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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2024AP0691

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JODY WILLIAM SOLOM,

Defendant-Appellant-Petitioner.

PETITION FOR REVIEW

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ISSUE PRESENTED

Officer Butryn of the Waukesha Police Department was told by police dispatch that a red Honda Civic was reported to have run a stop sign and crashed into a snowbank before driving away with a “smashed up” front end. Officer Butryn subsequently saw a red Honda Civic driven by Mr. Solom in the same area but did not observe damage to the front of the vehicle. Nonetheless, Officer Butryn stopped Mr. Solom.

1. Under the totality of the circumstances, did the arresting officer have a sufficient basis to believe Mr. Solom’s car had been the same one reported to have crashed into a snow bank?

The circuit court answered yes.

The Court of Appeals answered yes.

CRITERIA FOR REVIEW

Review is warranted because this case presents a real and significant question of federal and state constitutional law—whether Mr. Solom’s constitutional right to be free from unreasonable seizure was violated. Wis. Stat. § 809.62(1r)(a). A significant number of traffic stops occur every day; therefore, ensuring that these seizures conform with constitutional reasonableness requirements is of vital importance to the public, law enforcement, practitioners, and lower courts.

Review is also warranted because the court of appeals' decision is in conflict with a Wisconsin Supreme Court opinion. Wis. Stat. § 809.62(1r)(d). In *State v. Richey*, the Wisconsin Supreme Court considered the stop of a Harley-Davidson motorcycle half a mile from the reported location of a Harley-Davidson which had been speeding and driving erratically. 2022 WI 106, ¶¶ 2-3, 405 Wis. 2d 132, 983 N.W.2d 617. It held that the officer lacked concrete reasons for believing Richey's Harley-Davidson and the one seen earlier were the same vehicle because the basic description of a "Harley-Davidson motorcycle" could apply to a large number of vehicles. *Id.* at ¶ 11. Similarly, here, the vehicle which crashed into a snowbank was described as a red Honda Civic with a smashed-up front end. The arresting officer did not confirm that Mr. Solom's front end was "smashed up" before stopping his car and because "red Honda Civic" is a description that could apply to a large number of vehicles, the officer's hunch did not rise to the level of reasonable suspicion under *Richey*.

STATEMENT OF THE FACTS

On January 28, 2022, a witness reported a reckless driver to the Waukesha Police Department. (59:11; App. 27). The witness reported seeing a car run a stop sign and hit a snowbank before leaving the scene. *Id.* The witness described the car as a red Honda Civic but was unable to provide a license plate number. *Id.* The witness did, however, report that the front of the vehicle was "smashed up." (59:20; App. 36). After the crash, the witness reported seeing the

vehicle drive away, traveling westbound on Main Street in Waukesha. (59:12; App. 28).

Officer Butryn was dispatched to search for the reckless driver. (59:10-11; App. 26-27). A few minutes after receiving the dispatch, while traveling eastbound on Main Street, Officer Butryn saw what appeared to be a red Honda Civic going in the opposite direction, about a mile from where the witness had reported seeing the reckless driver. (59:13-14; App. 29-30). Officer Butryn testified that he “was able to observe the driver’s side of the front of the vehicle” and that it did not appear to be damaged. (59:22; App. 38).¹ He then performed a U-turn and followed the red car. (59:22-23; App. 38-39). This was the first red sedan he had seen and he did not look for other cars that may have matched the description. *Id.* At the suppression hearing, Officer Butryn did not specifically remember whether there was heavy traffic, but testified that it was reasonable to believe so based on the fact that it was 5:30 p.m. on a Friday evening. (59:21; App. 37). While following the vehicle, he observed some minor deviations within the lane of traffic and varying speeds, but did not observe the car leave its lane or

¹ Later in the hearing, Officer Butryn appeared to give conflicting testimony. When the State asked him, “So you did not see the front of the car; is that fair to say?” he replied “Prior to initiating the stop, no.” (59:26; App. 42). The trial court did not make a specific finding as to whether Officer Butryn saw the front of the vehicle, but concluded that “as he passes the vehicle, he doesn’t observe any damage to the front of the vehicle.” (59:38; App. 54).

commit a speeding violation. (59:23; App. 39). He then stopped the vehicle. *Id.*

At the suppression hearing, the circuit court concluded that Officer Butryn had reason to believe it was the same car which had crashed into a snowbank and therefore had “sufficient probable cause to make a stop for further investigation.” (59:40-41; App. 56-57).

The Court of Appeals affirmed and found that the case was distinguishable from *Richey*. *State v. Solom*, Appeal No. 2024AP691-CR, ¶13, slip op. (WI App March 19, 2025, recommended for publication) (App. 8-9). Specifically, it found that the witness’s description of a “red Honda Civic” was more specific than the generic “Harley-Davidson” description in *Richey*. *Id.* Because the witness reported not just the manufacturer of the vehicle that hit the snowbank, but also the model and color, the Court of Appeals found the description more reliable. *Id.*

The Court of Appeals also found the location where the officer found Mr. Solom’s Civic supported reasonable suspicion more so than the location where the officer found the Harley-Davidson in *Richey*. *Id.* at ¶ 14 (App. 9). The court reasoned that in *Richey* the arresting officer first observed the Harley-Davidson only a half-mile from the location where a speeding Harley-Davidson had been reported five minutes earlier despite the fact that it would take only about a minute to travel that distance. *Id.* Here, the Court of Appeals noted that Mr. Solom’s Civic was found approximately a mile from the snowbank and that

“two or three minutes” had passed since Officer Butryn had received the dispatch. *Id.* at ¶ 15 (App. 9).

Finally, the Court of Appeals noted that the suspicious Harley-Davidson in *Richey* had been reported speeding and driving erratically while the arresting officer did not observe any speeding or erratic driving with the motorcycle she stopped. *Id.* at ¶ 16 (App. 10). Here, though, the court noted that Officer Butryn observed varying of speed and weaving, which could signal a “control issue” consistent with having crashed into a snowbank. *Id.*

ARGUMENT

I. This Court should grant review to determine whether a sufficient basis exists under the Fourth Amendment for police to conduct a stop based simply on a generic vehicle description.

The Court of Appeals failed to follow the binding holding in *Richey* that an officer does not have reasonable suspicion when a given description could apply to a large number of vehicles by finding that, under the totality of the circumstances, that Officer Butryn had a sufficient basis to believe Mr. Solom’s Civic was the same vehicle which had been reported to have crashed into a snowbank.

A. General legal principles.

The Fourth Amendment provides “the right of the people to be secure in their persons ... against

unreasonable searches and seizures.” U.S. CONST., AMEND. IV. “A traffic stop is generally reasonable if the officers have probable cause to believe that a traffic violation has occurred or have grounds to reasonably suspect a violation has been or will be committed.” *State v. Popke*, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569 (citations and quotations omitted). The State bears the burden of establishing the reasonableness of the stop. *State v. Post*, 2007 WI 60, ¶12, 301 Wis. 2d 1, 733 N.W.2d 634. The remedy for a Fourth Amendment violation is exclusion of the evidence obtained therefrom. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963).

Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact. *Popke*, 2009 WI 37, ¶10. The circuit court’s findings of historical facts are upheld unless clearly erroneous but the application of those facts to constitutional principles is reviewed *de novo*. *Id.*

A police officer may conduct a traffic stop when, under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed. *Popke*, 2009 WI 37, ¶23. Reasonable suspicion must be founded on concrete, particularized facts warranting suspicion of a specific individual. *Richey*, 2022 WI 106 at ¶9. An officer’s inchoate and unparticularized suspicion or hunch will not give rise to a reasonable suspicion. *Popke*, 2009 WI 37, ¶23.

B. Officer Butryn lacked concrete reasons to believe Mr. Solom's Civic was the same vehicle which had crashed into a snowbank because the information he verified applied to a large number of vehicles. The Court of Appeals' opinion is therefore in conflict with *Richey*

When he initiated his stop of Mr. Solom's car, Officer Butryn knew the following facts:

- A witness had reported that a red Honda Civic had run a stop sign and hit a snowbank, leaving it with a smashed-up front end.
- The witness reported last seeing that vehicle driving westbound on Main Street.
- Officer Butryn saw a red Honda Civic driving westbound on Main Street but did not observe any damage to the front end.
- It was 5:30 p.m. on a Friday evening, when traffic is typically heavy.
- The car Officer Butryn saw made minor deviations and varied its speed, neither of which amounted to a traffic violation.

Based simply on this information, Officer Butryn lacked reasonable suspicion that Mr. Solom's car had been involved in a crime or traffic violation, because he lacked particularized reasons to believe it was the same vehicle that had crashed into a

snowbank and the information he verified applied to a large number of vehicles.

In *Richey*, an officer was told to be on the lookout for a Harley-Davidson motorcycle driving erratically and speeding at around 11:00 p.m. *Richey*, 2022 WI 106, ¶2. About five minutes later, the officer spotted a Harley-Davidson half a mile from the reported location of the speeding Harley-Davidson. *Id.* at ¶3. Although the second officer did not observe any traffic violations, she stopped the Harley-Davidson based on her suspicion that it was the same vehicle that had previously been seen driving erratically. *Id.* The Court noted that traffic had been light that night and that the officer had seen relatively few motorcycles out that early in the year. *Id.* at ¶10.

Based on these facts, this Court determined that the stop was not based on reasonable suspicion, explaining that “[t]o clear the reasonable-suspicion threshold, Officer Meier’s suspicions had to be particularized; she needed *concrete reasons* for believing that Richey’s Harley-Davidson and the one seen five minutes earlier speeding north on Alderson Street were one and the same.” *Id.* at ¶11 (emphasis added). Because the basic description of a “Harley-Davidson motorcycle” could “apply to a large number of vehicles,” this Court held that the officer’s hunch did not rise to the level of reasonable suspicion. *Id.*; see also *United States v. Street*, 917 F.3d 586, 594 (7th Cir. 2019) (“*Terry* does not authorize broad dragnets ... Without more, a description that applies to large numbers of people will not justify the seizure of a particular individual.”).

Here, as in *Richey*, the descriptor “red Honda Civic” applied to a large number of vehicles. Honda Civics are one of the most popular cars in America, and red cars are not uncommon. Moreover, while the stop in *Richey* occurred late at night when traffic was relatively light, the stop here took place during rush hour on a Friday evening – meaning *more* vehicles were on the road. The Court of Appeals attempted to distinguish *Richey* by pointing out, correctly, that Officer Butryn knew the color and model of the car he was looking for, while the officer in *Richey* did not know the color or model of the motorcycle. *Solom* at ¶ 13 (App. 8-9). But the court ignored the fact that motorcycles in general are significantly less common than passenger cars. Because red Honda Civics are common, and because it was 5:30 on a Friday evening, the description given to Officer Butryn applied to a fair number of vehicles and, accordingly, the Court of Appeals should have followed *Richey*, and held that there was an insufficient basis for the stop.

This is especially true because Officer Butryn *had* a more detailed description than simply a “red Honda Civic.” He had been told the front end of the vehicle was “smashed up.” But Officer Butryn did not observe any damage to the front of Mr. Solom’s vehicle, nor did he investigate further before stopping the vehicle, making his suspicion that it was the same car even less reasonable under the circumstances.

The Court of Appeals also attempted to distinguish *Richey* by noting that the location where the officer passed Mr. Solom’s car supported reasonable suspicion more than the location where the

officer found the Harley-Davidson in *Richey*. *Id.* at ¶¶ 14-15. Specifically, the court noted that the arresting officer was informed of a red Honda Civic which hit a snowbank travelling westbound and “[a]bout two to three minutes” after he had received the dispatch found a red Honda Civic about a mile from the reported accident. *Id.* at 15. It reasoned that on city streets, it might take a car two to three minutes to travel a mile. *Id.* The time frame of “two to three minutes” was particularly important to the Court of Appeals’ reasoning: “Had the officer spotted Solom’s red Honda Civic in the location and headed in the direction he did ten seconds or ten minutes after receiving the dispatch, that would change the equation, because if it had been ten seconds, it could not have been the same red Honda Civic, and if it had been ten minutes, it would have been significantly less likely it was the same red Honda Civic.” *Id.* at ¶ 17.

The problem with the court’s reasoning is that no evidence was presented at the suppression hearing about how much time had passed between the time the *accident occurred* and the time Officer Butryn spotted Mr. Solom; rather, Officer Butryn testified that he saw Mr. Solom two to three minutes *after he received the dispatch*. It is plausible that several minutes went by while the witness called 911, explained what he had seen to the 911 operator, and while a dispatch was sent to Officer Butryn. The Court of Appeals simply assumed that little to no time passed between the accident and the dispatch and, as the Wisconsin Supreme Court recently held, the Court of Appeals may not distinguish cases “by drawing fine

distinctions between arguments and assuming additional or different facts.” *Wisconsin Voter Alliance v. Secord*, 2025 WI 2, ¶ 39, 414 Wis. 2d 348, 15 N.W.3d 872. The assumption is especially problematic here where the Court of Appeals specifically noted that even a delay as short as ten minutes would have made it significantly less likely that Officer Butryn had located the same Civic. Finally, given the rush hour traffic and the fact that Officer Butryn had been given a specific description of front-end damage to the car which he failed to verify, Mr. Solom’s car was even less likely to be the same vehicle. Accordingly, the location where the vehicle was found does not distinguish this case from *Richey* and this Court should grant review.

Finally, the Court of Appeals attempted to distinguish *Richey* by noting that Officer Butryn observed varying speed and weaving within a single lane while following Mr. Solom, while the arresting officer in *Richey* noted no erratic driving. *Solom* at ¶ 16 (App. 10). It reasoned that these issues signaled a “control issue” making it more likely that the car was the same one which had hit a snowbank. *Id.* But the circuit court found that neither the varying speeds or deviations in the direction of travel were sufficient to provide reasonable suspicion on their own. (59:40; App. 56). And slight weaving within a lane is not only innocent conduct, it is “conduct that many innocent drivers commit.” *Post*, 2007 WI 30, ¶ 21. It certainly does not indicate that a driver is so out of control that he is likely to crash into a snowbank. Varying speeds is also innocent conduct and, especially during rush hour traffic, does not indicate a significant control

issue; it is, in fact, often necessary to vary speeds in order to drive safely. Accordingly, these issues did not support reasonable suspicion and do not distinguish this case from *Richey*.

CONCLUSION

Because the Court of Appeals' decision failed to sufficiently distinguish this case from *Richey*, the holding in *Richey* applies and, under the totality of the circumstances, Officer Butryn lacked reasonable suspicion to stop Mr. Solom. Accordingly, this Court should grant review and reverse the decision.

Dated this 17th day of April, 2025.

Respectfully submitted,

Electronically signed by

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 2,820 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this petition is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 17th day of April, 2025.

Signed:

Electronically signed by

William Straube

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