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**COURT OF APPEALS**

**STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II**

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**Appeal No. 2025AP000183**  
**Fond du Lac County Circuit Court Case No. 2023TR6363**

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**FOND DU LAC COUNTY,**

Plaintiff-Respondent,

v.

**ANDREW JOSEPH LUDWIG,**

Defendant-Appellant.

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**AN APPEAL FROM THE CONVICTION STATUS  
REPORT AND THE COURT’S DENIAL OF THE  
DEFENDANT’S MOTION FOR SUPPRESSION OF  
EVIDENCE IN THE CIRCUIT COURT FOR FOND DU  
LAC COUNTY, THE HONORABLE DOUGLAS R.  
EDELSTEIN, JUDGE, PRESIDING**

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**THE REPLY BRIEF OF THE DEFENDANT-APPELLANT  
ANDREW JOSEPH LUDWIG**

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**By: Walter A. Piel, Jr.**  
**Attorney for the Defendant-Appellant**  
**State Bar No. 01023997**

**Piel Law Office**  
**11414 W Park Place Suite 202**  
**Milwaukee, WI 53224**  
**(414) 617-0088**  
**(920) 390-2088 (FAX)**

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## ARGUMENT

In its brief, the State, by citing to several unpublished cases, argues weather conditions are appropriate considerations for moving a suspect from the location of a traffic stop to a more convenient location for field sobriety testing and this action did not run afoul of the Fourth Amendment. See Brief of the Plaintiff-Respondent page 7-8. The defense does not necessarily dispute this fact.

However, the State fails to address the argument regarding whether the deputy diligently conducted the investigation. While the transportation in this case was 2-3 miles from the scene of the stop, Mr. Ludwig was detained for approximately 13 minutes before any officer continued an OWI investigation. Deputy Kraft simply waited for a training officer to arrive on the scene, at which time he was not diligently conducting the investigation. Kraft simply paused the investigation to wait for another officer.

Furthermore, the record is clear, it took almost 31 minutes from the point of the initial stop to the point where Mr. Ludwig and the deputies arrived at the sheriff's garage for field testing. The defense contends the deputies failed to diligently conduct the investigation.

When an initially justified detention of an individual extends beyond the purpose of the stop, it becomes illegal. *State v. Griffith*, 2000 WI 722, ¶38, 236 Wis.2d 48, 613 N.W.2d 72. “In assessing the permissible length of a stop, we must determine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the persons. *Quartana*, at 448.

There is no “hard-and-fast” rule delineating the duration from which a valid detention turns into an illegal one. *State v. Arias*, 2008 WI 84, 311 Wis.2d 358, 752 N.W.2d 748 ¶34. See *State v. Wilkens*, 159 Wis.2d 618, 628, 465 N.W.2d 206 (Ct. App. 1990) (an hour and twenty minute delay not unreasonable), *State v. Colstad*, 2003 WI App 25, ¶17-18, 260 Wis.2d 406, 659 N.W.2d 394, (thirty to forty-five minutes to resume questioning was reasonable), and *State v. Vorburger*, 2002 WI 105, ¶40, 63, 255 Wis.2d 537, 648 N.W.2d 829 (an hour and ten minute detention was not deemed unreasonable).

However, in each of the above cases, the officer diligently pursued the investigation. In *Wilkens*, the officer diligently pursued the investigation, “by getting Parr’s statement, finding the victim, E.E., calming her down, getting her statement of the

events and establishing her identification of the garage and her clothes within the garage “, and the delay was attributed to the officer investigation of the allegation and calming the victim. *Id* at 628. In *Colstad*, the delay was attributed to the officer “providing medical assistance to the injured child, investigating the scene, taking photographs, and marking the scene. It was reasonable for the officer to direct Colstad to wait while the officer performed these tasks.” *Id* at ¶17-18. Finally, in *Vorburger*, the delay was attributed to the time it took to get the warrant and the distance between the persons who were necessary to obtain said warrant. At the time of the detention, the officers knew “that a warrant was nearly ready. They had probable cause to search room 230 and probable cause to believe that a crime had been committed..” *Id* at ¶40.

Here, Deputy Kraft simply paused the investigation. Rather than diligently pursuing an OWI investigation, he waited for a training officer to arrive some thirteen minutes after the initial stop. Then, some thirty minutes after the initial stop, and transporting Mr. Ludwig two to three miles from the scene, the officer continued the OWI investigation beginning field sobriety testing.

The deputies did not diligently pursue their investigation.

## CONCLUSION

Because of this, the motion for suppression should have been granted.

Dated this 7<sup>th</sup> day of July, 2025.

Respectfully Submitted

Piel Law Office

Electronically Signed by Walter A. Piel, Jr.

Walter A Piel, Jr.

Attorney for the Defendant-Appellant

State Bar No. 01023997

**Mailing Address:**

11414 W Park Place Suite 202

Milwaukee, WI 53224

(414) 617-0088

(920) 390-2088 (FAX)

## FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 9 pages. The word count is 1443.

Dated this 7<sup>th</sup> day of July, 2025.

Respectfully Submitted

Piel Law Office

Electronically Signed by Walter A. Piel, Jr.  
Walter A Piel, Jr.  
Attorney for the Defendant-Appellant  
State Bar No. 01023997

**Mailing Address:**

11414 W Park Place Suite 202

Milwaukee, WI 53224

(414) 617-0088

(920) 390-2088 (FAX)

**CERTIFICATION 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.

Dated this 7<sup>th</sup> day of July, 2025.

Respectfully submitted,

Piel Law Office

Electronically Signed by Walter A. Piel, Jr.

Walter A. Piel, Jr.

Attorney for the Defendant-Appellant

State Bar No. 01023997