STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Appeal Case No. 2024AP000008-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

DANNY THOMAS MCCLAIN JR,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE CHRISTOPHER T. DEE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

Did Officer Rogge have reasonable suspicion to conduct a domestic abuse investigation after stopping McClain and Louge?

The trial court answered: Yes.

Did Officer Rogge have reasonable suspicion to conduct an OWI investigation and ask McClain to submit to Standardized Field Sobriety tests?

The trial court answered: Yes.

Did Officer Rogge's searches of McClain and McClain's vehicle unreasonably extend the duration of the traffic stop?

The trial court answered: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. § (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. § (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On Wednesday, February 20, 2019, Franklin Police Officer Adam Rogge arrested Danny McClain Jr. for Operating a Motor Vehicle While under the Influence of an Intoxicant (OWI-2nd offense). (R. 1; R. 2).

That arrest resulted from an investigation which occurred after Officer Rogge observed Danny McClain driving with a defective taillight in the 6400 block of West Ryan Road in Franklin. (R. 1; R. 39:5-8; R. 71:20-21). In addition to the defective taillight, Officer Rogge also observed Danny McClain swerving within the bounds of his lane. (R. 1; R. 39:7; R. 71:20-21). Officer Rogge spoke with Danny McClain and his passenger, April Louge, about the reasons for the stop. (R. 1; R. 39:8: R. 71:22). Immediately upon approaching Danny McClain, Officer Rogge observed that McClain had bloodshot eyes, and that there was an odor of alcohol coming from the vehicle. (R. 1; R. 39:8-9; R. 71:21). Danny McClain told Officer Rogge that he had picked up April Louge from her job at a bar. (R. 39:24; R. 71:22). Danny McClain and April Louge told Officer Rogge that McClain swerved because April Louge was reaching for McClain's phone during the course of an argument. (R. 39:26 R. 71:22). Officer Rogge confirmed that Danny McClain and April Louge were at that time in a relationship as boyfriend and girlfriend. (R. 39:9-10; R. 71:22). April Louge was upset and crying at the time Officer Rogge spoke with her shortly after the stop began. (Squad video footage: 2:52:21AM -

2:52:33AM).[1] Officer Rogge ran Danny McClain's information to check his record and learned that Danny McClain had a prior conviction for OWI. (R. 1:2; R. 39:10; R. 71:22).

When additional police officers arrived, the officers separated Danny McClain from April Louge. (R. 39:10 R. 71:23-24). Officer Rogge continued to smell the odor of alcohol while Danny McClain was alone in the vehicle. (R. 39:11). McClain initially told Officer Rogge that he had not had anything to drink and that April Louge had consumed alcohol while at work. (R. 39:12; R. 71:22). April Louge informed Officer Rogge that Danny McClain's swerving was due to her yelling, and not due to her reaching for McClain's phone. (Squad video footage: 2:57:00-2:57:27).

Officer Rogge considered the odor of alcohol, Danny McClain's bloodshot eyes, the time of day, and the observed driving before asking McClain to exit the vehicle to continue an OWI investigation. (R. 1:2 R. 39:12). While escorting McClain to the front of his squad, Officer Rogge asked McClain if he had any weapons on him. (Squad video footage: 3:01:50 AM-3:02:58 AM). Danny McClain responded that he might have a knife from work in his pocket. *Id*. Officer Rogge asked Danny McClain if he could search his jacket, and McClain consented to the search. Officer Rogge searched the pocket Danny McClain indicated and recovered a knife as well as Suboxone. *Id*. While Officer Rogge continued to speak with Danny McClain, Officer Walton spent time confirming McClain's prescription for Suboxone.[2] *Id*. After completing the search of McClain, Officer Rogge asked McClain to perform two Field Sobriety tests: to recite the English alphabet, and to name the months in a calendar year (R. 39:12; R. 71:24). Officer Rogge continued to smell the odor of alcohol while Danny McClain completed these tests. (R. 39:13). Officer Rogge asked Danny McClain for the second time if he had been drinking, and this time, McClain admitted that he drank two vodka cranberry mixed drinks. (R. 1:2; R. 39:13; R. 71:22).

[1] Timestamps correspond to the police squad footage introduced as Exhibit 1 at the suppression hearing. A DVD of the footage was transmitted to this court on January 19, 2024. (R. 96).

[2] Suboxone is a narcotic that contains Buprenorphine, a schedule III narcotic. Pursuant to Wis. Stat. § 961.41(3g)(b), Possession of Buprenorphine without a valid prescription is a misdemeanor offense.

Officer Rogge administered the Standardized Field Sobriety Tests (SFSTs) to McClain and ultimately arrested McClain for OWI. (R. 1:2). The State of Wisconsin charged McClain with OWI and Operating With a Prohibited Alcohol Concentration on March 27, 2019. (R. 1). Danny McClain moved to suppress evidence on October 5, 2020. (R. 28). A motion hearing was held on June 2, 2021. (R. 39). On March 4, 2022, Danny McClain filed a supplemental motion, arguing that the traffic stop was extended without reasonable suspicion to do so.[3] (R. 40). On June 21, 2022, the Honorable Judge Christopher Dee denied McClain's motion and rendered an oral decision. (R. 71). On September 15, 2022, Danny McClain entered a guilty plea to OWI-2nd offense, received a sentence of 5 days in jail, and was granted 5 days of credit. (R. 87).

STANDARD OF REVIEW

The principles governing an appellate court's review of a denial of a suppression motion are well-established. *See State v. Eason*, 2001 WI 98, ¶ 9, 245 Wis. 2d 206, 629 N.W.2d 625; *State v. Anderson*, 2019 WI 71, ¶¶ 19-20, 389 Wis. 2d 106, 935 N.W.2d 285.

> In reviewing a motion to suppress, we apply a two-step standard of review. *State v. Pallone* 2000 WI 77, ¶ 27, 236 Wis.2d 162, 613 N.W.2d 568 (*citing State v. Martwick,* 2000 WI 5, ¶¶ 16–18, 231 Wis. 2d 801, 604 N.W.2d 552). First, we review the circuit court's findings of historical fact and will uphold them unless they are clearly erroneous. *Pallone,* 2000 WI 77, ¶ 27, 236 Wis. 2d 162, 613 N.W.2d 568 (citing *Martwick,* 2000 WI 5, ¶ 18, 231 Wis. 2d 801, 604 N.W.2d 552). Second, we review the application of constitutional principles to those facts *de novo. Id.*

Eason, 245 Wis. 2d 221-222.

ARGUMENT

Law enforcement officers are allowed to seize individuals for an investigative stop when they have reasonable suspicion

[3] The supplemental motion contained new arguments that were not originally briefed in the original motion. Neither new evidence nor additional testimony was presented subsequent to the filing of the supplemental motion.

that criminal activity is afoot. This principle of law was established in *Terry v. Ohio*, 392 U.S. 1, 22, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968), where the United States Supreme Court held that investigative stops are governed by an objective test: "would the facts available to the officer at the moment of the seizure . . . 'warrant a man of reasonable caution in the belief' that the action taken was appropriate." The Wisconsin Supreme Court has adopted this standard from *Terry* consistently since it was first decided. *See State v Chambers*, 55 Wis. 2d 298, 294, 198 N.W.2d 377 (1972); *State v. Jackson*, 147 Wis. 2d 824, 829-830, 434 N.W.2d 386, 389, (1989); *State v. Waldner*, 206 Wis. 2d 51, 55, 556 N.W.2d 681 (1996).

In *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S.Ct. 1609, 191 L.Ed. 2d 492 (2015), the U.S. Supreme Court likened traffic stops to *Terry* stops due to their lower level of invasion and relatively quick resolutions. This lower-level threshold was tempered by the requirement that traffic stops actually be short; specifically, a stop must be completed in the time reasonably necessary to complete the mission of the stop. *See Rodriguez* 575 U.S. at 354. However, an officer is not locked into the original mission of a stop. Should new evidence come to light that supports reasonable suspicion for a new criminal offense, officers can extend a stop to investigate the new leads. *See id.* at 355; *Illinois v. Caballes*, 543 U.S. 405, 409, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005); *State v. Floyd*, 2017 WI 78 ¶¶ 22-23, 377 Wis. 2d 394, 898 N.W.2d 560; *State v. Wright*, 2019 WI 45 ¶29, 386 Wis. 2d 495, 926 N.W.2d 157.

I. The Trial Court Properly Found that there was Reasonable Suspicion of a Domestic Violence Incident to Justify Extending the Traffic Stop.

Law enforcement officers in Wisconsin are required to thoroughly investigate potential Domestic Violence cases. Judge Dee alluded to this fact during the decision hearing. (R. 71:22-24). Judge Dee stated: ". . . I will note that for 40-ish years we've had a number of statutes put into law that really more or less, you know, they don't strictly require an investigation, but really put an onus on law enforcement to fully investigate DV-type situations." (R. 71:23). Judge Dee was referring to Wis. Stat. § 968.075, which is entitled Domestic Abuse Incidents; Arrest and Prosecution. Wisconsin Statute § 968.075(2)(a)(2)

mandates that a police officer "shall" arrest an individual when there is probable cause to believe they have committed an act of domestic abuse that constitutes a crime and any of three other factors are present.[4] Wis. Stat. § 968.075 provides officers with significant guidance on how domestic violence cases should be investigated. For example, after police investigate the nature of the relationship as well as the actions of each party, Wis. Stat. § 968.075(2) (ar) provides a list of directives to guide police officers in determining which party is the predominant aggressor during a domestic abuse investigation:

> In order to protect victims from continuing domestic abuse, a law enforcement officer *shall* consider all of the following information in identifying the predominant aggressor:
>
> - The History of domestic abuse between the parties, if it can be reasonably ascertained by the officer, and any information provided by witnesses regarding that history.
> - Statements made by witnesses.
> - The relative degree of injury inflicted on the parties.
> - The extent to which each person present appears to fear any party.
> - Whether any party is threatening or has threatened future harm against another party or another family or household member.
> - Whether either party acted in self-defense or in defense of any other person under the circumstances described in s. 939.48.

Wis. Stat. § 968.075(2)(ar)(italicized emphasis added).

Colloquially known to domestic abuse professionals as Wisconsin's "mandatory arrest" statute, law enforcement officers are expected to treat potential instances of domestic abuse with the utmost care. The Wisconsin Legislature added requirements applicable to law enforcement agencies when it adopted Wis. Stat. § 968.075(3), requiring law enforcement agencies to implement policies and procedures on how best to

[4] The three factors are: (1) there is a reasonable basis to believe that continued domestic abuse against the victim is likely, (2) There is evidence of physical injury to the alleged victim, or (3) the person is the predominant aggressor.

investigate domestic abuse cases in line with the entire statutory section. Recognizing the responsibilities placed upon law enforcement officers in situations involving potential abuse in intimate partner/family violence circumstances, Judge Dee acknowledged that a paltry amount of time investigating the argument between Danny McClain and April Louge would have been inappropriate: "So I have to say spending about 30 seconds on this matter would have been probably met with a lot of raised eyebrows, probably some frowns from his superiors, so I really don't think that that's a problem in this case." (R. 71:23-24). Again, Judge Dee alludes to his awareness of the strict burden that Wis. Stat. § 968.075 places upon law enforcement officers. In actuality, the statute opens officers up to potentially very serious consequences if they fail to properly investigate domestic abuse incidents. Law enforcement officers are susceptible to liability if they do not follow Wis. Stat. § 968.075 in good faith. See Wis. Stat. § 968.075(6m).

Wisconsin Statute § 968.075 was implicated in this case. When Officer Rogge first made contact with Danny McClain and April Louge, he was presented with a potential domestic abuse incident once they began to explain what happened. It is undisputed that Danny McClain and April Louge were in a romantic relationship, identifying one another as boyfriend and girlfriend. (R. 39:9-10; R. 71:22). Danny McClain told Officer Rogge that the swerving was due to April Louge reaching for his phone during an argument. Upon learning that an intimate relationship was involved, Officer Rogge was bound both by statute and Franklin Police Department Standard Operating Procedures, to thoroughly investigate the matter.[5] The Franklin Police Domestic Violence procedure is attached in the Supplemental Appendix . This Court will note that the Franklin Police Department Standard Operating Procedure closely adheres to Wis. Stat. § 968.075.

Officer Rogge observed several pieces of concerning behavior that warranted further investigation. First, he observed the swerving of the vehicle which Danny McClain and April Louge attributed to a fight that involved yelling. Second, the

[5] A copy of the Franklin Police Department Standard Operating Procedure for Domestic Violence has been obtained by Petitioner-Respondent from the Franklin Police Department and included in the Petitioner-Respondent's Supplemental Appendix.

fight, which would ultimately prove to be predominantly a verbal argument, included physical contact in the form of April Louge grabbing Danny McClain's arm. Officer Rogge also noted that he observed that April Louge was visibly upset and crying (Squad video footage: 2:52:21AM - 2:52:33AM). While April Louge and Danny McClain denied being spouses, cohabitants or having a child in common, it was reasonable for Officer Rogge to continue investigating. Had the investigation legitimately pointed towards a probable cause for abuse or violence—even outside the bounds of the statutory definition of "domestic"—there is nothing preventing the Franklin Police Department from exercising its discretion to arrest the predominant aggressor.

Separating and speaking with each party alone gave Officer Rogge the opportunity to look at the required considerations: getting witness statements, seeing if either party is scared of the other, learning about prior incidents, etcetera. The fact that this incident was a false alarm should not make the additional time investigating unreasonable. Officer Rogge was able to investigate and confirm that there was no predominant aggressor to arrest, and no victim that needed protecting. Had he not taken these steps, he could have opened himself up to liability if that was not the case.

The record amply supports that police had legitimate and reasonable concerns that Danny McClain and April Louge may have been in the midst of a domestic abuse incident. Officer Rogge acted reasonably and in line with Wis. Stat. § 968.075 by spending adequate time to thoroughly investigate the situation.

II. The Trial Court Properly Found That There Was Reasonable Suspicion for an OWI Incident to Justify Extending the Traffic Stop.

Wisconsin Courts have considered a wide variety of factors that support reasonable suspicion and probable cause to believe someone is operating while intoxicated. Probable cause may be established through a showing of erratic driving and the subsequent "stumbling" of the driver after getting out of the motor vehicle. *See State v. Welsh*, 108 Wis. 2d 319, 333–35, 321 N.W.2d 245 (1982). Probable cause may be demonstrated by bloodshot eyes, an odor of intoxicants, and slurred speech,

together with a motor vehicle accident or erratic driving. *See State v. Wille*, 185 Wis. 2d 673, 683, 518 N.W.2d 325 (Ct. App. 1994). Probable cause may be established by an officer's observation of erratic driving as well as physical indications of intoxication. *See State v. Babbitt*, 188 Wis. 2d 349, 357, 525 N.W.2d 102 (Ct. App. 1994). A single-vehicle accident, odor of intoxicants, and slurred speech are sufficient to establish probable cause. *See State v. Kasian*, 207 Wis. 2d 611, 622, 558 N.W.2d 687 (Ct. App. 1996). Even though the Probable Cause standard is significantly lower than the standard of Beyond a Reasonable Doubt, it is still higher than the Reasonable Suspicion standard that governs traffic stops. *See State v. Secrist*, 224 Wis. 2d 201, 212, 589 N.W.2d 387 (1999). In determining Reasonable Suspicion, the courts have considered: (1) an officer's training and experience, (2) prior OWI convictions, (3) a .02 BAC restriction, (4) the odor of intoxicants inside a vehicle, (5) an admission to consuming alcohol, and (6) excessive speeding. *State v. Adell*, 2021 WI App, 72 ¶19, 399 Wis. 2d 399, 966 N.W.2d 115.

In addition to the investigation of a potential domestic violence incident, Officer Rogge had reason to suspect that Danny McClain was driving while intoxicated. McClain argued in the trial court (and argues again on appeal) that the only factors supporting suspicion of an OWI that were known to Officer Rogge was the odor of alcohol coming from the vehicle, McClain's bloodshot eyes, and McClain's swerving within the lane of traffic.

However, there was an additional factor available to Officer Rogge, a factor that Judge Dee considered in his decision. After Officer Rogge spoke with McClain, he was able to confirm that McClain had a prior conviction for an OWI offense. (R. 39:10; R. 71:22). The reasonable suspicion determination looks at the totality of the circumstances available to an officer. *Jackson*, 147 Wis. 2d at 833-843; *State v. Richey*, 2022 WI 106, ¶9, 405 Wis. 2d 132, 938 N.W.2d 617. All four factors together warrant a reasonable officer in Officer Rogge's position to investigate further.

Officer Rogge's following actions remained reasonable to investigate the new suspicion that Danny McClain was operating while intoxicated. Officer Rogge was forthcoming

with the fact that the odor of alcohol was coming from the vehicle (which had two occupants) as opposed to just coming directly from McClain. Office Rogge separated McClain and Louge as part of the domestic abuse investigation, which then provided an opportunity for the odor to dissipate had Louge been the only source. However, Officer Rogge testified that the odor did not dissipate. The odor continued to follow Danny McClain through the rest of the stop. (R. 39:11, 19). This factor further bolsters the weight of Officer Rogge's suspicion.

Officers are not required to accept innocent explanations as the only possibility. The Wisconsin Supreme Court has consistently held that "police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop." *State v. Anderson*¸155 Wis. 2d 77, 84, 454 N.W.2d 763 (*Anderson II*); *See Waldner*, 206 Wis. 2d at 59. In *State v. Anderson*¸155 Wis. 2d 77, 84, 454 N.W.2d 763, the Wisconsin Supreme Court reasoned that flight from a police officer may have innocent explanations, and police officers do not have to ignore the inference that something criminal might be afoot.

In the present case, McClain offered the innocent explanation that his swerving was caused due to the verbal argument. (R. 39:10; R. 71:22). While this explanation may have been valid, Officer Rogge was not required to accept it as the only explanation. Officer Rogge testified to two other inferences he thought could have been the cause. "Based on time of day, in my prior experience, [swerving in a lane is] consistent with either a medical emergency, or impairment." (R. 39:7). By itself, swerving in the lane is not enough to support reasonable suspicion of an OWI. However looking at the totality of the circumstances, the odor of alcohol, the bloodshot eyes, and Danny McClain's prior OWI, Officer Rogge was reasonable in considering the swerving as potential evidence of drunk driving.

In sum, there were several factors known to Officer Rogge that could lead any reasonable officer to suspect that McClain was operating while intoxicated. Officer Rogge properly extended the stop to further that investigation.

III. The Searches of McClain's Person and Vehicle Did Not Impermissibly Extend the Traffic Stop.

A. The Trial Court's Determination that there was no Reasonable Belief to Support a Terry Frisk is Clearly Erroneous, and any Related Extension was Reasonable.

Law enforcement officers may frisk an individual when they have reason to believe the person may be armed and dangerous. *Terry*, 392 U.S. at 27. Reasonableness is determined by the specific reasonable inferences they are able to make in light of the available facts, and their experience. *Id*. In *Terry*, the United States Supreme Court held that officers were allowed to frisk Terry when the surrounding circumstances led them to believe Terry was planning a daylight robbery, and that such a plan could reasonably include the use of weapons. *See Id.* at 28.

In the present case, Judge Dee held that Officer Rogge's frisk of McClain was unreasonable and suppressed the evidence of a suboxone tablet that was recovered during the search:

> Now the searches however, they're both out. You can't do a patdown without some reasonable belief that Mr. McClain was being – or armed at the time. *There is absolutely nothing in the record that supports that.* You can't just start patting people down, which then yielded the suboxone pill so that's out.

R. 71:25 (emphasis added).

While Judge Dee indicated there was no evidence in the record to support reasonable suspicion, the State believes this decision was in error. During the motion hearing, Exhibit One was entered into evidence. (R. 35; R. 39:17; R. 96). During the hearing, the State played Exhibit One from time stamp 2:59:44 until 3:05:07. During this portion of video, Officer Rogge asked Danny McClain if there were any weapons on his person, and McClain responded that he had a knife on him. (Squad video footage at 3:01:48-3:02:06). Officer Rogge then asked Danny McClain if he had any issue with him "search[ing] and recover[ing] it," and Mr. McClain responded, "no." (Squad video footage at 3:02:06-3:02:011). McClain's admission of there being a potentially dangerous weapon on his person is sufficient information for Officer Rogge to briefly frisk and

summarily recover the knife in Danny McClain's pocket under *Terry*. Even if it was not, Danny McClain's consent to the frisk further rendered Officer Rogge's actions as reasonable.

The original motion hearing was held on June 2, 2021 in order to discuss the motions filed by Mr. McClain in Defendant's Motion to Suppress, R. 28. This document (R. 28) raised three grounds for suppression, none of which included an argument that Officer Rogge's frisk was unconstitutionally invasive. The frisk issue was raised nine months later on March 4, 2022, in Notice of Supplemental Motion and Supplemental Motion to Suppress Following Evidentiary Hearing. (R. 40). Mr. McClain's argument hinges solely on there being, "literally no evidence in the record that would give the Lieutenant [Rogge] any basis to believe Mr. McClain is armed and dangerous." (R. 40:9).

While the transcript for the motion hearing, (R. 39), contains no discussion of the circumstances of the frisk, this is due to the fact that the legality of the frisk was not at issue in June of 2021. The motion was decided more than a year later on June 21, 2022, where Judge Dee echoed McClain's argument that there was nothing to support the legality of the frisk. This holding completely disregards Exhibit One and the portions played directly to the court which showed that Mr. McClain admitted to having a knife on his person, and further, that he consented to Officer Rogge searching his person. Judge Dee's finding of fact that there was no factual basis to support reasonable suspicion is clearly erroneous.

Officer Rogge had reasonable suspicion and consent from Mr. McClain to search his pocket, resulting in the discovery of the Suboxone. Any extension of the traffic stop to verify the validity of Mr. McClain's prescription was therefore reasonable.

B. The Illegal Search of McClain's Vehicle Did Not Prolong the Traffic Stop.

An otherwise legal traffic stop can become unlawful if its duration is increased beyond the time reasonably required to complete the mission of the stop. *Illinois v. Caballes*¸ 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed. 2d 842 (2005), *Rodriguez v. United States*, 575 U.S. at 357. Conduct performed

"simultaneously with mission-related activities" does not impermissibly extend a traffic stop. *State v. Brown*, 2020 WI 63, ¶18, 392 Wis. 2d 454, 945 N.W.2d 584 (quoting *Wright*, 386 Wis. 2d at 495); *See Caballes*, 543 U.S. at 408.

In *State v. Brown*, 2020 WI 63, 392 Wis. 2d 454, 945 N.W.2d 584, Brown challenged the extension of his traffic stop when an officer asked him to step out of the vehicle, asked if there was anything dangerous on his person, moved him to the front of the squad car, and asked for consent to search his person. The Wisconsin Supreme court held that each of these actions were "negligibly burdensome actions directly related to officer safety and therefore part of the stop's mission." *Brown*, 392 Wis. 2d at 476-477.

The mission for the stop of Mr. McClain evolved into a four-fold mission. The original purpose was for a traffic violation of driving with a broken tail light. The stop quickly gained two new missions: investigating a possible domestic violence incident and investigating a possible OWI. The final mission was investigation of Mr. McClain's possession of Suboxone, which did not arise until later in the stop. It is clear, then, that the mission of the stop was not one that could be completed in a relatively short amount of time like in *Caballes*, which lasted less than 10 minutes. *See Caballes*, 543 U.S. at 406. Mr. McClain calculated that from stop to arrest, this incident lasted approximately 41 minutes. (Brief of Appellant at 2, 15). The search of the vehicle, occurred from 3:00:20 (video footage), when Officer Rogge initially opened Mr. McClain's door, until 3:01:33, when Officer Rogge asked Mr. McClain to step out of the vehicle. This search lasted approximately one minute and 13 seconds. From the time of 3:00:20 until 3:00:55 (see squad video footage), Officer Rogge is not searching Mr. McClain; rather, Officer Rogge is asking Mr. McClain about April Louge's statements pertaining to the potential domestic abuse incident. Therefore, the search of the vehicle and locating the bottle of water took approximately 38 seconds. While it may be true that Officer Rogge should not have opened Mr. McClain's passenger side door at the time he did, his doing so and subsequent search were so short in the context of the 41 minute encounter, that neither action impermissibly extended the stop.

The 38 second search of McClain's vehicle, before the missions of the stop were completed, amounted to a negligibly burdensome intrusion that does not now render the entirety of the stop unreasonable.

CONCLUSION

For the reasons herein, the State asks that the court affirm the denial of Mr. McClain's motion to suppress evidence.

Dated this 26th day of August, 2024.

Respectfully submitted,

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Electronically signed by:
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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm), and (c) for a brief produced with a proportional serif font. The length of this brief is 4,292 words.

Dated this 26th day of August, 2024.

Electronically signed by:
Kevin Clancy
KEVIN CLANCY
Assistant District Attorney
State Bar No. 1122094

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 26th day of August, 2024.

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