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DOCUMENT A.....DECISION OF COURT OF APPEALS



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DISTRICT III

December 28, 2021

To:

Hon. Gregory B. Huber
Circuit Court Judge
Electronic Notice

Michael J. Herbert
Electronic Notice

Shirley Lang
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Theresa Wetzsteon
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2021AP53-CR

State of Wisconsin v. Angel L. Dupee (L. C. No. 2017CF432)

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

Summary disposition orders 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).

Angel Dupee appeals from a judgment of conviction for one count of felony bail jumping; two counts of misdemeanor bail jumping; and one count of possession of drug paraphernalia. Dupee argues that the methamphetamine drug paraphernalia found in her vehicle, and the statements she made to law enforcement, must be excluded because police unreasonably extended a traffic stop for the arrival of a K-9 unit. Based upon our review of the briefs and

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record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2019-20).¹

Dupee was a passenger in a vehicle stopped for traffic violations. The driver told police that he had recently purchased the vehicle, that he did not have any proof of sale, insurance or registration, and that he had put false license plates on the car. The officer obtained identification from the occupants, returned to his squad car, and called for assistance from a K-9 unit while he investigated the vehicle's ownership and its occupants to determine whether the vehicle had been stolen. The officer decided to issue two written warnings, but because of the ownership discrepancies and improper registration, the officer had to manually enter all the information pertaining to the warnings. Before the officer had completed and issued the written warnings, the K-9 unit arrived and immediately alerted to narcotics within the vehicle. A plastic baggie was discovered in the front seat, and a plastic straw with a forty-five-degree angle cut off was found in Dupee's purse, which contained white powder that tested positive for methamphetamine.

A motion to suppress was denied, and Dupee entered pleas to one count of felony bail jumping, two counts of misdemeanor bail jumping and the possession of drug paraphernalia count. Another count of felony bail jumping as well as charges in an unrelated case were dismissed and read in. The circuit court adopted the parties' joint recommendation and withheld sentence, placed Dupee on two years' probation, and imposed ninety days' conditional jail time that was "stayed and only used for rule violations."

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

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Dupee does not challenge the reasonableness of the stop, nor does she argue that the mere call for the K-9 unit itself impermissibly extended the stop—and there is no evidence in the record on appeal regarding the time it took for the officer to accomplish the call itself. Rather, Dupee argues the police “unnecessarily and unreasonably” extended the traffic stop for the arrival of the K-9 unit.

This case falls squarely within the holding of *Illinois v. Caballes*, 543 U.S. 405, 407-08 (2005). The dog sniff here did not measurably increase the duration of the stop because the dog sniff occurred while the officer was still reasonably completing the traffic stop’s mission, which was multi-faceted: to investigate the suspicious circumstances of the vehicle’s false license plates and ownership issues, to investigate the occupants for warrants, and to determine whether to issue a citation or a warning for traffic law violations. *See id.* at 407.

The circuit court found that approximately twelve minutes after the initial stop, the dog arrived and alerted to the drugs. The court found the officer was diligent during the traffic stop and did not extend the stop improperly for the purpose of trying to obtain a K-9 search. The court’s findings are not clearly erroneous. *See* WIS. STAT. § 805.17(2). Once the K-9 alerted to the presence of narcotics in the vehicle, an extension of the initial stop was constitutionally justified by the additional reasonable suspicion of a crime. *See, e.g., State v. Malone*, 2004 WI 108, ¶24, 274 Wis. 2d 540, 683 N.W.2d 1. The search of the vehicle was justified because the dog alert provided probable cause. *See State v. Miller*, 2002 WI App 150, ¶¶11-15, 256 Wis. 2d 80, 647 N.W.2d 348.

This case is distinguishable from *Rodriguez v. United States*, 575 U.S. 348, 352 (2015), where the K-9 unit arrived *after* the officer completed the mission of the traffic stop. Quite

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simply, as the circuit court properly found, when the K-9 unit arrived in this case, the officer had not yet completed the stop's mission.

Dupee also argues the officer called the K-9 unit without any reasonable basis to conclude that persons within the vehicle possessed drugs. However, the officer required no separate quantum of suspicion to call the K-9 unit during his investigation and enforcement of the traffic stop, again because he did not extend the traffic stop beyond its mission. In any event, a dog sniff is not a search, because the dog sniff performed on the exterior of the car "does not implicate legitimate privacy concerns." See *Caballes*, 543 U.S. at 409.

Dupee's reliance upon *State v. Arias*, 2008 WI 84, ¶34, 311 Wis. 2d 358, 752 N.W.2d 748, *abrogated on other grounds by Rodriguez*, 575 U.S. at 356-57, is also misplaced. Dupee argues that in *Arias*, the canine was "already on the scene" so the "delay" to conduct the dog sniff "was seventy-eight seconds and the entire process took just over four minutes," whereas in the present case "the delay itself was twice that long." Again, there was no delay of the dog sniff in the present case because the K-9 unit arrived and the dog alerted before the officer completed the mission of the traffic stop. *Arias* is thus inapposite.

Dupee cites *State v. Brown*, 2020 WI 63, ¶26, 392 Wis. 2d 454, 945 N.W.2d 584, in support of her claim that the driver's infractions were minor and the "delay" caused by manually entering the information for the written warnings did "not involve questions related to officer safety" and was therefore unreasonable. But *Brown* actually supports the circuit court's decision here. In *Brown*, the court held the traffic stop's mission was not complete at the time of the dog sniff because the officer still had the ticket and Brown's driver's license in his possession. *Id.*, ¶¶20-21. The court concluded that because the mission of the stop was incomplete, "officer

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safety remained a viable concern” and Brown’s removal from the vehicle in order to conduct a dog sniff was justified. *Id.* Here too, there was no impermissible delay because the mission of the traffic stop was incomplete when the officer conducted the dog sniff and the duration of the stop was reasonable.

Finally, Dupee’s contention that the officer *could* have simply given a verbal warning but instead *chose* to prolong the stop by issuing written warnings is specious. The officer was entitled to determine the proper enforcement measures, and Dupee’s claim that the written warnings were unreasonable is unsupported and will not be further addressed. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

DOCUMENT B.....TRANSCRIPT FROM SUPPRESSION HEARING

FILED
01-29-2018
CLERK OF CIRCUIT COURT
MARATHON COUNTY

2017CF000432

STATE OF WISCONSIN CIRCUIT COURT MARATHON COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

CASE NO.
17-CF-432
MOTION TO SUPPRESS

ANGEL L. DUPEE,

Defendant.

TRANSCRIPT OF PROCEEDINGS
HELD BEFORE HON. GREG HUBER
ON DECEMBER 18, 2017, IN WAUSAU, WISCONSIN

A P P E A R A N C E S

For the Plaintiff: RAYMOND L. PELRINE
Assistant District Attorney
Marathon County Courthouse
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Wausau, WI 54403

For the Defendant: LOU ANN BOHN
Asstistant Public Defender
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Defendant appearing in person.

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Witness

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EXHIBIT INDEX

Number

Identification

Off'd

Rec'd

(No exhibits marked.)

1 WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:

2

3 THE COURT: This is *State of Wisconsin versus*
4 *Ange1 Dupee*, 17-CF-432.

5 MR. PELRINE: Raymond L. Pelrine here for the
6 State. The defendant is here in person and by Counsel Lou Ann
7 Bohn.

8 I believe we're here for a hearing on the issue
9 of two motions filed by the defendant: one to suppress
10 evidence claiming that there was either an illegal stop or an
11 illegal continuation of a stop, and the other seeking to
12 suppress any statements made by the defendant claiming that
13 she was under arrest at the time and those statements hadn't
14 been preceded by Miranda. I'm ready to proceed.

15 THE COURT: Okay. Go ahead.

16 MR. PELRINE: I call Ed Bauknecht to the stand,
17 please.

18 EDWARD BAUKNECHT, witness sworn to tell the truth,
19 the whole truth, and nothing but the truth, testified as
20 follows:

21 **DIRECT EXAMINATION**

22 BY MR. PELRINE:

23 Q. What's your name, please, sir.

24 A. Edward Bauknecht.

25 Q. And where are you employed?

1 A. Rothschild Police Department.

2 Q. In what capacity?

3 A. I'm a police officer.

4 Q. And how long have you been a police officer for
5 Rothschild?

6 A. For Rothschild, six and a half years.

7 Q. And how long have you been a sworn police officer
8 in Wisconsin?

9 A. Just under 16 years.

10 Q. All right. Were you working in that capacity on
11 April 24 of this year shortly after 8:00 o'clock p.m.?

12 A. Yes, I was.

13 Q. And at any time were you involved in a traffic
14 stop that ultimately came to involve a person identified for
15 you as the defendant, Angel L. Dupee?

16 A. Yes.

17 Q. Were you the person who conducted that traffic
18 stop?

19 A. Yes, I was.

20 Q. Where did that happen?

21 A. On Business 51 in Rothschild. I think we ended up
22 pulling out of Yawkey Avenue.

23 Q. Okay. And that's within Marathon County?

24 A. Yes, it is.

25 Q. And what was your reason for stopping this car?

1 A. The driver was not wearing a seatbelt, and I also
2 ran the -- checked the registration of the vehicle, license
3 plates, and the plates were not associated with any vehicle on
4 the DOT records.

5 Q. Okay. And at the time were you operating a marked
6 Rothschild Police Department squad car?

7 A. Yes.

8 Q. And wearing the full uniform of a Rothschild
9 patrol officer?

10 A. Yes.

11 Q. So did you stop that car?

12 A. I did.

13 Q. Now, at the time you made this stop, were you
14 alone in your car and was yours the only squad initially
15 involved in the stop?

16 A. Yes.

17 Q. Did you speak with the driver?

18 A. Yes, I did.

19 Q. Was he alone in the car?

20 A. No.

21 Q. How many people were in there?

22 A. Including himself, four.

23 Q. Okay. And to maybe help us set the stage, at some
24 point was the defendant identified as being one of the
25 occupants?

1 A. Yes, she was.

2 Q. Where was she in the car?

3 A. She was in the rear seat of the vehicle.

4 Q. Okay. So who was the driver?

5 A. Matthew Dyess.

6 Q. And did you speak with him?

7 A. I did.

8 Q. And did you tell him the reason for the stop?

9 A. Yes.

10 Q. And what was his explanation for it?

11 A. He said the vehicle he just purchased from a
12 gentleman in Marshfield. He had said that the license plates
13 were his grandmother's, but he had no supporting proof of the
14 vehicle -- of him owning the vehicle. He did not have a
15 title, not a bill of sale. He had false plates on the
16 vehicle, and the registered owner was a guy from Marshfield at
17 the time.

18 Q. Okay. As if that's not enough, did you also ask
19 him whether or not he had insurance for the car?

20 A. And he said he did not.

21 Q. Okay. So did you determine that you had to take
22 either further investigatory action, or even further
23 enforcement action, or possibly both as to that driver in that
24 car?

25 A. Yes.

1 Q. What?

2 A. I identified the other occupants of the vehicle.
3 After speaking with the driver explaining all the laundry list
4 of violations, I went back to my car and began to process the
5 paperwork and also request the K-9 unit.

6 Q. Okay. Now, I want to break that down a little
7 bit. When you go back to your squad after having this initial
8 contact with the driver, are all the people in the car, are
9 they still in there?

10 A. Yes.

11 Q. Do they all remain in there when you return to
12 your car?

13 A. Yes.

14 Q. Did you tell anyone at that time they were all
15 under arrest?

16 A. No, not at all.

17 Q. So you go back to your car and say that among the
18 things that you were doing is working on paperwork for the
19 driver?

20 A. Yes.

21 Q. Did that include investigation, enforcement, or
22 both?

23 A. Both.

24 Q. And what were the things that you were going to be
25 doing in your car?

1 A. Trying to determine whose vehicle it was. So I
2 had to get the VIN number off the vehicle that was stopped to
3 see where that -- if it was stolen or who the registered owner
4 was. The license plates of the vehicle were associated with a
5 lady that was not in the vehicle at all, and it was supposedly
6 the grandmother of the driver.

7 Among that, I was trying to determine several
8 citations or warnings you could write for any of the
9 violations. And then with not having the information properly
10 with the driver or with the vehicle, when you entered all of
11 that information into the system called TraCS -- that's the
12 citation software we use --

13 Q. Okay.

14 A. None of that information was auto populating
15 because it was all incomplete.

16 Q. So you had to do something manually?

17 A. You had to manually enter everything from the
18 names, the VINs, the driver's license number -- everything on
19 those citations had to be manually entered. Usually when all
20 the information is correct on a typical stop, it auto
21 populates. So there was some time delay in that.

22 Q. And you mentioned at some point you also called
23 for the assistance of a K-9 Unit?

24 A. I think as soon as I got back in my car after
25 speaking with the driver I requested a K-9 Unit.

1 Q. Okay. Why?

2 A. Given the suspicion of the traffic violations, it
3 is not common that you see a vehicle with plates on it that
4 don't belong to anyone in the vehicle. The vehicle's not
5 registered, and no one has any supporting proof of the
6 purchase of the vehicle, or supposed purchase. I was
7 suspicious as to what else was going on in the vehicle.

8 Q. Okay. So you made that request while you're
9 looking into who owns the car and doing the stuff you already
10 described doing, manually entering the citations?

11 A. Yes.

12 Q. And, in fact, was it citations you ultimately
13 issued to the driver or something else?

14 A. Two written warnings.

15 Q. Okay. But you still had to manually type them in
16 just as if they were citations?

17 A. Yes.

18 Q. And was all of that going on as you called for the
19 K-9 Unit?

20 A. Yes.

21 Q. Was it still going on? Were you still doing that
22 when the K-9 officer arrived?

23 A. Yes.

24 Q. Did you get out to assist the K-9 officer?

25 A. At some point, yes.

1 Q. But was it before or after the K-9 had walked
2 around the car?

3 A. It was after the K-9 walked around the car and it
4 was after at that point when two officers were already having
5 people step out of the vehicle.

6 Q. Okay. So what I want to get clear for Judge Huber
7 is, from the time you went back to your car until after people
8 were being taken out by the K-9 officer and some others, what
9 were you doing in your squad car?

10 A. Working on my computer to process the citations
11 and investigate the stop further so I could figure out, like I
12 said before, what was going on. And then in reviewing the
13 video, you can hear the printer going off at various
14 increments that I was processing citations, or processing
15 warnings for the driver.

16 Q. Okay. So did that process for the things you were
17 doing as to the driver, if you will, did that continue until
18 after whatever the K-9 was going to do with the squad, excuse
19 me, for the stopped car, that the K-9, in fact, did?

20 A. Yes.

21 Q. All right. So while you're working on this
22 paperwork and the K-9 arrives and does whatever he or she is
23 going to do, did you get some information from officers as to
24 whether or not that K-9 had a hit on the car?

25 A. Yes, I did.

1 Q. From what officer, and how did you get that
2 information?

3 A. I don't remember directly which officer it was. I
4 know deputy D'Acquisto is the K-9 officer. I don't know if he
5 just nodded to me or if -- I know Officer Klemm came to the
6 side of my car and said, "Hey, the dog hit. Do you want to
7 start pulling people out?" At that point I told Officer Klemm
8 to start getting people out of the car.

9 Q. And is that because your training and experience
10 tells us that a K-9 alert on a vehicle justifies in you doing
11 something further?

12 A. Yes.

13 Q. What?

14 A. It allows us to search the vehicle.

15 Q. Okay. So at that time had you determined if you
16 were going to arrest anybody yet?

17 A. No.

18 Q. Were you going to investigate further?

19 A. Yes.

20 Q. And were the other officers, in fact, already
21 involved in that by the time you got out of your own squad?

22 A. Yes, they were.

23 Q. Do you remember which of the occupants had been
24 asked to get out of the car yet, or if you were involved in
25 asking any of them to get out of the car?

1 A. I don't remember -- Officer Klemm went on the left
2 side of the vehicle, the driver's side, and Deputy D'Acquisto
3 went on the right. I don't know if Officer Klemm had the
4 driver step out first or the rear seat passenger. I can't
5 think of the rear seat passenger's name. But when I had
6 looked out through my windshield, I saw Officer Klemm speaking
7 to the rear passenger. I also at that point saw Officer Klemm
8 remove a .40 caliber Glock from that rear occupant. At that
9 point I stopped what I was doing with the paperwork and went
10 up to Officer Klemm.

11 Q. That's a handgun you're referring to?

12 A. Yes, a handgun, a loaded handgun.

13 Q. And that was found by another officer by a
14 different passenger, not -- or associated with a different
15 passenger, not with Angel Dupee?

16 A. Correct.

17 Q. But was she still in the car then? Am I following
18 that correctly at this point?

19 A. I believe so, at the time that she was.

20 Q. So do you remember, was it you or another officer
21 that asked her to get out?

22 A. I don't remember which one of us asked her to get
23 out.

24 Q. Might it have been you?

25 A. It very well could have been.

1 Q. Okay. What was she told in any event, whether it
2 was by you or another officer, while you were there?

3 A. If she could step out, give her a pat down, and
4 then had her sit on the curb or sidewalk with the other
5 occupants while we searched the vehicle. One officer was
6 always with the four of them on the sidewalk for safety
7 reasons, both there's and ours. And the other two officers
8 were searching the vehicle.

9 Q. Okay. So she was asked to go sit on the curb or
10 on the sidewalk?

11 A. Yes.

12 Q. She wasn't placed in restraints?

13 A. Not at all.

14 Q. Was she physically restrained by any officer?

15 A. No.

16 Q. Was she told she was under arrest by any officer?

17 A. No.

18 Q. So how long would you estimate it is from the time
19 she's asked to get out of the car before either you find, or
20 in your presence other officers find, any evidence you believe
21 may be associated with Angel Dupee?

22 A. I would probably say seven to twelve minutes.

23 Q. Okay. And what is it that's found and by whom?

24 A. I found a purse that had several traffic citations
25 with the names of Angel Dupee.

1 Q. Okay.

2 A. And then inside that purse there was about an inch
3 and a half long pink plastic straw that was cut off -- one
4 angle was cut off at a 45-degree angle, and inside that straw
5 which is commonly used for drugs, there was a white powdery
6 substance in that straw.

7 Q. Okay. And did you have a belief at that time,
8 just so we can move this along, as to what you thought either
9 the straw was for or what the substance was?

10 A. I believed it was methamphetamines.

11 Q. Okay. And did it later test positive for that?

12 A. Yes, it did.

13 Q. So after you find that purse with that
14 identification and those contents, did you have further
15 conversation, or did you have any conversation at this point
16 with Ms. Dupee?

17 A. Yes, I did.

18 Q. And I misspoke a moment ago when I said "did you
19 have further conversation." Had you had any conversation with
20 her up to this point other than possibly ask her to get out of
21 the car?

22 A. Not outside of asking her to step out of the
23 vehicle. There was none.

24 Q. Okay. So this would be the first conversation you
25 had with her?

1 A. Yes.

2 Q. Describe what happened.

3 A. I asked her if that was her purse. She said it
4 was. And then I asked her about the pink straw with the
5 possible suspected methamphetamines, and she said that her
6 daughter, or her child likes to play. So then alluding that
7 the straw was put there by her child. And then I said, "Well,
8 there's no evidence of" -- I believe she said something about
9 her son, or child likes to play with rocks, and I said, "Well,
10 there's not -- there's nothing in this purse or even in the
11 straw that's associated with rocks, no sand. There's nothing
12 that would indicate that this thing was played for as a -- for
13 a kid in a sandbox. There was nothing to indicate that in any
14 way this was anything but drug paraphernalia."

15 Q. Okay. And where did this conversation occur?

16 A. It would have been on the sidewalk. I believe
17 I -- I don't know if I saw the purse and looked through it and
18 I showed it to her, or if I just left it in the vehicle and
19 went and talked to her. But the conversation was on the
20 sidewalk next to the vehicle.

21 Q. Okay so it wasn't in your squad car?

22 A. No.

23 Q. She's still not in restraints?

24 A. Correct.

25 Q. Was she under arrest at that point?

1 A. No.

2 Q. Had you told her she was under arrest?

3 A. No.

4 Q. Had you drawn your weapon around her?

5 A. No.

6 Q. Had you restrained her in any fashion?

7 A. No.

8 Q. About how long would you estimate this
9 conversation between you and Ms. Dupee lasted?

10 A. Less than a minute.

11 Q. All right. At some point then did you decide to
12 take some enforcement action as to Ms. Dupee?

13 A. Yes. I placed her under arrest for possession of
14 drug paraphernalia. Actually after I spoke to her I tested --
15 I did a field test on the substance which tested positive for
16 methamphetamines. At that point I told her she was under the
17 arrest for possession of methamphetamines.

18 Q. Okay. Did she remain on the sidewalk then while
19 you went to do that field test?

20 A. Yes.

21 Q. And then you walked back to her?

22 A. Yes.

23 Q. So between the time of the chat -- that whole time
24 when you're doing the field test, was she restrained you?

25 A. No.

1 Q. By any other officers?

2 A. No.

3 Q. Were there even officers standing over her or
4 making sure she didn't go --

5 A. There were officers in her presence, but nobody
6 hovering over her shoulder by any means. She wasn't
7 threatening. You know, she wasn't -- I guess for lack of a
8 better term, wasn't squirrely. She wasn't fidgeting around.
9 She was calm and stood there listening to the officers. She
10 didn't argue with us. She didn't -- she did what we asked.

11 Q. Okay. And then you do the field test and you went
12 back and you told her what?

13 A. That she was under arrest for possession of
14 methamphetamines.

15 Q. Okay. Did you do any further interview with her
16 there after you told her she was under arrest?

17 A. No.

18 MR. PELRINE: Thank you. I don't have any other
19 questions. Ms. Bohn might have some for you.

20 THE COURT: Go ahead.

21 MS. BOHN: I do. Thank you.

22 **CROSS-EXAMINATION**

23 BY MS. BOHN:

24 Q. So you said that you wrote out warnings for the
25 driver; correct?

1 A. Yes.

2 Q. Okay. And you didn't write out warnings for any
3 of the other occupants of the vehicle; correct?

4 A. Correct.

5 Q. Or you didn't write out any tickets or citations
6 for anybody else; correct?

7 A. Correct.

8 Q. And from the time that you -- well, you made the
9 original stop and then you talked to the driver; correct?

10 A. Yes.

11 Q. And then you went back to your squad; correct?

12 A. Correct.

13 Q. And that's when you requested the K-9; correct?

14 A. Correct.

15 Q. And then you started investigating this whole
16 thing about the vehicle; correct?

17 A. Yes.

18 Q. And then you also called in to dispatch the names
19 of each of the occupants of the vehicle; correct?

20 A. Yes.

21 Q. And then you received information back that the
22 driver's story about buying it from somebody in Marshfield
23 checked out; correct?

24 A. Yes.

25 Q. So at that point you knew it wasn't a case of a

1 stolen vehicle; correct?

2 A. I knew the vehicle wasn't stolen at that point.

3 Q. You what?

4 A. I knew the vehicle was not stolen at that point.

5 Q. Okay. And then you also received information from
6 dispatch that there were no warrants for any of the occupants;
7 correct?

8 A. Correct.

9 Q. Or no wants; correct?

10 A. Correct. I want to say that maybe one of them had
11 a geographically restricted warrant, but I don't remember for
12 sure. But there was nothing -- there was no information at
13 that point that would have caused for immediate arrest of
14 anything. Nobody was wanted through Marathon County or the
15 surrounding counties at least.

16 Q. And no probation holds or anything like that?

17 A. No. There was no active probation warrants. I
18 don't recall if anyone was on probation at the time, but there
19 was not any warrants that I was made aware of.

20 Q. And you found all of that out before the K-9
21 arrived; correct?

22 A. Yes.

23 Q. So then you remained in the squad; correct?

24 A. Yes.

25 Q. And you were doing all the paperwork that you were

1 discussing with Attorney Pelrine; correct?

2 A. Yes.

3 Q. And all that paperwork had to do with the vehicle
4 and with the driver; correct?

5 A. Correct.

6 Q. And so by the time that the K-9 arrived -- well,
7 strike that. I asked that already.

8 So with your initial stop, when you're initially
9 talking to the driver and you're asking for I.D.s, you told
10 the folks to kind of stay put; correct?

11 A. Yes.

12 Q. And the vehicle did remain there the whole time;
13 correct?

14 A. Yes.

15 Q. And all the passengers did remain in the vehicle
16 until, as you said, they were pulled out; correct?

17 A. Correct.

18 Q. And then -- so initially it was you, and then at
19 some point Officer Klemm arrived; correct?

20 A. Yes.

21 Q. And he was also in full uniform; correct?

22 A. Yes.

23 Q. In his police squad vehicle; correct?

24 A. Yes.

25 Q. And then after him, Deputy D'Acquisto of the

1 Marathon County Sheriff's Department arrived with the K-9;
2 correct?

3 A. Correct.

4 Q. And then there was another sheriff's deputy that
5 also arrived; correct?

6 A. I don't remember another -- I don't remember a
7 fourth one being there. I remember Officer Klemm and Deputy
8 D'Acquisto. I don't recall the other officer.

9 Q. Do you remember how many squad vehicles were
10 there?

11 A. Minimum of three.

12 Q. And this was at 8:30 at night that the initial
13 traffic stop occurred; correct?

14 A. Yeah. Around 8:30, yes.

15 Q. And it was dark out?

16 A. Yes, it was. It was dusk at the time of the stop,
17 but shortly into the stop it was dark.

18 Q. And then -- well, okay. You already answered
19 that. Excuse me.

20 So the initial stop occurred at around
21 8:30 p.m., and by the time that the occupants were ordered
22 out of the vehicle, that occurred at around 8:47 p.m.?

23 A. I'd have to review the tapes, but that sounds --
24 that sounds similar to what it could be. I don't know the
25 exact times of when -- I didn't time stamp every single move

1 that we made.

2 Q. Okay. Well, would you say from the time you made
3 your initial stop until the people were being pulled out of
4 the vehicle, that 20 to 25 minutes had passed?

5 A. Until the time we got people out of the vehicle?

6 Q. Correct.

7 A. Fifteen to twenty minutes. Like I said, I'd have
8 to review the squad tape to show you the exact times.

9 Q. And then with respect to Ms. Dupee, she was the
10 last one to be pulled out of the vehicle?

11 A. I believe so, yes.

12 Q. And then as you write in your police report, she
13 was checked for weapons and contraband; correct?

14 A. Correct.

15 Q. And nothing was found on her person?

16 A. Correct.

17 Q. And she was complying with all of your orders;
18 correct?

19 A. Yes.

20 Q. And then from the time that she was pulled out of
21 the vehicle until the time that you talked to her, would you
22 say about 14 minutes had passed?

23 A. From the time she exited the vehicle until the
24 time I talked to her?

25 Q. Correct.

1 A. It's possible. Like I said, ten minutes. Ten,
2 fifteen minutes. I don't know the exact time.

3 Q. And you never told her at any point that she has
4 free to leave, did you?

5 A. No, because she wasn't free to leave. She was
6 involved in a stop. We had her out of the vehicle remaining
7 with the other occupants.

8 Q. And then after you found this straw, you told her
9 to come talk with you; correct?

10 A. Yes.

11 Q. And she got up from the curb and then she went
12 over to talk to you; right?

13 A. Yes. I don't know if I -- I know I separated her
14 at some point so she wouldn't be talking next to everybody
15 that's there. So I don't know if we actually had the
16 conversation in front of my squad car. But it was, you know,
17 a few feet away from the other occupants so I could speak to
18 her face to face.

19 Q. So it was -- you were alone with Ms. Dupee when
20 you --

21 A. Yeah. In front of my camera or on the sidewalk.
22 I was face to face with her, yes.

23 Q. But it was just you and Ms. Dupee when you were
24 questioning her; correct?

25 A. Correct.

1 Q. And then after a minute or so Deputy D'Acquisto
2 joined in; correct?

3 A. Yes.

4 Q. And she was answering your questions; right?

5 A. She was providing answers, yes.

6 Q. And you -- up until that point, you had not
7 administered the Miranda warnings; correct?

8 A. Correct.

9 Q. Now, in fact, you didn't administer the Miranda
10 warnings at all that night; right?

11 A. Correct.

12 Q. Or any of the other law enforcement officers that
13 were there, they didn't?

14 A. Correct.

15 Q. And then at one point you mentioned that she --
16 she was placed in handcuffs; correct?

17 A. Yes.

18 Q. And then taken to Officer Klemm's squad car?

19 A. Yes.

20 Q. And then taken to jail?

21 A. Yes.

22 Q. And then at the jail he apparently had a
23 conversation with her; correct?

24 A. You'd have to ask Officer Klemm that.

25 Q. Well, he returned to you and talked to you about

1 what she had said with respect to some pills; correct?

2 A. I don't remember exactly what Officer Klemm had
3 told me.

4 Q. Then I have another question about timing. So
5 when you went back to your squad and you asked for the K-9,
6 that was maybe about five minutes or so after the stop?

7 A. No. It would have been as soon as I got back to
8 my car from the initial contact, however long that
9 conversation was with the driver. As soon as I sat in my seat
10 I called dispatch. I asked -- I advised them of the
11 information of the drivers and also if there was a K-9 close.
12 So it would have been immediately as I sat back in my car.

13 Q. And then so from the time that you asked for the
14 dog and the time it arrived, there was about twelve minutes
15 that had passed?

16 A. Yes.

17 Q. And then from the time that you learned the
18 vehicle was not stolen and that the story had checked out, and
19 that all the passengers were cleared and checked out, from
20 that point when you got that information until the dog
21 arrived, that was about eight minutes or so; correct?

22 A. Correct.

23 Q. And when you were in your squad vehicle doing all
24 the paperwork and waiting for the dog, during that time you
25 didn't get any new information about any of the occupants;

1 correct?

2 A. Correct.

3 MS. BOHN: Judge, that's all I have.

4 THE COURT: Okay. Any redirect?

5 MR. PELRINE: No. Thank you, Officer. No other
6 witnesses, your Honor.

7 THE COURT: Any witnesses?

8 MS. BOHN: No, your Honor.

9 THE COURT: Okay. Any argument?

10 MR. PELRINE: I will go first if I may, your
11 Honor.

12 THE COURT: Okay.

13 MR. PELRINE: I think moving through the reason
14 for the stop, through the detention, then the questioning, it
15 was all lawful.

16 Beginning with the stop, the officer articulated
17 specific reasons why he stopped that car. The plate wasn't
18 registered to anybody who -- to any vehicle at all. The
19 driver you could see wasn't wearing a seatbelt. And then when
20 he speaks with the driver, he finds out even more information
21 to justify further investigation and enforcement action.

22 He then goes back to his squad car and
23 immediately begins working on investigating the stuff about
24 the driver and working on the warnings, the written warnings
25 that were going to be issued to him. He also immediately

1 calls for the assistance of a K-9. That's lawful. They don't
2 need any Fourth Amendment suspicion or justification to do
3 that so long as that act does not extend an otherwise lawful
4 traffic stop.

5 And the officer made it clear that, throughout
6 the entire time from the calling of the K-9, to the arrival of
7 the K-9, to the sniff by the K-9, to the hit by the K-9, the
8 officer was continuing to work on the paperwork for the
9 driver. So that stop was not extended a single second beyond
10 what he already was justified in doing, and that was taking
11 enforcement action as to this stopped vehicle.

12 Once it hits, officers are then authorized that
13 there's reasonable suspicion to continue investigating the
14 basis for that hit, which they do. It immediately turns up a
15 loaded handgun in one passenger. So that justifies a search
16 of the entire interior of the vehicle. The occupants are
17 asked to get out. None of them are placed in custody. None
18 of them are threatened. None of them are restrained. In
19 fact, they go and stand or sit on the sidewalk.

20 A few minutes later this officer goes and has a
21 one-minute conversation with the defendant when she's not
22 under arrest. Frankly, she gives him some sort of cock and
23 bull story about the contraband that's already been found in
24 her purse, but she wasn't under arrest at the time.

25 That entire contact with her is not only

1 authorized by abundant case law, but we've got a statute that
2 authorizes it. 968.24 of the statutes is our state embodiment
3 of the *Terry* stop rule that officers may reasonably detain and
4 question a person if they've got justification that's beyond
5 just rank suspicion. By the time they're speaking with her,
6 they had found contraband in the car. By the time he speaks
7 with her, he found actual contraband associated with her.

8 So she wasn't under arrest. She didn't need to
9 be given Miranda, and she was lawfully questioned. So all of
10 that is fine. It should all be upheld.

11 In terms of if we need to -- I mean, I think
12 what's lurking in the background is a possible claim by the
13 defendant that the K-9 search was unlawful under the recent
14 U.S. Supreme Court *Rodriguez* decision, but *Rodriguez* makes
15 clear, as well as cases decided since then in Wisconsin make
16 abundantly clear, that there's nothing wrong with a K-9 sniff.
17 It's just that an officer cannot extend a stop just to carry
18 out that sniff.

19 So as long as there's a justified basis for the
20 stop and the officer is carrying out activities that he
21 otherwise is lawfully allowed to do with respect to that stop
22 and it's not extended at all in order to carry out the K-9
23 sniff, it's fine. In fact, just in the past month there's an
24 unpublished decision by Wisconsin that says just that. It
25 hasn't been authorized for publication yet; so I won't cite it

1 for you, your Honor.

2 But *Rodriguez* is out there. But this officer
3 was clearly acting with the knowledge of and intent to follow
4 *Rodriguez* and its guidelines, and he did all that.

5 So I'd say both motions by the defense should be
6 denied.

7 THE COURT: Attorney Bohn?

8 MS. BOHN: Judge, with respect to the stop, we
9 are contesting the extension of the stop, and that was
10 illegal.

11 Here's the thing. We don't dispute that while
12 the officer was writing out the tickets and so forth that the
13 driver could be detained. All of the infractions that the
14 officer testified to, all of them had to do with the driver.
15 And I asked him, did you write warnings for anyone else? No.
16 He testified repeatedly on direct that he was doing process --
17 he was processing paperwork with the driver, that he was doing
18 paperwork for the driver. All of the citations or the
19 possible warnings that he was investigating had to do with the
20 driver.

21 He found out before the K-9 arrived that the
22 other occupants in the vehicle were cleared. No wants. No
23 warrants. No one was on probation and so forth. None of them
24 was associated with the vehicle. He had found out the vehicle
25 wasn't stolen. So there wasn't lingering suspicion that they

1 were involved with a stolen vehicle.

2 When asked on direct, "Why did you ask for a
3 K-9?" He said, "Well, there was -- I just had suspicion of
4 the driver violations." He didn't say there were furtive
5 movements. He didn't say he smelled the odor of drugs or
6 anything like that. And to -- you know, that's more of a
7 hunch than a suspicion based on articulable objective facts of
8 illegal activity.

9 And as I said, when he was still in the squad
10 vehicle waiting for the K-9 to arrive, Ms. Dupee checked out.
11 There was no reason for her to be detained. He testified that
12 she remained detained and that she has not free to leave, but
13 that is an illegal extension. Once she was cleared, the
14 reason for her to be stopped and detained was resolved and she
15 should have been released.

16 Now, we are relying on *Rodriguez*, and it does
17 say that a stop can be extended if, during the course of the
18 stop, there's reasonable suspicion that there's criminal
19 activity, and here there wasn't. To the contrary.

20 The suspicion of criminal activity, like a
21 vehicle being stolen, was already resolved before the K-9
22 came. And in *Rodriguez*, it took about seven or eight minutes
23 from the time that the dog was -- from the time that the
24 traffic violation was resolved. In that case there was a
25 written warning, until the dog indicated, there was about

1 seven or eight minutes that elapsed. And here there was about
2 seven or eight minutes from the time that Miss Dupee's name
3 had been cleared until the dog had arrived. And in *Rodriguez*,
4 the Court said that is -- that is too long.

5 So that's why we're asking you to suppress the
6 evidence and her statements made after the dog alert, because
7 her portion -- I just represent her, not the driver. Her
8 portion was illegally extended and she was illegally detained,
9 and that is in violation of the Fourth Amendment.

10 With respect to her statements, there were at
11 least three law enforcement officers there and squad vehicles.
12 She was guarded by Officer Klemm, or at least one law
13 enforcement officer, as Officer Bauknecht testified to. She
14 submitted to the authorities. She obeyed all the commands.
15 She was compliant.

16 From the time that the car was pulled over until
17 the time that she was ordered out, about 20 or 25 minutes had
18 passed. So she was obediently, you know, being detained. She
19 was not free to leave. The officer said she was not free to
20 leave, that she was being detained. She was given orders to
21 remain in the car, to get out of the car, to sit on the curb,
22 to come talk to Officer Bauknecht, and she submitted to all
23 that authority.

24 The Miranda rights were never read, even though
25 she was questioned about the alleged contraband found

1 allegedly in her purse. She provided answers. No Miranda was
2 read that night to her at all, Judge. Therefore, she didn't
3 make a knowing and intelligent waiver, and that's why we're
4 asking you to suppress her statements because she was, indeed,
5 in custody. And the law says it's what a reasonable person in
6 Ms. Dupee's position would believe. Would they believe they
7 are free to leave? And she wasn't free to leave for a very,
8 very long time.

9 So that's why we're asking for suppression of
10 her statements.

11 THE COURT: Okay. The officer had reasonable
12 suspicion to stop the vehicle because of the fact the driver
13 was not wearing a seatbelt and because the license plates did
14 not match up to anyone.

15 The question is under the totality of the
16 circumstances, and I have to use the greater weight of the
17 credible evidence as the burden here.

18 The officer testified that there were four
19 people involved. There were a number of offenses. He was
20 doing the paperwork. He had to manually input a lot of it
21 because it wasn't self-populating.

22 So the officer was not delaying his
23 investigation. He did have to investigate ownership of the
24 vehicles, verify the stories, see if there were any holds or
25 warrants for the people that were the four people that were in

1 the vehicle.

2 The officer testified that he was still working
3 on it when the K-9 officer arrived. So under *Rodriguez*, this
4 wasn't extended. The officer was, from his testimony, was not
5 trying to delay this just in order to get a dog to the scene
6 to investigate.

7 And once the dog did get there and alerted to
8 the drugs, that's a reasonable suspicion to continue a new
9 investigation, basically, concerning the drugs and not the
10 traffic violations.

11 So the extension was not an illegal extension
12 here just for the purpose of trying to get a K-9 search done.
13 So the defense is articulating a new standard that I haven't
14 heard before that --

15 MS. BOHN: It's not a new standard.

16 THE COURT: -- if there's four people in a
17 vehicle, that when you run the name of one, you have to stop,
18 go to the vehicle, tell that person that they can start
19 walking away, get back in the car or squad, run the next one.
20 If they can go, get out of the car, go to the vehicle, say you
21 can start walking away. I'm not sure that -- I think there
22 are some safety concerns with doing that as well, both for the
23 passengers who are told they can start walking at night as
24 well as for the officer who -- when people are out of the
25 vehicle and he's still doing his investigation.

1 So --

2 MS. BOHN: Well, that's not exactly -- we
3 weren't saying one by one. But we are saying, you know,
4 *Rodriguez* was by himself. So we don't have that. But if
5 somebody -- if there's no reason to detain somebody, they need
6 to be released.

7 THE COURT: Well, I guess if you've got some
8 case law on that, that's great. But I think that's an
9 interesting, but novel interpretation.

10 So at this point he was investigating the driver
11 and the four people inside. He was running checks on them for
12 bench warrants and so forth, trying to decide what citations,
13 trying to determine who owned the vehicle, whether it was
14 stolen, and that took some time.

15 So, under *Rodriguez* your motion is denied. It
16 wasn't extended. The officer did everything in the right
17 sequence.

18 The next question is whether she should have
19 been Mirandized before she was questioned, and you need to
20 Mirandize people when they're in custody to do a custodial
21 interrogation. This was not a custodial interrogation. She
22 was not under arrest. She was not in the squad car. She was
23 not restrained. The conversation lasted only a minute. There
24 was no testimony that Ms. Dupee was suffering from some sort
25 of disability that made her vulnerable to the presence of the

1 police talking or interviewing her.

2 So, for all those reasons, the motion to
3 suppress the statements is also denied.

4 Anything else from the State?

5 MR. PELRINE: I'd simply ask that this be put on
6 for a calendar call. I think it would be January 5 or 4. I
7 can't recall what day of the week would be on that first week
8 of January.

9 THE CLERK: January 2nd, but I believe the
10 courthouse is closed that day as well.

11 MR. PELRINE: Then the 9th, if that's all right.

12 THE COURT: January 9th, but if the two of you
13 could go back now, that would be preferred.

14 MR. PELRINE: Nothing from me, your Honor.

15 THE COURT: Okay. We'll be adjourned. Thank
16 you.

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18 (PROCEEDINGS CONCLUDED.)

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1 STATE OF WISCONSIN)
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 2 MARATHON COUNTY)

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I, Karla M. Sommer, a stenographic machine shorthand reporter, Registered Merit Reporter, Certified Realtime Reporter, and Certified Realtime Captioner, employed in Wausau, Wisconsin, do hereby certify that I took in shorthand the foregoing proceedings in a hearing in Circuit Court for Marathon County at the Courthouse in the City of Wausau, Wisconsin, on the 18th day of December, 2017, with the Honorable Greg Huber, Circuit Court Judge, presiding, and that the foregoing is a true and correct transcript of my shorthand notes and of the whole thereof.

Dated in Wausau, Wisconsin, this 29th day of January, 2018.

Electronically signed by Karla M. Sommer
 Karla M. Sommer, RMR, CRR, CRC
 Marathon County, Wisconsin