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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appellate Case No. 2022AP1839

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

NICHOLAS A. STILWELL,

Defendant-Appellant.

APPEAL FROM A FINAL ORDER ENTERED IN THE CIRCUIT COURT FOR DODGE COUNTY, BRANCH II, THE HONORABLE MARTIN J. DE VRIES PRESIDING, CIRCUIT COURT CASE NO. 20-TR-5613

REPLY BRIEF OF DEFENDANT-APPELLANT

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I. THE STATE COMES DANGEROUSLY CLOSE TO ADOPTING A "MINORITY REPORT" APPROACH TO ENFORCING THE LAW.

The State proffers that Mr. Stilwell's detention was reasonable under the Fourth Amendment by attempting to justify it using two highly questionable approaches. The first of these is the State's attempt to constrain the reasonableness test involved in examining the constitutionality of removing a person from one location to another during an investigatory detention to nothing more than assessing (1) whether the transport was to a location within the vicinity of the initial detention and (2) whether the "*purpose* of moving the person to that vicinity is reasonable." State's response Brief at p.6 (emphasis added). This is a mischaracterization of the law as it completely ignores the sundry other factors examined by the courts in cases like *Florida v. Royer*, 460 U.S. 491 (1983), and *State v. Quartana*, 213 Wis. 2d 440, 570 N.W.2d 618 (1997), *et al.* Common law authority such as *Royer* and *Quartana* have always examined the constitutional reasonableness of a suspect's relocation in the context of other factors—beyond "vicinity" and "purpose"—such as the nature of the setting to which the person is removed (*e.g.,* and institutional setting) and the manner in which the person is removed (*e.g.*, in handcuffs; not being told they would be free to leave; whether any of the person's documents were seized and possessed by law enforcement; *etc.*). Clearly, even the most rudimentary reading of ***any*** of the authority which examines the concept of "suspect relocation" demonstrates that far more is considered regarding the reasonableness of the same than the State professes.

Even *Terry v. Ohio*, 392 U.S. 1 (1968), the case upon which the State principally relies in its brief, looked beyond location and purpose to such factors as the *degree* of intrusion. *Id.* at 24-25. It is beyond Mr. Stilwell's ken how the State could have overlooked this fact.

Second, the State places great emphasis on the fact that if it did not transport Mr. Stilwell to an alternate location, "having been through [an operating while intoxicated offense] **5** other times," if he had not been removed from his residence, he could have had "the opportunity to leave his residence again and commit a 7th OWI and potentially harm or kill someone, ..." State's Response Brief, at p.7

(emphasis in original). That Mr. Stilwell should have to explain to the State why its argument is constitutionally reprehensible is frightening.

If there is one thing which is clear in our constitutional republic, it is that a person cannot be punished for possible *future* conduct. There is no presumption *anywhere* within the law which permits the government to *assume* that a person might commit a crime *in the future.* This is neither the Philip K. Dick novel *The Minority Report* nor the Tom Cruise film *Minority Report*. Any implication by the State to the contrary should be rejected by this Court without the slightest apology. While the point of the State's argument might have been that merit existed in further investigating Mr. Stilwell's potential involvement in the case at hand, this notion does **not** equate to granting law enforcement officers the authority to handcuff him and lock him in the rear of a squad car for thirty-three minutes while they continued to gather evidence to see if he was in fact the driver of the vehicle. These are two very different concepts, and the State seems to have missed this distinction.

Finally, but most tellingly, the State **never** addresses within the four corners of its brief Mr. Stilwell's main contention, *i.e.*, that his **thirty-three minute confinement in handcuffs (behind the back) in the secured rear seat of the officer's squad** was constitutionally unreasonable. The handcuff issue was never addressed; the thirty-three-minute detention was never examined; and the confinement in the rear of the officer's squad was never scrutinized. Moreover, all of this was done just so the officers could continue their investigation to see if Mr. Stilwell was the driver of the vehicle. If the absence of any argument on the part of the State speaks volumes about the weakness inherent in its position, it is in the instant case.

CONCLUSION

Mr. Stilwell respectfully requests that this Court reverse the decision of the circuit court finding his refusal to submit to an implied consent test improper on the ground that Mr. Stilwell's right to be free from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution was violated given the circumstances surrounding his detention.

Dated this 21st day of April, 2023.

Respectfully submitted:

MELOWSKI & SINGH, LLC

Electronically signed by:
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CERTIFICATION

I hereby certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is proportional serif font. The text is 13-point type and the length of the brief is 907 words.

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

Dated this 20th day of April, 2023.

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