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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appellate Case No. 2022AP860

WAUPACA COUNTY,

Plaintiff-Respondent,

-vs-

HUNTER JA DEAN WHEELOCK,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR WAUPACA COUNTY, BRANCH I, THE HONORABLE TROY L. NIELSEN PRESIDING, TRIAL COURT CASE NO. 19-TR-4090

BRIEF & APPENDIX OF DEFENDANT-APPELLANT

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Mapp v. Ohio, 367 U.S. 643 (1961)..9

[1]Mr. Wheelock was arrested in 2019, and therefore, the laws of 2019-20 apply to his case. Since the substantive statutory law at issue herein has not changed, for ease of reference, Mr. Wheelock's citation to statutory authority will be to the Laws of 2021-22 unless otherwise noted.

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STATEMENT OF THE ISSUE

WHETHER THE LAW ENFORCEMENT OFFICER WHO DETAINED MR. WHEELOCK LACKED A REASONABLE SUSPICION TO DO SO IN VIOLATION OF MR. WHEELOCK'S THE FOURTH AMENDMENT RIGHTS?

Trial Court Answered: NO. The circuit court concluded that the officer in this case had a reasonable suspicion to detain Mr. Wheelock because (1) he was parked in an area which was known for "mischievous deeds attributed to youthful exuberance" and (2) he had glassy, red eyes. R24 at 22:18 to 24:14; D-App. at 103-05.

STATEMENT ON ORAL ARGUMENT

The Defendant-Appellant will NOT REQUEST oral argument as this appeal presents a single question of law based upon a set of uncontroverted facts. The issue presented herein is of a nature that can be addressed by the application of long-standing legal principles, the type of which would not be enhanced by oral argument.

STATEMENT ON PUBLICATION

Mr. Wheelock will NOT REQUEST publication of this Court's decision as the common law authorities which set forth the standard for detaining an individual based upon anonymously tipped information are well-settled.

STATEMENT OF THE CASE

On November 2, 2019, Mr. Wheelock was charged in Waupaca County with Operating a Motor Vehicle With a Restricted Controlled Substance—First Offense, contrary to Wis. Stat. § 346.63(1)(am). R1.

After retaining counsel, Mr. Wheelock filed, *inter alia*, a motion to suppress evidence based upon the fact that the arresting officer in the instant case, Sgt. Kevin Studzinski,[2] lacked a reasonable suspicion to detain him. R16. An evidentiary hearing was held on Mr. Wheelock's motion on May 7, 2021. R24. The State offered the testimony of a single witness at the hearing, Sgt. Studzinski. R24 at pp. 4 to 16.

[2]Since his contact with Mr. Wheelock, Sgt. Studzinski has been promoted to the rank of lieutenant. Because he was a sergeant at the time of his encounter with the Appellant, Mr. Wheelock will refer to him throughout this brief as "Sgt. Studzinski" owing to the fact that this was his rank at the time of his encounter with Mr. Wheelock.

At the conclusion of the hearing, the court denied Mr. Wheelock's motion, finding that Mr. Wheelock had been detained at the moment the officer pulled his squad behind Mr. Wheelock's vehicle and activated his emergency lights, and that at this point, a reasonable suspicion to detain Mr. Wheelock existed because (1) he was parked in an area which was known for "mischievous deeds attributed to youthful exuberance" and (2) he had glassy, red eyes. R24 at 22:18 to 24:14; D-App. at 103-05.

On April 4, 2022, a trial to the court was held at which Mr. Wheelock was found guilty of operating a motor vehicle with a restricted controlled substance. R67; D-App. at 101-02.

It is from the adverse judgment of the circuit court that Mr. Wheelock now appeals to this Court by Notice of Appeal filed on May 20, 2022. R40.

STATEMENT OF FACTS

While on routine patrol on November 2, 2019, Sgt. Kevin Studzinski of the Waupaca County Sheriff's Office came upon Mr. Wheelock's vehicle parked on the side of Sunrise Road in the Town of Farmington. R24 at 6:1-13. Sergeant Studzinski pulled alongside the Wheelock vehicle at the driver's side window[3] and, upon looking at the driver later identified as Mr. Wheelock, averred that Mr. Wheelock's eyes appeared glassy, red, and watery.[4] R24 at 7:3-14. Based upon this observation and his training and experience, Sgt. Studzinski testified that this indicated Mr. Wheelock "could be under the influence of something." R24 at 7:11-12. At this time, the officer suspected that Mr. Wheelock was under the influence of "alcohol or drugs," but could not discern which. R24 at 8:6-13.

After making this observation, Sgt. Studzinski told Mr. Wheelock to stay where he was and then "turned on [his] lights and pulled behind" the Wheelock vehicle. R24 at 7:12-14; 8:14-16. Sergeant Studzinski testified that he was "not going to let a couple of teenage kids drive away if [he] believe[d] they [were] under the influence of alcohol or drugs." R24 at 8:21-23.

Based upon the foregoing testimony, the circuit court made a finding that Mr. Wheelock had been detained for Fourth Amendment purposes when Sgt. Studzinski pulled in behind his vehicle and activated his emergency lights. R24 at 24:10-12. Because Mr. Wheelock's appeal concerns whether a reasonable suspicion to detain

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[3]R24 at 7:18-21.

[4]Of course, the descriptions "glassy" and "watery" mean the same thing and are thus duplicative. If a person's eyes are "watery" they will appear "glassy." The additional descriptor "glassy," therefore, adds nothing to the reasonable suspicion inquiry.

him existed at this moment, a detailed recitation of the remaining facts is irrelevant to the issue presented. For purposes of judicial economy, therefore, Mr. Wheelock will simply proffer that after Sgt. Studzinski made contact with him, he was ultimately arrested for Operating a Motor Vehicle With a Restricted Controlled Substance, contrary to Wis. Stat. § 346.63(1)(am). R1.

STANDARD OF REVIEW

The issue presented in this appeal is premised upon whether an undisputed set of facts rises to the level of establishing a reasonable suspicion to detain Mr. Wheelock's vehicle. When assessing whether a particular set of facts satisfies a constitutional standard, this Court reviews the constitutional question *de novo*. *State v. Drogsvold*, 104 Wis. 2d 247, 256, 311 N.W.2d 243 (Ct. App. 1981).

ARGUMENT

I. THE LAW IN WISCONSIN AS IT RELATES TO REASONABLE SUSPICION TO DETAIN AN INDIVIDUAL UNDER THE FOURTH AMENDMENT.

A. The Fourth Amendment in General.

The starting point for any analysis of the constitutionality of a seizure must begin with the foundations established by the Fourth Amendment itself. The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. "The Fourth Amendment's purpose is to prevent arbitrary and oppressive interference by law enforcement officials with the privacy and personal security of individuals." *State v. Riechl*, 114 Wis. 2d 511, 515, 339 N.W.2d 127 (Ct. App. 1983). Capricious or arbitrary police action is not tolerated under the umbrella of the Fourth Amendment. "The basic purpose of this prohibition is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *State v. Boggess*, 115 Wis. 2d 443, 448-49, 340 N.W.2d 516 (1983); *see also Camara v. Municipal Court*, 387 U.S. 523, 528 (1967).

The Wisconsin Constitution provides coextensive protections against unreasonable searches and seizures under Article I, § 11. Wisconsin courts interpret the protections granted by Article 1, § 11 of Wisconsin's Constitution identically to

those afforded by the Fourth Amendment. *See State v. Kramer*, 2009 WI 14, ¶ 18, 315 Wis. 2d 414, 759 N.W.2d 598; *State v. Phillips*, 218 Wis. 2d 180, ¶ 21, 577 N.W.2d 794 (1998).

Both federal and state courts have consistently held that "[c]onstitutional provisions for the security of persons and property should be **liberally construed**." *Mapp v. Ohio*, 367 U.S. 643, 647 (1961)(emphasis added), citing *Boyd v. United States*, 116 U.S. 616, 635 (1886). "A close and literal construction deprives [these protections] of half their efficacy, and leads to gradual depreciation of the right [to be free from unreasonable searches and seizures], as if it consisted more in sound than in substance. **It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon**." *Schneckloth v. Bustamonte*, 412 U.S. 218, 229 (1973)(emphasis added).

The foregoing authority does not stand alone as time and again the Supreme Court has consistently repeated that the Fourth Amendment "guaranties are to be **liberally construed to prevent impairment of the protection extended**." *Grau v. United States*, 287 U.S. 124, 127 (1932)(emphasis added). The High Court has admonished that "all owe the duty of vigilance for [the Fourth Amendment's] effective enforcement lest there shall be impairment of the rights for the protection of which it was adopted." *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931).

With these stringent pronouncements as a backdrop against which all law enforcement conduct must be measured, Sgt. Studzinski's actions in the present case can be scrutinized.

B. The Reasonable Suspicion Standard.

Within the ambit of the Fourth Amendment, there are recognized three levels of encounter, namely: (1) the "simple encounter" for which the individual is afforded no constitutional protection because his or her movement is not restricted; (2) the investigatory detention, or *Terry*[5] stop, for which the officer must have a "reasonable suspicion" to detain the person; and (3) the custodial arrest which requires probable cause. *State v. Welsh,* 108 Wis. 2d 319, 321 N.W.2d 245 (1982); *Henry v. United States,* 361 U.S. 98 (1959).

For purposes of determining whether Sgt. Studzinski's actions in detaining Mr. Wheelock where constitutionally justifiable, the inquiry involves ascertaining whether they were reasonable under the "totality of the circumstances." The test for

[5]*Terry v. Ohio*, 392 U.S. 1 (1968).

determining the constitutionality of an investigative stop is an objective test of reasonableness. *Terry,* 392 U.S. at 20-21.

> The test is an objective test. Law enforcement officers may only infringe on the individual's interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime. An inchoate and unparticularized suspicion or 'hunch'. . . will not suffice.

State v. Guzy, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987)(internal quotations omitted); *United States v. Pavelski,* 789 F.2d 485, 489 (7th Cir. 1986).

Whether an investigatory detention is constitutionally reasonable turns upon:

> 'a particularized and objective basis' for suspecting the person stopped [is engaged in] criminal activity. *Ornelas v. United States*, 517 U.S. 690, 696, 134 L. Ed. 2d 911, 116 S. Ct. 1657 (1996)(citation omitted). When determining if the standard of reasonable suspicion [is] met, those facts known to the officer must be considered together as a totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990).

State v. Powers, 2004 WI App. 143, ¶ 7, 275 Wis. 2d 456, 685 N.W.2d 869. Absent proof of any wrongdoing, a detention is constitutionally unreasonable.

The notion that an investigatory detention is constitutionally justifiable is built upon there being a "particularized basis" for suspecting that the person who is detained is engaged in some illegal activity. *Ornelas*, 517 U.S. at 696. A particularized basis is one which requires that there be some nexus, or link, between the suspect and an alleged violation. Absent a nexus between the suspect and the potential violation, a detention is constitutionally unreasonable under the Fourth Amendment.

The United States Supreme Court emphasized the need for a particularized suspicion of wrongdoing in *United States v. Cortez*, 499 U.S. 411 (1981). Therein the Court clarified that the totality of the circumstances

> must raise a suspicion that the *particular individual being stopped is engaged in wrongdoing*. Chief Justice Warren, speaking for the Court in *Terry v. Ohio, supra*, said '[that] this demand for specificity in the information upon which police action is predicated is *the central teaching of this Court's Fourth Amendment jurisprudence*.'

Cortez, 499 U.S. at 418 (emphasis in original in part, added in part), citing *Brown v. Texas*, 443 U.S. 47, 51 (1979); *Delaware v. Prouse*, 440 U.S. 648, 661-63 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).

Based upon the foregoing authority, this Court faces but a single question: Did the facts known to Sgt. Studzinski at the time he encountered Mr. Wheelock justify an investigatory detention of his person under the Fourth Amendment? To answer this question, a nexus is required between the observations Sgt. Studzinski made of Mr. Wheelock and some "wrongdoing" as required under *Cortez*, *Brignoni-Ponce*, *Prouse*, *Ornelas*, *Powers*, *Richardson* and their progeny. Fortunately for this Court, direction has been given by courts of supervisory jurisdiction regarding the answer to this question.

C. **Brown v. Texas,** ***443 U.S. 47 (1979) and Related Cases.***

Instructive on the issue of whether the circumstances of the instant case justify a detention under the Fourth Amendment is the United States Supreme Court's decision in *Brown v. Texas*, 443 U.S. 47 (1979). In *Brown*, officers of the El Paso Police Department observed two men walking away from one another in an alleyway. *Id*. at 48. The officers asserted that one of the individuals they observed, Brown, was someone whom they had never seen in the area. *Id*. at 49. Moreover, the officers also averred that the location in which Brown was detained was known to police as an area with a high incidence of drug trafficking. *Id*. The officers stopped Brown and asked him to identify himself and when he refused to do so, the officers arrested Brown for violating a Texas statute which required a person to identify themselves to law enforcement officers to do so when lawfully detained. *Id*.

Brown challenged the constitutionality of his detention on several grounds, among them that his Fourth Amendment right to be free from unreasonable searches and seizures was violated because, he maintained, the officers lacked a reasonable suspicion to detain him in the first instance. *Id*. at 49. After his motion was denied and he exhausted his appeals in Texas, Brown petitioned the Supreme Court for review. *Id*. at 50. Upon review, the Supreme Court reversed Brown's conviction. *Id*.

When analyzing Brown's claim that his Fourth Amendment rights had been violated, the Court began its analysis by observing that the Fourth Amendment has been designed "to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Id*. at 50, citing *Prouse*, 440 U.S. at 654-55; *Brignoni-Ponce*, 422 U.S. at 882. The Court then turned its attention to the State's assertion that the officers had a "reasonable, articulable suspicion" to detain Brown because he (1) looked suspicious and (2) he was in an alley in an area frequented by drug users. *Id*. at 52. In rejecting the State's argument that the foregoing observations justified Brown's detention, the Court stated that the allegation that Brown looked "suspicious" was not based upon any specific facts which supported that conclusion, and further, the

allegation that he was in an area known to be frequented by drug users, standing alone, was "not a basis for concluding that appellant himself was engaged in criminal conduct." *Id*. at 52.

The foregoing holding was echoed in a subsequent decision of the Supreme Court, namely *Illinois v. Wardlow*, 528 U.S. 119 (2000). In *Wardlow*, the Court emphasized that "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." *Id*. at 124, citing *Brown*, 443 U.S. 47. The *Wardlow* Court continued that there must be an "objective justification" for the detention which requires "[t]he officer [to] be able to articulate more than 'an inchoate and unparticularized suspicion or 'hunch'' of criminal activity." *Wardlow*, 528 U.S. at 124, citing *Terry v. Ohio*, 392 U.S. 1, 27 (1968); *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

The notion that being present in "an area of suspected criminal activity" is insufficient to establish the basis for a reasonable suspicion to detain someone is no stranger to Wisconsin jurisprudence either. In *State v. Young*, 212 Wis. 2d 417, 569 N.W.2d 84 (Ct. App. 1997), the Wisconsin Court of Appeals examined a factual circumstance analogous to the one presented in Mr. Wheelock's case. Law enforcement officers detained Charles Young, a black male who was passing on foot through a neighborhood known for its drug trafficking. *Id*. at 420-21. Young was detained because while he was walking he stopped and made "short-term contact" with another male in the same area. *Id*. Upon executing a consensual search of Young, officers found a small amount of marijuana and a marijuana pipe on his person. *Id.* at 421. Young was thereafter arrested and charged with possession of THC. *Id*. at 419.

Young moved to suppress the evidence found on his person on the ground that law enforcement officers lacked a reasonable suspicion to detain him. *Id*. at 419. At the hearing on the matter, the circuit court denied Young's motion to suppress based upon the fact that Young was in a known drug-trafficking area and that the arresting officer, based upon his training and experience, knew that persons who had "short-term contact" with one another in such locales often did so to exchange illegal narcotics for money. *Id*. at 423.

On appeal, the *Young* court resoundingly rejected the lower court's decision. *Id.* 428-31. In overturning the lower court, the *Young* court relied heavily upon the Supreme Court's decision in *Brown*, 443 U.S. 47. In an effort to distinguish the *Brown* holding from the circumstances present during Young's arrest, the State argued that another factor—the short-term contact between two men—was present which was not present in the circumstances before the *Brown* Court. *Id*. at 428. The *Young* court agreed that this was an additional factor not present in *Brown*, however,

it still rejected the State's theory that a trained, experienced officer could reasonably conclude that such a meeting was conducted for the purpose of selling drugs. *Id.* The *Young* court stated that "we do not accept the premise implicit in the State's position that, because a trained officer testifies that certain conduct may mean that a drug transaction has occurred, it automatically follows that the constitutional standard of reasonable suspicion has been met." *Id.* at 428-29. The *Young* court observed that an officer's "mere experience [does not] mean that an [officer's] perceptions are justified by the *objective* facts." *Id.* at 429 (emphasis in original), quoting *United States v. Buenaventura*, 615 F.2d 29, 36 (2d Cir. 1980).

In yet another decision, *State v. Diggins*, Case No. 2012AP526-CR, 2013 WI App. 105, 349 Wis. 2d 787, 837 N.W.2d. 177 (Wis. Ct. App. July 30, 2013)(unpub.),[6] the Wisconsin Court of Appeals noted:

> It is well-settled law that "[a]n individual's presence in an area of expected criminal activity, standing alone, is not enough to support a reasonable, particularized suspicion that the person is committing a crime." *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000); *see also*, *State v. Washington*, 2005 WI App 123, ¶ 18, 284 Wis. 2d 456, 700 N.W.2d 305.
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> . . . .
>
> More than mere presence (*i.e.*, hanging out) in a public place is required for reasonable suspicion that criminal activity is afoot. [Citation omitted.] Hanging out in a high crime neighborhood for approximately five minutes, at night, while dressed in dark clothing, is not enough for reasonable suspicion. *See State v. Young*, 212 Wis. 2d 417, 429-30, 569 N.W.2d 84 (Ct. App. 1997)(acknowledging that while some seemingly innocent conduct may also give rise to reasonable suspicion, "conduct that large numbers of innocent citizens engage in every day for wholly innocent purposes, even in . . . neighborhoods where drug trafficking occurs" is insufficient for finding reasonable suspicion of criminal activity). Nor is hanging out at a place where other arrests have been made sometime in the past, without more, enough for reasonable suspicion of a particular person's involvement in criminal activity. [Citation omitted.]

Diggins, 2013 WI App 105, ¶¶ 13, 15 (emphasis added).

The *Diggins* court's reliance on *Young*, 212 Wis. 2d 417, is instructive. One of the factors that the detaining officer in *Young* offered as a justification for

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[6]*Diggins* is not cited as binding precedent, but rather, as an unpublished opinion of the court of appeals, is cited for its persuasive value only pursuant to Rule 809.23(3).

Young's detention was that, apart from his being present in a "high drug-trafficking area," he "'made short-term contact' with another individual" which is often indicative of a drug transaction. *Id*. at 429. In wholly rejecting this as a basis to justify Young's detention, the *Young* court opined that:

> stopping briefly on the street when meeting another person is an ordinary, everyday occurrence during daytime hours in a residential neighborhood. There is nothing in the record to suggest that that is not the case in this residential neighborhood, or in high drug-trafficking residential neighborhoods in general. The conduct that Trooper Tennessen considered suspicious, then, is conduct that large numbers of innocent citizens engage in every day for wholly innocent purposes, **even in residential neighborhoods where drug trafficking occurs**. The trial court correctly acknowledged this. We give full weight to the training and experience of Trooper Tennessen and Detective Gerfen and to the knowledge they acquired thereby that in this neighborhood drug transactions occur on the street and involve very short contacts between individuals. However, we cannot agree with the trial court that this is sufficient to give rise to a reasonable suspicion that two individuals who meet briefly on the sidewalk in this neighborhood in the daytime are engaging in a drug transaction.

Id. at 429-30 (emphasis added). Surely, if the *Young* court's observation that "conduct that large numbers of innocent citizens engage in every day for wholly innocent purposes" adds nothing to the reasonable suspicion calculus under the Fourth Amendment, then Mr. Wheelock's merely being parked at the side of the road—conduct which large numbers of innocent citizens engage in every day for wholly innocent purposes—cannot be a constitutionally permissible justification for his detention.

II. APPLICATION OF THE LAW TO THE FACTS.

In the present case, the information upon which Sgt. Studzinski based his decision to detain Mr. Wheelock was constitutionally insufficient to establish a reasonable suspicion to believe a violation of the law was afoot. Here, the first among the officer's allegedly objective factors for detaining Mr. Wheelock was the officer's claim that young people had been known to cause havoc in the area in which Mr. Wheelock was parked. Just as the Courts in *Brown*, *Wardlow*, and *Young* acknowledged, the fact that Mr. Wheelock was in an area where there allegedly had been disturbances is, standing alone, insufficient to justify his detention.

The remaining "objective" factor was the red appearance of Mr. Wheelock's eyes. Unfortunately for the State, having bloodshot eyes is among the weakest of all of the observations of impairment any law enforcement officer can make. In fact, it is such an insubstantial and anemic observation that the National Highway Traffic Safety Administration has now rejected it as contributing anything to the reasonable suspicion calculus. A NHTSA sponsored study *eliminated* the consideration of bloodshot eyes as an indicator of impairment given its subjective nature. J. STUSTER, *The Detection of DWI at BACs Below 0.10*, at p.14 (September 1997). According to the NHTSA study, "a flushed or red face **and bloodshot eyes** are open to subjective interpretation and could be due to allergies or caused by outdoor work." *Id*. (emphasis added). Given that U.S. Department of Transportation researchers are not even willing to consider red eyes as having any value at all in the assessment of whether a person is impaired, it should have had no value whatsoever in the lower court's probable cause calculus.

Comparatively speaking, if (1) being out at night, (2) in a high crime neighborhood, (3) for five minutes, (4) while wearing dark clothing is *not sufficient* to rise to the level of having a reasonable suspicion to detain an individual as was determined under *Diggins*, then it cannot be gainsaid that simply being parked at roadside with bloodshot eyes is insufficient as well. *Diggins*, 2013 WI App 105, ¶ 3. In the instant case, Mr. Wheelock made no attempt to flee from the officer; Mr. Wheelock was not passed out behind the wheel of his vehicle, incapacitated by intoxication; Mr. Wheelock made no inculpating admissions to the officer when he pulled alongside Mr. Wheelock's vehicle; the officer did not observe that Mr. Wheelock had slurred speech; the officer observed no contraband or alcohol in plain view when he first approached the Wheelock vehicle; *etc*. Quite literally, there were *no* observations of Mr. Wheelock which implicated him as having committed any violation of the law.

Mr. Wheelock was engaged in wholly innocent behavior, and just as in *Young*, this behavior, like the behavior of innocent individuals throughout Wisconsin, cannot be deemed to give rise to a reasonable suspicion that a violation of the law is afoot, regardless of the location in which the person may be stopped. The notion that there has been some "unlawful conduct" must be *reasonably* inferred, and the conduct at issue herein simply does not give rise to such an inference.

CONCLUSION

Because Sgt. Studzinski lacked sufficient grounds upon which to establish a reasonable suspicion to believe that Mr. Wheelock was engaged in wrongdoing, Mr. Wheelock's Fourth Amendment rights were violated and he respectfully requests that this Court reverse the decision of the lower court and remand this matter for further proceedings not inconsistent with the Court's judgment.

Dated this 30th day of August, 2022.

Respectfully submitted:
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Electronically signed by:
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CERTIFICATION OF LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 4,903 words.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wis. Stat. § 809.19(12).

Dated this 30th day of August, 2022.

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