

STATE OF WISCONSIN  
IN SUPREME COURT

\_\_\_\_\_  
No. 2021AP0053-CR

**FILED**  
FEB 08 2022  
CLERK OF SUPREME COURT  
OF WISCONSIN

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STATE OF WISCONSIN,

Plaintiff -Respondent,

v.

ANGEL L. DUPEE,

Defendant-Appellant-Petitioner.

\_\_\_\_\_  
**RESPONSE TO PETITION FOR REVIEW**  
\_\_\_\_\_

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## INTRODUCTION

The State opposes the petition for review filed by Angel L. Dupee, seeking review of the court of appeals' decision summarily affirming her convictions for felony bail jumping, misdemeanor bail jumping, and possession of drug paraphernalia. The court of appeals rejected her claim that the "police unreasonably extended a traffic stop for the arrival of a K-9 unit." *State v. Angel L. Dupee*, No. 2021AP0053-CR (Wis. Ct. App. December 28, 2021) (Pet-App. 3–4.) The petition does not present "special and important reasons" for review, such as a real and significant constitutional question or a conflict with controlling opinions that are ripe for reexamination, and review is unnecessary to clarify, develop or harmonize the law related to claim that is not factual in nature. Wis. Stat. § (Rule) 809.62(1r). Dupee seeks review of the court of appeals' application of well-established law to the facts, alleging error by the court of appeals. This is not an error-correcting court.<sup>1</sup> This Court should deny the petition.

## BACKGROUND

After police stopped the vehicle in which Dupee was a passenger for traffic violations and the driver admitted that he put false license plates on the car and had no proof of ownership, the officer obtained the occupants' identification, returned to his squad to investigate the occupants and whether the car had been stolen, and called for assistance from a K-9 unit. (Pet-App. 4.) The officer decided to issue two written warnings, had to manually enter the information

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<sup>1</sup> See *State v. Mosley*, 102 Wis. 2d 636, 665, 307 N.W.2d 200 (1981) ("It is not the primary purpose of this court . . . merely to correct error in trial court proceedings[,] a function now largely met by the court of appeals[,] but instead to oversee and implement the statewide development of the law."); *State v. Minued*, 141 Wis. 2d 325, 328, 415 N.W.2d 515 (1987) ("It is not this court's institutional role to perform this error correcting function.")

because of the ownership and registration issues, and the K-9 unit arrived before the officer had completed and issued the written warnings. (Pet-App. 4.) The dog alerted to narcotics and police found drugs in the car and paraphernalia in Dupee's purse. (Pet-App. 4.) The circuit court denied a motion to suppress, Dupee entered a plea, and the court withheld sentence, imposed two years of probation and 90 days conditional jail time. (Pet-App. 4.)

On appeal, Dupee made one argument: "police 'unnecessarily and unreasonably' extended the traffic stop for the arrival of the K-9 unit." (Pet-App. 5.) Based on the circuit court's factual findings that the "dog arrived and alerted to drugs" in the car "approximately twelve minutes after the initial stop" and "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," which "are not clearly erroneous," the court of appeals concluded that the officer had not completed the stop's mission before the K-9 unit arrived. (Pet-App. 5.) The court rejected Dupee's claims that the K-9 unit arrived after the officer had completed the mission of the stop and the officer impermissibly delayed the traffic stop, and affirmed the judgment of conviction. (Pet-App. 6-7.)

### **REASONS THIS COURT SHOULD DENY REVIEW**

Dupee argues that review by this Court is warranted because the court of appeals' decision "is contrary to both US and Wisconsin caselaw" that an officer must "expeditiously complete the seizure" and the "court of appeals in this case appears to have misapplied the law" because it did not "examine whether the police diligently pursued the investigation" as required by *Rodriguez v. United States*, 575 U.S. 348 (2015). (Pet. 5.) But the court of appeals did properly apply the law to facts to hold that the officer's investigation was reasonable. The court concluded that the facts of this case fell "squarely within the holding of *Illinois v. Caballes*, 543

U.S. 405, 407–08 (2005)” because in that case, the officer had not completed the traffic stop’s mission when the K-9 unit arrived and the dog sniff did not “measurably increase the duration of the stop.” (Pet-App. 5.) Likewise, here the K-9 unit arrived before the officer completed the traffic stop’s “multi-faceted” mission: “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.” (Pet-App. 5.) The court distinguished this case from *Rodriguez*, “where the K-9 unit arrived *after* the officer completed the mission of the stop” because “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.” (Pet-App. 5–6.) The court of appeals appropriately applied the facts of this case to controlling law. Dupee fails to show otherwise.

Dupee cites this Court’s decision in *State v. Brown*, 2020 WI 63, 392 Wis. 2d 454, 945 N.W.2d 584 to support her claim that the officer “unnecessarily delayed” when he carried out the purpose of the traffic stop. (Pet. 5–6.) But as the court of appeals correctly determined, “*Brown* actually supports the circuit court’s decision here. In *Brown*, 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.” (Pet-App. 6.) *Brown* does not help Dupee. In fact, it supports that here, “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.” (Pet-App. 7.)

Dupee insists that this Court should grant review and “ultimately conclude that the court of appeals erred in finding that the traffic stop in this case was not unreasonabl[y] extended.” (Pet. 8.) She seeks error correction, arguing that the court of appeals’ decision was “wrong” because the officer had completed the traffic stop’s mission before the “[e]ight

minutes passed while everyone waited for the officer to complete the written warnings” and that he “could have simply issued a verbal warning.” (Pet. 10–11.) The court of appeals soundly rejected Dupee’s argument that the officer unreasonably prolonged the stop by issuing written warnings as “specious,” concluding that the officer was entitled to determine the proper enforcement measures and that Dupee failed to support her claim that issuing the written warnings was unreasonable. (Pet-App. 7.) Dupee argues that the officer was required to “act diligently, expeditiously, and reasonably,” that the court of appeals did not address “why it was absolutely necessary for the officer to issue written rather than verbal warnings,” and that this Court should reject the lower court’s factual findings and conclude instead that the officer had completed the mission of the stop before the K-9 unit arrived and “chose to prolong the seizure—unnecessarily—in order to write out written warnings.” (Pet. 11–13.) Dupee seeks review of the court of appeals’ application of well-settled law to the facts, which does not meet the statutory criteria enunciated in Wis. Stat. § (Rule) 809.62(1r) that the case present “special and important reasons” for this Court to grant review.

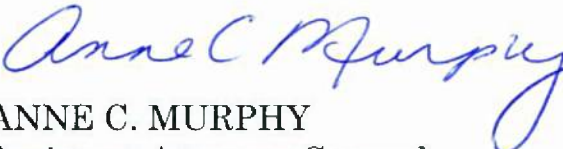
## CONCLUSION

The court of appeals' decision correctly applied well-established legal standards. This case does not present a significant question of constitutional law, a need for this Court to develop, clarify, or harmonize the law on a question that is not factual in nature, or is in conflict with other decisions. This Court should deny the petition for review.

Dated: February 8, 2022.

Respectfully submitted,

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**FORM AND LENGTH CERTIFICATION**

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rule) 809.19(8)(b) and 809.62(4) (2019–20) for a response produced with a proportional serif font. The length of this response is 1256 words.



ANNE C. MURPHY  
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE WITH  
WIS. STAT. §§ (RULE) 809.19(12)  
and 809.62(4)(b) (2019–20)**

I hereby certify that:

I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rule) 809.19(12) and 809.62(4)(b) (2019–20).

I further certify that:

This electronic response is identical in content and format to the printed form of the response filed as of this date.

A copy of this certificate has been served with the paper copies of this response filed with the court and served on all opposing parties.

Dated: February 8, 2022.



ANNE C. MURPHY  
Assistant Attorney General