

STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT 1

For Official Use

State of Wisconsin, _____)
 _____)
 Plaintiff-Respondent, _____)
 _____)
 -vs- _____)
 Andrew W. Bunn, _____)
 _____)
 Defendant-Appellant, _____)

**Brief
Cover**

Case No.
2019AP002127CR

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CLERK OF COURT OF APPEALS
OF WISCONSIN

ON APPEAL FROM THE CIRCUIT COURT FOR Milwaukee
_____ COUNTY,

THE HONORABLE (name of Judge) William W Brash, III, PRESIDING

BRIEF OF Andrew Watson Bunn, Appellant *

Name: Andrew Watson Bunn
 State Bar No., if applicable: None
 Address: 473 Oakland Ave
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Constitutional Issues

AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT IV

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.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been

previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV

Note: Article I, section 2, of the Constitution was modified by section 2 of the 14th amendment.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State,

being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment

of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

ISSUES PRESENTED

Whether an anonymous in person descriptionless so called "mom" informant who's substance of tip contradicts observation and absent indica of criminality can substantiate a lawful vehicle stop and search where the officer's make perjurous utterances and presents apparent manipulative fantasies or hallucinations and delete most evidence which would support these unbelievable assertions or if the 4th amendment protects against any unreasonable searches and seizures.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State of Wisconsin withheld the arrest incident report numbered 171310142 from the Circuit Court. This incident report contains clear willful material plain errors of police perjury. The perjury along with the incredible nature of the massive unexplained disappearance, destruction or spoliation of evidence which should exist along with the suspicious nature of the pretextual relationship between Mr Andrew Watson Bunn and the City of Milwaukee constitutes a structural error fatal to the decision dated 03 November 2017 in case number 17CM1652.

The facts are disputed wholly between parties and selectively within the adversarial parties themselves in self conflicting sworn and official utterances. Bunn is absent counsel and the Court is unable and unwilling to provide counsel. Previous Appellant Attorney Sara Zwach refuses to deliver all discovered evidence to Mr. Bunn and the Court refuses to compel Attorney Zwach to assist the appellant to have access to most of the discovery. Bunn finds conflict between the Plea Agreement protecting the criminality of government and Bunn's individual duty not to misprision these repeated apparent, possibly unlawful retaliatory, possibly in

the assistance of foreign or hostile non-governmental entities, felonious activities of the City of Milwaukee and State (18 USC § 4 and 18 USC § 2382) and Wisconsin 946.31(1)(a) and 946.32(1)(b) and 940.45 and 66.0413(1)(i). Bunn welcomes oral argument provided the Court finds it helpful. See Wis § 809.22 Publication would be helpful to redress of the leaking of private data by millions of Federal agents, and Bunn, with security clearances and some families (US Courts Misc Action No 15-1354 ABJ for Case No. 1:15-cv-1015 in US District Court for D.C. in AFGE, AFL-CIO, et al v. United State Office of Personnel Management). Publication is not authorized, however, because this is a one-judge appeal of a case involving a misdemeanor conviction. Wis. Stat. §§ 751.31(2)(f), 809.23(4)(b). Nevertheless, this court would be warranted in convening a three-judge panel, on own motion, and in issuing a published opinion, to resolve the issues presented above.

STATEMENT OF THE CASE AND FACTS

Prior to the investigative stop detailed in Milwaukee Police Incident Report No 171310142 (Appendix, 37) on

5/11/2017 I, Andrew Watson Bunn, was an independent nurse, business owner with a private garden in Milwaukee researching the benefits of improving health, wellness, pollution mitigation and healthspan by reconnecting people in the community with gardens and vegetables. I was also involved in some forensics work as an expert. Prior to this investigative stop I was frequently stopped by police of multiple agencies for innocent activities which is highly unusual for me and universally the suspicion was deemed related to a so called anonymous tip. From memory, roughly 100 stops were effected in the months prior to the incident in question. Some time prior to this incident a police robbery (perhaps under exigency exception or burglary fronting as lawful) and later extrajudicial razing occurred at the garden. I was forced to secure thousands of items including 3 weapons in my truck after the robbery. The thefts crossed the felony level amount and were reported to the Milwaukee Police initially and the Milwaukee Sheriff due to Police refusal as the burglar was shown to work for the City of Milwaukee and they are unable and unwilling to self-investigate. Historically, the Just Takings clause intended for the government to at least compensate but is now interpreted

as effectively 'just keep taking and taking', apparently. I did attempt to redress this as a civil manner but if the City doesn't answer a Notice of Claim this lack of permission slip voids the 7th Amendment of the US Constitution for which the City is clearly unbounded. This conflict of interests was undisclosed in 2017CM1652 case as if it were lawful to interfere between Civil and Criminal laws. Clearly, this defamation is in the interests of protecting the thief-burglar(s). (Wisconsin 66.0413, 2017SC041108, 2017SC040413).

According to the Incident Report of Manuel A Lucena-Martinez under Section titled "Supplement" on page 6 of 7, 4th Paragraph beginning, "While Sgt SAWYER was speaking with BUNN I made contact with the front passenger who was verbally identified as Angela M ESPERES (w/f 01/19/1988) Upon speaking with her I identified her as a known prostitute who engages in prostitution on W Greenfield Av". (Appendix, 37) This sounds like solid police work however Angela M Esperes is NOT a known prostitute. Someone else with a similar surname and different date of birth are. In the appendix page 34, I have the CCAP case search results for Angela M Esperes, whom prejudicially has a violent history in case

2011CM6937. Attached is also the Municipal Court search for the surname of Esperes (appendix 35). Amy L Esperes is listed, with four (4) other persons. Zero (0) cases are shown however for Angela Espreres. Attached also is the Municipal Court record for Amy L Esperes with a Date of Birth of September of 1989 (Appendix, 36). Amy L Esperes, is a known prostitute according to case numbers: 16045057, 17028224, 17042786. Also attached, please see the Supplement of Sgt Kieran J Sawyer, 3rd paragraph 2nd sentence, "PO Lucena-Martinez made contact with passenger, Angela M. Esperes (w/f 1/19/1988) and had her step from the vehicle to make an assessment of the situation...". We see twice Angela M Esperes is identified as the front passenger. (Appendix 38-39).

According to CCAP case number, 2918F416 we can see the City of Milwaukee was able to find me guilty of having Amy L Esperes in the truck as well by citing the above cases and having Sawyer and Lucena-Martinez raise their rights hand swear to tell the truth and committed to separate incidents of perjury by conflicting to the statements enumerated above in the supplements. Other States have been able to stand up to rogue officers (although this case involves an apparent rogue

supervisor). The State of Maryland was able to stand up to the problematic gun trace task force Officer Michael O'Sullivan and delt with appeals of bad cases by special courts (Burley Waller v State of Maryland, 2017). The State of Texas was able to stand for law and order following a bad faith affidavit which led to the assassination of fellow veteran Dennis Tuttle with Rhogena Nicholas (Texas v Gerald Goines, 2019). Apparently, in other jurisdictions there is some interests in not having courts deceived by perjury which leads to obviously bad process such as can be clearly seen of the above.

Following a peaceful arrest damage was incurred to my vehicle in the amount of \$750. Notice of Intent was filed and remains never answered with the City of Milwaukee for the post arrest vandalism to the supplemental restraint and front windshield both damaged apparently by searching the vehicle too violently to maintain public safety (Wisconsin 893.82 and 943.01, 943.011). Mr. Bunn doesn't believe in extrajudicial punishments and so we recommended to the court a fine of \$750 (see Notice of Intent to Pursue Postconviction Relief Counts 1 and 2

are codes for the vandalism of Sawyer and Martinez).
(Appendix 31).

Contrary to the testimony of Sawyer in the Criminal Complaint filed by PO Ray Harraz, states under section "Probable Cause" his basis of complaint was upon "normal course of business of the Milwaukee Police" that Lucena-Martinez was "dispatched to the area due to a report from a mother who had witnessed a couple engaging in oral sex in the vehicle "out in the open," and that truck matched the description given by dispatch." Sounds like great police work if it didn't contradict the lack of dispatch records found in discovery and the testimony of Sawyer but may have prejudiced the Court as the best case law pertains to phone complaints and zero cases are in reference to in person anonymous and description-less so-called complainants likely because this level of bad faith and manipulation doesn't pass the sniff test, usually.

Lucena-Martinez, the primary officer, never testified in this case.

Sawyer testified "duly sworn" in Motion hearing 24 October 2017 as follows, Line 20A Page 5 of Document 37

(appendix 48), "I wasn't able to obtain her name." Sawyer continues, line 16-17, "And we didn't have time to obtain her name." There are vague descriptions of sorts in line 22-25, "And we were just sitting there and she was playing with her daughter and I believe some other kids were in the area there And she approached the car." This constitutes the totality of the description of the so called complainant, some degree of vagaries of gender and being a mom. The videos were apparently deleted as it is difficult to impossible to film something that never happened. Height description is absent I did state prior it would be impossible for this "mom" or otherwise descriptionless female to be able to see what she claimed as vision is line of site and trigonometry is unarguable but there are in theory some 7-8 foot females. Three of the current Milwaukee Bucks out of 18 are in the low 7-foot range for example. I was unable to find any females in the 7-foot range but it is theoretically possible but highly unusual. A child (of undisclosed approximate age) being of stature above 7 foot is unheard of. Therefore, Sawyer's testimony doesn't seem to make sense of human vision under normal conditions. The State is burdened

with proof, however. Obviously one would need to actually see what one claims to be credible, let alone existing. A comparison can be made between the care given to the environment, and vehicle and the total lack of adequate description of the "mom." Sexual characteristics which would substantiate gender are absent. Other physical attributes are never noted. It is not noted whether this "mom" is a US person or citizen. It is unnoted any behavioral characteristics. Languages spoken is unnoted. Whether this person went armed is not noted and yet there is a strange and obvious contrast between this "mom" persons' interaction and the vehicle stop of Mr. Bunn. This so called "mom" also seems to lack object permanence and disappears quite quickly never to be seen again most accurately (along with the vagaries) describing a hallucination or fantasy. Mr. Bunn believes people are describable objects. Medically, a person presents one moment and gone the next and not visible on camera is necessarily a hallucination (if believed) and a fabrication (if disbelieved).

Corroborative data is absent. There is zero dash camera. There are zero body cameras. There were no photos, from a cell phone or other camera, taken of this "mom." The

road side discussion of Mr. Bunn's role as a witness for the United States is absent. Post-Miranda interview is noted absent. Grievance filed with the Sheriff upon arrest is disappeared. Suffice it to say most of the evidence in this case has been deleted without explanation.

ARGUMENT

District 1 Court has a reputation for being unable to discriminate gun cases. There is a profit motive in pretending the City of Milwaukee has a higher violence and gun crime rate in order to secure or defraud the United States of policing grants.

Further political issues are the growing anti-Republicanism which benefits the International Cartels and American Strategic Enemies. Mr. Bunn's name was leaked as part of a large and highly damaging "dangle" operation to America's strategic adversaries. The likely thief of my identity and personal information was a foreign and hostile State Security adversary. Taking the apparent bait is a so called indescribable person which sort of fits perfectly what one would believe of a foreign hostile actor's physical description may be if in friendly liaison. Both witness intimidation (and I was in fact intimidated) and assisting

the enemy at a time of growing emergency and war are serious criminal offenses that can be possibly run afoul by taking anonymous in person reports. Courts have been unwilling to affirmatively burden police with duties to protect Americans. However, a foreign and hostile actor would explicitly not, by definition, be a concerned CITIZEN. The citizenship of this "mom" is unknown and the particular foreign State actor which stole my identity is increasingly influencing the local political and business communities. Advancing, even in the theoretical, the activities of hostile actors by way of anonymous and unsupported tip is corrosive and antithetical to justice, unconstitutional.

Reasonable suspicion is the lowest bar protecting the liberty of Americans. The notable absence of evidence which did or should have existed, along with the perjury and vandalism, and the reliance upon an indescribable "mom" which best fits the description of a hallucination or fantasy makes meaningless and mockery of a Fourth Amendment (Brady v Maryland, 1963 and Neder v United States, 1999).

No articulable and specific description of occupants such as physical description nor license plate were apparently reported by the indescribable and anonymous "mom."

Investigative stops require reasonable suspicion. See:

State v Rutzinski, 241 Wis. 2D 729, 736 (2001) for a phoned in tip. At the moment of investigative stop the officer must be able to articulate particularized facts and rational inferences therefrom which could lead a reasonable person with the knowledge and experience of the officer to believe an individual is engaging in criminal activity which driving on the road not infringing any traffic violations with one or possibly two passengers fails to meet this lowest hurdle (Terry v Ohio, 392 U.S 1, 21-22, 27 (1969)). Informant tips vary in substance and in this case may not exist whatsoever. Both the Officers lack credibility due to the perjury and inability to provide any evidence whatsoever on the so called "mom." The tip however must be subject to reliability in reliability and content. Wisconsin has a two pronged test on informant reliability 1. the veracity of the informant and 2. the basis of knowledge of the informant. The informant tip lacks indication of reliability whatsoever. The police may independently corroborate the tip and any details here are innocent and the police were unable to appreciate the tip independently which inherently did or should have reduced the reliability. More specifically, the police claim to have a tip by a "mom" that directly and completely went against their own observation at the time of the tip receipt which provided nothing not obvious. The "mom" claimed there was

some active coitus which was appreciable. No sexual acts were appreciable and was denied by all other parties. There also is a time scale which fails to make much sense and goes against reliability. In fact, the time scale seems so thin that it might approach zero. Indications of anonymous tipster reliability, nor existence, are absent in whole and in part. Florida v. J.L 529 U.S. 266 (2000) provides police must do more than verify easily obtainable information such as a truck with one or two passengers driving on a road which if existing is all the detail provided here.

The totality of the circumstances, of a man and one or two women driving is wholly innocent of criminal indica (Alabama v White, 496 U.S. 325, 332 (1990)). Nothing of predictive value can be obtained from either the uncorroborated tip nor the innocent unspecific details. The corroborated details here are a blue pickup truck exiting a parking lot. The portions of the tip which would have made the stop lawful were counterindicated by officer observation.

A conviction that is based on insufficient evidence cannot constitutionally stand. Jackson v. Virginia, 443 U.S. 307 (1979). The due process clauses of the United States and Wisconsin constitutions provide individuals with protection from conviction in a criminal case except "upon proof beyond a reasonable doubt of every fact necessary to

constitute the crime with which he is charged." In re Winship, 397 U.S. 358, 365 (1970), accord State v. Smith, 117 Wis. 2d 399, 415, 344 N.W.2d 711 (Ct. App. 1983). The stop was not subject to proven reliable confidential informant tip allowing Terry intermediate stop and search (Adams v Williams, 1972). The State also cited Illinois v Gates, 462 U.S. 213, 233, 103 S.Ct 2317 (1983) which is an issue of probable cause totality and the tip clearly had reliable and articulable information well in excess of this case. However, the totality of the circumstances are wholly innocent here. Police were able to verify a vehicle exiting a parking lot and lacking the substance of the tip and lacking any traffic violations. Here the direct observation tends to undercut the veracity of the so called "mom" tipster Bunn appreciates no case law directly applicable here to a descriptionless "mom" tipster, by a liar and vandal engaging in witness intimidation.

The State considers the tip as originating not from an informant but a concerned citizen tipster citing Williams which is a phoned in tip like Rutzinki where we can be certain that there was a tipster as there is a record. Here there isn't independent corroboration but the police contradict the report of the so called "mom" who has no record of existence and that which would substantiate existence doesn't hold up to the sniff test with the

deleted body cameras. (Williams, 2001 WI 21, 623 N.W.2d 106, 241 Wis. 2D 631).

The State also cited Wisconsin v Powers in 2004 which resolves around a traffic violation and has zero bearing on informants and tipsters as an officer viewed a seatbelt violation whereas in this stop no such violation was appreciated and although the officers easily could have followed Mr. Bunn until lawfulness was clearly and unequivocally established, they chose not to.

It's worth note that the 4th amendment is destroyed for people in the community when police invent a missing "mom." That is for the remainder of the shift anyone resembling a female in the area loses her privacy as she fits a description so the privacy protections are destroyed for a whole class of people by such lying. Whereas when I worked as a US Marine I wanted exact descriptions of suspects.

In Wisconsin, a criminal defendant may challenge the sufficiency of the evidence on appeal regardless of whether raised or not at trial. State v. Hayes, 2004 WI 80, ¶ 4, 273 Wis. 2d 1, 681 N.W.2d 203. An appellate court does not substitute judgment as factfinder, instead asks whether the

evidence, viewed in the light most favorable to the State, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. *Id.* ¶ 56. If the reviewing court concludes the evidence was insufficient, the conviction must be reversed, with a remand to the circuit court for entry of a judgment of acquittal. *State v. Wulff*, 207 Wis. 2d 143, 144-145, 557 N.W.2d 813 (1997) (citing *Burks v. United States*, 437 U.S. 1, 18 (1978)).

CONCLUSION

According to the above reasons, Andrew Watson Bunn respectfully requests that this court reverse the judgment and order of the circuit court on the grounds of insufficiency of the evidence and remand the case to the circuit court with directions to enter a judgment of acquittal.

In the alternative, Bunn requests that this court reverse the judgment and order of the circuit court to remand the matter to the circuit court for entry of a judgment of dismissal for unlawful stop and to suppress any evidence seized as a result.

Dated this 30th day of January 2020.

Respectfully submitted,



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Table of Authorities

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CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on (date of mailing)

2/6/2020 I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

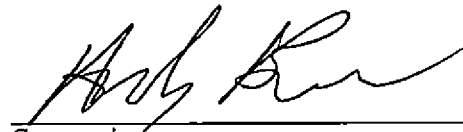
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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a [choose one] monospaced or proportional serif font.

The length of this brief is 27 pages [if a monospaced font is used] or NOT APPLICABLE words [if a proportional serif font is used]

Date 2/6/2020



Signature

APPELLANT'S BRIEF APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of 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, and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings 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 of 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

Date 2/6/2020

Signature Andy Burns, pro se

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I hereby certify that filed with this brief, either as a separate document or as a part of 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 rulings or decisions showing the circuit court's reasoning regarding those issues.

Signed:

Andy Brown, Esq.