

Ultimately, the legal principles governing when a *Terry* stop converts to a custodial arrest requiring probable cause is

already well-established. The court of appeals aptly applied those principles when it concluded that Tek was not arrested when handcuffed and temporarily placed in a police squad vehicle after disclosing that he would leave if Officer Rocha did not restrain him. Despite the litany of rhetorical questions Tek now presents, review is unnecessary to clarify any legal principles relevant in this case.

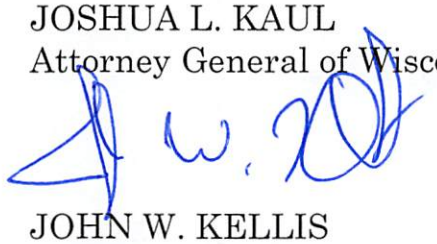
CONCLUSION

The court of appeals correctly affirmed Tek's judgment of conviction, and review by this Court is unwarranted.

Dated this 27th day of May 2022.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin



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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 petition or response is 1,646 words.

Dated this 27th day of May 2022.

JOHN W. KELLIS
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 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 petition or response is identical in content and format to the printed form of the brief 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 27th day of May 2022.

JOHN W. KELLIS
Assistant Attorney General