COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2025AP1275-CR **Cir. Ct. No. 2022CF300**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW W. TUGGLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County: W. ANDREW VOIGT, Judge. *Suppression order vacated and cause remanded for further proceedings*.

Before Graham, P.J., Blanchard, and Kloppenburg, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Matthew Tuggle appeals a judgment of conviction. The issue is whether a police officer had reasonable suspicion to extend a traffic stop for the purpose of conducting a dog sniff. We conclude that the officer lacked reasonable suspicion of a controlled substance violation, and therefore that the circuit court should have granted Tuggle's motion to suppress the evidence obtained after the traffic stop was extended. We vacate the order denying the motion to suppress and remand to the circuit court for further proceedings.

¶2 Tuggle was charged with controlled substance and weapon offenses based on evidence that was obtained after a dog sniff during a traffic stop. He moved to suppress evidence on the ground that the traffic stop was improperly extended to wait for the dog. The circuit court denied the motion after an evidentiary hearing. Tuggle then pled no contest to three controlled substance felonies. On appeal, he challenges the order that denied his suppression motion pursuant to WIS. STAT. § 971.31(10) (2023-24).[1]

¶3 The general law regarding traffic stops and reasonable suspicion is well established and not disputed by the parties, and therefore we do not repeat it here. The State concedes that the traffic stop of Tuggle was extended in a manner that required additional reasonable suspicion of criminal controlled substance activity, beyond the reasonable suspicion of a traffic offense that supported the initial stop. There do not appear to be any significant factual disputes about the traffic stop, and the parties agree that this leaves only questions of law that we review de novo.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

¶4 The parties' arguments in this appeal focus considerably on past cases in which reasonable suspicion was held to exist, or not to exist, based on specific combinations of facts. Although our conclusion is informed by the analyses of these cases, the facts in Tuggle's case do not precisely align with any of those fact combinations, and therefore we will not attempt to describe those cases in detail, or how they are similar and different to each other and to Tuggle's case. However, we do discuss case law in relation to specific facts.

¶5 The State argues that reasonable suspicion is shown by a combination of several facts. The State does not provide a clear list of those facts in its argument, but we now discuss the ones that its argument appears to rely on.

¶6 First, the officer testified that Tuggle did not pull over promptly when the officer initiated the traffic stop. The officer testified that it took Tuggle thirty seconds to pull over, which he did after turning off of the state highway on which he had been travelling and onto a side road. The officer testified that five to ten seconds is a more normal time, and that the delay led him to think that the person in the vehicle was "possibly concealing something." We agree that such a delay can be a fact supporting reasonable suspicion.

¶7 However, in this case the significance of that delay is less than it might be in some other cases. Here, the officer acknowledged that road conditions such as rain can affect the time it takes for a person to react and pull over, and that the dashboard camera appeared to show that it was raining at the time of this stop. In addition, we note that the stop occurred at approximately 8:45 p.m. in June, which in the rain would likely be a time of reduced ambient light. Under these circumstances, a driver might reasonably choose to pull over onto a side road, as Tuggle did, instead of stopping along the highway itself.

¶8 Second, the officer testified that, as he walked up to the vehicle, Tuggle lit a cigarette. He testified that some people do this to mask the odor of marijuana or other substances. We agree with the State that the timing of lighting the cigarette is a fact supporting reasonable suspicion of the presence of controlled substances.

¶9 Third, the officer testified that the vehicle had "several air fresheners, more than the average person would have." In relation to this fact, the State cites ***State v. Floyd***, 2017 WI 78, ¶¶2-5, 377 Wis. 2d 394, 898 N.W.2d 560, and provides this parenthetical explainer: "after valid traffic stop, officer's formulation of reasonable suspicion of drug activity was based in part on his observations of air fresheners in every vent of the vehicle as well as the rear view mirror, which is 'often an indicator of drug-related activity because' they are 'used to mask the smell of narcotics.'"

¶10 To the extent that the State intends to suggest that the ***Floyd*** court relied on those facts to find reasonable suspicion, that characterization of ***Floyd*** is inaccurate. The decision in ***Floyd*** ultimately turned on whether the traffic stop had been improperly extended and on consent, with the court concluding that the stop was not improperly extended and the consent was valid. ***Id.***, ¶¶25-34. The court expressly stated that, because of these conclusions, the court was not considering the State's alternative argument that there was reasonable suspicion to extend the traffic stop. ***Id.***, ¶34. In other words, although the ***Floyd*** opinion described facts that could have related to reasonable suspicion and the State cites to that factual portion of the ***Floyd*** opinion in its brief in this appeal, the ***Floyd*** court did not actually rely on those facts and reached no conclusion about their role in reasonable suspicion. Accordingly, the State's citation to ***Floyd*** is of no value in this appeal.

¶11 Here, in this case, we see no meaningful significance to the presence of the air fresheners. When the officer observed the air fresheners, he was already aware that Tuggle smoked cigarettes in his car, and air fresheners are commonly used to reduce the lingering smell of cigarette use. In this context, they do not support reasonable suspicion of the presence of controlled substances. We reach the same conclusion about the officer's testimony about the presence of "several lighters scattered through the vehicle." Cigarette smokers often possess lighters. The officer acknowledged that the presence of air fresheners and lighters could both be indicators that a person smokes cigarettes in the car.

¶12 Fourth, the officer testified that Tuggle had a radar detector in the car. He testified that "most people do not have [radar detectors], and also it's a reason to avoid contact with law enforcement." By "reason," we understand the officer to have meant that a radar detector is a method to avoid contact with law enforcement.

¶13 We do not agree that a radar detector provides meaningful support for reasonable suspicion in this case. The issue here is whether there was reasonable suspicion to extend the traffic stop *for the purpose of obtaining a dog sniff*. A radar detector reasonably indicates a driver's intent to avoid enforcement of speed limits, but it does not indicate anything meaningful about controlled substances. If a driver carrying controlled substances really wants to avoid law enforcement, compliance with posted speed limits would likely be a more effective strategy than a radar detector, which might itself become a focus of law enforcement attention. Yet, it could not reasonably be argued that compliance with speed limits contributes to reasonable suspicion of controlled substance possession because it shows the driver's desire to avoid law enforcement. In

short, the State fails to connect inferences about Tuggle's views about speed limit compliance and enforcement to the presence of controlled substances.

¶14 Fifth, the officer testified that Tuggle showed an unusual level of nervousness. The officer testified that while many people that he stops act nervous, they look at him and talk to him, and after a short time they "calm down and start to act normal." In contrast, Tuggle's nervousness did not dissipate. We agree that excessive or extended signs of nervousness can support reasonable suspicion that criminal activity may be present.

¶15 However, the significance of this fact is again reduced in this case because the issue is whether there was reasonable suspicion for a dog sniff, which requires reasonable suspicion of a controlled substance offense. Excess nervousness does not support reasonable suspicion of that specific category of offense, apart from other types of criminal conduct. For example, excess nervousness may also be present if the driver knows the vehicle contains evidence of other crimes, such as weapons, stolen property, or child pornography. Therefore, this counts in favor of reasonable suspicion, but not heavily.

¶16 Sixth, the officer testified that he was suspicious because he believed Tuggle was taking an "odd" route of travel between what Tuggle reported to be his origin and destination. The officer testified that Tuggle said he was coming from the west side of Madison and going to Poynette. The stop occurred on Highway 60 in the Town of Arlington in Columbia County, a few miles east of Lodi. The officer testified that he believed that this was not the "fastest route," and that "the interstate" is the faster route from Columbia County. But the circuit court found, based on its own personal experience, that "[w]hile [Tuggle's route is] certainly not the fastest route probably at some times, there are other times

when it actually might be." And, our own review of a Wisconsin map does not support an objectively reasonable belief that there is something odd about being in that location when traveling between those points.

¶17 Seventh, the officer testified that, although Tuggle said that he lived on the east side of Madison, his address was listed in state department of transportation records as a DeForest address. The officer testified that he thought that the discrepancy may indicate that Tuggle was trying to hide his residence, but the State did not provide any further evidence about the officer's understanding of what could be a routine discrepancy between residence and state driving records. Without more, this discrepancy did not create a reasonable inference that Tuggle was lying to the officer about where he lived in order to further or hide criminal activity of any kind. We give no weight to this discrepancy as an indicator of controlled substance activity, or of criminal activity generally.

¶18 Eighth, and finally, the officer testified that, before calling for the dog, he learned that Tuggle had a prior felony conviction for possession of a controlled substance. Tuggle argues that a past controlled substance conviction does not support reasonable suspicion of current law violation.

¶19 Tuggle relies in part on ***State v. Gammons***, 2001 WI App 36, 241 Wis. 2d 296, 625 N.W.2d 623. In that case, among other facts, the officer "had knowledge of prior drug activity by each of the three men in the vehicle." ***Id.***, ¶21. However, the ***Gammons*** court gave that fact little or no weight as support for reasonable suspicion to extend a traffic stop, because "nothing in the record demonstrates that [the officer] observed Gammons or the others say or do anything that specifically indicated drug use or possession on the night of the stop." ***Id.***,

¶23. In other words, we did not consider the prior conviction, by itself, to be a significant indicator of current use or possession.

¶20 The State relies on the analysis in ***State v. Lange***, 2009 WI 49, 317 Wis. 2d 383, 766 N.W.2d 551. There, the court relied on the officer's knowledge of a prior conviction for operating while intoxicated as one of several facts supporting probable cause to arrest for an alcohol-related vehicle offense. ***Id.***, ¶33.

¶21 We believe that these cases can be harmonized because, in ***Lange***, there was a clear indicator of current alcohol use, namely, "wildly dangerous driving that suggests the absence of a sober decision maker." ***Id.***, ¶24. The ***Lange*** court considered the prior conviction as part of the totality of circumstances, and did not purport to overrule the portion of ***Gammons*** that suggests that a prior controlled substance conviction, by itself, is not a significant indicator of current use or possession.

¶22 The facts of this case are more like ***Gammons***, and less like ***Lange***, because here, the circumstances did not otherwise include any specific indication of current controlled substance use or possession. Accordingly, we give only slight weight to Tuggle's prior controlled substance conviction.

¶23 Boiling this all down, for purposes of reasonable suspicion related specifically to a controlled substance offense, and looking at the totality of the circumstances, this is what we mainly have: a driver who delayed pulling over, though possibly with good reason, and lit a cigarette at a potentially suspicious moment. In addition, the driver had a prior controlled substance conviction of unspecified recency. This is supplemented to a minor degree by the driver's nervousness, which may suggest non-specific criminal activity. We conclude that

this is not enough to provide reasonable suspicion that a controlled substance violation is occurring.

¶24 For these reasons, we conclude that the circuit court erred when it denied Tuggle's motion to suppress. We vacate that order and remand to the circuit court for further proceedings.

By the Court.—Suppression order vacated and cause remanded for further proceedings.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.