STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Appellate Case No. 2024AP000954

STATE OF WISCONSIN,
Plaintiff-Respondent
v.
HOLLY J. GRIMSLID,
Defendant-Appellant

ON APPEAL OF A JUDGMENT OF CONVICTION ENTERED IN LA CROSSE COUNTY CIRCUIT CASE NUMBER 23CM000225, THE HONORABLE SCOTT L. HORNE, PRESIDING.

BRIEF OF PLAINTIFF-RESPONDENT

TREVOR A. PAULSON
Assistant District Attorney, La Crosse County
State Bar No. 1123968
333 Vine Street, Rm 1100
La Crosse, WI 54601
Attorney for Plaintiff-Respondent

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STATEMENT ON ORAL ARUGMENT AND PUBLICATION

Plaintiff-respondent State of Wisconsin ("the State") agrees with defendant-appellant Holly J. Grimslid ("Grismlid") that oral argument and publication is not warranted as the briefs should fully present the issues on appeal pursuant to Wis. Stats. §§809.22 and 809.23.

STATEMENT OF THE CASE

On March 21st, 2023, at approximately 8:40 p.m., Officer Fah was on duty in the Village of Holen, when he observed a gray jeep traveling northbound on highway 35 with no running taillights on. (R. 42 at page 5-6). Eventually the jeep pulls into a Kwik Trip parking lot and Officer Fah makes contact with the driver of the jeep. *Id, passim*.

After making contact with the driver and while identifying the driver of the jeep, Officer Fah could detect the driver possessed slurred and slow speech. And the officer could detect the odor of intoxicants emitting from inside the vehicle. *Id, passim*.

With the observations from Officer Fah, he determined field sobriety tests would be appropriate, so he has Ms. Grimslid exit her vehicle to perform the various tests. Officer Fah has Ms. Grimslid perform the Horizontal Gaze Nystagmus test first. Ms. Grimslid kept moving her head alongside the officer's finger, which makes the test impossible to perform. *Id, passim*.

After the HGN test was attempted, Ms. Grimslid appeared to be unsteady on her feet, unable to stand still, and trying to maneuver her way back to her vehicle, Officer Fah determined for safety reasons the field sobriety tests would not be a rational goal at that time. And proceeded to place Ms. Grimslid under arrest. *Id, passim*.

Once Ms. Grimslid was under arrest, Officer Fah transported her to Mayo Clinic in La Crosse. After arriving at Mayo Clinic, Officer Fah reads Ms. Grimslid the Informing the Accused form. Ms. Grimslid provides an ambiguous response. Officer Fah perceives her response as a refusal, then prepares the paperwork for a search warrant. While preparing the search warrant for Ms. Grimslid's blood, she starts to request to be able to use the bathroom. Officer Fah indicates to Ms.

Grimslid not until the affidavit and warrant are completed. Moreover, Officer Fah was concerned about Ms. Grimslid being a female and lack of supervision he could provide. And for evidence contamination concerns. *Id, passim*.

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. Officer Fah was objectively reasonable when responding to Ms. Grimslid's requests to use the restroom.

a. The Duration of the Confinement.

Ms. Grimslid provides no support that a 45-minute waiting period to go to the bathroom is unreasonable. The State also notes that Ms. Grimslid was under arrest. The State will cite cases where a detention occurred, and the Court found a lawful detention. In *State v. Vorburger*, the defendant was detained while an officer waited to get a search warrant. *State v. Vorburger*, 2002 WI 105, 255 Wis. 2d 537, 648 N.W.2d 829. One of the defendants even requested to go to the bathroom. *Id*. ¶61. That detention lasted for approximately one hour. *Id*. ¶63. The defendant was also handcuffed in that case. *Id*. ¶62. The Court found the detention to be reasonable. *Id.* ¶87.

In *U.S. v. Sharpe*, the U.S. Supreme Court held a 20-minute detention was permissible because it did "not involve any delay unnecessary to the legitimate investigation of the law enforcement officers." *United States v. Sharpe*, 470 U.S. 675, 687, 105 S. Ct. 1568, 1576, 84 L. Ed. 2d 605 (1985). The State would note that the first time Ms. Grimslid asks to go to the bathroom, Officer Fah is doing the warrant for the blood draw. He even states the reason for why he is not letting her use the bathroom "No, not until this process is done." (R. 70 at 21:41:30). Moreover, Ms. Grismlid does not allege that Officer Fah was not doing something related to the arrest.

As stated, all those cases above involved detentions not arrests. However, in this case it is approximately 1 hour 3 minutes from the request to go to the bathroom to when Ms. Grimslid arrives at the jail. Plus Ms. Grimslid is also not cooperative during the interaction. She ignores Officer Fah's commands multiple times. There was an extended period of time where it took to get any answer during the reading of the informing the accused. The State would also note Ms. Grimslid was uncooperative prior and immediately after the arrest. Finally, when Ms. Grimslid complained of pain prior to arriving at the hospital, Officer Fah attempted to help her pain issues to no response from Ms. Grimslid. (R. 70 at 28:15-29:05; 29:20-29:45; 31:05-31:45; 37:40-37:50). There is also no authority about when an officer must allow someone to go to the bathroom.

The natural dissipation of alcohol had been found to potentially be a valid factor for exigent circumstances to draw blood without a warrant in OWI cases. *Missouri v. McNeely*, 569 U.S. 141, 153, 133 S. Ct. 1552, 1561, 185 L. Ed. 2d 696 (2013). It is therefore reasonable for Officer Fah not to want to delay the blood draw and allow Ms. Grimslid to go to the bathroom (not to mention the potential for delay that Ms. Grimslid might try to cause). The closer the time of the blood draw to the actual driving, the more accurate that result will be.

The State would also note the potential issue of supervising a bathroom activity so there is no destruction of evidence given that Ms. Grimslid is female, and Officer Fah is a male. Another reason why Officer Fah would not allow Ms. Grimslid to use the bathroom prior to the blood draw. (R. 42 on page 14). After the blood draw (which occurs approximately 53 minutes after the first bathroom request), the Officer can have concerns about allowing Ms. Grimslid to use a public restroom while she is in custody and intoxicated.

Therefore, the length of detention here in this case was patently reasonable under the totality of the circumstances. And does not satisfy the first element of an unreasonable confinement situation.

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

Ms. Grimslid cites the case of *Lopez v. City of Chicago*, 464 F.3d 711, for the proposition that Ms. Grimslid's situation was more egregious than what Joseph Lopez endured by the Chicago Police Department. This is not the case. Mr. Lopez was subjected to borderline torture methods. He was, as presented by Mr. Lopez himself, shackled to a wall of an interrogation room for four days and nights. He

was deprived of food, drink, and sleep during the four days and nights spent shackled to the wall in the interrogation room. Moreover, Mr. Lopez was forced to yell for an extended period of time to be let out of the interrogation room to utilize the restroom. *Lopez*, 464 F.3d at 720.

In Mr. Lopez's case, if found to be credible, a fact-finder, based on common sense, would find his situation to be objectively unreasonable. This is due to the fact he was shackled to a wall in an interrogation room for four days and nights. And was deprived of essential human items for the four days and nights, as well. Also relevant to note, Mr. Lopez had not received a judicial determination on probable cause at the time of his detention, unlike Ms. Grimslid. *Lopez,* 464 F.3d at 718.

In this case, Ms. Grimslid was handcuffed lawfully for operating a motor vehicle while impaired for a little more than 45 minutes while Officer Fah was in the throes of his investigative duties after Ms. Grimslid refused to provide a blood sample. Ms. Grimslid's situation was under a couple of hours; Mr. Lopez was borderline tortured for *days.* Even without a bright-line rule, the two situations are not the same.

There simply is not a constitutional violation in this case.

c. Police Rationale for the Deprivation.

Ms. Grimslid is presenting there is only one reason for not allowing her to use the restroom: Officer Fah's "vindictiveness." That is simply not the case as it is presented in this record. Firstly, when Ms. Grimslid asks to go to the bathroom, Officer Fah is doing the warrant for the blood draw. He even states the reason for why he is not letting her use the bathroom "No, not until this process is done." (R. 70 at 21:41:30).

Secondly, when Ms. Grimslid cross-examined Officer Fah at the motion hearing held back on February 16th, 2024, on whether he did not allow Ms. Grimslid to use the restroom was due to Officer Fah's "annoyance" with her—Officer Fah responded "That is not correct." (R. 42 on page 22). Moreover, Officer Fah on direct examination provided a more in depth response on the restroom issue. Officer Fah stated that besides completing a warrant and affidavit, he also was worried about supervision while Ms. Grimslid would be utilizing the restroom as Officer Fah is a male and Ms. Grimslid a female. And the fact Officer

Fah was worried about Ms. Grimslid possibly consuming items while in the restroom. (R. 42 on page 14).

Officer Fah's rationale is objectively reasonable under any standard.

d. The Circuit Court's Concern about a Remedy.

As stated by Ms. Grimslid, the Circuit Court denied her motion, in part, because a valid warrant was issued on a probable cause finding and authorized Officer Fah to obtain a sample of Ms. Grimslid's blood. And because the Court could find no existing authority which provided for the suppression of the blood results under the circumstances of this case.

In this case, the Court found the refusal to be lawful. (R. 81 on page 15). And that findings relating to the unreasonable confinement issue to be *unnecessary*. *Id*. And that the Court found it does not *affect* the OWI. *Id*.

Ms. Grismlid cites case law around the remedy for violation of the Fourth Amendment, under the "exclusionary rule," for an illegal search or seizure is suppression of the evidence. And with that legal notion, the State agrees. *State v. Nordness*, 128 Wis.2d 15 (1986). But that is not what occurred in this case. There was no illegal search or seizure.

As we all know, in the OWI investigation process if an officer gets to the point where they are applying for a search warrant for the individual's blood—there was a finding of probable cause and no unreasonable search or seizure occurred.

Ms. Grimslid states there is taint on the warrant in this case stemming from the officer's own erroneous conclusion that Ms. Grimslid refused to consent and because Officer Fah was unreasonably denying and ignoring Ms. Grimslid's pleas to use the restroom. Officer Fah was merely doing his due diligence when obtaining a search warrant for Ms. Grimslid's blood, after Officer Fah took Ms. Grimslid's responses as a refusal. Obtaining a search warrant should always be the standard. Moreover, the pleas to use the restroom as the warrant process was occurring after a valid arrest, the Court found it does not *affect* the OWI, just the refusal issue. (R. 81 on page 15).

Even if there was a constitutional violation, there is no authority that would lead to suppression of evidence. Once again, the State is also unsure what evidence would be suppressed. The blood was obtained pursuant to a warrant.

If any type of remedy exists based on the law cited by Ms. Grimslid, it would be some form of monetary damages based on a civil rights violation as indicated in the *Lopez* case. Not suppression of the evidence in this case because it was obtained lawfully.

Conclusion

The circuit court found that Officer Fah's actions in this case to be reasonable as it relates to the OWI. And the evidence was lawfully obtained pursuant to a warrant. This Court should affirm.

Dated this 30th day of September, 2024.

Respectfully submitted,
Electronically signed by

Trevor Paulson

Trevor Paulson
Assistant District Attorney
State Bar #1126938

Attorney for Plaintiff-Respondent

La Crosse County District Attorney's Office
333 Vine Street, Room 1100
La Crosse, WI 54601
(608) 785-9604
Trevor.paulson@da.wi.gov

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in §809.19 (8) (b), (bm), and (c) for a brief. The length of the brief is 2431 words.

Signed: Electronically signed by Trevor Paulson

Trevor Paulson
Assistant District Attorney

CERTIFICATIE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Signed: Electronically Signed by Trevor Paulson

Trevor Paulson
Assistant District Attorney