

FILED
12-12-2022
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
IN THE COURT OF APPEALS
DISTRICT II

Appeal No. 2022AP001438 CR

State of Wisconsin,

Plaintiff-Respondent,

v.

Kelly A. Monson,

Defendant-Appellant.

APPEAL OF A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT
OF WINNEBAGO COUNTY, THE HONORABLE JOHN A. JORGENSEN PRESIDING
TRIAL COURT CASE NO. 2019CT730

REPLY BRIEF OF DEFENDANT-APPELLANT KELLY A. MONSON

Attorney Andrew H. Morgan
W.S.B. 1001491
CHARLTON & MORGAN, LTD.
529 Ontario Ave.
Sheboygan, WI 53081

(920) 458-4566

Dated: December 12, 2022

ARGUMENT: DUE TO THE FACTUAL SIMILARITIES OF STATE V. HOGAN AND THE PRESENT CASE, HOGAN ALLOWS THIS COURT TO CONCLUDE THAT MONSON'S RIGHTS WERE VIOLATED

The State, in its response brief, argues that,

"Hogan does not stand for the facts in this case being insufficient to ask the defendant to perform field sobriety tests, and does not stand for the trial court erring in this case when it found the detention lawful." Id. at 4.

Although the Hogan court did state that, "[t]he State could have made a valid case that Deputy Smith had reasonable suspicion to pursue field sobriety tests with Patrick Hogan,"¹ such a finding does not nullify the fact that based on the factual record presented in Hogan, the traffic stop extension was deemed unlawful.

This court can compare the factual similarities between the present case and the Hogan case, and conclude that the factual similarities allow for this court to conclude that Monson's rights were violated. As stated in Monson's initial brief:

"The facts of Hogan are strikingly similar to the present case. In both cases, the traffic stop was not due to observed impaired driving. In both cases, the extension of stop was based upon the officer's observations of the motorist. In both cases, the illegal substance was methamphetamine. In Hogan, the officer noticed the motorist as very nervous and shaking with body tremors, as

¹ See State's brief at page four, and Hogan at 184-185.

well as noticing restricted pupils. In the present case, the officer noticed bloodshot/glassy eyes, erratic eye movements, nervousness and slurred speech. In both cases, the officers admitted that they did not have drug recognition training, and based their observations on years of work experience.

The Hogan court expressly notes the link between nervousness, anxiety and tremors, and methamphetamine use. But the Hogan court was not willing to allow the officer's observations of same to justify the extension of traffic stop." See Monson brief at 20-21.

CONCLUSION

State v. Hogan, a Wisconsin Supreme Court decision, supports the present appeal. With facts strikingly similar to the present case, Hogan allows this court to reverse the trial court's ruling that the extension of Monson's traffic stop was lawful. The evidence of Monson's drug use (from her blood draw) should have been suppressed. This appeal requests that the judgment of conviction against Monson be vacated and that the case be remanded to the trial court.

Dated this 12th day of December, 2022 in Sheboygan, Wisconsin.

Respectfully submitted,

Electronically signed by:

ATTORNEY ANDREW H. MORGAN
W.S.B. 1001491
Charlton & Morgan, Ltd.
Attorney for Kelly A. Monson

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. 809.19 (8) (b) and (c) for a brief produced with monospaced word font. The length of this brief is three pages.

Electronically signed by:
Attorney Andrew H. Morgan
W.S.B. 1001491