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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2024AP000931-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOSEPH PAUL MORELLO,

Defendant-Appellant.

On Appeal from a Judgement of Conviction Entered
in the Circuit Court for Rock County, the Honorable
Barbara W. McCrory, Presiding

BRIEF OF
DEFENDANT-APPELLANT

TRISTAN S. BREEDLOVE
Assistant State Public Defender
State Bar No. 1081378
breedlovet@opd.wi.gov

DAVID J. SUSENS
Assistant State Public Defender
State Bar No. 1099463
susensd@opd.wi.gov

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 266-3440

Attorneys for Defendant-Appellant¹

¹ With assistance from University of Wisconsin Law School students, Garrett Kerr and Adriana M. Van Hout.

TABLE OF CONTENTS

	Page
ISSUE PRESENTED.....	6
POSITION ON ORAL ARGUMENT AND PUBLICATION.....	6
STATEMENT OF FACTS AND STATEMENT OF THE CASE.....	7
ARGUMENT.....	11
Police did not have reasonable suspicion to stop Mr. Morello.....	11
A. Legal principles and standard of review.	12
B. Relevant factors for this type of case show there was not reasonable suspicion to stop Mr. Morello.	13
C. Police did not have reliable information that a Chevy Avalanche was involved in the shooting they were investigating.....	17
D. The description of the vehicle was not sufficiently particular and police suspicion was not particularized to Mr. Morello.....	19
E. Police lacked reasonable suspicion to stop Mr. Morello more than an hour after gunshots were first heard because the shooter could have	

traveled at least 30 miles by that time.....	21
F. There were too many people about at the time Mr. Morello was stopped for there to be reasonable suspicion particularized to him.	23
G. Police lacked reasonable suspicion to stop Mr. Morello because he did not exhibit any suspicious behavior that would make it more likely he was involved in criminal activity and they did not suspect a traffic violation.....	24
CONCLUSION	29

CASES CITED

<i>Katz v. United States</i> , 389 U.S. 347 (1967).....	12
<i>Mapp v. Ohio</i> , 367 U.S. 643 (1961).....	12
<i>State v. Conaway</i> , 2010 WI App 7, 323 Wis. 2d 250, 779 N.W.2d 182.....	26
<i>State v. Harris</i> , 206 Wis. 2d 243, 557 N.W.2d 245 (1996)	14, 18, 27, 28
<i>State v. Houghton</i> , 2015 WI 79, 364 Wis. 2d 234, 868 N.W.2d 143.....	13

State v. Nimmer,
 2022 WI 47, 402 Wis. 2d 416,
 975 N.W.2d 598.....14 passim

State v. Post,
 2007 WI 60, 301 Wis. 2d 1,
 733 N.W.2d 634..... 12, 13

State v. Richey,
 2022 WI 106, 405 Wis. 2d 132,
 938 N.W.2d 617.....11 passim

Terry v. Ohio,
 392 U.S. 1 (1968)..... 12

Union Pac. R. Co. v. Botsford,
 141 U.S. 250 (1891)..... 12

United States v. Jones,
 998 F.2d 883 (10th Cir. 1993)..... 19

United States v. Sokolow,
 490 U.S. 1 (1989)..... 13

United States v. Street,
 917 F.3d 586 (7th Cir. 2019)..... 20

**CONSTITUTIONAL PROVISIONS
 AND STATUTES CITED**

United States Constitution

Fourth Amendment 12, 13, 20

Wisconsin Constitution

Article I, Section 11 12

Wisconsin Statutes

346.63(1)(a)..... 9

346.63(1)(b)..... 9

347.413(1) 9

OTHER AUTHORITIES CITED

3 Wayne R. LaFave, Search and Seizure,
 § 9.3(d) (2d ed 1987)..... 14, 27, 28

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 wXadZ2Qy) 22

ISSUE PRESENTED

People heard gunshots beginning at 12:04am. Fifteen and forty-five minutes later reports came in of a black Chevy Avalanche leaving the area.

More than an hour after gunshots were first heard, police pulled Mr. Morello over because he was driving a black Chevy Avalanche. He was pulled over less than a mile from where the shots were heard. No evidence was found linking Mr. Morello to the gunshots but he was charged with an OWI and related charges based on police interactions with him after he was stopped.

Did police have reasonable suspicion to stop Mr. Morello?

The trial court answered: "Yes."

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested because it is expected that the briefs will fully address the issue.

Publication is not warranted as the sole issue in this case only requires the application of facts to established law.

STATEMENT OF FACTS AND STATEMENT OF THE CASE

In the words of the trial court, on May 2, 2022, Mr. Morello “happened to be the wrong person at the wrong place at the wrong time.” (49:17). On that day, Mr. Morello was driving home when the lights and siren of a police car turned on behind him. (22:2, 10:2). Mr. Morello pulled over immediately and was ordered out of his car by Officer Asilis. (24:20). After getting out, Asilis patted Mr. Morello down for weapons but none were found. (22:2). Asilis then explained that he stopped Mr. Morello because Mr. Morello was driving a black Chevy Avalanche, the same model of a car suspected in an earlier crime. (22:2).

The Events Preceding the Traffic Stop

At 12:04am, 61 minutes before Mr. Morello was stopped, police received a report of gunshots at 1611 Hackett Street in Beloit. (10:2; 24:7). A second report of gunshots was made from a few blocks away approximately 15 minutes later. (10:2; 20; 24:12). The record does not indicate that anyone was shot.

Officers spoke to a witness who said he saw a black Chevy Avalanche driving north out of the area 15 minutes after the initial gunshots were heard. (10:2; 24:10-11). The witness did not see anyone enter the black Chevy Avalanche, so they could not provide a description of anyone in the car. (24:27-28). The witness also did not see the car’s license plate or any other distinguishing features. (24:27-28). The only

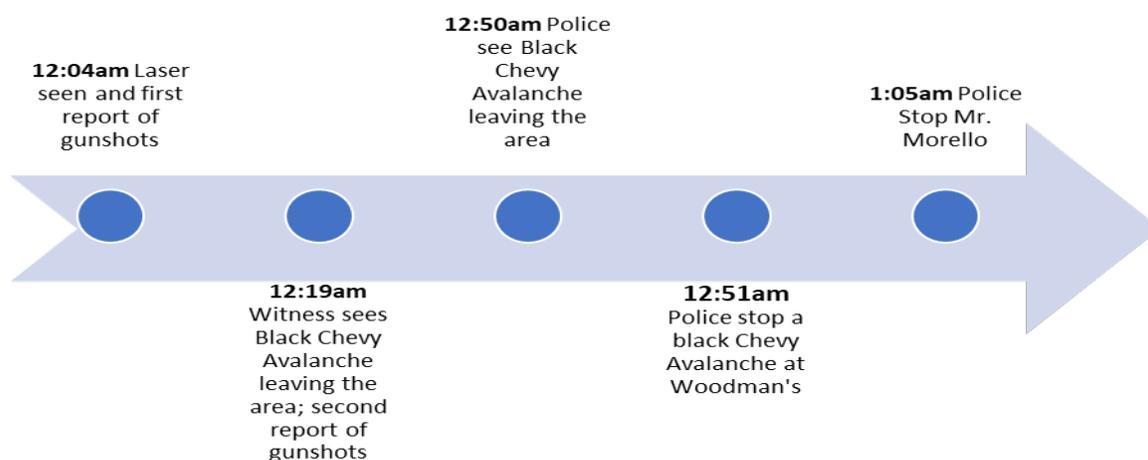
details the witness could provide were the color and model of the car. (24:27-28).

With only this limited description of a vehicle, officers began reporting sightings of and performing traffic stops on similar vehicles. (10:2).

At 12:36am, officers interviewed a witness that reported seeing someone shining a laser from a dark-colored pickup truck near the area shortly before the 12:04am reports of gunshots came in. (10:2).

At 12:50am, Officer Muniz reported seeing a black Chevy Avalanche speeding approximately 12 blocks from where the first shots were reported. (10:2; 20).

At 12:51am, officers stopped a different black Chevy Avalanche parked outside of a Woodman's grocery store. (10:2, 24:15). This Woodman's was open at the time and within 2 miles of where shots were fired. (24:30-31).



The Traffic Stop

At 1:05am, 61 minutes after the initial report of shots came in, Officer Asilis spotted a black Chevy Avalanche driving less than a mile away from where shots had been heard. (10:2). Mr. Morello was driving this vehicle. Though Mr. Morello was not swerving, speeding, or running any traffic signs, Asilis pulled him over. (10; 24; 49:17 (“There was no bad driving in this situation.”)). After ordering Mr. Morello to exit his vehicle and subjecting him to a pat down, Asilis explained that he stopped Mr. Morello because he believed he may have been involved with gunshots heard earlier that day. (22:2).

Though Officer Asilis initiated the traffic stop to investigate the earlier shooting, after observing Mr. Morello’s demeanor and smelling alcohol on his breath, Officer Asilis transitioned to conducting an OWI investigation. (10:2-3; 22:2; 24:22). After this investigation, Mr. Morello was charged with Operating a Motor Vehicle While Under the Influence (2nd) (Wis. Stat. § 346.63(1)(a)), Failure to Install Ignition Interlock Device (IID) (Wis. Stat. § 347.413(1)), and Operating with a Prohibited Alcohol Concentration (2nd) (Wis. Stat. § 346.63(1)(b)). (10:1-2).

Mr. Morello was never charged with or convicted of any crime related to gunshots heard on May 2, 2022. (10; 34; App. 3-4).

The Events Following the Traffic Stop

Defense counsel moved to suppress all evidence obtained as a result of the traffic stop. (16:1). At the suppression hearing, nearly seven months after the traffic stop, Officer Asilis claimed that in addition to suspicion that Mr. Morello's car was the same as the one seen leaving the area where shots were heard, he noticed Mr. Morello's car had "excessive window tint." (24:22). However, in the police report prepared mere hours after the traffic stop on May 2, Asilis wrote:

Due to the time of night, there being collective knowledge that a black-in-color Chevy Avalanche may have been involved in the shooting . . . this black-in-color Chevy I saw matching the description and the distance of Grant and Burton from the shooting incident, 0.9 miles, I developed a reasonable suspicion to believe this specific Chevy Avalanche may have occupants involved in the earlier shooting and they may be armed.

(22:2).

The criminal complaint also indicated the reason Asilis stopped Mr. Morello was to investigate the gunfire heard earlier that day. (10:2). Neither document stated Mr. Morello was stopped because of tinted windows. (10; 22).

Though the trial court admitted this case was a "close call," it denied the suppression motion, finding police had reasonable suspicion to stop Mr. Morello because "he happened to be driving a car that matched the description" of one seen leaving the area of the

shots fired. (24:55; App. 10). The circuit court made no ruling regarding the window tint. (24:50-55; 47:12-21; App. 5-10, 11-20).

In light of the Wisconsin Supreme Court's December, 2022 decision in *State v. Richey*, 2022 WI 106, 405 Wis. 2d 132, 938 N.W.2d 617, Mr. Morello moved for reconsideration. (25:1). After acknowledging, again, that this case was a close call, the trial court denied the defense's motion. (47:19; App. 18). The trial court distinguished *Richey* on the basis that, in *Richey*, police were searching for a drunk driver whereas, in this case, police were looking for "an active shooter." (47:17; App. 16).

After the motion to suppress and motion to reconsider were both denied, Mr. Morello entered no contest pleas to charges of OWI (2nd) and Failure to Install Ignition Interlock Device. (49:9). The trial court found Mr. Morello guilty of both charges and imposed fines for both. It also sentenced him to 30 days in jail for the OWI charge. (34; 49:10, 18-19; App. 3-4). Mr. Morello now appeals.

ARGUMENT

Police did not have reasonable suspicion to stop Mr. Morello.

The warrantless traffic stop conducted on Mr. Morello was unreasonable because officers did not have reasonable suspicion to believe Mr. Morello had

been involved with the gunshots heard earlier or had violated a traffic law.

A. Legal principles and standard of review.

The Fourth Amendment to the United States Constitution, as incorporated on the states, and Article I, Section 11 of the Wisconsin Constitution guarantee the right to be free from “unreasonable searches and seizures.” U.S. CONST. amend IV; WIS. CONST. art. I, § 11. As the United States Supreme Court has stated, “No right is held more sacred, or is more carefully guarded . . . than the right of every individual to the possession and control of his own person, free from all restraint or interference by others, unless by clear and unquestionable authority of law.” *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (citing *Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 251 (1891)).

A traffic stop constitutes a seizure within the meaning of the Fourth Amendment. *Richey*, 2022 WI 106, ¶8. Absent an exception, warrantless seizures are presumptively unreasonable under the Fourth Amendment. *Katz v. United States*, 389 U.S. 347, 357 (1967). Any evidence obtained from an unreasonable search or seizure is subject to the exclusionary rule, meaning, absent an exception, that evidence cannot be used in a criminal prosecution. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

The state bears the burden of showing that a warrantless traffic stop was reasonable. *State v. Post*, 2007 WI 60, ¶12, 301 Wis. 2d 1, 733 N.W.2d 634.

A traffic stop violates the Fourth Amendment when an officer does not have reasonable suspicion to believe a crime or traffic violation has been or will be committed by the car's occupants. *State v. Houghton*, 2015 WI 79, ¶21, 364 Wis. 2d 234, 868 N.W.2d 143. This standard requires that the stop be based on more than an officer's inchoate and unparticularized suspicion or hunch. *Post*, 2007 WI 60, ¶10. Rather, an officer's reasonable suspicion must be supported by articulable facts that wrongful activity may be afoot. *United States v. Sokolow*, 490 U.S. 1, 7 (1989).

Whether police had reasonable suspicion to conduct a traffic stop is a legal question that appellate courts review de novo. *Richey*, 2022 WI 106, ¶7. This court accepts a circuit court's findings of fact unless they are clearly erroneous. *Id.*

B. Relevant factors for this type of case show there was not reasonable suspicion to stop Mr. Morello.

For reasonable suspicion to exist, it must be "founded on concrete, particularized facts" that warrant "suspicion of a specific individual." *Id.* at ¶9.

In determining whether reasonable suspicion exists, courts must consider the totality of the circumstances. *Id.* In analyzing whether the totality of the circumstances provide reasonable suspicion to conduct an investigative stop to look for someone involved in a specific reported crime, Wisconsin courts consider multiple factors.

The interrelated factors can be summarized as:

- The reliability of the information police have regarding how the person stopped could be connected to the reported crime;
- The particularity of the description of the offender/vehicle and how particular police suspicion is to the specific person;
- The size of the area in which the offender might be found based on how far from the scene and how long after the reported crime the person was stopped;
- Number of other people in the area of the reported crime;
- Whether the individual stopped exhibited any suspicious behavior making it more likely he or she was involved in criminal activity.

See Id.; *State v. Nimmer*, 2022 WI 47, 402 Wis. 2d 416, 975 N.W.2d 598.

Other considerations include the known or probable direction of the offender's flight and knowledge that the person stopped has been involved in other crimes of the same type as the reported crime. *See State v. Harris*, 206 Wis. 2d 243, 260, 557 N.W.2d 245 (1996) (citing 3 Wayne R. LaFave, *Search and Seizure*, § 9.3(d) at 461 (2d ed 1987)).

All these factors weigh against reasonable suspicion in this case.

Two recent Wisconsin Supreme Court cases that evaluated these factors are particularly instructive. In one, *Richey*, 2022 WI 106, the Court found there was not reasonable suspicion to pull the defendant over. In the other, *Nimmer*, 2022 WI 47, the Court found there was reasonable suspicion. Mr. Morello's case is more similar to *Richey* than *Nimmer* and, as in *Richey*, there was no reasonable suspicion in this case.

In *Richey*, the Wisconsin Supreme Court held a police officer did not have reasonable suspicion to stop a motorcyclist, where the rider's motorcycle was the same make as one seen "driving erratically and speeding" minutes earlier. 2022 WI 106, ¶¶2, 13.

In *Richey*, a police officer observed a Harley Davidson driver quickly and erratically going down the road and reported the behavior. *Id.* at ¶2. The report said only that it was a Harley and provided no specific details about the motorcycle or the person driving it. *Id.*

Five minutes after the report, a different officer stopped Richey, who was driving a Harley Davidson about a half a mile from the location the other officer saw a Harley speeding. *Id.* at ¶3. The second officer "did not see any erratic driving, speeding, or other traffic violations." *Id.* The officer only stopped the motorcycle because she suspected it was the same one seen driving erratically a few minutes earlier. *Id.*

The officer's suspicion in *Richey* was not reasonable because it was based solely on a generic description of a motorcycle seen driving erratically and speeding nearby, minutes earlier. *Id.* at ¶11. Despite the relative lack of motorcycles on the road late at night, particularly in April, the Court held that the generic motorcycle description was “not enough to transform [the officer's] hunch into particularized reasonable suspicion.” *Id.* at ¶12. Since the officer did not have reasonable suspicion, the *Richey* Court held the traffic stop was unconstitutional, and all evidence obtained from it was inadmissible. *Id.* at ¶15.

In contrast, the Court in *Nimmer* found reasonable suspicion existed to stop the only man found at the address of a reported shooting. *Nimmer*, 2022 WI 47, ¶47. In *Nimmer*, police received a report of shots fired and arrived at the location of the shooting “no more than one minute after receiving the report.” *Id.* at ¶8. There, police found one man—Nimmer—walking away quickly. *Id.* at ¶¶8-9. The Court held the close temporal and spatial proximity between Nimmer's location and that of the shooting, coupled with Nimmer being the sole person in the area, was sufficient to form reasonable suspicion to stop Nimmer. *Id.* at ¶32.

An analysis of the relevant factors shows that Mr. Morello's case is more like *Richey* than *Nimmer*.

C. Police did not have reliable information that a Chevy Avalanche was involved in the shooting they were investigating.

In *Nimmer*, the Court focused on the reliability of the ShotSpotter technology² to locate gunfire. *Id.* at ¶¶1, 4, 27. The Court found that because the technology is reliable, police could accurately determine where the shots were fired, and because they got to that location within one minute, could accurately determine the universe of potential suspects in the area. *Id.* at ¶27.

In *Richey*, the officer himself saw a motorcyclist breaking the law giving him a firsthand account that a Harley was involved in a criminal act. 2022 WI 106, ¶2.

In contrast, in Mr. Morello's case, no one saw the shooter and police did not hear the gunshots firsthand. The gunfire was not detected by the reliable ShotSpotter technology but, rather, was reported by citizens. (10:2). Nothing in the record indicates whether police ever evaluated the reliability of the tipsters. But even more importantly, police lacked reliable evidence linking the gunshots to a black Chevy Avalanche. Someone said he saw what looked like a laser light in a black pickup truck around the same time shots were heard. (10:2). Someone also reported seeing a black Chevy 15 minutes after the first shots were heard. (10:2). Finally, an officer said

² ShotSpotter is a gunshot location system that uses acoustic sensors to locate gunfire. *Nimmer*, 2022 WI 47, ¶4.

she saw a black Chevy Avalanche at 12:50am, more than 40 minutes after initial shots were heard, 12 blocks away from where they were heard. (10:2).

This information was insufficient to assume a black Chevy Avalanche had anything to do with the gunshots. First, someone seeing a laser light inside a pickup truck is not indicative that truck was involved in a shooting. Not every gun has a laser and not every laser is attached to a gun. Second, it is unlikely an Avalanche seen leaving the area contained the shooter because one would expect a person who just fired shots would leave the scene immediately, not wait around to take off. And the vehicle the officer saw was seen so long after shots were fired and was so far from the location where shots were heard.

Reasonable suspicion must be based on concrete, particularized facts. *Richey*, 2022 WI 106, ¶9. In *Harris*, 206 Wis. 2d at 246, 256, police were looking for an African-American robbery suspect. They stopped a car that contained African-American passengers seen leaving the curb outside the suspect's home. *Id.* at 247. The Wisconsin Supreme Court ruled there was no reasonable suspicion to stop the car because there was insufficient evidence anyone in the car had anything to do with the robbery. *Id.* at 262. In other words, the race of the occupants of the car and the fact they were in front of the robbery suspect's home were insufficient evidence to stop the vehicle. As in *Harris*, there was insufficient proof in this case that a Chevy Avalanche like Mr. Morello's was actually involved with the reported crime.

- D. The description of the vehicle was not sufficiently particular and police suspicion was not particularized to Mr. Morello.

The police in *Richey* based their suspicion solely on a generic description of a motorcycle seen driving erratically. 2022 WI 106, ¶2. In Mr. Morello's case, Officer Asilis based his suspicion solely on a generic description of a car that was never seen engaging in criminal activity. (24:27-28). The officer in *Richey* knew only the make of the motorcycle under investigation and Officer Asilis knew only the model and color of the vehicle under investigation. (24:27-28); *Richey*, 2022 WI 106, ¶11. Neither Asilis nor the officer in *Richey* had a description of the vehicle's license plate. (24:27-28); *Richey*, 2022 WI 106, ¶11. In neither case did police have any description of the driver. (24:27-28); *Richey*, 2022 WI 106, ¶11. The *Richey* court found the vehicle description was not particular enough for there to be reasonable suspicion. *Id.* This court should find the same here.

Reasonable suspicion must be particularized to the specific individual being stopped. *Richey*, 2022 WI 106, ¶11 (officers need concrete reasons for believing the vehicle they pull over is one and the same as the one involved with the reported crime; reasonable suspicion requires reason to believe "the particular individual being stopped [wa]s engaged in wrongdoing.") (internal citations omitted). *See also United States v. Jones*, 998 F.2d 883, 884-86 (10th Cir. 1993) (report that two African-American male suspects were traveling in a black Mercedes was too

general to amount to reasonable suspicion to stop a black Mercedes).

Generic information about a vehicle, like police had in this case, without a license plate number or any information about the driver, could apply to a number of people. Indeed, multiple other black Chevy Avalanches were seen in the area during the same timeframe. (10:2). The circuit court also noted many people in the area drove dark colored Avalanches. (47:14; App. 13). An Avalanche also looks similar to other types of pickup trucks, as Officer Asilis testified. (24:17). This means a large number of people could have been swept into a broad search conducted by police. Such expansive suspicion violates the Fourth Amendment which “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. *Richey*, 2022 WI 106, ¶12; *United States v. Street*, 917 F.3d 586, 594 (7th Cir. 2019)).

The description of the car alone was not enough to rise to reasonable suspicion. Reasonable suspicion is not such a low bar, “that it allows the state to stop so many otherwise law-abiding citizens based on such a generic description.” *Richey*, 2022 WI 106, ¶12.

- E. Police lacked reasonable suspicion to stop Mr. Morello more than an hour after gunshots were first heard because the shooter could have traveled at least 30 miles by that time.

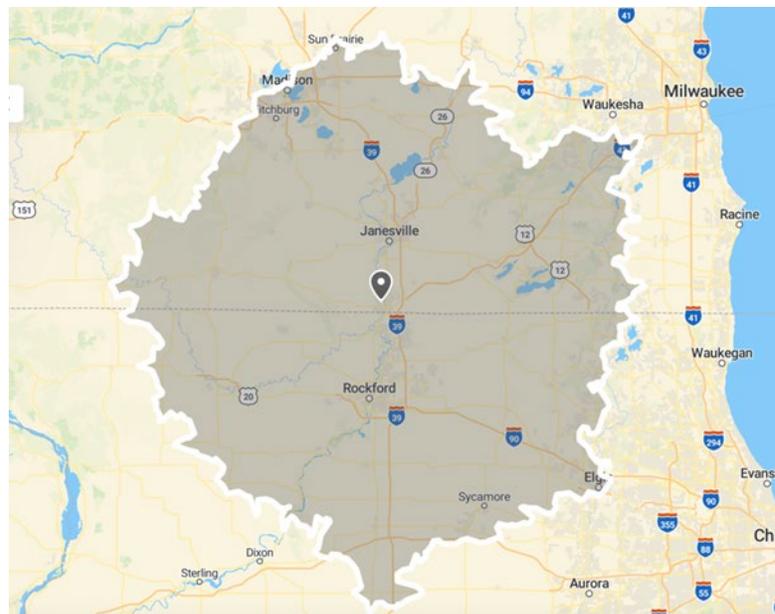
If there is a short time between when police receive a report of a crime and when they stop an individual, that weighs in favor of reasonable suspicion. *Nimmer*, 2022 WI 47, ¶¶29, 32. But the time between gunshots being heard and police pulling Mr. Morello over was quite long in this case confirming there was no reasonable suspicion.

In *Nimmer*, police stopped Nimmer as he was walking away from the address of a reported shooting, just one minute after the shooting. *Id.* at ¶8.

In *Richey*, police stopped Richey roughly half a mile from the initial sighting, just five minutes after that sighting. 2022 WI 106, ¶3. The Court noted that the Harley driver could have gotten much farther away than where they pulled Mr. Richey over in the time that had elapsed since the first officer saw the erratic driving. *Id.* at ¶13. The Court also noted the location and time of the stop raised more questions than they answered. *Id.* It questioned why the Harley driver would be driving toward the location where it was first seen speeding. *Id.* Similar factual problems exist here.

In this case, Officer Asilis stopped Mr. Morello roughly a mile from where shots were heard, over an hour after the first 911 call. (10:2). As such, the size of

the area in which the offender could be found was significantly larger in this case than it was in both *Nimmer* and *Richey*. Indeed, in the 61 minutes that passed from the time the first shots were heard to the time police stopped Mr. Morello, the shooter could have traveled as far as Janesville, or Madison, WI or Rockford, IL or farther. (24:31). The map below shows the location of where the first shots were reported (marked with a flag marker) and how far a person could get from that point in 61 minutes following speed limits (seen in gray).³



Further, the timing and location raise questions as they did in *Richey*. Why would Mr. Morello still be

³See

<https://www.smappen.com/app/map/OgL4HZ7kwXadZ2Qy>

so close to the scene if he was the shooter? In order for the theory that Mr. Morello was the shooter to be plausible, Mr. Morello would have had to either remain in the area for an extended period while somehow avoiding police, or drive away only to knowingly return to the area where he had recently illegally fired a gun.

Because so much time passed after the shooting before Mr. Morello was stopped, police did not have reasonable suspicion to believe Mr. Morello was involved in the shootings.

F. There were too many people about at the time Mr. Morello was stopped for there to be reasonable suspicion particularized to him.

Another factor—the number of persons about at the time of the stop—also indicates that police did not have reasonable suspicion to stop Mr. Morello. In *Nimmer*, 2022 WI 47, ¶33, there was reasonable suspicion because police started investigating within a minute of the reported gunfire and there was only one person in the area. However, in Mr. Morello's case, multiple people were in the area when police began investigating the reported gunshots. Businesses were still open and multiple cars were on the road at the time police stopped Mr. Morello. (24:30-31). Indeed, at least two other black Chevy Avalanches were seen in the time between the shooting and Mr. Morello's traffic stop: the one seen leaving the area 15 minutes after the first shots were heard and the one stopped in

the Woodman's parking lot. (10:2). Further, the circuit court noted a lot of people drove dark colored Chevy Avalanches in the area. (47:14; App. 13).

Even if there were only a few cars on the road, police would still not have reasonable suspicion to stop Mr. Morello. In *Richey*, the Court held that the relative lack of motorcycles on the road late at night in April was not enough to support a finding of reasonable suspicion. 2022 WI 106, ¶12. Thus, any relative lack of vehicles on the road when Mr. Morello was stopped should not be enough to support a finding of reasonable suspicion.

G. Police lacked reasonable suspicion to stop Mr. Morello because he did not exhibit any suspicious behavior that would make it more likely he was involved in criminal activity and they did not suspect a traffic violation.

The activity police observed before pulling Mr. Morello over also weighs against a finding of reasonable suspicion. Police did not observe Mr. Morello swerving or speeding before he was stopped. (10; 24). His vehicle showed no signs of being involved in gunfire.

This differs from *Nimmer* where the Wisconsin Supreme Court found there was reasonable suspicion in part because Mr. Nimmer was making suspicious movements consistent with someone hiding a weapon. 2022 WI 47, ¶¶1, 34-35. This case is more akin to *Richey* in which police saw no suspicious behavior

before pulling Richey over and where the Court found there was no reasonable suspicion.

Police also lacked reasonable suspicion to stop Mr. Morello for committing a traffic violation. First, they did not see any erratic driving, failure to signal, equipment violation, speeding or other traffic infraction allowing them to pull Mr. Morello over.

The complaint mentions that Mr. Morello's windows appeared tinted but the first time Officer Asilis mentioned any suspicion of illegal window tinting was in response to leading questions asked by the district attorney at the suppression hearing, which took place almost seven months after the stop. (24:22). Whereas Officer Asilis' report, prepared mere hours after stopping Mr. Morello on May 2, 2022, says nothing about stopping Mr. Morello's car for illegal tinting. (22). Such statements are similarly absent from the description of the reason for pulling Mr. Morello over in the criminal complaint. (10). Rather, both documents indicate the reason Officer Asilis stopped Mr. Morello was because he had "developed a reasonable suspicion to believe this specific Chevy Avalanche may have occupants involved in the earlier shooting and they may be armed." (22:2; 10:2). This was the same reason police pulled over the Chevy Avalanche at Woodman's. (10:2; 22:1-2).

Other parts of Officer Asilis' testimony also show the stop was based on suspicion about the gunshots. He testified his supervisor wanted him to

pull over Chevy Avalanches and he was actively searching for Avalanches specifically. (24:27, 32, 34). Finally, when performing the stop, Officer Asilis specifically told Mr. Morello the stop was to investigate dark-colored Chevy Avalanches and said nothing about stopping him because of window tint. (22:2).

Moreover, no evidence was presented that the windows were illegally dark. In fact, Officer Asilis testified he never measured the tint. (24).

In *State v. Conaway*, 2010 WI App 7, ¶1, 323 Wis. 2d 250, 779 N.W.2d 182, police stopped a car for a suspected window tint violation. The officer testified he had more than 13 years of experience as a state trooper and had received training on using a tint meter. *Id.* at ¶8. This court found the officer did not provide any specific, articulable facts supporting reasonable suspicion because he did not connect his training to his ability to determine the difference between legal and illegal tint in the specific case. *Id.* at ¶8, 9, 11. The same is true here.

The circuit court's ruling further supports a finding that Mr. Morello was not stopped because of window tint. In its ruling on the suppression motion, the circuit court did not find the window tint was a reason for stopping Mr. Morello. (24:50-55; App. 5-10). Rather, the circuit court based its ruling entirely on whether there was reasonable suspicion to believe Mr. Morello could have been involved in the shooting. (24:50-55; App. 5-10). Thus, the circuit court's ruling

further indicates that Mr. Morello was not stopped because he violated a traffic law but instead was stopped because his vehicle matched the description of one seen leaving the area where gunshots were heard and he “happened to be the wrong person at the wrong place at the wrong time.” (49:17).

Application of the last two factors sometimes considered by Wisconsin courts also show there was not reasonable suspicion here. The known or probable direction of the offender’s flight weighs against a finding of reasonable suspicion. *See Harris*, 206 Wis. 2d 243 (citing 3 Wayne R. LaFave, *Search and Seizure*, § 9.3(d) at 461 (2d ed 1987)). First, as discussed above, police did not even know that the person who fired the shots was in a black Chevy Avalanche. Further, the record does not contain any information about other vehicles that left the area after the shots were fired. (24). It is very possible the person who fired the shots left the scene earlier. In fact, it would be suspicious for someone to stay in the area for an extended period of time after firing a gun knowing that police may have been called.

But even if the offender was in the black Chevy Avalanche seen by the witness, the direction it was driving became irrelevant after so much time passed – here, more than an hour. Further, the direction the vehicle seen leaving the scene was traveling was opposite of the direction Mr. Morello was driving when he was stopped. The vehicle seen was traveling north and Morello was traveling south. (10:2).

The last factor -- police knowledge or suspicion that the person or vehicle stopped was involved in other criminality of the type presently under investigation—also weighs against reasonable suspicion. *See Harris*, 206 Wis. 2d 243 (citing 3 Wayne R. LaFave, *Search and Seizure*, § 9.3(d) at 461 (2d ed 1987)). Police did not observe any bullet holes in Mr. Morello's vehicle. (22). Police did not find a gun or other weapon on him and had no information about him ever being involved in any shootings when they pulled him over. (22). As such, police had no knowledge or reason to suspect that Mr. Morello or his vehicle were involved in any kind of shooting.⁴

Taking all the facts and circumstances together, the state did not meet its burden to show police had reasonable suspicion to stop Mr. Morello. The information police had about a link between a black Chevy Avalanche and the gunfire was weak. Further, the description of the vehicle was not sufficiently particularized and too much time had passed between the time the shots were heard and when police spotted Mr. Morello to make it reasonable to believe he could

⁴ The circuit court did not evaluate this factor correctly. It stated the factor was whether the vehicle stopped was involved in other criminal activity and said that was the issue here -- that the car was suspected in the criminal activity of the gunshots. (24:54; App. 9). However, the factor actually looks at whether police had knowledge or suspicions that the person or vehicle stopped had been involved with other *past* criminality of the same type as presently being investigated. Here, that would mean whether police had knowledge or suspicion Mr. Morello had been involved in other shootings in the past.

be the suspect police sought. Additionally, Mr. Morello was not speeding or driving erratically and his car had no signs of being involved in a shooting or traffic offense.

CONCLUSION

For the above stated reasons, Mr. Morello respectfully asks the court to vacate his judgement of conviction and remand this case with an order to suppress all evidence obtained as a result of the traffic stop on May 2, 2022.

Dated this 30th day of July, 2024.

Respectfully submitted,

Electronically signed by

Tristan S. Breedlove

TRISTAN S. BREEDLOVE

Assistant State Public Defender

State Bar No. 1081378

breedlovet@opd.wi.gov

Electronically signed by

David J. Susens

DAVID J. SUSENS

Assistant State Public Defender

State Bar No. 1099463

susensd@opd.wi.gov

Office of the State Public Defender

Post Office Box 7862

Madison, WI 53707-7862

(608) 266-3440

Attorney for Defendant-Appellant

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 5,018 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief 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 30th day of July, 2024.

Signed:

Electronically signed by

Tristan S. Breedlove

TRISTAN S. BREEDLOVE

Assistant State Public Defender