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**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 20, 2021**

Sheila T. Reiff  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2018AP1764-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 2017CM207

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,  
PLAINTIFF-RESPONDENT,  
v.  
KIMBERLY DALE CRONE,  
DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Sawyer County:  
JOHN M. YACKEL, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 HRUZ, J. Kimberly Crone appeals a judgment of conviction, entered upon her no-contest plea, for possession of a controlled substance.<sup>1</sup> She

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<sup>1</sup> By our June 24, 2020 order, we held this appeal in abeyance pending our supreme court's decision in *State v. Brown*, 2020 WI 63, 392 Wis. 2d 454, 945 N.W.2d 584.

(continued)

argues the circuit court erred by denying her motion to suppress evidence that a law enforcement officer obtained during a traffic stop, after she consented to a search of her purse. Crone contends the officer's request to look at two pill bottles in her purse—which were in plain view of the officer standing next to her vehicle—unlawfully extended the stop, violating her Fourth Amendment rights. We disagree, as the officer's simple request for Crone's consent—even when that request occurred at the end of the traffic stop—did not unreasonably extend the stop under the totality of the circumstances. Therefore, we affirm.

### BACKGROUND

¶2 Around 9:00 a.m., Sawyer County sheriff's deputy Jay Poplin stopped Crone because she was driving eleven miles per hour over the speed limit. Poplin approached Crone's vehicle and then asked for her driver's license and proof of insurance. As she was "digging" through her purse for her proof of insurance, Poplin observed two orange pill bottles inside her purse. He could only see the pill bottles and their caps, such that he was unsure if either of the bottles had labels on them. Poplin then returned to his squad car and confirmed that Crone had a valid driver's license.

¶3 Poplin returned to Crone's vehicle and gave back her driver's license. As he did so, Poplin asked Crone if he could see the two pill bottles. She agreed. The first pill bottle Crone handed to Poplin had a valid prescription label

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Additionally, this appeal was converted from a one-judge appeal to a three-judge appeal by the July 15, 2020 order of the Chief Judge of the Court of Appeals. *See* WIS. STAT. § 752.31(3) (2019-20); WIS. STAT. RULE 809.41(3) (2019-20). That order also directed the attorney general to file a supplemental respondent's brief in this case, which he did and to which Crone filed an additional reply brief. All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

with her name on it for gabapentin. The second pill bottle had no label on it and contained various types of pills. Poplin identified some of the pills at the scene as gabapentin and ibuprofen. He returned those pills to Crone, which left two other types of pills that Poplin could not identify.

¶4 Poplin then asked Crone if she had prescriptions for those pills. Crone initially replied that she did. After Poplin gave her his business card so that she could later provide him proof of the prescriptions, however, Crone admitted that she did not have prescriptions for them. Poplin seized the remaining pills and allowed Crone to leave.

¶5 Poplin returned to the sheriff's department and identified some of the pills he seized as lorazepam, a schedule IV controlled substance. Crone was charged with one count of possession of a controlled substance without a valid prescription, contrary to WIS. STAT. § 961.41(3g)(b). She subsequently filed a motion to suppress the evidence Poplin obtained on the grounds that his inspection of the two pill bottles constituted an unlawful extension of the traffic stop. Poplin testified at the hearing on Crone's suppression motion.

¶6 Poplin testified that although he had "completed the reason" for the traffic stop when he asked Crone for the two pill bottles, he had already decided he "was going to start a drug investigation and look further into the pill bottles" based on his initial contact with her. Poplin admitted that he never told Crone that she was free to leave. When asked whether Poplin had "any particular reason to think that there wasn't a prescription prior to looking at the bottles," he replied, "Just based on prior law enforcement training and experience I have found illegal substances in pill bottles."

¶7 The circuit court denied Crone's suppression motion. The court found Poplin's request to inspect the two pill bottles "was of a very minimal intrusion" and "did not ... require a tremendous amount of additional time." The court therefore concluded there "was a valid expansion under these very limited circumstances as to how [Poplin] approached it and how [Crone] responded." Crone pleaded no contest to the possession of a controlled substance count, and she now appeals.<sup>2</sup>

### DISCUSSION

¶8 Whether evidence should be suppressed is a question of constitutional fact. *State v. Wright*, 2019 WI 45, ¶22, 386 Wis. 2d 495, 926 N.W.2d 157. When presented with a question of constitutional fact, this court engages in a two-part inquiry. *Id.* First, we review the circuit court's findings of historical fact under the clearly erroneous standard. *Id.* Second, we independently apply constitutional principles to these historical facts. *Id.*

¶9 The United States and Wisconsin Constitutions both protect the rights of individuals to be free from unreasonable searches and seizures, and we normally interpret article I, section 11 of the Wisconsin Constitution coextensively with the Supreme Court's interpretation of the Fourth Amendment. *State v. Floyd*, 2017 WI 78, ¶19, 377 Wis. 2d 394, 898 N.W.2d 560. A traffic stop is a form of seizure entitled to Fourth Amendment protections. *Id.*, ¶20. Crone, however, does not challenge the lawfulness of her initial traffic stop.

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<sup>2</sup> A circuit court's order denying a motion to suppress evidence may be reviewed on appeal from a judgment of conviction notwithstanding a defendant's no-contest plea. *See* WIS. STAT. § 971.31(10).

¶10 Rather, Crone argues the traffic stop was unlawfully prolonged. A traffic stop can become unlawful if it is prolonged beyond the time reasonably required to effectuate its purpose. *See id.*, ¶21. After a stop is made, an officer may expand the scope of inquiry only to investigate “additional suspicious factors” that come to the officer’s attention. *State v. Hogan*, 2015 WI 76, ¶35, 364 Wis. 2d 167, 868 N.W.2d 124. “An expansion in the scope of the inquiry, when accompanied by an extension of time longer than would have been needed for the original stop, must be supported by reasonable suspicion.” *Id.*

¶11 The State rightfully concedes on appeal that Poplin did not have reasonable suspicion to lawfully expand the traffic stop and inquire into whether Crone legally possessed the contents of the two pill bottles. Poplin’s observation of pill bottles in Crone’s possession—especially with him being unable to see if there were labels on the bottles—does not give rise to a reasonable suspicion that Crone illegally possessed a controlled substance. Consequently, the lawfulness of the traffic stop turns on whether it lasted longer than was necessary to reasonably effectuate its original purpose. *See Wright*, 386 Wis. 2d 495, ¶¶23-24.

¶12 Our supreme court and the United States Supreme Court have both recently spoken on this topic, and we are bound by their holdings. *See State v. Jennings*, 2002 WI 44, ¶18, 252 Wis. 2d 228, 647 N.W.2d 142; *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997). These cases establish that the “tolerable duration” of a traffic stop is determined by its “‘mission’—to address the traffic violation that warranted the stop and attend to related safety concerns.” *Wright*, 386 Wis. 2d 495, ¶23 & n.19 (quoting *Rodriguez v. United States*, 575 U.S. 348, 354 (2015)). A traffic stop’s mission includes: “(1) addressing the traffic violation that warranted the stop; (2) conducting ordinary inquiries incident to the stop; and (3) taking negligibly burdensome precautions to ensure officer

safety.” *Id.*, ¶24. When those tasks are completed, or reasonably should have been completed, the lawful authority for a traffic stop ends. *Id.*

¶13 The Supreme Court has recognized, however, that “the Fourth Amendment tolerate[s] certain unrelated investigations that d[o] not lengthen the roadside detention.” *Rodriguez*, 575 U.S. at 354. Any unrelated inquiries during an otherwise lawful traffic stop cannot prolong the stop beyond the amount of time reasonably required to complete the stop’s mission (again, absent the reasonable suspicion ordinarily demanded to justify detaining an individual). *Id.* at 354-55. Importantly, the length of time required for a law enforcement officer to ask a question regarding an unrelated inquiry, even if it is purely investigatory in nature, by itself is insufficient to transform a reasonable, lawful stop into an unreasonable, unlawful one. See *State v. Griffith*, 2000 WI 72, ¶¶56-61, 236 Wis. 2d 48, 613 N.W.2d 72 (citing *Ohio v. Robinette*, 519 U.S. 33 (1996); and *State v. Gaulrapp*, 207 Wis. 2d 600, 558 N.W.2d 696 (Ct. App. 1996)). To that end, our supreme court has recently stated:

While it is true that such a [frisk] search can be [an annoying, frightening, and perhaps humiliating experience], a request to conduct such a search cannot. In fact, that request is just like “questions seeking information” because it is just seeking information—to wit, whether Mr. Floyd would agree to be searched. What follows the answer to the question may be a non-negligible burden, but that says nothing about the nature of the question itself.

*Floyd*, 377 Wis. 2d 394, ¶28. In another recent case, our supreme court stated, “[The officer’s] question about whether Wright held a [concealed carry weapon] CCW permit did not ‘measurably extend the duration of the stop.’ Obviously, [the] question took some amount of time to ask. However, we view the time it

took ... to ask the CCW question as de minimis and virtually incapable of measurement.” *Wright*, 386 Wis. 2d 495, ¶47.

¶14 Beyond the foregoing, another consideration informs our analysis. Namely, the Supreme Court has consistently eschewed bright-line rules when determining whether law enforcement violated an individual’s Fourth Amendment rights. *See Robinette*, 519 U.S. at 39. Similarly, Wisconsin courts have rejected setting “[a] hard and fast time limit rule” for temporary detentions when considering the reasonableness of a stop’s duration. *See State v. Gruen*, 218 Wis. 2d 581, 590, 582 N.W.2d 728 (Ct. App. 1998) (citation omitted). Rather, the touchstone of the Fourth Amendment has long been—and continues to be—whether the actions of law enforcement were reasonable. *See Robinette*, 519 U.S. at 39. Reasonableness, in turn, is a fact-intensive inquiry, measured in objective terms, by examining the totality of the circumstances. *Id.*

¶15 We conclude that Poplin’s very brief, continued detention of Crone to ask if he could look at the two pill bottles she possessed was reasonable under the Fourth Amendment. To begin, we acknowledge that Poplin’s request to view the pill bottles was unrelated to the traffic stop’s original mission of addressing Crone’s speeding—i.e., the traffic violation that warranted the stop. *See Wright*, 386 Wis. 2d 495, ¶24. His investigation of the two pill bottles was not an ordinary inquiry attendant to the stop. “Typically such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Rodriguez*, 575 U.S. at 355. Additionally, Poplin’s inquiry regarding the two pill bottles plainly was unrelated to his safety. *See Wright*, 386 Wis. 2d 495, ¶¶25-26. Instead, Poplin testified that based on his training and experience, he thought illegal substances could be in the pill bottles.

¶16 Still, Poplin's question regarding the two pill bottles did not violate Crone's Fourth Amendment rights under the totality of the circumstances here. His simple request for Crone's consent to see the pill bottles did not unreasonably extend the traffic stop beyond the amount of time required to complete the stop's mission. In particular, and on this record, his request occurred either contemporaneously with him returning Crone's license or immediately thereafter.<sup>3</sup> Under either scenario, Poplin did not unreasonably extend the stop by merely asking the question. Indeed, the scenario here appears to fit squarely within our supreme court's language in *Floyd* and *Wright*. See *supra*, ¶13.

¶17 A contrary conclusion would create a rule gainsaying Fourth Amendment precedent in two ways. First, such a rule would run afoul of the notion that the length of time required to ask a question is insufficient to transform a lawful stop into an unlawful one, even when the question is investigatory in nature and unrelated to officer safety. See *Floyd*, 377 Wis. 2d 394, ¶28; *Griffith*, 236 Wis. 2d 48, ¶¶56-61 (discussing *Robinette* and *Gaulrapp*). Second, an adoption of Crone's contrary conclusion necessarily would create a rigid,

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<sup>3</sup> Crone takes the position on appeal that Poplin clearly completed the mission for the traffic stop—i.e., returned her driver's license—before he asked for her consent to search the two pill bottles. The record is not as clear on this matter as Crone makes it seem. Poplin testified that he "re-approached the vehicle, returned her driver's license to her, and asked to see the pill bottles." Additionally, neither party incorporates Poplin's narrative, which is attached to the complaint, to provide further clarification of the sequence of events. Therein, Poplin writes: "I re-approached on the driver's side, handed her driver's license and explained to her that she needs to get a current insurance card. I then asked [Crone] to show me the pill bottles in her purse."

To the extent Crone contends Poplin's testimony that he "completed the reason" for the traffic stop "prior to" when he asked Crone for the two pill bottles is dispositive, we note that an officer's subjective beliefs are generally inconsequential when the Fourth Amendment is implicated. See, e.g., *State v. Kramer*, 2009 WI 14, ¶¶26-27, 315 Wis. 2d 414, 759 N.W.2d 598; *State v. Kyles*, 2004 WI 15, ¶23, 269 Wis. 2d 1, 675 N.W.2d 449. More importantly, and as we discuss in this opinion, the precise timing of Poplin's request for consent is inconsequential under the totality of the circumstances presented in this case.

bright-line rule that is historically viewed with disfavor in cases involving the reasonableness of searches and seizures implicating the Fourth Amendment. *See Robinette*, 519 U.S. at 39.

¶18 Crone's arguments on appeal do not dissuade us from the foregoing analysis and conclusions, especially based on existing precedent. She first asserts that *Gaulrapp* (and, by extension, *Robinette*) should not be relied upon because it does not "squarely address" the issues presented, with her also implying that it is no longer good law after *Rodriguez*. She further argues that *Robinette*, a Supreme Court case upon which *Gaulrapp* relied, is inapposite because, in her view, "*Robinette* was not about the legality of an extended stop."

¶19 We disagree that *Robinette* and *Gaulrapp* do not inform the issues presented. *Robinette* held that the Fourth Amendment does not require a lawfully seized defendant be advised that he or she is "free to go" before his or her consent to a search will be recognized as voluntary. *Robinette*, 519 U.S. at 35. In so doing, the Court rejected a bright-line rule requiring a "free to go" statement and concluded that a fact-specific, contextual approach for assessing the voluntariness of a defendant's consent to search was consistent with the Court's Fourth Amendment precedent determining the reasonableness of a search or seizure. *Id.* at 39-40.

¶20 *Gaulrapp*, in turn, addressed whether law enforcement officers were permitted to ask a driver involved in a traffic stop—whom they stopped after observing his vehicle's "loud muffler that was almost dragging on the roadway"—if he had drugs or weapons inside his vehicle, and if they could have consent to search his vehicle and person. *Gaulrapp*, 207 Wis. 2d at 603, 609. This court concluded *Gaulrapp*'s detention "was not unreasonably prolonged by the asking of

one question. After that question, the detention was prolonged because Gaulrapp consented to the search.” *Id.* at 609. We also observed that *Robinette*’s holding was difficult to reconcile with Gaulrapp’s position “that the very asking of the first question about drugs and firearms, without a reasonable suspicion that he possessed either, transformed the legal stop into an illegal stop, making his consent automatically invalid.” *Id.* at 608.

¶21 Crone’s attempts to distinguish *Robinette* and *Gaulrapp* are unpersuasive for a few reasons. First, while *Robinette* involved the voluntariness of a defendant’s consent to search, we find *Robinette* instructive because the Supreme Court’s rejection of a per se rule in favor of the totality of the circumstances approach is consistent with the critical inquiry here—to wit, whether Poplin’s question unrelated to the basis for the traffic stop was reasonable under the totality of the circumstances. Additionally, *Gaulrapp*’s factual similarities involving an officer’s simple request for consent to search are not diminished by *Robinette* not having expressly decided the legality of the extended stop at issue in that case. Indeed, as indicated above, *Gaulrapp* appears to have implicitly answered that the extended traffic stop in *Robinette* was lawful under existing precedent. *See Gaulrapp*, 207 Wis. 2d at 608. In all, we see nothing to suggest that either *Robinette* or *Gaulrapp* is at odds with the Supreme Court’s more recent *Rodriguez* decision and, consequently, is no longer good law. We therefore reject Crone’s attempts to downplay those authorities.<sup>4</sup>

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<sup>4</sup> We do agree with Crone on two points, however. First, *State v. Wright*, 2019 WI 45, 386 Wis. 2d 495, 926 N.W.2d 157, is materially distinguishable and, therefore, not dispositive of the issue on appeal. Second, *Brown*, the case for which we held Crone’s appeal in abeyance, ultimately does not resolve the issue presented. The decision did, however, reiterate the principle that law enforcement may lawfully ask an investigative question unrelated to a traffic stop if doing so does not measurably extend the duration of the stop. *Brown*, 392 Wis. 2d 454, ¶16.

¶22 Crone also asserts that Poplin's request unlawfully extended the traffic stop under the Supreme Court's decision in *Rodriguez*, a case she maintains more "squarely addresses the issue presented" than *Robinette* and *Gaulrapp*. *Rodriguez* involved a K-9 dog sniff unrelated to the mission of the traffic stop. *Rodriguez*, 575 U.S. at 348, 355-56. The officer undisputedly had completed all of the stop's mission-related activities when he asked Rodriguez for permission to conduct a dog sniff, which Rodriguez declined to grant. *Id.* at 352. The officer then instructed Rodriguez to exit the vehicle and wait for a second officer to arrive on the scene. *Id.* Seven to eight minutes had elapsed from the time the stop's mission-related activities had been completed to when the second officer arrived and the dog sniff took place. *Id.*

¶23 The Court concluded that the dog sniff violated Rodriguez's Fourth Amendment rights because it prolonged the stop beyond the time reasonably required to complete its mission. *See id.* at 350-51, 357. In so doing, the Court stated, "The critical question ... is not whether the dog sniff occurs before or after the officer issues a ticket ... but whether conducting the sniff prolongs—*i.e.*, adds time to—the stop[.]" *Id.* at 357 (citations omitted).

¶24 Crone argues *Rodriguez* supports her position and resolves this case in her favor. She maintains that the traffic stop's mission had already been completed when Poplin asked for her consent and that his request added time to the stop in a way that is "absolutely measurable," leaning heavily on *Rodriguez*'s language that "prolongs" means "adds time to."

¶25 Accepting Crone's factual premise, for argument's sake, that Poplin's request occurred immediately after he returned her license, *see supra*, ¶16 & n.3, we are unpersuaded that *Rodriguez* is either dispositive of, or otherwise

supports, her position. Unlike Poplin's stop of Crone, the stop in *Rodriguez* was prolonged many minutes (seven to eight) for law enforcement to conduct an activity (a dog sniff) unrelated to the stop's mission, all without Rodriguez's consent. Poplin's simple request for Crone's consent to view the two pill bottles—which consent Crone readily provided—occurring immediately after he handed her license back—which is a mission-related activity—is materially different.<sup>5</sup> Cf. *State v. Gammons*, 2001 WI App 36, ¶¶3, 19, 241 Wis. 2d 296, 625 N.W.2d 623 (distinguishing *Gaultrapp* by concluding that the traffic stop at issue was transformed into an unlawful detention because during an unrelated investigation, the defendant did not consent immediately to a search of his vehicle but only consented after the threat of a K-9 dog sniff).

¶26 We further disagree with the notion, implicit in Crone's argument, that *Rodriguez* created a rigid rule on when an inquiry unrelated to a traffic stop is unlawful. The quote upon which Crone relies concludes a paragraph discussing that the reasonableness of a seizure is measured by what law enforcement actually did in a particular instance. See *Rodriguez*, 575 U.S. at 357. Notably, the Court specifically rejected the government's argument that "an officer can earn bonus time to pursue an unrelated criminal investigation" if he or she completed expeditiously all mission-related activities. *Id.* Instead, the Court concluded that if an officer can complete mission-related inquiries expeditiously, "then that is the

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<sup>5</sup> To be sure, there would come a point where, after the traffic stop's mission had ended, a delay in actually ending the stop—which would occur, for example, when the officer tells the driver he or she is free to leave, or when the officer returns to his or her vehicle—before asking such a question would impermissibly extend the stop and violate the Fourth Amendment. Indeed, such a delay may not need to be that long for the extension to become unlawful. We merely conclude that, under the facts in this case, such an unreasonable and unlawful delay did not occur.

amount of time reasonably required to complete the stop's mission .... [A] traffic stop prolonged beyond that point is unlawful." *Id.* (citations omitted).

¶27 This context from the Court's decision is important because it demonstrates that the demarcation of when unrelated mission activities unreasonably and unlawfully extend a stop is inexact. *Cf. id.* ("The critical question ... is not whether the dog sniff occurs before or after the officer issues a ticket ...."). Rather, a court assesses the reasonableness of an officer's manner of conducting unrelated mission activities. *Id.* at 354, 357. And, similar to other Fourth Amendment inquiries, reasonableness is determined based on the totality of the circumstances. *See Robinette*, 519 U.S. at 39. A holistic reading of *Rodriguez* therefore illustrates that it did not create the bright-line rule Crone seemingly relies upon in her appellate arguments.

¶28 We emphasize one final point. We disagree with the notion underlying Crone's arguments that Poplin's request for consent violated her Fourth Amendment rights merely because the inquiry occurred at the very end of (or immediately after) the stop, rather than "during" it. To be sure, the timing of when the unrelated investigations in *Rodriguez*, *Wright* and *Floyd* occurred does not mirror precisely when Poplin's unrelated inquiry occurred here. Still, we believe the principles derived from those cases govern our analysis. As discussed above, although the time it takes to ask a question is measurable, the fact that an inquiry is made does not, in and of itself, create the type of unreasonable burden to make an extension of a traffic stop unlawful for Fourth Amendment purposes. That notion is true whether the question occurs in the "middle" of a stop versus at the very end of one. Under the circumstances of this case, we perceive no valid reason why the reasonableness of such a question turns on when it was asked during a lawful encounter. Notwithstanding, we strongly caution that delays

between the proper ending of a traffic stop and when an officer poses an unrelated, investigatory question need not be long at all before the stop's extension becomes unreasonable and, thus, unlawful. *See supra*, ¶25 n.5.

¶29 Having determined that Poplin's simple request for Crone's consent did not unreasonably or unlawfully extend the traffic stop, we now turn to whether her consent to search the two pill bottles was constitutionally valid. We conclude that it was. Crone's consent was constitutionally valid if, under the totality of the circumstances, it was freely and voluntarily given. *See Floyd*, 377 Wis. 2d 394, ¶¶29-30. The record does not indicate Poplin employed any misrepresentation, deception or trickery, nor did he use any threats or physical intimidation. *See id.*, ¶32. Moreover, Crone makes no appellate argument asserting the contrary. Thus, Crone's consent turned the continued encounter into a consensual one, such that the Fourth Amendment was no longer implicated, and Poplin's continued inquiries regarding the pill bottles were lawful. The circuit court therefore did not err by denying Crone's motion to suppress.

*By the Court.*—Judgment affirmed.

Recommended for publication in the official reports.

No. 2018AP1764-CR(C)

¶30 STARK, P.J. (*concurring*). I concur in the result reached by the majority opinion because I agree that it is compelled by binding precedent—specifically, by the Wisconsin Supreme Court’s decision in *State v. Wright*, 2019 WI 45, 386 Wis. 2d 495, 926 N.W.2d 157. I write separately, however, to express concern that the majority’s analysis, as compelled by *Wright*, is inconsistent with the purpose of the Fourth Amendment and fails to properly balance the public and private interests at stake.

¶31 As the majority aptly notes, the tolerable duration of a traffic stop “is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop ... and attend to related safety concerns.” *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citations omitted). “Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* Although the Fourth Amendment “tolerate[s] certain unrelated investigations that d[o] not lengthen the roadside detention,” *id.*, the seizure “remains lawful only ‘so long as [unrelated] inquiries do not measurably extend the duration of the stop.’” *Id.* at 355 (quoting *Arizona v. Johnson*, 555 U.S. 323, 333 (2009)).

¶32 In *Wright*, the Wisconsin Supreme Court held that no Fourth Amendment violation occurred when, during a traffic stop for an unrelated traffic violation, an officer asked the defendant whether he had a permit to carry a concealed weapon (CCW permit) and then completed a CCW permit check. *Wright*, 386 Wis. 2d 495, ¶¶12, 50. The *Wright* court acknowledged that both the officer’s question and the permit check were unrelated to the mission of the stop—

they did not address the traffic violation that formed the basis for the stop, they were not part of the ordinary inquiries incident to the stop, and they did not further the interest of officer safety. *Id.*, ¶¶24, 36-37. Nevertheless, the court concluded that the officer's inquiries did not violate the Fourth Amendment because they did not measurably extend the duration of the stop. *Id.*, ¶¶12, 47-50. As particularly relevant here, the court acknowledged that the officer's "CCW permit question took some amount of time to ask." *Id.*, ¶47. However, the court stated that the time it took the officer to ask the CCW question was "de minimis and virtually incapable of measurement. Thus, the CCW question did not violate the Fourth Amendment in the instant case." *Id.*

¶33 Accordingly, the supreme court in *Wright* held that an officer's asking of a single question unrelated to the mission of a traffic stop does not violate the Fourth Amendment because the negligible amount of time required to ask a question is "de minimis" and thus does not measurably extend the duration of the stop. Under *Wright*, which is binding precedent, I have no choice but to agree with the majority that deputy Poplin did not violate the Fourth Amendment by asking to see the pill bottles in Crone's purse. That question was unrelated to the mission of the stop in that it was not related to the underlying traffic violation, it was not part of the ordinary inquiries incident to the stop, and it was not related to officer safety. *See id.*, ¶24. In addition, as the State correctly concedes, Poplin's question was not supported by reasonable suspicion to expand the scope of the stop to inquire into whether Crone legally possessed the contents of the pill bottles. *See State v. Hogan*, 2015 WI 76, ¶35, 364 Wis. 2d 167, 868 N.W.2d 124. Nonetheless, under *Wright*, the time necessary to ask the question was

“de minimis” and, as such, Poplin’s asking of the question did not violate Crone’s Fourth Amendment rights.<sup>1</sup>

¶34 Although we are bound by *Wright*, I write separately because I am concerned that the supreme court’s holding in that case is inconsistent with the

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<sup>1</sup> According to the majority, *State v. Wright*, 2019 WI 45, 386 Wis. 2d 495, 926 N.W.2d 157, is “materially distinguishable and, therefore, not dispositive of the issue on appeal.” Majority, ¶21 n.4. I disagree. Instead, for the reasons already discussed, I conclude *Wright* directly controls the issue of whether Poplin’s question to Crone impermissibly extended the duration of the traffic stop.

The majority instead relies on *State v. Floyd*, 2017 WI 78, ¶28, 377 Wis. 2d 394, 898 N.W.2d 560, and *State v. Griffith*, 2000 WI 72, ¶¶56-61, 236 Wis. 2d 48, 613 N.W.2d 72, for the proposition that “the length of time required to ask a question is insufficient to transform a lawful stop into an unlawful one, even when the question is investigatory in nature and unrelated to officer safety.” Majority, ¶17. I conclude, however, that both *Floyd* and *Griffith* are distinguishable. The officer’s questions in *Floyd*—i.e., whether Floyd had any weapons or anything that could harm the officer, and whether the officer could perform a search for his safety—were related to officer safety and were therefore part of the “mission” of the traffic stop. See *Floyd*, 377 Wis. 2d 394, ¶28; *Wright*, 386 Wis. 2d 495, ¶24. Here, Poplin’s request to see Crone’s pill bottles was plainly unrelated to officer safety.

In *Griffith*, officers stopped a vehicle that they knew was registered to an individual who did not have a valid driver’s license. *Griffith*, 236 Wis. 2d 48, ¶¶8-10. Griffith, who was later alleged to have been a passenger in the back seat of the vehicle, conceded that the initial stop of the vehicle was lawful. *Id.*, ¶¶13, 27. He argued, however, that the lawful seizure “became unlawful when, having already determined that the driver had no valid license, [an officer] asked the rear passenger his name and date of birth.” *Id.*, ¶28. In rejecting Griffith’s argument, the supreme court noted that “the brief period of time it takes to ask a question does not unreasonably prolong a temporary detention.” *Id.*, ¶56. The court also concluded, however, that “asking the rear passenger for identification furthered several legitimate public interests and was reasonably related to the purpose of the stop.” *Id.*, ¶49. In other words, the question was part of the mission of the traffic stop, which is undisputedly not the case here.

Moreover, the *Griffith* court’s statement that “the brief period of time it takes to ask a question does not unreasonably prolong a temporary detention” should not be read in isolation. See *id.*, ¶56. The *Griffith* court did not hold that the questioning in that case was permissible simply because of the minimal amount of time it took. Instead, the *Griffith* court engaged in a balancing analysis, in which it weighed “the public interest served by the questioning against the incremental liberty intrusion that resulted from the questioning.” *Id.*, ¶38. As discussed below, I conclude such a balancing analysis would be a more appropriate means of assessing the reasonableness of Poplin’s question to Crone in this case, instead of considering only the amount of time required to ask that question.

“basic purpose” of the Fourth Amendment—that is, “to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” See *Camara v. Municipal Ct. of City & Cnty. of San Francisco*, 387 U.S. 523, 528 (1967). That purpose is not served by enforcing a blanket rule permitting law enforcement officers to extend traffic stops to conduct unrelated inquiries that are unsupported by reasonable suspicion, as long as those inquiries do not take longer than the amount of time needed to ask a question. A single question may, under certain circumstances, constitute precisely the type of arbitrary invasion into an individual’s privacy or security against which the Fourth Amendment is intended to protect.

¶35 I therefore submit that the negligible amount of time needed to ask an unrelated question during a traffic stop cannot be the sole criterion by which the reasonableness of the extension of the stop is judged. Instead, I would look to *Brown v. Texas*, 443 U.S. 47, 50 (1979) (citations omitted), where the United States Supreme Court explained that the reasonableness of a seizure that is less intrusive than a traditional arrest depends on “a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.” “Consideration of the constitutionality of such seizures involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.” *Id.* at 50-51.

¶36 In *State v. Griffith*, 2000 WI 72, ¶37, 236 Wis. 2d 48, 613 N.W.2d 72, the Wisconsin Supreme Court recognized that *Brown* “sets forth the framework that guides our examination of whether the police conduct” during a traffic stop constitutes an unreasonable seizure for Fourth Amendment purposes. The defendant in *Griffith* did not challenge the reasonableness of the initial traffic

stop, but he argued subsequent police conduct during the stop—namely, an officer’s asking a back seat passenger for identifying information—violated the Fourth Amendment. *See id.*, ¶38. The court explained that under those circumstances, the issue was “whether the incremental intrusion that resulted from the identification questions was unreasonable.” *Id.* Consistent with *Brown*, the court stated the resolution of that issue required it to “weigh the public interest served by the questioning against the incremental liberty intrusion that resulted from the questioning.” *Id.*

¶37 In conducting that analysis, the *Griffith* court first concluded that “permitting law enforcement officers to request identifying information from passengers in traffic stops serves the public interest in several ways that are reasonably related to the purpose of a traffic stop.” *Id.*, ¶45. First, the court stated there is a public interest in completing the investigation of the traffic violation that justified the stop, which might include obtaining a passenger’s identifying information. *Id.*, ¶46. Second, the court stated it was reasonable for the officers in *Griffith* to request the back seat passenger’s identifying information in order to determine whether he was licensed to drive, as they had already learned that the driver and another passenger did not have valid licenses. *Id.*, ¶47. The court reasoned that there is a public interest “in determining whether a car must be towed at public expense or may be driven away by a private party,” and “[p]ermitting police officers to talk to passengers during a traffic stop will further this interest.” *Id.* Third, the court stated there is a “general public interest in attempting to obtain identifying information from witnesses to police-citizen encounters,” as those individuals may later be able to assist police in locating the person who violated the law and may also be able to provide information about

what occurred during the stop if questions arise about law enforcement's conduct.

*Id.*, ¶48.

¶38 Turning to the private side of the balance, the *Griffith* court noted that: (1) the traffic stop took place in public view; (2) the entire encounter took only a few minutes; (3) the back seat passenger had the right to refuse to answer the identification questions; (4) an officer's mere posing of a question does not constitute a seizure under the Fourth Amendment; and (5) the time needed to ask the identification questions was "very brief." *Id.*, ¶¶50-55. The court then concluded:

In sum, on the private side of the equation, we find that the additional interference with the passenger's personal liberty that resulted from the identification questions was minimal. The passenger was already seized pursuant to a lawful traffic stop. The only change in the passenger's circumstances that resulted from the questioning is that rather than sitting silently while being temporarily detained, he had to decide whether to answer the officer's questions. The passenger probably felt some obligation to respond to the officer's questions, but he was under no legal obligation to do so and could not have been prosecuted for refusing to respond.

Weighing the public interest served by permitting police to request identifying information from passengers against the incremental intrusion upon individual privacy interests, we conclude that the public interests are substantial and the interference with private liberty interests is *de minimis*. We therefore hold that the identification questions did not transform the reasonable search into an unreasonable one under the circumstances of this case.

*Id.*, ¶¶62-63.

¶39 Absent our supreme court's holding in *Wright*, I would apply the type of balancing analysis set forth in *Brown* and *Griffith* and conclude that Poplin's extension of the traffic stop to ask about the pill bottles in Crone's purse

was unreasonable and therefore violated the Fourth Amendment. Poplin stopped Crone for speeding—a relatively minor civil forfeiture offense—at 9:00 a.m. The State concedes that he had no reasonable suspicion to ask Crone about the pill bottles he saw in her purse. Although there is undoubtedly a public interest in ensuring that individuals who are stopped for speeding are not operating while under the influence of drugs, Poplin did not testify that anything about either Crone’s driving or her behavior during the stop made him believe that she was impaired. And, while Poplin observed two pill bottles in Crone’s purse, he had no reason to believe that those bottles did not contain legal prescription medications. Under these circumstances, there was minimal—if any—public interest in questioning Crone about the pill bottles. Unlike the identification questions in *Griffith*, Poplin’s question about the pill bottles was not necessary to complete his investigation of the speeding violation, to determine the identity of potential witnesses, or to serve another purpose necessitated by the stop, such as determining who might be able to move a stopped vehicle out of a private parking lot.

¶40 On the other hand, Poplin’s question about the pill bottles interfered with Crone’s significant privacy interest in her own medical information. As in *Griffith*, Crone’s stop was conducted in the public view, Poplin’s question took only a few seconds, and Crone could have declined to answer it. Unlike in *Griffith*, however, the question in this case pertained to Crone’s private medical information. Our society recognizes the sensitive nature of a person’s private medical information and therefore treats such information as being highly confidential. *See, e.g.*, WIS. STAT. § 146.82(1) (2019-20) (stating that all patient health care records “shall remain confidential”). The officer in *Griffith* merely asked the back seat passenger to provide his name and date of birth—innocuous

identifying information that individuals are routinely asked to provide in various facets of day-to-day life. An officer's request for such innocuous information does not impact an individual's privacy interest in the same way as an officer's request that a person disclose his or her confidential medical information.

¶41 On these facts, I would conclude that Crone's significant interest in keeping her confidential medical information private outweighed the minimal—or nonexistent—public interest served by Poplin questioning her about the pill bottles in her purse. Although the time needed to ask about the pill bottles may have been brief, the nature of the intrusion, and the lack of any significant public interest supporting it, convinces me that under the totality of the circumstances the extension of the traffic stop to ask about the pill bottles was unreasonable. The question was, quite simply, an arbitrary invasion of Crone's privacy by the government—the very evil against which the Fourth Amendment was intended to protect.

¶42 Before closing, I pause to address what I perceive to be two other deficiencies in the majority's analysis, as compelled by our supreme court's holding in *Wright*. First, the majority emphasizes that the United States Supreme Court “has consistently eschewed bright-line rules when determining whether law enforcement violated an individual's Fourth Amendment rights.” Majority, ¶14. The majority then correctly asserts that the “touchstone” of the Fourth Amendment is reasonableness, and that reasonableness “is a fact-intensive inquiry, measured in objective terms, by examining the totality of the circumstances.” *Id.*

¶43 In this case, however, it is actually the majority that applies a bright-line rule in concluding that Poplin's question to Crone about the pill bottles did not violate the Fourth Amendment. Consistent with *Wright*, the majority

concludes Poplin's question did not unreasonably extend the traffic stop because "the length of time required to ask a question is insufficient to transform a lawful stop into an unlawful one, even when the question is investigatory in nature and unrelated to officer safety." Majority, ¶17. That is a bright-line rule—under *Wright* and the majority's analysis, a single question unrelated to the mission of a traffic stop will never unreasonably extend the duration of a traffic stop and therefore will never violate the Fourth Amendment. The analysis I propose would instead consider the totality of the circumstances surrounding the extension of the stop in order to determine whether that extension was reasonable for Fourth Amendment purposes.

¶44 My second reservation regarding the majority/*Wright* analysis is this: although the majority and *Wright* apply a bright-line rule that may be employed in cases where an officer extended a traffic stop by asking a single question, they provide no guidance for other cases as to how long a stop may be extended by unrelated inquiries before the extension stops being "de minimis" and becomes unreasonable. A single question may take only a few seconds to ask. But what if the officer asks two questions? Or, what if the officer asks a series of interrelated questions that last twenty seconds, or even one minute? Would the extension of the traffic stop be unreasonable under those circumstances? The majority/*Wright* analysis provides no guidance in such cases. In contrast, a totality of the circumstances approach that balances the public and private interests

at stake is equally applicable regardless of the length of time by which unrelated inquiries extend a traffic stop in a particular case.<sup>2</sup>

¶45 In summary, while I conclude that the result reached by the majority in this case is compelled by our supreme court's holding in *Wright*, I am concerned that the majority/*Wright* approach is inconsistent with the Fourth Amendment's purpose of safeguarding individuals' privacy and security against arbitrary governmental intrusions. If I were writing on a blank slate, I would therefore apply the type of balancing analysis set forth in *Brown* and *Griffith* and conclude that Poplin's extension of the traffic stop to inquire about the pill bottles in Crone's purse was unreasonable and violated the Fourth Amendment. *Wright* is, however, binding precedent. I therefore respectfully concur.

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<sup>2</sup> I agree with the majority that for purposes of determining whether unrelated inquiries unreasonably extended a traffic stop, it makes no difference whether the unrelated inquiries occurred during the course of the stop or at its conclusion. See Majority, ¶28. I note, however, that the balancing analysis that I would apply in this case to assess the reasonableness of the extension applies equally well regardless of whether the unrelated inquiries occurred during or at the end of the stop.



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Candace K. Biskup, Official Court Reporter for the Honorable John M. Yackel  
10610 Main Street, Suite 244, Hayward, WI 54843 (715) 638-3204

1 THE COURT: We'll go on record in 17CM207,  
2 State of Wisconsin versus Kimberly Dale Crone. Ms.  
3 Crone appears in person with her attorney, Martin  
4 Jarvis. The State is represented by DA Bruce Poquette.  
5 This is the time set for a preliminary hearing. No,  
6 it's a motion hearing, excuse me. And it's a motion to  
7 suppress so that is why Investigator Poplin is sitting  
8 next to DA Poquette. Mr. Poquette, if you want to  
9 proceed.

10 MR. POQUETTE: Yes, sir. I would call  
11 Deputy Poplin.

12 (Jay Poplin duly sworn by the clerk)

13 THE COURT: Proceed whenever you are ready,  
14 Mr. Poquette.

15 **DIRECT EXAMINATION**

16 BY MR. POQUETTE:

17 Q. Thank you, your Honor. Sir, state your full name  
18 and spell your last for the record, please.

19 A. My name is Jay Poplin. Last name is P-O-P-L-I-N.

20 Q. In April of 2017 were you employed with the  
21 Sawyer County Sheriff's Department?

22 A. Yes.

23 Q. In what capacity?

24 A. I was a patrol deputy.

25 Q. Around 9 o'clock in the morning do you recall

1 where your location may have been?

2 A. It would have been near County Highway CC and  
3 County Highway H.

4 Q. Let me back up. I apologize. I didn't give you  
5 a date. I just told you a month and a year. Let me  
6 focus your attention on April 30. Would the answer have  
7 been the same then?

8 A. Yes.

9 Q. Sorry.

10 A. I thought that was the day we were talking about.

11 Q. That is the day we are talking about. All right.  
12 What were doing at that location?

13 A. Normal patrol duties, moving patrol.

14 Q. What, if anything, unusual did you observe?

15 A. I observed a vehicle coming towards me. I  
16 estimated the speed to be over 55 miles an hour. I  
17 activated my radar to confirm the vehicle's speed and it  
18 was going 66 miles an hour so I made a traffic stop on  
19 the vehicle for speeding.

20 Q. All right. I assume the vehicle pulled over?

21 A. Yes.

22 Q. And did you make contact with anybody inside the  
23 vehicle?

24 A. Yep. There was a lone occupant. Kimberly Crone  
25 was the driver.

1 Q. Did you identify her in some manner?

2 A. A Wisconsin driver's license.

3 Q. All right. Tell us-- I assume that you  
4 approached her vehicle; is that correct?

5 A. Correct.

6 Q. Tell us how that occurs.

7 A. I approached on the driver's side, spoke to Ms.  
8 Crone. I asked her for her driver's license and proof  
9 of insurance. She started digging through her purse for  
10 proof of insurance. I observed two pill bottles while  
11 she was doing that.

12 Q. All right. Then what did you do?

13 A. I went back to my patrol vehicle to check her  
14 driving status and they said that she had a valid  
15 driver's license. I then re-approached the vehicle,  
16 returned her driver's license to her, and asked to see  
17 the pill bottles.

18 Q. Did she hand the pill bottles to you?

19 A. She handed me the first one and that was for  
20 Gabapentin. That one had a valid prescription label  
21 with her name on it. Then I asked her for the second  
22 one which did not have a label on it.

23 Q. Did she hand the second pill bottle to you?

24 A. Yes.

25 Q. Did you look inside that particular pill bottle?

1 A. Yes.

2 Q. Did you find anything inside?

3 A. There was multiple pills that appeared to be  
4 multiple different kinds. They were different shapes  
5 and colors.

6 Q. All right. Were you able to identify any of the  
7 pills that were inside?

8 A. At the scene I was not. I asked her if she had a  
9 prescription for whatever they were. Some of them  
10 matched the ones in the one she had a valid prescription  
11 for so I believed those to be Gabapentin. And some of  
12 the other ones looked like Ibuprofen based on training  
13 and my experience. And I returned those to her as she  
14 had a valid prescription for the Gabapentin.

15 Q. All right. So you returned the Gabapentins that  
16 were in the bottle that didn't have a label on it; is  
17 that correct?

18 A. Yep.

19 Q. And you returned the ibuprofen that was in the  
20 bottle that didn't have a label on it?

21 A. Yes.

22 Q. Was there still other pills in that bottle?

23 A. Yes.

24 Q. All right. Let's talk about those. What were  
25 those?

7

1           A. There was two other kinds of pills. I asked if  
2 she had a prescription. At first she said she did.  
3 Then I provided her my business card so she could show  
4 proof of that at a later date. Then she admitted that  
5 she did not have one later, but she was on her way to  
6 work. I did not want to delay her any further. She was  
7 speeding because she was on her way to work she told me.  
8 I seized the pills that I didn't know what they were in  
9 the pill bottle with no label and looked them up at a  
10 later date. There was multiple of each kind. One kind  
11 Lorazepam which is a controlled substance. The other  
12 kind I can't say it properly but if I could read my  
13 report I could spell it. And that one was available by  
14 prescription only but it was not a controlled substance.

15           Q. When you first saw these pill bottles can you  
16 tell us again if they were located inside her purse?

17           A. Yes.

18           Q. Meaning she had moved the contents of her purse  
19 around such that the pill bottles were in plain view  
20 from where you were standing?

21           A. Yep.

22           Q. Could you see at that time that the one pill  
23 bottle didn't have a label on it?

24           A. No, I just saw pill bottles, caps and I guess it  
25 would be like the orange colored pill bottles. And I

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1 wasn't sure if there were labels of either of them.

2 Q. So then you just simply asked to see them; is  
3 that correct?

4 A. Correct.

5 MR. POQUETTE: Nothing on that, or no more  
6 questions, Judge. Thank you.

7 THE COURT: Mr. Jarvis.

8 CROSS-EXAMINATION

9 BY MR. JARVIS:

10 Q. Is it fair for me to say that you completed the  
11 reason for your stop prior to asking her for the pill  
12 bottles?

13 A. You mean completed the reason for her speeding?

14 Q. Yeah.

15 A. Yes, but in my initial contact is when I saw them  
16 and I was going to start a drug investigation and look  
17 further into the pill bottles.

18 Q. When you-- tell me the exact words you used to  
19 get her to give you the pill bottles?

20 A. Can I see them?

21 Q. Okay.

22 A. I mean, I believe I said can I see the pill  
23 bottles.

24 Q. Okay. Did you ever tell her prior to that that  
25 she was free to leave?

1 A. I don't believe I did.

2 Q. Did you consider her free to leave?

3 A. No, because I was still on a traffic stop with a  
4 drug investigation that started when I saw the bottles.

5 Q. So what reason did you have to believe that she  
6 didn't have a valid prescription and it was, thus, an  
7 illegal possession of these pills, you know, prior to  
8 looking at the bottles?

9 A. Based on training and experience I've found  
10 multiple substances in pill bottles anywhere from  
11 marijuana, to illegal pills, to other controlled  
12 substances.

13 Q. Okay. Based on just life experience, I mean, a  
14 lot of people have valid prescriptions for pills and  
15 carry them around for with them, correct?

16 A. Correct.

17 Q. And at that time they could have just as well  
18 been as far as you were concerned a valid prescription  
19 or an invalid prescription?

20 A. Correct. If they both would have had a label on  
21 it I would have given them back and released her.

22 Q. Okay. Did you have any particular reason to  
23 think that there wasn't a prescription prior to looking  
24 at the bottles?

25 A. Just based on prior law enforcement training and

1 experience I have found illegal substances in pill  
2 bottles.

3 MR. JARVIS: Okay. That is all I have.

4 THE COURT: Anything else, Mr. Poquette?

5 MR. POQUETTE: No.

6 THE COURT: You are excused. Any further  
7 witnesses, Mr. Poquette?

8 MR. POQUETTE: No.

9 THE COURT: Any witnesses, Mr. Jarvis?

10 MR. JARVIS: No, your Honor.

11 THE COURT: All right. Mr. Jarvis, I want  
12 to start a little bit of discussion here with you. I  
13 think, at least my initial reaction is that if Deputy or  
14 Investigator, or at that time it was Deputy Poplin asked  
15 her, can I see the pill bottles-- Ms. Crone, listen to  
16 your attorney's advice. Okay?

17 THE DEFENDANT: (Nodded in the affirmative).

18 THE COURT: If Deputy Poplin had said can I  
19 see your pill bottles and she said, no. Then it went  
20 through all of this and eventually searched her purse  
21 and got them and found all of this stuff, how would you,  
22 what would your reaction to that be?

23 MR. JARVIS: Well I would wondering if there  
24 is reasonable suspicion or probable cause.

25 THE COURT: Because wouldn't that be an

1 expansion then or a situation where then anybody you see  
2 that have them, have these prescription pill bottles,  
3 I'm going to search them?

4 MR. JARVIS: That is correct.

5 THE COURT: And I don't think that at a  
6 motion hearing I have to take the officer's, you know,  
7 whether or not he was expanding this into a drug  
8 investigation or not. I don't know if that is  
9 necessarily relevant. But isn't the statement by him,  
10 can I see the pill bottles and she hands them over-- she  
11 hands them over. I mean, doesn't he have the right to  
12 say, hey, can I search your car? Sure. Can I look in  
13 your trunk? Sure.

14 MR. JARVIS: Well I will address this as  
15 best I can. When I first came in here I expected the  
16 officer would say in my mind she was free to leave. I  
17 just hadn't said that. Because I returned her driver's  
18 license and given her a warning or talked to her about,  
19 you know, whatever. But he didn't. He said  
20 subjectively she was not free to leave yet because he  
21 felt he had reasonable suspicion.

22 THE COURT: Probable cause.

23 MR. JARVIS: Yes, probable cause.

24 THE COURT: Because he might have thought at  
25 that point I'm going to arrest her and she is going

1 resist. I mean, no disrespect to Deputy Poplin. Do I  
2 even care what his frame of mind was? I mean, on some  
3 level it's helpful but--

4 MR. JARVIS: I would say you do because if  
5 she just ignored him and driven off we would have had a  
6 problem in this case since he would have subjectively  
7 said, well she was free to go. If she had done that he  
8 would have gone, oh well. I guess she is not staying  
9 around to answer questions. Typically what I see in a  
10 case like this is once the reason, the primary reason  
11 for a stop is completed and there is not reasonable  
12 suspicion, an officer will go you are free to leave and  
13 then he will go, hey, can I ask you a question? So it's  
14 a type of badger stop, old school. You clean the slate  
15 and then you go, do you mind if I have a look at those  
16 pill bottles?

17 In this case, you know, she has been stopped  
18 and pulled over, her driver's license taken. And  
19 according to the officer the first part, you know, the  
20 original stop was because of the speeding and he  
21 completed that part. But the way I take it is he felt  
22 he had reasonable suspicion to continue an investigation  
23 into whether these drugs were legal or illegal because  
24 he had just seen the pill bottles and had no other  
25 information. And an element is that they are illegal.

1                   And, you know, my mom drives around with  
2 lots of pill bottles. You know, those are all legal  
3 prescriptions. You know, many of us as we get older  
4 have prescriptions that we carry around all of the time.  
5 And I don't think simply having a bottle without further  
6 information is good reason for an officer, you know, to  
7 continue the stop. I believe the officer would need to  
8 formally break up the stop and just say, like ideally I  
9 would like to see the statement you are free to go but  
10 can I ask you a few questions.

11                   THE COURT: Can I see the pill bottle. If  
12 he said that you would say that is fine?

13                   MR. JARVIS: If he had said she was free to  
14 go I would say you followed the rules. .

15                   THE COURT: Mr. Poquette?

16                   MR. POQUETTE: It's just like a drunk  
17 driving stop. If you stop somebody for speeding and  
18 walk up to the window and now you smell the smell of  
19 alcohol you don't say, all right. You are free to go,  
20 walk away and let them drive away, and then pull them  
21 over and then do the OWI stop. It would be no different  
22 if she was digging in her purse and out pops an empty  
23 bottle of liquor, or out pops a bag of green, leafy  
24 substance that the officer thinks maybe that is an  
25 illegal substance.

1           It could be not an illegal substance but  
2 they still have the opportunity now during his  
3 investigation to ask, hey, can I see what is in the bag,  
4 or can I see what is in the pill bottles? Sure, here  
5 you go. The reasonable suspicion can grow as you are  
6 making contact. I think the OWI case is "Renz". I  
7 don't know if there is other cases that talks about  
8 continuing the stop.

9           THE COURT: And I get all of that. And  
10 usually with an OWI stop you stop them for speeding and  
11 then, you know, okay. Or if, you know, there was  
12 speeding and then you would say, well gee I smell  
13 alcohol. Or oh, you were speeding and I see an empty  
14 liquor bottle. Maybe that is what caused the speeding.

15           I agree with you that on some level the  
16 statement by the deputy to say, can I see the pill  
17 bottle, is of such a minimal intrusion. I mean, it's  
18 not like, can I search your car. Gee, that is going to  
19 take 5 or 10 minutes here. Hey, can I see the bottles  
20 or can I see that liquor bottle down there. Is it  
21 empty? I mean, I see that. I mean, is that all-- is  
22 this a drug investigation? Is that what the deputy  
23 basically stated or is it more of just almost an  
24 innocuous statement at the end of this traffic stop that  
25 is minimal intrusion that is permissible?

1           And if she complies with it and gives it to  
2 him, hey, can I-- you know, is there meth in the glove  
3 box? Oh, okay. You know, I mean he can ask. Or which  
4 way should I be looking at it more? Is it more than  
5 just the expansion of a stop into a drug investigation  
6 simply based on the pill bottles, or is it more at the  
7 tail end of a traffic stop regarding of what the deputy  
8 says and the statement is just a very minimum intrusion  
9 of, hey, can I see the pill bottles and she hands them  
10 over?

11           MR. POQUETTE: You can let counsel answer  
12 that but I think under either analysis it's the same  
13 result. But I'll let counsel argue what he thinks.

14           MR. JARVIS: I would like the officer and I  
15 believe he will tell us what he honestly felt at the  
16 time. But from his testimony I believe he pulled her  
17 over for speeding and dealt with the traffic issues. He  
18 felt that there was reasonable suspicion to investigate  
19 it further and he finished that up after he returned her  
20 driver's license. That is the way I read it. But the  
21 officer knows better.

22           THE COURT: The Court's findings are that on  
23 April 30, 2017 at approximately 9 a.m. at the  
24 intersection of County CC and H Deputy Poplin was on  
25 patrol, saw a vehicle appearing to be traveling over the

1 speed of 55 miles an hour. He activated his radar and  
2 clocked her at 66 miles an hour. He pulled her over for  
3 a traffic stop for speeding. He made contact with the  
4 driver. He confirmed that the driver was Kimberly  
5 Crone. Asked for her driver's license and proof of  
6 insurance.

7           When she was digging through her purse for  
8 proof of insurance he saw what he identified as two pill  
9 bottles and went back to his patrol vehicle to run her  
10 license and found that the license was, that she was  
11 valid. No warrants. Nothing there. He re-approached  
12 the car. In his mind at that point he was going to  
13 expand this into a, or he was going to expand it into a  
14 drug investigation. I think he basically testified that  
15 based on his experience there is often contraband,  
16 illegal substances that are placed in pill bottles to  
17 conceal them. And so he comes back to the vehicle,  
18 hands back the license, and proof of registration or the  
19 insurance, and asks Ms. Crone, can I see the pills. Can  
20 I see the pill bottles is what I believe he said.

21           And she handed them over. He opened them up  
22 and saw that one was a valid prescription for  
23 Gabapentin. The other one was a mixture of different  
24 pills and he did not have access to or did not look and  
25 see what those pills were at that time but simply took

1 her information, returned the valid prescription to her  
2 along with what he identified as ibuprofen, and she went  
3 on her way to work. She was released. Then he had an  
4 opportunity with the seized pills to determine that they  
5 were of a class that needed prescriptions and that she  
6 admitted that she didn't have prescriptions for them.

7           It seems to me that based upon the deputy's  
8 training and experience, and I am very, very, very  
9 cautious about this fact that well, you can just simply  
10 look at somebody's pill bottles. But what he did and  
11 the statements that he made of, can I see your pill  
12 bottles, was of a very minimal intrusion. This wasn't a  
13 situation where he said, okay. I'm going to have to  
14 take you out of the car, ma'am. And I'm going to call  
15 the drug dog and I'm going to have the dog sniff the  
16 pill bottles, and you are going to sit here in my squad  
17 car. You are going to be under-- you are under  
18 custody. It's of a very minimal-- I mean, I guess the  
19 fact that he found something that appeared to be  
20 possessing a controlled substance without a  
21 prescription, she was still let on her way.

22           So I think the argument that somehow it was  
23 intrusive or unduly intrusive, or burdensomely intrusive  
24 I don't think holds water. I'm not going to get into  
25 the hypothetical but if he asked her to see the pill

1 bottles and she said no and then he took further steps,  
2 I'm not going to speculate as to how the Court would  
3 rule. There is too many hypotheticals. We will have to  
4 wait until that situation arises. But the fact of the  
5 matter is is that she turned those pill bottles over  
6 him. His statement to her was of a nature that was  
7 very, very straightforward and did not, didn't require a  
8 tremendous amount of additional time. She complied.  
9 She turned it over and she didn't object at all or  
10 anything like that.

11 So the Court is going to deny the motion and  
12 find that it was a valid expansion under these very  
13 limited circumstances as to how the deputy approached it  
14 and how she responded. And are we set for anymore  
15 dates, Mr. Jarvis, on this?

16 MR. JARVIS: No, I think we just need to get  
17 a date where we are likely to wrap the thing up. So I  
18 don't know if you have a date for us on a Tuesday maybe?

19 THE COURT: Okay. April 24 at 1:30?

20 MR. JARVIS: Sure.

21 THE COURT: All right. Okay. We are  
22 adjourned on that matter.

23 MR. POQUETTE: You said April 24 at 1:30?

24 THE CLERK: Yes.

25 MR. POQUETTE: Apparently my listening

1 skills have left.

2 CERTIFICATION

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I, Candace K. Biskup, hereby certify that I was the court reporter for Circuit Court, Sawyer County, on February 2, 2018 and that I have carefully compared the foregoing pages of my stenographic notes, and that the same is a true and correct transcript.

Dated at Hayward, Wisconsin this 18th day of July, 2018.

Electronically signed

\_\_\_\_\_  
Candace K. Biskup, Official Court Reporter  
For the Honorable John M. Yackel

Candace K. Biskup, Official Court Reporter for the Honorable John M. Yackel  
10610 Main Street, Suite 244, Hayward, WI 54843 (715) 638-3204

STATE OF WISCONSIN                      CIRCUIT COURT                      SAWYER COUNTY

State of Wisconsin vs. Kimberly Dale Crone                      **Judgment of Conviction**  
 and Sentence to the  
 County Jail/Fine/Forfeiture

Date of Birth: 07-22-1968                      Case No. 2017CM000207

FILED  
 04-24-2018  
 Clerk of Circuit Court  
 Sawyer County, Wis.

The defendant was found guilty of the following offense(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
1	Possession of Controlled Substance	961.41(3g)(b)	No Contest	Misd. U	04-30-2017		04-24-2018

The defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Begin date	Begin time	Agency	Comments
1	04-24-2018	Costs					Pay \$443 costs including DE must provide DNA sample and pay applicable \$200 surcharge. Pay obligation within 30 days or apply to the Clerk of Court for a payment plan within 30 days and pay the \$15.00 payment plan fee.

**Obligation Detail:**

Ct.	Schedule	Amount	Days to Pay	Due Date	Failure to Pay Action	Victim
1	DNA Analysis Surcharge	200.00	30	05-24-2018	Collection Agency	
1	Misdemeanor Court Costs	243.00	30	05-24-2018	Collection Agency	

**Obligation Summary:**

Ct.	Fine & Forfeiture	Court Costs	Attorney Fees	<input type="checkbox"/> Joint and Several Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge	Totals
1		163.00			13.00	67.00		200.00	443.00

**Total Obligations: 443.00**

It is adjudged that 0 days sentence credit are due pursuant to §973.155, Wisconsin Statutes.

It is ordered that the Sheriff take the defendant into custody.

**THIS IS A FINAL ORDER/JUDGMENT FOR PURPOSES OF APPEAL.**

**BY THE COURT:**

**Distribution:**

John M. Yackel, Judge  
 Bruce Robert Pogue, District Attorney  
 Martin Jarvis, Defense Attorney  
 County Sheriff

Electronically signed by Jill C Tonn

Circuit Court Judge     Clerk     Deputy Clerk

April 24, 2018  
 Date