STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appellate Case No. 2024AP954-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

HOLLY J. GRIMSLID,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR LA CROSSE COUNTY, BRANCH IV, THE HONORABLE SCOTT L. HORNE PRESIDING, TRIAL COURT CASE NO. 2023-CM-225

BRIEF OF DEFENDANT-APPELLANT

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STATEMENT OF THE ISSUE

WHETHER A REMEDY SHOULD HAVE BEEN IMPOSED WHEN THE CIRCUIT COURT FOUND THAT OFFICER CHARLES FAH ACTED IN VIOLATION OF THE FOURTH AMENDMENT BY UNREASONABLY DENYING MS. GRIMSLID'S REQUEST TO USE THE RESTROOM WHILE SHE WAS IN HIS CUSTODY?

> Ttial Court Answered: NO. While the circuit court made findings of fact that "there was quite a lapse of time from when [Ms. Grimslid] had first asked to use the restroom," it nevertheless concluded as a matter of law that no remedy would lie because (1) it could not "really find that [Ms. Grimslid's] urges [had] a bearing on the consent that was given"; (2) the search warrant obtained in this case "serve[d] as a basis for consent"; and (3) the court could find no authority "suppressing evidence obtained as a result of a search warrant or valid consent." R81 at 14:6-8 & R59 at 9:18 to 10:9, respectively; D-App. at 132 & 111-12, respectively.

STATEMENT ON ORAL ARGUMENT

The Defendant-Appellant will NOT REQUEST oral argument as this appeal presents a single question of law based upon a set of uncontroverted facts. The issue presented herein is of a nature that can be addressed by the application of long-standing legal principles, the type of which would not be enhanced by oral argument.

STATEMENT ON PUBLICATION

Ms. Grimslid will NOT REQUEST publication of this Court's decision as the common law authority describing the Fourth Amendment "reasonableness" standard at issue in this matter is well developed, and furthermore, the underlying facts which give rise to the issue herein do not occur with sufficient frequency that publication of this Court's decision is merited or warranted.

STATEMENT OF THE CASE

On March 22, 2023, Ms. Grimslid was charged in La Crosse County with, *inter alia*, Operating a Motor Vehicle While Under the Influence of an Intoxicant—Second Offense, contrary to Wis. Stat. § 346.63(1)(a), Operating a Motor Vehicle with a Prohibited Alcohol Concentration—Second Offense, contrary to Wis. Stat. § 346.63(1)(b), and Unlawfully Refusing to Submit to an Implied Consent Test, contrary to Wis. Stat. § 343.305(9)(a). R3.

After retaining counsel, Ms. Grimslid filed several pretrial motions including a motion to suppress based upon a violation of the Fourth Amendment's reasonableness requirement on the ground that the arresting officer in this matter unjustly denied Ms. Grimslid access to a bathroom when she repeatedly protested that she needed to relieve herself. R35. A hearing on Ms. Grimslid's motions was held on February 16, 2024. R42.

At the motion hearing, the State offered the testimony of Officer Charles Fah of the Holmen Police Department. R42 at pp. 5-32. During the hearing, Officer Fah's body-camera video was admitted as Exhibit No.2. R70. At the conclusion of the hearing, the court ordered the parties to submit supplemental briefs. R42 at 33:20 to 35:12.

The parties submitted their respective additional briefs (R38, R43, R45, & R50), and by two separate oral decisions, granted Ms. Grimslid's request that the court find that she did not refuse to submit to an implied consent test on May 7, 2024, and two days later, on May 9th, denied her motion challenging the reasonableness of her confinement on the ground that: (1) the court could not "really find that [Ms. Grimslid's] urges [had] a bearing on the consent that was given"; (2) the search warrant obtained in this case "serve[d] as a basis for consent"; and (3) the court could find no authority "suppressing evidence obtained as a result of a search warrant or valid consent." R81 at 14:6-8 & R59 at 9:18 to 10:9, respectively; D-App. at 132 & 111-12, respectively.

On May 13, 2024, Ms. Grimslid entered a plea of guilty to the charge of operating with a prohibited alcohol concentration, whereupon the Court entered a judgment of conviction. R55; D-App. at 101-02.

It is from the adverse decision and judgment of the circuit court that Ms. Grimslid now appeals to this Court by Notice of Appeal filed on May 15, 2024. R61.

STATEMENT OF FACTS

On March 21, 2023, the above-named Defendant, Holly Grimslid, was stopped and detained in the Village of Holmen, La Crosse County, by Officer Charles Fah of the Holmen Police Department for allegedly operating her motor vehicle without its headlamps lit. R3 at p.2. The encounter between Officer Fah and Ms. Grimslid was captured on the officer's body-worn video camera. R70.

Upon making contact with Ms. Grimslid, Officer Fah ostensibly observed that she had glossy eyes, slurred speech, and had an odor of intoxicants emanating

from her vehicle. R3 at pp. 2-3. Based upon these observations, Officer Fah asked Ms. Grimslid to submit to a battery of field sobriety tests. R3 at p.3. Ms. Grimslid consented to the horizontal gaze nystagmus test, however, she was unable to hold her head still enough for the test to be successfully completed. R3 at p.3. Thereafter, no remaining field sobriety tests were conducted because Ms. Grimslid attempted to walk away from Officer Fah and was immediately taken into custody for operating while intoxicated. R3 at p.3.

Ms. Grimslid was handcuffed and placed in the rear, secured portion of Officer Fah's squad. R3 at p.3. After being secured in the rear of the officer's squad, Ms. Grimslid began asking Officer Fah whether she could use the bathroom. R70 at Time Stamp 00:57:00, *et seq*. She repeated this request at least three times. *Id*. Officer Fah did not respond to every one of Ms. Grimslid's requests, but when he did, he stated: "No, not until this process is done." *Id*.

Shortly thereafter, Ms. Grimslid renewed her request to use the bathroom, to which Officer Fah replied, "Once we're done with this process." *Id*. at 01:09:25, *et seq*. Thereafter, Ms. Grimslid again asked whether they can "go [some]where so I can go to the bathroom?" *Id*. Later, she remarked, "I can't wait 'til they let me out so I can go to the bathroom." *Id*. at 01:13:00.

As time passed and she still had not been afforded access to a bathroom, Ms. Grimslid once again *urgently* restated her request to be allowed to relieve herself by asking Officer Fah whether she could be taken to the bathroom. *Id*. at 01:15:35, *et seq*. Officer Fah's response remained: "Not 'til this process is done." *Id*. After that, Ms. Grimslid *emphatically pleads* that she wants to go to the bathroom, and she asks Officer Feh whether he can help her with that, to which the officer does not respond. *Id*. at 01:18:10, *et seq.* Ms. Grimslid's final plea on this record occurs when she states, "I just want to go [to the bathroom]." *Id*. at 01:18:49.

When Ms. Grimslid is finally removed from the squad car, she *again* reminds Officer Fah that she still has to go to the bathroom. *Id*. at 01:44:17. In total, Ms. Grimslid made *at least one dozen* statements about needing and/or wanting to use the bathroom—several of which were wholly ignored by Officer Fah. R42 at 22:22-25. The circuit court made a finding that "there was quite a lapse of time from when [Ms. Grimslid] had first asked to use the restroom" until she was ultimately removed

from the officer's squad, which "probably took about 40 or 45 minutes, if not more." R81 at 14:10-11; D-App. at 132.

It is of further relevance to this appeal that Officer Fah testified to the following at the evidentiary hearing:

> He admitted that he recalled Ms. Grimslid asking to go to the bathroom (R42 at 14:10-12);
>
> The officer conceded that Ms. Grimslid "asked [him] **more than a dozen times** to use the bathroom . . ." (R42 at 22:22-25);
>
> The officer admitted that he "never told [Ms. Grimslid] when the process would end or how long the process would go on" with respect to her being allowed to use the restroom (R42 at 19:25 to 20:2);
>
> Officer Fah conceded that Ms. Grimslid "had no idea when the process was over, [or] how long that would be before she'd be able to use the bathroom" (R42 at 20:3-6); and
>
> Officer Fah testified that the portion of his encounter with Ms. Grimslid regarding her desire to use the bathroom "is all on [his] video" (R42 at 23:4-5).

It is worth noting that the objective video record in this matter reveals that the estimation of at least "a dozen times" that Ms. Grimslid requested to use the bathroom actually falls well short of the actual mark. R70 at Elapsed Time 57:00 to 01:44:17. Furthermore, as the time stamps on Exhibit No.2 irrefutably indicate, Ms. Grimslid's requests went unrequited for over *forty-eight* minutes *minimum*, during which Officer Fah spent most of his time ignoring Ms. Grimslid's pleas by not even bothering to respond to her. *Id.*

STANDARD OF REVIEW

This appeal presents a mixed question of constitutional law and fact to which this Court applies a two-step standard of review, first determining whether the circuit court's findings of historical fact were clearly erroneous and then independently applying the relevant constitutional principles to those facts. *State v. Dieter*, 2020 WI App 49, ¶ 1, 393 Wis. 2d 796, 948 N.W.2d 431.

ARGUMENT

I. THE FOURTH AMENDMENT PRINCIPLES UNDERGIRDING MS. GRIMSLID'S ISSUES ON APPEAL.

Because the issue Ms. Grimslid raises on appeal implicates the safeguards afforded by the Fourth Amendment, it is necessary to begin the analysis of the questions she raises by first expounding upon the constitutional principles undergirding her contention.

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. "The Fourth Amendment's purpose is to prevent arbitrary and **oppressive** interference by law enforcement officials with the privacy and personal security of individuals." *State v. Riechl*, 114 Wis. 2d 511, 515, 339 N.W.2d 127 (Ct. App. 1983)(emphasis added). As the Wisconsin Supreme Court noted in *State v. Boggess*, 115 Wis. 2d 443, 340 N.W.2d 516 (1983), "[t]he basic purpose of this prohibition is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *Id*. at 448-49; *see also Camara v. Municipal Court*, 387 U.S. 523, 528 (1967).

The Wisconsin Constitution provides coextensive protections against unreasonable searches and seizures under Article I, § 11. As a general rule, Wisconsin courts interpret the protections afforded by Article 1, § 11 of Wisconsin's Constitution identically to those conferred by the Fourth Amendment. *See State v. Kramer*, 2009 WI 14, ¶ 18, 315 Wis. 2d 414, 759 N.W.2d 598; *State v. Phillips*, 218 Wis. 2d 180, ¶ 21, 577 N.W.2d 794 (1998).

When applying the protections against unreasonable searches and seizures, both federal and state courts have consistently held that "[c]onstitutional provisions for the security of persons and property should be **liberally construed**." *Mapp v.*

Ohio, 367 U.S. 643, 647 (1961)(emphasis added), citing *Boyd v. United States*, 116 U.S. 616, 635 (1886).

> A close and literal construction deprives [these protections] of half their efficacy, and leads to gradual depreciation of the right [to be free from unreasonable searches and seizures], as if it consisted more in sound than in substance. **It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon**.

Schneckloth v. Bustamonte, 412 U.S. 218, 229 (1973)(emphasis added).

The foregoing authority does not stand alone as time and again the Supreme Court has consistently repeated that the Fourth Amendment "guaranties are to be **liberally construed** to prevent impairment of the protection extended." *Grau v. United States*, 287 U.S. 124, 127 (1932)(emphasis added). The High Court has admonished that "all owe the duty of vigilance for [the Fourth Amendment's] effective enforcement lest there shall be impairment of the rights for the protection of which it was adopted." *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931). Ultimately, "the Fourth Amendment . . . should be liberally construed **in favor of the individual**." *Sgro v. United States*, 287 U.S. 206, 210 (1932)(emphasis added).

It is under the rubric of the foregoing paradigm that the question presented by Ms. Grimslid must be analyzed. Thus, any "close call" with respect to whether Officer Fah's decision to withhold bathroom use from Ms. Grimslid was constitutionally unreasonable should be resolved in Ms. Grimslid's favor.

II. THE FOURTH AMENDMENT'S REASONABLENESS STANDARD AS IT RELATES TO CONDITIONS OF CONFINEMENT.

Claims relating to a detainee's conditions of confinement between the time they are arrested and a court[1] has had an opportunity to engage in a probable cause determination are examined under an "objectively unreasonable" standard which

[1]It does not matter that *a law enforcement officer* made a "probable cause" determination to arrest for the purpose of assessing whether the Fourth Amendment's reasonableness standard has been violated. The Fourth Amendment protects the accused up until the time a *court* has made a probable cause determination. *Lopez v. City of Chicago*, 464 F.3d 711, 718 (7th Cir. 2006); *see Haywood v. City of Chicago*, 378 F.3d 714, 717 (7th Cir. 2004)

finds its roots in the Fourth Amendment. *Currie v. Chhabra*, 728 F.3d 626, 629, 631 (7th Cir. 2013).[2] Relative to due process claims under the Fourteenth Amendment which arise after a judicial determination of probable cause[3] or to "cruel and unusual punishment" claims under the Eighth Amendment which arise after conviction, it is worth noting that pretrial detainees are entitled to ***at least*** the same protection against "deliberate indifference" to their basic needs as is available to convicted prisoners raising claims regarding a violation of their Eighth Amendment rights. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979); *Payne v. Churchish*, 161 F.3d 1030, 1039-41 (7th Cir. 1998); *Tesch v. County of Green Lake*, 157 F.3d 465, 473 (7th Cir. 1998).

To determine whether the Fourth Amendment has been violated based upon a claim relating to unreasonable conditions of confinement, courts are to look to the "totality of the circumstances" surrounding the conditions of confinement to determine whether they were "objectively unreasonable." *Chhabra*, 728 F.3d at 629; *Flores v. Lackage*, 938 F. Supp. 2d 759, 776 (N.D. Ill. 2013). The defendant's burden under this standard has been characterized as "easier for an arrestee . . . to meet than it is for their pretrial-detainee or convicted-prisoner counterparts, whose conditions of detention are governed by the Eighth and Fourteenth Amendments." *Id*. at 775, citing *Lopez v. City of Chicago*, 464 F.3d 711, 718, 720 (7th Cir. 2006); *Williams v. Rodriguez*, 509 F.3d 392, 403 (7th Cir. 2007)(deliberate indifference standard under the Eighth and Fourteenth Amendments requires a higher showing on a defendant's part than is necessary to prove an officer's conduct was 'objectively unreasonable under the circumstances.'").

When assessing the totality of the circumstances, courts should consider several, non-exclusive elements, including: (1) the duration of the confinement; (2) the nature and seriousness of the alleged constitutional violation; and (3) the police rationale for the deprivation of the arrestee's rights. *Walgren v. Heun*, No. 17-CV-04036, p.15, 2019 U.S. Dist. LEXIS 8634 (N.D. Ill. Jan. 17, 2019).

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[2]For purposes of Ms. Grimslid's appeal, it should be noted that the "objective unreasonableness" standard under the Fourth Amendment is less burdensome than the "deliberate indifference" standard applied under the Fourteenth Amendment. *See Lopez*, 464 F.3d at 718.

[3]*Villanova v. Abrams*, 972 F.2d 792, 797 (7th Cir. 1992); *see also Brokaw v. Mercer County*, 235 F.3d 1000, 1018 n.14 (7th Cir. 2000); *Luck v. Rovenstine*, 168 F.3d 323, 326 (7th Cir. 1999); *Reed v. City of Chicago*, 77 F.3d 1049, 1052 (7th Cir. 1996).

III. APPLICATION OF THE LAW TO THE FACTS.

A. The Duration of the Confinement.

The first factor to examine with respect to Ms. Grimslid's claim regarding the unreasonable conditions of her confinement relates to the length of her confinement. As the circuit court noted, Ms. Grimslid's confinement lasted for forty-five minutes *or more* from the first time she asked to use the bathroom until the time she was actually removed from the officer's squad—a time which does not correspond to her *actual* use of a bathroom, but only to her removal from the officer's squad. During this forty-five minute period, Ms. Grimslid was handcuffed and seated in the rear of Officer Fah's squad, and it is well known that the seats in squad vehicles are made of hard plastic and not designed for comfort which, of course, would contribute to her discomfort. Despite these facts, for a *minimum* period of forty-five minutes, Ms. Grimslid's pleas to relieve herself went ignored by the officer.

Forcing a 57-year-old woman to wait forty-five minutes while they express an urgent need to urinate is patently unreasonable when one considers that the officer was parked just tens of feet from the entrance to a hospital which, most assuredly, had *multiple* restrooms inside. R70 at 57:00 to 01:44:17. A typical confinement to the rear seat of a squad while handcuffed lasts no more than a few to perhaps tens of minutes at the extreme. Even in rural counties where a person might need to be transported a significant distance from the scene of their detention to an institutional setting, the confinement rarely lasts more than twenty-five minutes. Ms. Grimslid's confinement was nearly twice as long as the *longest* of confinements in the most rural of counties. This is patently unreasonable and satisfies the first indicia of an objectively unreasonable confinement when considered in light of her repeatedly expressed and unequivocal need to relieve herself.

B. The Nature and the Seriousness of the Constitutional Violation.

In *Lopez*, 464 F.3d 711, it is relevant to note that the defendant was "deprived of food, drink, and sleep during the four days and nights he spent shackled to the wall of the interrogation room, and **was forced to yell for an extended period of time before being let out to use the bathroom.**" *Lopez,* 464 F.3d at 720 (emphasis

added). The *Lopez* court held that a reasonable jury could find that the detention was objectively unreasonable under the circumstances. *Id*.

While Ms. Grimslid must acknowledge that unlike the defendant in *Lopez*, she was not confined for "four days," nevertheless, there does not exist any "bright-line" rule with respect to when the duration of a confinement crosses the line between constitutional reasonableness and objective unreasonableness with regard to an individual being allowed to relieve herself. Here, the total time of confinement from the point at which Ms. Grimslid alerts the officer that she has to use the bathroom until the time she was ultimately removed from the officer's squad—at a location which has many available bathrooms—is *at least* forty-five. It is not clear from the video/audio record in this case how much longer *after* this time Ms. Grimslid had to continue to wait until she was finally allowed to urinate. While this is not the same as "days" of confinement like those identified in *Lopez*, it is important to recognize that it is unknown from the statement of facts in *Lopez* how long Lopez had to "scream" to use the bathroom before he was allowed to do so. *Lopez*, 464 F.3d at 714-15. Thus, Lopez may have actually been permitted to use a restroom in less time than Ms. Grimslid was. Whatever differences may exist between these times, as indicated above, the absence of any bright-line rule means that the time *in this case* must be examined from the perspective of whether *it* was objectively unreasonable. To that end, there are several relevant observations which can be made about this case.

First, no matter how one "slices this pie," being forced to wait at least forty-five minutes to urinate—especially when the need is *urgent*—is, to say the least, excruciating. Every human being has, at one time or another, waited to relieve a full bladder due to circumstances beyond their control. In fact, numerous Hollywood films, typically comedies, depict the "humor" associated with this circumstance. Often the actors who portray the individual who must relieve themselves cross their legs, bend at the waist, twist their face into an agonizing expression, all in the name of communicating to the audience just how painful it can be to have to "hold one's water." There can be *no doubt whatsoever* that Ms. Grimslid was in a state of extreme discomfort when Officer Fah unreasonably forced her to "hold it." That one can objectively glean that Ms. Grimslid was suffering derives from the fact that Ms. Grimslid can be heard on the audio portion of the video record literally ***begging*** Officer Fah to be allowed to relieve herself. R70 at 57:00 to 01:44:17.

Second, forcing Ms. Grimslid to "hold it" is objectively unreasonable given that Officer Fah had other readily available options open to him by which he could have accommodated Ms. Grimslid. Officer Fah could have: (1) asked for a second officer to be dispatched to his location to assist him in allowing Ms. Grimslid to relieve herself; or (2) taken Ms. Grimslid into the hospital at which they were already located *instead of sitting in his squad doing nothing more than preparing paperwork*.

With respect to the second factor identified above, there is no objectively sufficient justification which Officer Fah can offer this Court that he was *required* to spend *forty-five minutes* filling out paperwork on his computer while his detainee *begged* to use the bathroom. If anything in this case can be deemed as objectively unreasonable, it is the officer's petty and demeaning conduct.

Finally, there are at least two other factors under *Lopez* which support a finding of objective unreasonableness. For example, Lopez was shackled to a wall. Ms. Grimslid was handcuffed *behind* her back in the cramped rear seat of a squad car. At least Lopez enjoyed some freedom of movement which Ms. Grimslid did not because of her handcuffs. Additionally, while it may have been confining, Lopez was at least in a nine-by-seven foot interrogation room. *Lopez*, at 464 F.3d at 714. Shackled to a wall or not, Lopez would have been able to stand up or sit down in such a room and would have had some freedom of movement around the same, at least to the extent to which his shackles would allow. Ms. Grimslid, on the other hand, was seated in the secured rear seat of a squad car, a significantly more confining space. There was no freedom of movement allowed Ms. Grimslid as there was Lopez. Ms. Grimslid could not stand up or even stretch out across the rear seat of the squad as she was both confined by a seat belt and as the rear seat of a standard vehicle does not allow any person of average height to "stretch out." In these regards, the facts of this case are actually more egregious than those in *Lopez*.

C. Police Rationale for the Deprivation.

Under the final point of analysis, the "police rationale" for the confinement must be examined. Ms. Grimslid proffers that there is one, and only one, rationale for not permitting her to relieve herself, namely: officer vindictiveness. Officer Fah was seemingly "punishing" Ms. Grimslid because her responses to him throughout

their encounter had, in his opinion, been less-than understanding, cooperative, or accommodating.

The officer's perception in this regard is grossly in error. Ms. Grimslid engaged in *no* overtly threatening conduct. She does not attempt to flee; she does not attempt to punch or strike the officer; she does not kick; she does not shove or push the officer; she does not spit nor attempt to bite them; she does not brandish a weapon; nor did she even threaten the officers, *etc*. Nevertheless, Officer Fah denied Ms. Grimslid the basic human right to relieve herself. R70, *passim*.

It cannot be gainsaid that relieving one's bladder is a basic need. There is no species on the planet which does not void its bladder. Once this is accepted, the question becomes whether Officer Fah was "deliberately indifferent" to Ms. Grimslid's need in this regard. To this extent, the record in this matter speaks for itself. There is little doubt that Officer Fah's unprofessional handling of the circumstances in this case are evidence of the fact that he was punishing Ms. Grimslid for having been allegedly less-than cooperative with him. The officer simply "wanted his revenge."

Law enforcement officers are obligated to remain professional. Nevertheless, despite this obligation, Officer Fah elected to remain in the parking lot—mere feet from a bathroom—in order to prevent Ms. Grimslid from being able to relieve herself. This conduct is objectively unreasonable under any standard.

D. The Circuit Court's Concern About a Remedy.

As noted in the Statement of the Case, *supra*, the circuit court denied Ms. Grimslid's motion, in part, because a warrant had been obtained to seize a sample of Ms. Grimslid's blood, and additionally, because the court could find no authority which provided for suppression as a remedy under the circumstance in this case.

The fact of the matter is that authority does exist which establishes a remedy, and moreover, common sense dictates that *some* remedy must be imposed rather than allowing such constitutionally unreasonable conduct to continue.

First, when an individual is subject to unreasonable law enforcement conduct in violation of the Fourth Amendment, the well-settled and long-standing remedy

for the violation is suppression of the ill-gotten evidence under the "exclusionary rule." *Mapp v. Ohio*, 367 U.S. 643 (1961). Notably, in *Hoyer v. State*, 180 Wis. 407, 193 N.W.2d 89 (1923), the Wisconsin Constitution countenanced an exclusionary remedy in the face of an unconstitutional search or seizure thirty-eight years *prior to* the U.S. Supreme Court's *Mapp* decision. The seemingly prescient Wisconsin Constitutional protections are afforded to protect personal privacy, preserve judicial integrity, and deter police misconduct. *Conrad v. State*, 63 Wis. 2d 616, 635, 218 N.W.2d 252 (1974).

Not only are the direct products of an illegal search or seizure excluded from evidence, but the indirect or secondary products of a Fourth Amendment violation are excluded as well to prevent police exploitation of such violations. *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Anderson*, 165 Wis. 2d 441, 477 N.W.2d 277 (1991). In what has famously become known as the "fruit of the poisonous tree" doctrine, evidence which comes to light as a result of exploiting the benefit of an unconstitutional initial search or seizure must be suppressed as well because the taint from the initial violation flows downstream to all of the subsequently gathered evidence. *State v. Schneidewind*, 47 Wis. 2d 110, 118, 176 N.W.2d 303 (1970); *Anderson*, 165 Wis. 2d 441; *see also*, *Browne v. State*, 24 Wis. 2d 491, 129 N.W.2d 175 (1964); *State ex rel. White Simpson*, 28 Wis. 2d 590, 594, 137 N.W.2d 391 (1965).

Since the warrant was only obtained based upon the officer's erroneous conclusion that she refused to submit to a test, and further, since the warrant was sought during a period when Officer Fah was ignoring and unreasonably denying Ms. Grimslid's pleas to use a bathroom, there is a concomitant taint on the warrant application process. That is, Officer Fah's disregard of Ms. Grimslid's bodily functions occurred during a period in which a warrant was sought. Thus, there is a degree of taint on the warrant process since it would *not* have been unreasonable for Officer Fah to simply walk Ms. Grimslid into the hospital at which they were already parked to use a restroom and *then* return to his warrant application process. The abuse of the warrant application procedures in this fashion was nothing more than the officer's way of "getting back at" a supposedly uncooperative detainee.

Officer Fah was not required to start his application for a warrant *immediately* after he deemed Ms. Grimslid to have refused testing. Moreover, this was not a circumstance in which the officer was located in a rural area far from the nearest

bathroom—he was literally in a hospital parking lot abutting a building which likely had dozens of bathrooms placed throughout the premises. Similarly, there was nothing prohibiting Officer Fah from calling his dispatcher and requesting that another officer report to his location to take Ms. Grimslid into the bathroom. If he had done this, it is highly unlikely that it would have taken another officer ***over forty-eight minutes*** to arrive, which is the total amount of time Ms. Grimslid was held in the rear seat of the officer's squad before finally being taken into the hospital.

Beyond the foregoing, there is an additional, equally important consideration, namely: If Officer Fah's conduct is not reproved in some way, he has no incentive in future cases to desist from treating other detainees in the same constitutionally unreasonable fashion he did Ms. Grimslid. If Officer Fah knows he "can get away with" such patently unreasonable treatment of a defendant in this matter, there is no reason for him not to do so in the future. Sanctions, such as the exclusionary rule, are *deliberately* designed to curtail unreasonable conduct on the part of law enforcement, and failing to impose such a sanction in this matter does not serve the purpose underlying the rule.

CONCLUSION

It is Ms. Grimslid's position that Officer Fah's conduct was unreasonable under the Fourth Amendment because it was "deliberately indifferent" to her basic needs, and further, that it is *not* unreasonable to conclude it was the product of either his dislike of her or his intention to "punish" her for being resistive. Because Officer Fah unreasonably denied Ms. Grimslid access to the use of a restroom for over forty-eight minutes while she was in his custody, Ms. Grimslid respectfully requests that this Court reverse the decision of the circuit court denying her motion.

Dated this 29th day of August, 2024.

Respectfully submitted:

MELOWSKI & SINGH, LLC

Electronically signed by:
Dennis M. Melowski
State Bar No. 1021187
Attorneys for Holly J. Grimslid,
Defendant-Appellant

CERTIFICATION OF LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 5,917 words.

I also certify that filed as a separate document is an appendix that complies with Wis. Stat. § 809.19(2)(a).

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 29th day of August, 2024.

MELOWSKI & SINGH, LLC

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