

1 STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
2 BRANCH 3

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4 STATE OF WISCONSIN,
5 Plaintiff,

6 vs. Case No. 2013-CF-003474

7 JIMMIE JOHNSON,
8 Defendant.

9 * * * * *

10 ORAL RULING

11 * * * * *

12 Charge: Possession of Heroin, With Intent to
13 Deliver

14 Date: March 24, 2014
15 Time: 9:53 a.m. - 10:17 a.m.

16 Before the
17 Honorable Clare L. Fiorenza,
18 Circuit Judge, Branch 3,
19 Presiding

20 * * * * *

21 A P P E A R A N C E S :

22 ANTONELLA ALEMAN appeared on behalf of the
23 Plaintiff.

24 CRAIG POWELL appeared on behalf of the Defendant.

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Jennifer L. Carter, RPR, RMR, Official Reporter

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24 Please see final page for information on obtaining
25 official, certified copies of this transcript.

TRANSCRIPT OF PROCEEDINGS

THE CLERK: State of Wisconsin versus Jimmie Johnson; Case No. 13-CF-3474, possess with intent to deliver heroin.

Appearances, please?

ATTORNEY ALEMAN: Antonella Aleman on behalf of the State of Wisconsin.

ATTORNEY POWELL: Jimmie Johnson appears in person with Attorney Craig Powell. Good morning, Your Honor.

THE COURT: Good morning. Mr. Johnson has two cases of -- to be called this morning. I'll just have them called separately, I think. Makes more sense. Separate cases. Separate decision. They're not going to be tried together; so I thought we'd call them one at a time, if there's no objection to proceeding in that matter.

ATTORNEY ALEMAN: Not from the State, Your Honor.

ATTORNEY POWELL: No.

THE COURT: Okay. This case before the Court is for a decision on the defendant's motion to suppress that was filed back on November 11th of last year.

1 An evidentiary hearing took place on
2 March 13th. At that time, there was one
3 witness, Detective Nick Stachula,
4 S-T-A-C-H-U-L-A. The motion filed by Defense
5 challenged both the stop of the defendant and
6 the reliability of the dog -- of the drug
7 detection dog. Excuse me.

8 After the hearing began, I was
9 advised that the sole issue was concerning the
10 stop of the defendant, specifically, whether
11 there was probable cause to arrest the
12 defendant at the time he was stopped by police.

13 Mr. Powell, is that an accurate
14 statement of the sole issue?

15 **ATTORNEY POWELL:** Yes.

16 **THE COURT:** Ms. Aleman?

17 **ATTORNEY ALEMAN:** Yes, Your Honor.

18 **THE COURT:** Based upon the
19 uncontested testimony from the evidentiary
20 hearing, I make the following findings of fact:

21 Detective Nick Stachula, an officer
22 with the West Allis Police Department for
23 approximately fourteen years, presently
24 assigned to the Special Investigations Unit,
25 was assigned to investigate a matter concerning

1 a report of a citizen finding some suspected
2 controlled substances in the Chuck E. Cheese
3 parking lot on Highway 100 in West Allis.

4 On June 13th of last year, he was
5 advised that Jennifer Trudeau, T-R-U-D-E-A-U,
6 came to the West Allis Police Department with a
7 bag of suspected controlled substance she
8 reported finding in a nearby business parking
9 lot, and she spoke to the front desk officer
10 about what she had found.

11 Detective Stachula ran a report
12 written by Officer Tillman, T-I-L-L-M-A-N, that
13 day, and then called Jennifer Trudeau and spoke
14 with her. She told him that she's a social
15 worker and was coordinating a visit with some
16 children with a client of hers at Chuck E.
17 Cheese.

18 She went to exit her vehicle and
19 walked over -- she went to exit her vehicle and
20 to walk over to Chuck E. Cheese and located a
21 purple Crown Royal satchel directly adjacent to
22 a car parked next to hers, which she described
23 as by the driver's door -- side door, below the
24 driver's door, as if it fell out of a car, it
25 appeared to her, as whoever exited the door --

1 that the bag fell out on the concrete parking
2 lot.

3 The satchel was picked up and opened,
4 and she saw a plastic baggie with a bunch of
5 aluminum foil folds, which she suspected was
6 some type of narcotic.

7 She took out her cell phone, took a
8 picture of the license plate and the back end
9 of the vehicle, which the bag she found by the
10 driver's door, proceeded to go into Chuck E.
11 Cheese with the visit she was coordinating, and
12 maintained by the window -- and remained by the
13 window -- excuse me -- to actually look into
14 the parking lot to see if anyone came out into
15 the vehicle.

16 She noticed an individual come
17 walking from the north, which was a business
18 directly north, which was the Pet World, and
19 that individual walked from that general
20 direction of Pet World, then made it to the
21 driver's door and accessed the vehicle.

22 It drove directly west towards
23 Highway 100 exit, made an abrupt stop, turned
24 back in the parking lot, and then started
25 circling around the lot, which she described as

1 appeared to be looking for something.

2 Eventually, the vehicle stopped
3 again, and the driver, the sole occupant, got
4 out and walked around, looking on the ground,
5 like -- like he lost something, and then
6 eventually went back in the vehicle and left
7 the area.

8 Ms. Trudeau provided a description of
9 the individual as follows: Black male, roughly
10 five-eight to five-nine-ish, light to medium
11 complexion, 200 pounds, and in the twenties
12 area. He was wearing a black T shirt and black
13 shorts. She brought in with her the Royal
14 Crown purple cloth bag with a plastic bag
15 containing sixty-nine individually-wrapped tin
16 foil bindles.

17 Detective Stachula tested the
18 substance, and it was heroin. There is no
19 challenge to the drug testing for this motion.

20 Detective Stachula contacted Pet
21 World that day and requested a copy of
22 surveillance footage or the surveillance
23 footage in the entry area and the front door of
24 that business from 1:00 to 2:00 p.m. because
25 the report Ms. Trudeau -- sorry -- because in

1 the report Ms. Trudeau estimated that it was
2 somewhere in the area of 1:45 when this
3 occurred.

4 The next day, on June 14th, he picked
5 up the video. He viewed the video, and at 1:13
6 p.m., he observed a party matching the
7 description that Ms. Trudeau had provided,
8 black male, twenties, five-eight-ish, wearing a
9 black T shirt and black shorts, come walking in
10 the front door of the business. The video was
11 quite clear for surveillance footage, he
12 testified, and he could clearly see, on the
13 right forearm, a tattoo.

14 He observed the person walk through
15 the front door, pass through the checkout area,
16 and walk back to the fish tank display area.
17 The person looked around the garbage area and
18 underneath it and then walked out of the store
19 without stopping to purchase anything.

20 Detective Stachula -- Am I
21 pronouncing it correctly?

22 **ATTORNEY ALEMAN:** Stachula.

23 **THE COURT:** Stachula. Did not show
24 the video to Ms. Trudeau. The video also
25 showed a person in a blue T shirt look in that

1 same area.

2 Ms. Trudeau also provided a
3 photograph of the license plate and trunk area
4 to Detective Stachula via e-mail, which was
5 received into evidence as Exhibit 14, which he
6 reviewed, and it was consistent with the
7 information Ms. Trudeau had verbally provided
8 to him. It was a Chevy Tahoe with a Wisconsin
9 registration tag of 190UNY.

10 He ran that information through a
11 database and acquired an address and name of
12 the registered owner. I believe it was
13 D-A-Y-A-Y-A, Shurrell, S-H-U-R-R-E-L-L,
14 Anderson, A-N-D-E-R-S-O-N, at 3360 North 48th
15 Street. That's Exhibit 15 that was received
16 into evidence. Detective Stachula drove by the
17 house several times and was not able to locate
18 the vehicle at that location.

19 Detective Stachula sent an e-mail out
20 on an investigative website asking other
21 jurisdiction investigators if they had made
22 contact with that plate or vehicle and
23 received -- and he received an e-mail response
24 from Detective Zimmerman from the Milwaukee
25 Police Department that that vehicle had

1 recently received a Milwaukee parking ticket at
2 an address of 4460 North 20 -- North --
3 sorry -- 59th Street.

4 Exhibit 16 is a spreadsheet for the
5 City of Milwaukee night parking violations and
6 showed that on June 7th, 2013, a Chevy SUV
7 bearing the plate 190UNY received a citation
8 at -- one minute, please. I think I have the
9 wrong address in here. A 4650 North 52nd
10 Street, which matched the plate provided by
11 Ms. Trudeau.

12 After getting an address,
13 surveillance was done on that address in an
14 attempt to locate the vehicle, and on
15 June 19th, 2013, Detective Stachula and
16 Corporal Jeffrey Zientek, Z-I-E-N-T-E-K,
17 driving in separate vehicles, were doing
18 surveillance at 5650 North 52nd Street and saw
19 that vehicle, which was empty.

20 Eventually, a black male exited the
21 residence and -- and entered the front driver's
22 seat of the vehicle and proceeded northbound on
23 52nd Street. From the distance he was,
24 Detective Stachula, with binoculars, was unable
25 to confirm 100 percent that it was the person

1 in the Pet World video.

2 Detective Stachula and Corporal
3 Zientek followed the -- the vehicle to the area
4 of, I believe it was, 30th and Villard or 35th
5 and Villard -- 35th and Villard, where the
6 vehicle parked, and the driver exited the
7 vehicle and started to walk towards the
8 business.

9 As the driver was exiting, Detective
10 Stachula pulled up and got within a car length
11 of the individual and was close enough to get
12 an unobstructed visual on the tattoo on the
13 right forearm and was able to identify him as
14 the male who he previously viewed exiting Pet
15 World on the day Ms. Trudeau filed the
16 complaint, which was the defendant, Jimmie
17 Johnson.

18 Detective Stachula drove past the
19 defendant and then turned around, and in the
20 minute or two it took him to come back to the
21 area where the defendant was walking towards,
22 the vehicle was gone. They were not able --
23 Detective Stachula and Corporal Zientek -- were
24 not able to locate the vehicle in the general
25 area, and then they went back to the house

1 where they had previously seen the vehicle.

2 I believe it was his testimony about
3 five minutes had passed from the time he saw
4 the vehicle on, I think it was, 35th Street
5 and -- 35th and Villard and return to the
6 house, and then he observed Mr. Johnson walking
7 into the residence. Detective Stachula
8 testified that he had seen this type of short
9 transaction hundreds of times in the past when
10 conducting drug investigations.

11 They stayed at the location, trying
12 to get a marked squad to assist, and they may
13 have actually been trying to get a marked squad
14 earlier, but it was June 19th, and they had a
15 difficult time getting a marked squad from the
16 City of Milwaukee on that day.

17 About five to ten minutes after the
18 defendant entered the residence, he exited the
19 residence, got into the same vehicle, and
20 proceeded north on 52nd Street. A traffic stop
21 was done by a marked squad at around, like,
22 51st and Hampton. Detective Stachula went to
23 that location, and the -- the person stopped
24 was the defendant, the same person Detective
25 Stachula saw at the -- in the Pet World video

1 and the same person he saw on 35th and Villard.

2 A canine sniff was done on the
3 vehicle Mr. Johnson was driving, and the dog
4 indicated that narcotics were present inside
5 the vehicle. I find this undisputed testimony
6 of Detective Stachula credible. The defendant
7 asserts that there was not probable cause to
8 arrest the defendant at the time that he was
9 stopped.

10 Probable cause to arrest exists when
11 the totality of the circumstances within that
12 officer's knowledge, at the time of the arrest,
13 would lead a reasonable police officer to
14 believe that the defendant probably committed a
15 crime.

16 The objective facts before the police
17 officer need only lead to a conclusion that
18 guilt is more than a possibility. There must
19 be more than a possible -- a possibility or a
20 suspicion that the defendant committed the
21 offense, but the evidence need not reach the
22 level of proof beyond a reasonable doubt or
23 even that guilt is more likely than not.

24 With this standard in mind, at the
25 time that the defendant was stopped at the

1 direction of Detective Stachula, he had the
2 following information. I'm just reviewing the
3 testimony, the credible testimony, from
4 Detective Stachula.

5 There was a citizen, a social worker,
6 who had come to the West Allis Police
7 Department on June 13th with a bag of
8 sixty-nine foil bindles of heroin and reported
9 that they were found on the ground outside the
10 driver's door of the vehicle, and she provided
11 a photo of a license plate on the back end of
12 that vehicle.

13 She described how she saw the
14 individual walk from the north, which was the
15 direction of the Pet World, get into the car,
16 drove west towards Highway 100, the -- the exit
17 there, make an abrupt stop, turned back into
18 the parking lot, and started circling around
19 the parking lot, which she thought appeared to
20 be like the individual was looking for
21 something, and stopped the vehicle again.

22 And then the driver of -- the -- the
23 sole occupant, which was the defendant, got out
24 and -- and walked around, looked on the ground,
25 again like he lost something, and then

1 eventually went back to the vehicle and -- and
2 left the area.

3 Ms. Trudeau had provided a
4 description of this individual as a black male,
5 roughly five-eight to five-nine-ish, light to
6 medium complexion, 200 pounds, and in their
7 twenties. The individual was wearing a black T
8 shirt and black shorts.

9 Detective Stachula reviewed
10 surveillance video from Pet World, and there
11 was a person that matched that description of
12 the person provided by Ms. Trudeau, a black
13 male, matched in age, height, weight, and
14 exactly what the person was wearing, a black T
15 shirt and black shorts.

16 And Detective Stachula could also see
17 him -- When, I guess, the video was slowed
18 down, he could see clearly a tattoo that was on
19 the forearm -- the right forearm -- of the
20 individual that went into the Pet World and
21 exited without purchasing anything. Police ran
22 the plates, go to that address, did not see the
23 vehicle.

24 Detective Stachula sent out an e-mail
25 on an investigative website asking other

1 jurisdictions and investigators if they'd made
2 contact with that plate and vehicle and
3 received an e-mail response from Milwaukee
4 Police Department that the vehicle had received
5 a citation.

6 The officers -- The citation, I
7 believe, was on June 7th; so the same month as
8 this incident occurred they went to that area
9 to get some surveillance, found a vehicle that
10 matched the description that Ms. Trudeau had
11 provided, the plate and the description of the
12 vehicle.

13 And the officers do surveillance and
14 they see an individual get out, come out a
15 residence, go into that vehicle. Officer
16 Stachula gets close up. They follow. That
17 vehicle gets close up, within a car length,
18 sees the individual, believes it's the same
19 person that was on the video from the 17th
20 of -- I'm sorry -- from the 13th of June, saw
21 the tattoo that they saw on the person from the
22 Pet World video.

23 And the defendant then returns to the
24 residence after a short period of time, which
25 was consistent with what Detective Stachula

1 testified was -- he'd seen in his years of
2 experience with dealing with drug transactions.

3 Did anybody believe I misstated any
4 fact from the hearing?

5 **ATTORNEY ALEMAN:** No. I think they
6 were stated accurately, Your Honor.

7 **ATTORNEY POWELL:** Well, according to
8 the last thing you said, I think you needed to
9 make this specific finding because he said what
10 they observed about this short-term
11 transaction.

12 I think what the Court is referring
13 to is he saw Mr. Johnson get out of his car,
14 walk towards the business. Detective Stachula
15 and Corporal Zientek drove past, did not see
16 what happened after that, and returned. And he
17 was gone.

18 **THE COURT:** And then went back to the
19 residence. About five minutes passed from --
20 returning to the residence and finding the van
21 there. That's what I meant by the "short
22 term." They did not see a hand-to-hand.
23 Clearly, they did not, Mr. Powell. I wasn't
24 trying to insinuate that.

25 I believe Detective Stachula said he

1 had seen many short transactions, people go
2 somewhere, come back, deliver -- that's what I
3 inferred from his testimony, and that's what's
4 consistent with what he's seen in other
5 investigations regarding drug matters.

6 **ATTORNEY POWELL:** I believe he also
7 testified it was consistent with thousands of
8 other innocent explanations as well. That was
9 his testimony, just to --

10 **THE COURT:** It could be -- it could
11 be many things. Correct.

12 Based upon this record, I do find
13 that there was probable cause to arrest
14 Mr. Johnson at the time that he was stopped.
15 You know, probable cause does not mean guilt
16 beyond any type of reasonable doubt. It's more
17 than a suspicion, more than a possibility, but
18 it is not guilt beyond a reasonable doubt or a
19 reason that guilt is more likely than not. I
20 clearly believe, on this record, there was
21 probable cause to arrest the defendant for the
22 drug transaction.

23 And I do know that the defendant has
24 not been charged with the bag of heroin that
25 was found in the parking lot. The State

1 advised me, as the case proceeds, they would be
2 intending on charging that, or it would be a
3 read-in, I believe, for sentencing if the
4 defendant resolved -- resolved the case. So I
5 respectfully deny the motion to suppress.

6 With respect to this case, as I said,
7 we have two cases before the Court for
8 Mr. Johnson. That one is -- This one is set
9 for a jury trial a week from today, and I
10 believe at the last court date, you asked for a
11 brief time to talk with your client after the
12 ruling?

13 **ATTORNEY POWELL:** Yes.

14 **THE COURT:** Okay. We can put this
15 case on for Wednesday.

16 **ATTORNEY ALEMAN:** Your Honor, it's my
17 charging week.

18 **THE COURT:** Okay. I don't know when
19 you want to do it. The trial's on Monday.

20 **ATTORNEY ALEMAN:** That said, Your
21 Honor, with this trial on Monday, I was
22 notified by one of my officers, Corporal
23 Zientek is on vacation and would not be
24 available to be here on the 31st. I would have
25 to make a motion to adjourn if this does

1 proceed on the 31st.

2 **THE COURT:** What are you asking me to
3 do? Are you asking me to put -- I understand
4 you're in charging. Are you asking me not to
5 do the final pretrial?

6 **ATTORNEY ALEMAN:** No. We can do the
7 final pretrial, but if we do, the State will be
8 filing a motion to adjourn, seeing as I
9 wouldn't have one of my primary officers for
10 Monday's trial.

11 **THE COURT:** Okay.

12 **ATTORNEY POWELL:** Does the Court
13 have some time on Thursday afternoon?

14 **ATTORNEY ALEMAN:** I cannot do it
15 Thursday afternoon.

16 **ATTORNEY POWELL:** In the morning?

17 **THE COURT:** See, the -- I understand
18 this is Ms. Aleman's charging week.

19 **ATTORNEY ALEMAN:** Right.

20 **THE COURT:** And generally, I'm
21 supposed to, like, not bother the DAs during
22 their charging week. She -- I kind of twisted
23 her arm to have her come up here today because
24 the jury trial's on Monday.

25 You can't make it on Wednesday?

1 **ATTORNEY POWELL:** Is the afternoon
2 available at all? I could be here in the
3 morning, but it would probably be closer to
4 9:00 o'clock before I get here, and I have
5 another appearance at 10:00 in a civil matter.

6 **THE COURT:** Ms. Aleman, can you do it
7 on Wednesday afternoon?

8 **ATTORNEY ALEMAN:** Wednesday afternoon
9 I can. Just Thursday afternoon I cannot.

10 **THE COURT:** Okay. We'll adjourn
11 the -- we'll adjourn the final pretrial to
12 Wednesday afternoon with respect to Case
13 13-CF-3474 at 1:30 on the 26th.

14 (The proceedings concluded at 10:17
15 a.m.)

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