

STATE OF WISCONSIN
 IN SUPREME COURT

No. 2021AP311-CR

STATE OF WISCONSIN,
 Plaintiff-Respondent-Petitioner,
 v.
 DONTE QUINTELL MCBRIDE,
 Defendant-Appellant.

PETITION FOR REVIEW APPENDIX

JOSHUA L. KAUL
 Attorney General of Wisconsin

KIERAN M. O'DAY
 Assistant Attorney General
 State Bar #1113772

Attorneys for Plaintiff-
 Respondent-Petitioner

Wisconsin Department of Justice
 Post Office Box 7857
 Madison, Wisconsin 53707-7857
 (608) 267-2065
 (608) 294-2907 (Fax)
 odaykm@doj.state.wi.us

INDEX*State of Wisconsin v. Donte Quintell McBride*

Case No. 2021AP311-CR

	Page
Court of Appeals Decision Reversing and Remanding with Directions, Dated: Dec. 20, 2022	3 – 31
Transcript of Preliminary Hearing, Dated: Nov. 8, 2018 (Rec. 32).....	32 – 45
Transcript of Motion Hearing (Morning Session), Dated: Sept. 27, 2019 (Rec. 40).....	46 – 97
Transcript of Motion Hearing (Afternoon Session), Dated: Sept. 27, 2019 (Rec. 46).....	99 – 150
Milwaukee, Wis. Traffic Code 101-1.2 (2019)	151
Milwaukee, Wis. Traffic Code 101.24.2 (2020)	152
<i>State v. Neal</i> , Appeal No. 2017AP1397-CR, 2018 WL 1633577 (Wis. Ct. App., Apr. 3, 2018) (unpublished).....	153 – 155

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 20, 2022

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. 2021AP311-CR

Cir. Ct. No. 2018CF5172

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DONTE QUINTELL MCBRIDE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JONATHAN D. WATTS, Judge. *Reversed and cause remanded with directions.*

Before Donald, P.J., Dugan and White, JJ.

¶1 DONALD, P.J. Donte Quintell McBride appeals a judgment of conviction for one count of possession with intent to deliver heroin and two counts of possession with intent to deliver narcotics, and an order denying his motion to

suppress. As discussed below, we conclude that the police did not have reasonable suspicion to seize McBride. Accordingly, we reverse the judgment and the circuit court's denial of McBride's suppression motion.

BACKGROUND

¶2 On October 28, 2018, McBride and another person were sitting in an SUV parked in an alley behind the building where McBride lived. McBride was in the passenger seat.

¶3 At approximately 11:15 p.m., Officer Jose Rivera and his partner, Officer Eric Kradecki, were performing a routine patrol and spotted the SUV. Within a matter of seconds, Officer Rivera shined the squad spotlight into the SUV, exited the squad car, and ordered the driver and McBride to put their hands up. Officer Rivera then opened the passenger's side door, handcuffed McBride, and removed him from the SUV. When Officer Rivera opened the SUV door, he saw an orange, unlabeled pill bottle between the front passenger door and the seat. An additional unlabeled pill bottle was recovered from McBride's front right pocket after a pat-down.¹

¶4 McBride was charged with one count of possession with intent to deliver heroin and one count of possession of narcotic drugs. An amended information added a second count of possession of narcotic drugs and second and subsequent enhancers to all counts.

¹ At the preliminary hearing, Officer Rivera testified that he also recovered a clear plastic bag from McBride that he believed was heroin.

¶5 McBride filed a motion to suppress. At the suppression hearing, Officer Rivera testified, and the State moved the video footage from his body camera into evidence. According to Officer Rivera, upon shining the spotlight into the SUV, McBride, who was in the passenger seat, immediately “started to bend down towards his waist area and begin to reach around in the vehicle.” Further, as Officer Rivera exited his squad car, McBride was “still reaching inside of the vehicle.” Officer Rivera admitted, however, that neither his body camera nor his partner’s body camera captured any movement from McBride.²

¶6 Officer Rivera also testified that the SUV was not “parked off to the side, it was parked right in the alley,” and could have interfered with traffic if there was a large vehicle or two-way traffic. On cross-examination, Officer Rivera, however, indicated that he was able to maneuver his vehicle around the SUV, and that he did not take measurements of the alley to determine whether the SUV in fact obstructed traffic.

¶7 Following the suppression hearing, the circuit court denied the motion. The circuit court found Officer Rivera’s testimony credible. The circuit court further found that there was reasonable suspicion for the stop and subsequent frisk, and probable cause existed to arrest McBride.

¶8 That same day, McBride pleaded guilty to one count of possession with intent to deliver heroin and two counts of possession with intent to deliver narcotics. McBride was sentenced to a total of six years in prison. McBride now appeals the suppression ruling. Additional relevant facts are addressed below.

² According to Officer Rivera, this was because the body camera was at a fixed angle; whereas, he could move his head and see different things.

DISCUSSION

¶9 On appeal, McBride renews his argument that police did not have reasonable suspicion to seize him. McBride also contends that handcuffing and removing him from the vehicle was not supported by reasonable suspicion and exceeded the scope of a permissible stop. Finally, McBride contends that the search of his person was not justified.

¶10 We conclude that the police lacked reasonable suspicion to seize McBride. As a result, we do not address McBride's other issues. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (stating that an appellate court should decide cases on the narrowest possible grounds).

¶11 The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution protect the rights of citizens to be free from unreasonable searches and seizures. *State v. Young*, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729. An investigatory stop, also known as a *Terry stop*,³ “complies with the Fourth Amendment ‘if the police have reasonable suspicion that a crime has been committed, is being committed, or is about to be committed.’” *State v. Genous*, 2021 WI 50, ¶7, 397 Wis. 2d 293, 961 N.W.2d 41 (citation omitted).

¶12 “Reasonable suspicion requires that a police officer possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot.” *Young*, 294 Wis. 2d 1, ¶21. This is “an objective test that examines the totality of circumstances.” *State v. VanBeek*, 2021 WI 51, ¶52, 397 Wis. 2d 311,

³ *See Terry v. Ohio*, 392 U.S. 1 (1968).

960 N.W.2d 32. “A mere hunch that a person has been, is, or will be involved in criminal activity is insufficient” to establish reasonable suspicion. *Young*, 294 Wis. 2d 1, ¶21.

¶13 The State bears the burden of proving that an investigatory stop was constitutional. *State v. Meddaugh*, 2022 WI App 12, ¶13, 401 Wis. 2d 134, 972 N.W.2d 181. When reviewing an order granting or denying a motion to suppress, we will uphold the circuit court’s findings of fact unless they are clearly erroneous. *Id.*, ¶12. We independently apply constitutional principles to the facts. *Id.*

¶14 Here, the parties agreed in the circuit court that a seizure occurred when Officer Rivera ordered McBride to show his hands. *See Young*, 294 Wis. 2d 1, ¶34 (stating that a seizure occurs when a reasonable person would have believed he was not free to leave). As a result, at issue is whether the police had reasonable suspicion to seize McBride. *See Genous*, 397 Wis. 2d 293, ¶7. The State contends that the totality of the circumstances support a finding of reasonable suspicion. We disagree. We conclude that the totality of circumstances does not establish reasonable suspicion that McBride had been engaged in, was engaged in, or was about to be engaged in, criminal activity.

¶15 To start, we note what this case is *not* about. This is not a case where the police were responding to a call or tip about suspicious or criminal activity taking place. Nor is this a case where the police came across a person, had a hunch that criminal activity was taking place, and then, after observing the person for a substantial period of time, determined that criminal activity appeared to be afoot. Rather, in this case, we emphasize that the record reflects that the

officers were on a routine patrol and, seconds after observing the SUV, seized McBride.

¶16 In concluding that reasonable suspicion existed to seize McBride, the circuit court highlighted that: (1) the SUV was parked in a “high-crime” area; (2) the SUV had its lights off;⁴ (3) there were two people sitting inside the SUV; (4) the SUV was parked in an “unusual” place in the alley; and (5) McBride moved in response to seeing Officer Rivera’s spotlight.⁵

¶17 First, as the State acknowledges, it is well-established that an individual’s presence in a high-crime area standing alone is insufficient to give rise to reasonable suspicion. *See State v. Gordon*, 2014 WI App 44, ¶15, 353 Wis. 2d 468, 846 N.W.2d 483. The State cannot justify a warrantless search or seizure with nothing more than a recitation that the person was in a “high-crime” area. As we have previously observed:

sadly, many, many folks, innocent of any crime, are by circumstances forced to live in areas that are not safe—either for themselves or their loved ones. Thus, the routine mantra of “high crime area” has the tendency to condemn a whole population to police intrusion that, with the same additional facts, would not happen in other parts of our community.

Id.

⁴ Both Officer Jose Rivera and the circuit court simply referred to “lights.” Neither specified whether this meant the SUV’s headlights or interior lights.

⁵ We note that the circuit court in its decision also referred to the discovery of the unlabeled pill bottle in the SUV. Reasonable suspicion, however, must be facts and information known to the police officer before the seizure. *See State v. Genous*, 2021 WI 50, ¶10, 397 Wis. 2d 293, 961 N.W.2d 41.

¶18 Second, we are not persuaded that two people sitting in a parked SUV with its lights off is inherently suspicious. Sitting in a parked car with the lights off cannot be described as unusual or uncommon behavior in either high-crime or low-crime areas. There are a plethora of innocent reasons that two people may sit in a parked car, such as waiting for a friend or family member. While it is true that conduct which may have an innocent explanation may also give rise to a reasonable suspicion of criminal activity, the inference of unlawful conduct must be reasonable. *See State v. Waldner*, 206 Wis. 2d 51, 57, 556 N.W.2d 681 (1996). Here, we do not see how the presence of two people in the parked SUV without its lights on supports a reasonable suspicion that McBride was engaged in criminal activity.

¶19 Third, we address McBride's alleged movements in response to Officer Rivera's squad spotlight shining into the SUV. "Furtive" or suspicious movements do not automatically give rise to reasonable suspicion. For instance, in *Gordon*, officers stopped the defendant, who was walking at night in a high-crime area, after observing him pat the outside of his pants pocket, also known as a "security adjustment." *See id.*, 353 Wis. 2d 468, ¶¶9, 14. One of the officers explained that a "security adjustment" is a conscious or unconscious movement that an individual does when he or she is carrying a weapon and confronted by law enforcement. *Id.*, ¶4. Nonetheless, we concluded that, without more, the facts did not establish reasonable suspicion that criminal activity was afoot. *Id.*, ¶14. We stated that a "'security adjustment' could, given additional facts (such as, for example, flight or attempted flight), support an objective 'reasonable suspicion,'" the additional facts present were "far too common to support the requisite individualized suspicion[.]" *Id.*, ¶17.

¶20 Here, Officer Rivera admitted that neither his body camera nor his partner's body camera captured any movement from McBride. Nor do we discern any clear movement based on our review of the body camera recording. However, even accepting the circuit court's findings that Officer Rivera saw movement, we conclude that this does not establish reasonable suspicion that criminal activity was afoot. If anything, McBride's movement in response to a bright spotlight being shined into the car is far less suspicious than the "security adjustment" in *Gordon. Id.*; see also *State v. Johnson*, 2007 WI 32, ¶43, 299 Wis. 2d 675, 729 N.W.2d 182 (noting that there are any number of "innocuous movements persons make in their vehicle every day," which might result in an officer seeing the occupant of a vehicle's "head and shoulders move, or even momentarily disappear from view," including reaching for a wallet, putting down a soda, or picking up a fast food wrapper from the floor). Permitting a seizure based on a person's movement in response to a bright spotlight shining into a car where the only other facts are that the area is high-crime and two people are sitting in a parked car with the lights off in an alley simply is not enough to establish reasonable suspicion.

¶21 Finally, we turn to the location of the SUV in the alley. The Dissent contends that the SUV was obstructing traffic in the alley, thus, the officers had reasonable suspicion that a traffic law was being violated. See Dissent, ¶36; *State v. Colstad*, 2003 WI App 25, ¶9, 260 Wis. 2d 406, 659 N.W.2d 394 (holding that an investigative stop was justified by reasonable suspicion that the defendant

had violated a traffic ordinance). The Dissent, however, does not specify what traffic law or ordinance was allegedly being violated.⁶

¶22 Moreover, based on our review of the testimony and the body camera video, we conclude that the circuit court's finding that the SUV "obstructed traffic" was clearly erroneous. *See Meddaugh*, 401 Wis. 2d 134, ¶12. The video reflects that the SUV was not in fact parked in the middle of the alley, but rather off to the side with the driver behind the wheel and available to move the SUV. Additionally, on cross-examination, Officer Rivera conceded that he was able to maneuver his squad car around the parked SUV and that he took no measurements of the alley to determine whether the SUV would have in fact obstructed traffic.

¶23 Therefore, under the totality of the circumstances, we conclude that the police lacked reasonable suspicion to seize McBride. Accordingly, we reverse the judgment and the circuit court's denial of the motion to suppress. On remand, we direct the circuit court to vacate the judgment, withdraw McBride's plea, grant the motion to suppress, and determine the effect of suppression on each of the charges in the case.

By the Court.—Judgment and order reversed and cause remanded with directions.

⁶ The State's brief to this court references MILWAUKEE, WIS. TRAFFIC CODE, 101-24.2, which provides that it is "unlawful for any vehicle to be parked or left standing in a highway in such a manner as to obstruct traffic." We question whether this ordinance applies here. The plain language of the ordinance addresses vehicles on a *highway*, not an alley. *Cf.* MILWAUKEE, WIS. TRAFFIC CODE, 101-24.5(3) (discussing the removal of a vehicle from "any alley, street, highway or public place" when there is an issue with the vehicle identification number); 101-24.7(2)(a) (prohibiting an unregistered motor vehicle from being located upon "any alley, street, highway, public way or thoroughfare").

Not recommended for publication in the official reports.

No. 2021AP311-CR(D)

¶24 DUGAN, J. (*dissenting*). Because I conclude that: (1) the police officers had reasonable suspicion to stop the SUV McBride was a passenger in because the SUV was illegally parked obstructing traffic; (2) McBride was lawfully seized during the investigative stop for the traffic violation; (3) the officers lawfully ordered McBride to exit the SUV during the investigative stop; (4) under the totality of the circumstances, at the time Officer Rivera opened the car door and immediately saw the pill bottle that did not have a label and contained green pills that Officer Rivera believed were oxycodone, the officers had probable cause to arrest McBride for possession of a controlled substance without a prescription; and (5) the officers' search of McBride was incident to the lawful arrest, I respectfully dissent.¹

Officer Rivera's Testimony at the Suppression Hearing

¶25 Officer Rivera was the only witness to testify at the hearing on McBride's motion to suppress the evidence that was found after the SUV he was a passenger in was stopped. Thus, his testimony is critical in the analysis of the issues on appeal, and I highlight it in this dissent.

¹ As explained below, I disagree with the Majority's conclusion that the police officers did not have reasonable suspicion to seize McBride. The Majority analyzes the seizure issue from the standpoint of whether there was reasonable suspicion that McBride was committing a crime. My analysis focuses on the reasonable suspicion for the traffic stop, which then results, as it does in every traffic stop, with the occupants of the SUV being lawfully seized during the traffic stop.

¶26 Officer Rivera, who had almost twelve years of experience as a City of Milwaukee police officer, was assigned to the Anti-Gang Unit on October 28, 2018. His duties with the Anti-Gang Unit were to patrol high-crime areas, respond to shots fired, respond to reports of drug dealing, and things of that nature. At approximately 11:15 p.m. on October 28, 2018, he and his partner Officer Kradecki, were on patrol looking for any suspicious activity in the area around 416 East Locust Street in Milwaukee.

¶27 Officer Rivera testified that that location is a high-crime area where he had responded to many calls for service regarding shootings, shots fired, drug dealing, and things of that nature. He testified that he personally made over two dozen arrests regarding illegal drugs and firearm possession in that area.

¶28 Specific to this case, Officer Rivera stated that on the night in question, he saw a SUV parked in the alley with no lights on. He stated that alleys in Milwaukee are typically very narrow, so it caught his attention because it was not parked off to the side—it was parked right in the alley. He testified that the SUV was parked so that if there was a large vehicle or two-way traffic, the SUV would interfere with traffic. In response to trial counsel's question that "[i]n fact, in that vehicle if it's parked and no one is there, the solution would be just to ticket the vehicle, correct," Officer Rivera responded, "Yes. It would get ticketed or towed if it's obstructing traffic."

¶29 Officer Rivera then testified that to him "with it being dark out, the lights being off in the vehicle, with people inside the vehicle parked in an alley obstructing traffic, that was not normal, especially in a high-crime area which made him suspicious." He stated that because he could not tell if anyone was in the SUV, he shined his squad car spotlight at the SUV and he saw that there were

two people in it. Once the spotlight shined on the SUV, McBride immediately started to bend down towards his waist area and began to reach around in the SUV. Officer Rivera further testified that based on his experience and training and dealing with similar situations, McBride's movements were consistent with someone having illegal narcotics or weapons on their person. He explained that when those people see police, they try to hide the drugs and weapons. He also stated that in his experience, he had arrested people who had hidden controlled substances and weapons in their waistbands.

¶30 Officer Rivera testified that when he saw McBride make those movements, he got out of the squad car, saw that McBride was still making those movements, and so he ordered McBride and the driver to show him their hands—they complied. As Officer Rivera approached McBride while he was still in the SUV, Officer Rivera asked him what he was reaching around for—why was he reaching. Officer Rivera then opened the door, removed McBride from the SUV, and handcuffed him for the officers' safety because McBride's movements made him fear that McBride might be armed with a weapon. He then conducted a pat-down of McBride's person for weapons.

¶31 Officer Rivera also testified that when he opened the door, he immediately saw an orange pill bottle, without a label, that contained green pills located between McBride's seat and the door—he believed the pills were oxycodone. He testified that based on his training and experience that a pill bottle, without a label, was indicative of McBride possessing a controlled substance without a prescription and that when people normally carry prescription bottles, they have a label with their name on it, and there was no label on the pill bottle in the SUV. When the trial court asked Officer Rivera if he immediately saw that the pill bottle contained the green pills in it, Officer Rivera responded yes.

¶32 Officer Rivera testified that while he was patting McBride down for weapons, he recovered an additional pill bottle from McBride's front right pocket that did not have a label on it that contained more pills. McBride was arrested and subsequently charged with Possession with Intent to Deliver a Controlled Substance—Heroin—more than Three Grams but not more than Ten Grams² and with Possession of Oxycodone Hydrochloride, a Controlled Substance, without a valid prescription.

¶33 This dissent will address: (1) whether the police officers had reasonable suspicion to stop the SUV that McBride was a passenger in; (2) was McBride lawfully seized during the traffic stop; (3) did the officers lawfully order McBride to exit the SUV; (4) at the time that Officer Rivera opened the car door and saw the pill bottle with the green pills that he believed were oxycodone, did he have probable cause to arrest McBride; and (5) was the officers' search of McBride a search incident to his arrest. I will address each issue in turn.

The Officers had Reasonable Suspicion to Justify the Stop

¶34 In *State v. Genous*, 2021 WI 50, ¶¶7-9, 397 Wis. 2d 293, 961 N.W.2d 41, our supreme court concisely set forth the law regarding investigatory stops by police. The court stated:

An investigatory stop, also known as a *Terry* stop, “usually involves only temporary questioning and thus constitutes only a minor infringement on personal liberty.” *State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729. It allows police officers to briefly detain someone to “investigat[e] possible criminal behavior even though there is no probable cause to make an arrest.”

² As the Majority notes, at the preliminary hearing, Officer Rivera testified that he also recovered a clear plastic bag from McBride that he believed contained heroin.

State v. Waldner, 206 Wis. 2d 51, 55, 556 N.W.2d 681 (1996). This type of limited stop complies with the Fourth Amendment “if the police have reasonable suspicion that a crime has been committed, is being committed, or is about to be committed.” *Young*, 294 Wis. 2d 1, ¶20.

Reasonable suspicion must be supported by specific and articulable facts. *Id.*, ¶21. While it is a low bar, a mere hunch is insufficient. *Id.*; *State v. Eason*, 2001 WI 98, ¶19, 245 Wis. 2d 206, 629 N.W.2d 625. Yet “officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.” *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). The question is, “What would a reasonable police officer reasonably suspect in light of his or her training and experience?” *Id.* at 83-84; *United States v. Cortez*, 449 U.S. 411, 418 (1981) (“[A] trained officer draws inferences and makes deductions ... that might well elude an untrained person.”).

A reasonable suspicion determination is based on the totality of the circumstances. *State v. Post*, 2007 WI 60, ¶18, 301 Wis. 2d 1, 733 N.W.2d 634. We focus not on isolated, independent facts, but on “the whole picture” viewed together. *Cortez*, 449 U.S. at 417-18; *see also United States v. Sokolow*, 490 U.S. 1, 9-10 (1989) (“Indeed, *Terry* itself involved a series of acts, each of them perhaps innocent if viewed separately, but which taken together warranted further investigation.” (internal quotation marks omitted)).

Genous, 397 Wis. 2d 293, ¶¶7-9 (alterations in original; some citations omitted).

The court then explained that when addressing a motion to suppress involving a stop the court’s “task is to consider everything observed by and known to the officer, and then determine whether a reasonable officer in that situation would reasonably suspect that criminal activity was afoot.”³ *Id.*, ¶10. “Whether reasonable suspicion was present is a legal question we analyze independently, but

³ I note that in *Genous*, the officer stopped Genous’s vehicle based on a suspicion that he observed Genous engage in a drug transaction—not for a traffic violation. *See State v. Genous*, 2021 WI 50, ¶1, 397 Wis. 2d 293, 961 N.W.2d 41.

we accept the circuit court's findings of historical fact unless they are clearly erroneous." *Id.*

¶35 While on patrol, Officer Rivera turned into the alley at 11:15 p.m., and as he driving through the alley, he saw a SUV parked in the alley such that it was obstructing traffic. McBride argues that Officer Rivera's testimony did not establish that the SUV in fact blocked traffic. However, Officer Rivera testified that "[a]lleys typical in Milwaukee are very narrow, so it caught my attention because it wasn't parked off to the side, it was parked right in the alley." He also testified that a large vehicle or two-way traffic would be obstructed. When trial counsel asked Officer Rivera whether the SUV would get ticketed if no one was there, he responded, "Yes. It would get ticketed and towed if it is obstructing traffic."

¶36 Moreover, in this case the trial court made specific findings that the SUV was obstructing traffic. It stated in numerous parts of its oral decision that "the car is parked in the alley, not off to the side," "an unilluminated vehicle parked in the middle of the alley is suspicious," "so you have the improperly parked vehicle," "vehicle parked in the middle of the alley, obstructing traffic in the alley," and "discovery by Officer Rivera of a vehicle parked in the middle of the alley and having no lights on is suspicious." As noted, "we accept the circuit

court's findings of historical fact unless they are clearly erroneous." *Genous*, 397 Wis. 2d 293, ¶10.⁴

¶37 I conclude that based on the facts in the record and the circuit court's findings of fact that the SUV was obstructing traffic in the alley, the officers had reasonable suspicion that a traffic law was being violated, which justified a traffic stop. An officer may conduct an investigatory stop of a vehicle based on a noncriminal traffic violation. *State v. Colstad*, 2003 WI App 25, ¶¶8-9, 260 Wis. 2d 406, 659 N.W.2d 394 (noting that when there is reasonable suspicion to believe a person is violating a law or a traffic ordinance, a police officer may, consistent with the Fourth Amendment's protection against unreasonable seizures, detain the person for an investigative stop). In *State v. Neal*, No. 2017AP1397-CR, unpublished slip op. (WI App Apr. 3, 2018),⁵ officers saw a vehicle parked in an alley blocking traffic. The officers activated their squad lights, approached the vehicle, and asked the occupants to exit the vehicle. *Id.*, ¶2. This court concluded that the vehicle was "parked towards the middle of the alley, blocking traffic in at least one direction." *Id.*, ¶11. Accordingly, this court concluded that the stop was reasonable. *Id.*

⁴ The Majority notes that the circuit court stated that there was an "inference" that the SUV was "partially blocking the alley." It goes on to say that on cross-examination, Officer Rivera conceded that he was able to maneuver his car around the parked SUV and that he took no measurements "to indicate whether the SUV in fact obstructed traffic." Majority, ¶19. First, although the circuit court did note the inference that the SUV was partially blocking the alley, in that same sentence it went on to say, "[T]here was later testimony that the vehicle could have been towed or ticketed ..." By contrast, as noted above, the circuit court found that the SUV was illegally parked, was parked in the middle of the alley, and was obstructing traffic. We must accept the circuit court's findings of historical fact unless they are clearly erroneous. *Genous*, 397 Wis. 2d 293, ¶10.

⁵ This is an unpublished opinion. Pursuant to Rules of Appellate Procedure, WIS. STAT. RULE 809.23(3)(b), unpublished opinions issued on or after July 1, 2009, may be cited for persuasive value.

¶38 Applying our supreme court's holding in *Genous*, I am persuaded by the reasoning of this court in the *Neal* decision and conclude that the officers reasonably stopped the SUV in which McBride was a passenger.

Seizure and Removal from the SUV

¶39 I next address the issue of whether the police officers had reasonable suspicion to detain—seize—McBride and remove him from the SUV. I conclude because the police officers had reasonable suspicion that the parked SUV was violating a traffic ordinance that they could conduct an investigative stop of the SUV based on that noncriminal violation, that they could also detain the occupants of the SUV for the duration of the investigative stop, and that they could order McBride and the driver to exit the SUV without violating the Fourth Amendment's prohibition against unreasonable seizures.

¶40 In *Arizona v. Johnson*, 555 U.S. 323, 327 (2009), the U.S. Supreme Court explained that “[f]or the duration of a traffic stop, we recently confirmed, a police officer effectively seizes ‘everyone in the vehicle,’ the driver and all passengers. *Brendlin v. California*, [551 U.S. 249, 255] (2007).” Thus, the Court stated that “we hold that, in a traffic-stop setting, the first *Terry* condition—a lawful investigatory stop—is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. *The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.*” *Johnson*, 555 U.S. at 327 (emphasis added).

¶41 As noted above, in *Neal*, No. 2017AP1397-CR, this court was faced with facts similar to the facts in this case. Namely, officers saw a vehicle parked in an alley blocking traffic. In *Neal*, the officers activated their squad lights, approached the vehicle, and asked the occupants to exit the vehicle. *Id.*, ¶2. This

court concluded that the vehicle was obstructing traffic, and therefore, the stop was reasonable. *Id.*, ¶11. It also cited *Colstad* for the proposition that when there is a reasonable suspicion to believe a person is violating a law or a traffic ordinance, a police officer may, consistent with the Fourth Amendment's protection against unreasonable seizures, detain the person for an investigative stop. *Id.*

¶42 Thus, I conclude that because the SUV was obstructing traffic, the officers engaged in a lawful investigatory stop, and therefore, the officers could detain—seize—McBride and the driver for the investigative stop. *See Johnson*, 555 U.S. at 327.

¶43 The next issue I address is whether the officers could lawfully order McBride and the driver to exit the SUV. The U.S. Supreme Court decisions in *Arizona v. Johnson*, *Pennsylvania v. Mimms*,⁶ and *Maryland v. Wilson*,⁷ hold that once a vehicle has been lawfully detained for a traffic violation, the police officers may order the driver and any passengers to exit the vehicle without violating the Fourth Amendment's prescriptions of unreasonable searches and seizures.

¶44 McBride argues that *Mimms* and *Wilson* do not apply in this case because those cases involved roadside stops whereas here the SUV was parked in an alley. He then argues that the Court's concern in those cases "was the hazards and danger to police investigating a traffic violation on a roadway." He asserts that in contrast here, the police encounter with McBride did not occur during a

⁶ *Pennsylvania v. Mimms*, 434 U.S. 106 (1977) (per curiam).

⁷ *Maryland v. Wilson*, 519 U.S. 408 (1997).

roadside stop, but rather, when an officer shined a spotlight into a parked SUV in an alley. Without citing any authority, he then argues that his removal from the SUV exceeded the *Terry* stop. In his reply brief, again without citing any authority, McBride merely asserts that “[t]his court should reject the State’s bold invitation to extend the *per se* rule applicable to traffic stops in *Mimms* and *Wilson* to non-moving encounters.” Also, without citing any authority, McBride argues that this court should narrowly interpret *Mimms* and *Wilson*, as applying only to roadside stops.

¶45 However, in *Johnson*, the U.S. Supreme Court stated that “the Court has recognized that traffic stops are ‘especially fraught with danger to police officers.’ ‘The risk of harm to both the police and the occupants [of a stopped vehicle] is minimized,’ we have stressed, ‘if the officers routinely exercise unquestioned command of the situation.’” *Johnson*, 555 U.S. at 330 (alteration in original; citations omitted).

¶46 The Court then stated that its decisions in *Mimms*, *Wilson*, and *Brendlin* cumulatively portray *Terry*’s application in a traffic-stop setting. It explained that in *Mimms*, “the Court held that ‘once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment’s proscription of unreasonable searches and seizures’” and that “[t]he government’s ‘legitimate and weighty’ interest in officer safety, the Court said, outweighs the ‘*de minimis*’ additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle.” *Johnson*, 555 U.S. at 331 (citations omitted).

¶47 The Court then stated that in *Wilson*, the Court held that “the *Mimms* rule applied to passengers as well as to drivers,” that “[s]pecifically, the

Court instructed that ‘an officer making a traffic stop may order passengers to get out of the car pending completion of the stop,’ and that it observed that “[t]he same weighty interest in officer safety ... is present regardless of whether the occupant of the stopped car is the driver or passenger.” *Johnson*, 555 U.S. at 331 (citations omitted). The Court then stated that the *Wilson* Court “emphasized, the risk of a violent encounter in a traffic-stop setting ‘stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop.’” *Johnson*, 555 U.S. at 331 (citation omitted). Finally, the Court stated that “[t]he motivation of a passenger to employ violence to prevent apprehension of such a crime ... is every bit as great as that of the driver.” *Id.* at 331-32 (citation omitted).⁸

¶48 Based on the holdings in those decisions, I conclude that because the police officers had reasonable suspicion that the parked SUV was violating a traffic ordinance, they could conduct an investigative stop of the SUV based on that noncriminal violation. They could also seize the occupants of the SUV during the investigative stop and could order McBride and the driver to exit the SUV without violating the Fourth Amendment’s prohibition against unreasonable seizures. Moreover, when officers engage in a lawful traffic stop of a vehicle, they need not have cause to believe that any occupant of the vehicle is involved in

⁸ The *Johnson* Court also stated, “Completing the picture, *Brendlin* held that a passenger is seized, just as the driver is, ‘from the moment [a car stopped by the police comes] to a halt on the side of the road.’” *Arizona v. Johnson*, 555 U.S. 323, 332 (2009) (citation omitted).

criminal activity to engage in an investigation of the traffic violation and to order the occupants to exit the vehicle. *See Johnson*, 555 U.S. at 331.⁹

Probable Cause to Arrest and Search Incident to Arrest

¶49 The next issue that I address is whether the officers had probable cause to arrest McBride and search his person at the time when Officer Rivera opened the car door and immediately observed the orange pill bottle, without a label on it and with green pills in it, which he believed were oxycodone. I conclude that he did based on the totality of the circumstances.

¶50 In order to be lawful, an arrest must be based on probable cause. *State v. Secrist*, 224 Wis. 2d 201, 212, 589 N.W.2d 387 (1999). Probable cause to arrest is the sum of evidence “within the arresting officer’s knowledge at the time of the arrest which would lead a reasonable police officer to believe that the defendant probably committed or was committing a crime.” *Id.* While the

⁹ I note that McBride asserts that his seizure was not a “de minimis” additional intrusion occurring during a roadside traffic stop. He argues that to the contrary, rather than a traffic stop, his seizure was the whole point of the encounter. It appears that McBride is arguing that the traffic stop was a pretext and that Officer Rivera actually believed that the occupants of the SUV may be engaged in some other illegal behavior. He seems to be arguing that where a police officer subjectively believes that the occupants of an automobile may be engaging in some other illegal behavior the traffic stop is unlawful. First, he cites no authority for such an argument, and second, he is wrong.

In *Whren v. United States*, 517 U.S. 806, 813 (1996), stated that “[i]n *United States v. Robinson*, [414 U.S. 218] (1973), we held that a traffic-violation arrest (of the sort here) would not be rendered invalid by the fact that it was ‘a mere pretext for a narcotics search’” Referring to other cases cited in the decision, the Court stated that “[w]e think these cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved.” *Id.* In other words, regardless of whether a police officer subjectively believes that the occupants of an automobile may be engaging in some other illegal behavior, a traffic stop is permissible as long as a reasonable officer in the same circumstances *could have* stopped the car for the suspected traffic violation.

information must be sufficient to lead a reasonable officer to believe that the defendant's involvement in a crime is "more than a possibility," it "need not reach the level of proof beyond a reasonable doubt or even that guilt is more likely than not." *Id.* "The question of probable cause must be assessed on a case-by-case basis, looking at the totality of the circumstances. Probable cause is a 'flexible, common-sense measure of the plausibility of particular conclusions about human behavior.'" *State v. Lange*, 2009 WI 49, ¶20, 317 Wis. 2d 383, 766 N.W.2d 551 (citation and footnote omitted). "In determining whether there is probable cause, the court applies an objective standard, considering the information available to the officer and the officer's training and experience." *Id.* "When a police officer is confronted with two reasonable competing inferences, one justifying arrest and the other not, the officer is entitled to rely on the reasonable inference justifying arrest." *State v. Kutz*, 2003 WI App 205, ¶12, 267 Wis. 2d 531, 671 N.W.2d 660.

¶51 McBride asserts that Officer Rivera lacked probable cause to arrest him for the unlawful possession of a prescription drug "based simply upon the unlabeled pill bottle in the vehicle." However, as noted above, the question of probable cause must be assessed on a case-by-case basis, looking at the totality of the circumstances, not just one fact.

¶52 In this case, Officer Rivera—who had almost twelve years of experience as a City of Milwaukee police officer—and his partner were patrolling in a high-crime area. He had been patrolling that area for approximately five years. He testified that he had responded to many calls for service in the area regarding shootings, shots fired, drug dealing, and things of that nature. He personally made over two dozen arrests regarding illegal drugs and firearm possession in that area.

¶53 At approximately 11:15 p.m. on the night in question, Officer Rivera and his partner were patrolling in an alley looking for suspicious activity. While patrolling in the alley, he saw a SUV parked in the alley with no lights on. He testified that alleys in Milwaukee are typically very narrow, so the SUV caught his attention because it was not parked off to the side—it was parked right in the alley. As noted above, the circuit court found that the SUV was illegally parked, was parked in the middle of the alley, and was obstructing traffic. We must accept the circuit court’s findings of historical fact unless they are clearly erroneous. *Genous*, 397 Wis. 2d 293, ¶10. Officer Rivera further testified that to him “with it being dark out, the lights being off in the SUV, with people inside the SUV parked in an alley obstructing traffic, that was not normal, especially in a high-crime area which made him suspicious.”

¶54 Officer Rivera explained that because it was dark out and the SUV did not have any lights on he could not tell if anyone was inside the SUV, and therefore, he shined his squad car spotlight at the SUV. When he shined the spotlight on the SUV, he could see that there were two people in the car, and he could see that McBride immediately started to bend down towards his waist area and began to reach around in the SUV. Officer McBride testified that based upon his experience and training in dealing with similar situations, McBride’s movements were consistent with someone having illegal narcotics or weapons on their person. He also stated that in his experience he had arrested people who had hidden controlled substances and weapons in their waistbands. In determining whether probable cause exists, this “court is to consider the information available to the officer from the standpoint of one versed in law enforcement, taking the officer’s training and experience into account.” *Kutz*, 267 Wis. 2d 531, ¶12. “[A] trained officer draws inferences and makes deductions ... that might well elude an

untrained person.” *Genous*, 397 Wis. 2d 293, ¶8 (alteration in original; citation omitted).

¶55 As Officer Rivera got out of the squad car, he saw that McBride was still making those furtive movements, so he ordered McBride and the driver to show him their hands. As he approached the SUV, Officer Rivera was asking McBride what he was reaching for—why he was reaching. When he reached the passenger door, Officer Rivera opened the door. When he opened the door, he immediately saw an orange pill bottle, without a label on it and that contained several green pills, between McBride’s seat and the passenger door. Based on his training and experience, Officer Rivera believed the pills were oxycodone, that a pill bottle without a label was indicative that McBride was possessing a controlled substance without a prescription, and that when people normally carry prescription bottles, they have a label with their name on it, and that there was no label on the pill bottle in the SUV. When the trial court asked Officer Rivera if he immediately saw that the pill bottle contained green pills, Officer Rivera responded yes.

¶56 Here, the facts involve much more than a pill bottle, without a label, with green pills in it. Based upon the following facts discussed above, I conclude that probable cause existed for Officer Rivera to arrest McBride for possession of a controlled substance without a prescription at the time he opened the car door and saw the orange pill bottle, without a label and with green pills in it that he believed were oxycodone: (1) the stop occurred late at night; (2) in a high-crime area involving drug trafficking; (3) the SUV was parked in a dark alley obstructing traffic; (4) there were two people sitting in the car with the lights out; (5) when

Officer Rivera shined the squad spotlight on the SUV, McBride immediately began to make the furtive movements described above;¹⁰ (6) when Officer Rivera opened the car door, he immediately saw the pill bottle on the floor of the SUV and it did not have a label on it; (7) the fact that the pill bottle was located on the floor of the SUV between the passenger seat and the passenger door was consistent with McBride's furtive movements leaning down toward his waist and consistent with someone hiding contraband;¹¹ (8) the circuit court's finding that there is "a fair inference that people don't drive around in their cars with pill bottles on the floor board or in between the door and the passenger seat, that there was actually something that was related to the furtive movement"; (9) that McBride continued to make the furtive movements as Officer McBride was getting out of the squad car; and (10) the pill bottle had green pills in it, that based on his training and experience Officer Rivera believed were oxycodone.

¶57 While the information must be sufficient to lead a reasonable officer to believe that the defendant's involvement in a crime is "more than a possibility," it "need not reach the level of proof beyond a reasonable doubt or even that guilt is

¹⁰ In its decision, the Majority discusses McBride's movements. It notes that according to Officer Rivera, McBride immediately started to reach down towards his waist area and begin to reach around in the SUV. It then notes the Officer Rivera admitted, however, that neither his body cam nor his partner's body cam captured any movement from McBride. It then notes that Officer Rivera explained that this was because the body cam was at a fixed angle. Majority, ¶2. Later, the Majority states that Officer Rivera admitted that neither his body cam, nor his partner's captured any movement from McBride. It then states that they did not discern any movement based on its review of the body camera recording. To the extent that the Majority is questioning the credibility of Officer Rivera's testimony that he saw McBride make those movements, the circuit court made extensive findings about why it found Officer Rivera credible about the movements. We must accept the circuit court's findings of historical fact unless they are clearly erroneous. *Genous*, 397 Wis. 2d 293, ¶10.

¹¹ The circuit stated that "specifically that the bending down at the waist and putting one[s] hands in the waistband and the moving around was consistent with the hiding or retrieving of a weapon and ... of a contraband."

more likely than not.” *Secrist*, 224 Wis. 2d at 212. “The question of probable cause must be assessed on a case-by-case basis, looking at the totality of the circumstances. Probable cause is a ‘flexible, common-sense measure of the plausibility of particular conclusions about human behavior.’” *Lange*, 317 Wis. 2d 383, ¶20 (citation and footnote omitted). “In determining whether there is probable cause, the court applies an objective standard, considering the information available to the officer and the officer’s training and experience.” *Id.* “When a police officer is confronted with two reasonable competing inferences, one justifying arrest and the other not, the officer is entitled to rely on the reasonable inference justifying arrest.” *Kutz*, 267 Wis. 2d 531, ¶12.

¶58 Thus, I conclude that probable cause existed to arrest McBride before Officer Rivera searched him.

Search Incident to the Lawful Arrest

¶59 The last issue that I address is whether Officer Rivera’s search of McBride was incident to his arrest. The State notes that the record is unclear when the arrest occurred, though it states that it appears that it occurred after Officer Rivera searched McBride. Therefore, the State assumes that the arrest happened after the search. I will do the same.

¶60 The State argues that the fact that the arrest occurred after the search is not dispositive as to whether a search is one incident to a lawful arrest. In *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980), the Court held that “[w]here the formal arrest followed quickly on the heels of the challenged search ..., we do not believe it particularly important that the search preceded the arrest rather than vice versa.” In *State v. Sykes*, 2005 WI 48, ¶15, 279 Wis. 2d 742, 695 N.W.2d 277 (alteration in original; citation omitted), our supreme court held that “[a] search

may be incident to a subsequent arrest if the officers have probable cause to arrest before the search.” “Accordingly, when a suspect is arrested subsequent to a search, the legality of the search is established by the officer’s possession, before the search, of facts sufficient to establish probable cause to arrest followed by a contemporaneous arrest.” *Id.*, ¶16.

¶61 McBride acknowledges that a search incident to arrest is a lawful exception to the warrant requirement. Further, he does not argue that an arrest subsequent to a search is unlawful even if the officers had probable cause to arrest before the search. What he argues is that there was no probable cause to arrest him for possession of a prescription drug based simply on the unlabeled pill bottle in the SUV, and therefore, Officer Rivera lacked authority to search McBride incident to an arrest.

¶62 Because I concluded above that the unlabeled pill bottle was not the only factual basis supporting probable cause, I reject McBride’s argument. Thus, I conclude that the search of McBride was incident to his lawful arrest, and therefore, the drugs found on him were lawfully recovered.

Conclusion

¶63 Based on the totality of the circumstances, I conclude that: (1) the police officers had reasonable suspicion to stop the SUV McBride was a passenger in because the SUV was illegally parked obstructing traffic; (2) McBride was lawfully seized during the investigative stop for the traffic violation; (3) the officers lawfully ordered McBride to exit the SUV during the investigative stop; (4) under the totality of the circumstances, at the time Officer Rivera opened the car door and immediately saw the pill bottle that did not have a label on it and contained green pills that Officer Rivera believed were oxycodone, the officers

had probable cause to arrest McBride for possession of a controlled substance without a prescription; and (5) and the officers' search of McBride was incident to the lawful arrest.

¶64 Thus I would affirm, and I respectfully dissent.

FILED
11-16-2018
John Barrett
Clerk of Circuit Court
2018CF005172

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY
BRANCH PE

STATE OF WISCONSIN,

Plaintiff,

CASE NO. 18-CF-5172

vs.

DONTE Q. MCBRIDE,

Defendant.

PRELIMINARY HEARING

BEFORE THE HONORABLE GRACE FLYNN,
CIRCUIT COURT COMMISSIONER PRESIDING
NOVEMBER 8, 2018

A P P E A R A N C E S:

MS. STEPHANIE KRUEGER, Attorney at Law, appeared on behalf of the Plaintiff.

MS. TERESE M. DICK, Attorney at Law, appeared on behalf of the Defendant.

MR. DONTE Q. MCBRIDE, Defendant, appeared in custody.

DANIELLE N. HOLCOMB
Official Court Reporter

1

TRANSCRIPT OF THE PROCEEDINGS

2

THE CLERK: *State of Wisconsin versus Donte*

3

McBride, case 18-CF-5172. Count one, possession with

4

intent, heroin. Count two, possession of narcotic

5

drugs. The case is assigned to Judge Protasiewicz,

6

Branch 24. Appearances, please?

7

MS. KRUEGER: Stephanie Krueger appears on

8

behalf of the State on behalf of ADA John Flynn.

9

MS. DICK: Terese Dick appears on behalf of

10

Mr. Donte McBride. Mr. McBride is present in court.

11

Good afternoon.

12

THE COURT: Good afternoon. I have no

13

relationship to the DA. Although I have the same last

14

name, I don't know who he is. We're here for a

15

preliminary hearing. Is the State ready to proceed?

16

MS. KRUEGER: It is. The State would call

17

Officer Rivera.

18

THE CLERK: Good afternoon.

19

THE WITNESS: Good afternoon.

20

OFFICER JOSE RIVERA, having been called as a

21

witness herein and having been first duly sworn, was

22

examined and testified as follows:

23

THE CLERK: Thank you, officer. Please state

24

and spell your first and last name.

25

THE WITNESS: Jose Rivera, J-0-S-E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

R-I-V-E-R-A.

THE COURT: Proceed.

DIRECT EXAMINATION

BY MS. KRUEGER:

Q How are you employed, officer?

A City of Milwaukee as a police officer.

Q How long have you been so employed?

A 11 years now.

Q In those 11 years, what have been your typical duties?

A Typical duties over 11 years are general patrol and also currently for the past three years I've been assigned to the antigang unit at District Five.

Q Were you working in that capacity on or about October 28, 2018?

A Yes, I was.

Q And on that date, did you have cause to be at 416 East Locust Street?

A Yes.

Q Is that in the city and county of Milwaukee?

A Yes, it is.

Q Can you tell me what happened there?

A I was on patrol with my partner Eric Kradecki. That area is known for a high volume of crime regarding drug dealings, shots fired, shootings, things of that nature. I observed a vehicle, a Nissan Pathfinder, parked in the

1 alley. At the time, it was 11:00 o'clock at night. It
2 was late at night. The vehicle was off so I illuminated
3 my squad spotlight inside the vehicle and observed it
4 was occupied by a driver and then a front seat passenger
5 who was later identified as defendant Donte McBride.

6 Q Just let me stop you there. You observed a vehicle in
7 an alley?

8 A That's correct.

9 Q And the alley is, I guess, not for where you would park,
10 is that safe to say?

11 A In the city of Milwaukee, you're not allowed to park
12 your vehicle overnight in the alley. If you do park in
13 the alley, you have to allow 15 feet of clearance for
14 other vehicles to get through. From my experience
15 living in Milwaukee, no alley is that wide that you can
16 technically park in the alley.

17 Q What did you do next upon seeing a parked car in the
18 alley?

19 A Well, since it was dark out, at that point I did not
20 know if it was occupied at the time so I illuminated my
21 spotlight, the squad spotlight inside the vehicle, and
22 observed it was occupied.

23 Q What did you observe of the occupied vehicle?

24 A I observed the front seat passenger, who was identified
25 as Donte McBride, reach down towards his waist area and

1 begin to move both arms around. From my training and
2 experience, these actions are consistent with someone
3 either retrieving a firearm or concealing one or
4 concealing illegal narcotics.

5 Q Did you approach the vehicle?

6 A Yes. I approached the vehicle on foot and made contact
7 with Mr. McBride. I asked him to step out of the
8 vehicle, and upon doing so, once his front passenger
9 door was open, I observed an orange pill bottle in plain
10 view on the floor between the driver's seat -- I mean
11 the front passenger's seat and the front passenger door
12 that contained 68 oxycodone pills.

13 Q All right. Let me just stop you there and go back a
14 little bit. You said the driver was Donte McBride --

15 A No. No. No. I'm sorry.

16 Q -- when you ID'd him?

17 A He was the front passenger, Donte McBride. Yes. He was
18 identified.

19 Q And is the passenger of the vehicle you say is Donte
20 McBride in the courtroom today?

21 A Yes. He's seated at the defense table, wearing an
22 orange shirt.

23 MS. KRUEGER: I'd ask the record reflect
24 identification by this witness.

25 THE COURT: Any objection?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MS. DICK: No.

THE COURT: So ordered. The passenger?

THE WITNESS: Correct. Front passenger.

BY MS. KRUEGER:

Q Then you said you viewed an orange pill bottle, and that was on the passenger's side; correct?

A Yes, with no label.

Q You, I guess, investigated the pill bottle?

A Correct. There was no label on it so I suspected illegal narcotics. Later identified as oxycodone.

Q How did you identify them?

A With Drugs.com. And then once Mr. McBride exited the vehicle, I conducted a further search of his person and located an additional pill bottle in his front right pocket, jacket pocket, without a label also that contained more oxycodone pills. I recovered from his left front jacket pocket a clear plastic bag that contained suspected heroin.

Q Why did you think that was heroin?

A Through my training and experience, I suspected it to be heroin.

Q Could you describe the heroin?

A It was a chunk, a tan chunky substance.

Q Was that suspected heroin tested?

A Yes. I later tested it at District Five with Nark 11

1 and 33. The suspected heroin tested positive for
2 opiates and also fentanyl.

3 Q Do you remember how much the suspected heroin weighed?

4 A 9.19 grams.

5 Q And is 9. -- about 9 grams of heroin consistent with
6 personal use?

7 A No. That much of heroin is consistent with street level
8 sales.

9 Q Did you search the car at all in this incident?

10 A Yes. I searched the vehicle. In plain view I located a
11 black digital scale that contained suspected heroin
12 residue on top. That was located in the center console
13 area of the vehicle, and also Mr. McBride was in
14 possession of three cell phones and approximately a
15 little over \$1900 in cash.

16 Q Then I guess going back to the pills you identified, in
17 your training and experience as an officer, is Drugs.com
18 an accurate and reliable source to identify pills such
19 as oxycodone hydrochloride?

20 A It is.

21 Q Based on your training and experience as an officer, is
22 everything recovered from the car in addition to the
23 amount and type of controlled substances consistent with
24 personal use?

25 A No. The totality of everything, digital scale, large

1 amount of money, multiple cell phones, in my experience
2 I believe that's possession with intent to deliver.

3 MS. KRUEGER: State has no further questions
4 at this time.

5 THE COURT: Okay. Any cross-examination?

6 MS. DICK: Thank you.

7 CROSS-EXAMINATION

8 BY MS. DICK:

9 Q Officer, you were on routine patrol that night?

10 A Yes, correct.

11 Q And you came upon this vehicle just while on patrol;
12 correct?

13 A Yes, correct.

14 Q You don't know how long the car had been there; right?

15 A No.

16 Q You didn't get any calls to investigate the occupants of
17 the car or the car itself; correct?

18 A No.

19 Q And there were no shot spotter or shots fired in that
20 location; correct?

21 A Not at that time, no.

22 Q So you pulled up behind the vehicle that was in the
23 alley?

24 A Actually, we were coming from the north so we were kind
25 of in front of it. It was a t-alley. It was parked

1 just to the west of the t-alley, and we were at the
2 mouth of the t-alley, if that make sense.

3 Q Were you facing the vehicle or perpendicular to it?

4 A Perpendicular to it.

5 Q To the driver's side or the passenger's side?

6 A It'd be the driver's side.

7 Q You don't know how long the car had been there?

8 A That's correct.

9 Q So the spotlight would have gone from your vehicle,
10 specifically the front of your vehicle, into the
11 driver's side of the car?

12 A I illuminated the windshield area of it so it gave me a
13 full view of the occupants in front.

14 Q But to see Mr. McBride you would have to look past the
15 driver; correct?

16 A Well, the vehicle was, like I said, I was at the mouth
17 of the alley. It was just to the west, and so it was on
18 an angle. And then when illuminated by my spotlight, I
19 was able to see both occupants in the vehicle.

20 Q You said Mr. McBride had been reaching towards his
21 waist?

22 A Correct.

23 Q But given the structure of the car and the doors, you
24 wouldn't be able to see below the door, below the top of
25 the door; correct?

1 A Yeah, below the window panel area, you can see
2 movements, and he was reaching down.

3 Q But you don't know what he was reaching for?

4 A That's correct.

5 Q You had no information to that point that he may have
6 been armed in some fashion; correct?

7 A No. Just the movement upon seeing police from my
8 experience as a police officer, subjects who make
9 movements like that are typically attempting to conceal
10 weapons, narcotics.

11 Q But not everyone is; right?

12 A That's correct.

13 Q Did you have any of those same concerns about the
14 driver?

15 A At that point, no, I did not. The driver did not make
16 any movements to alarm me at that point.

17 Q So you removed Mr. McBride before you removed the driver
18 or did the driver stay in the car?

19 A I removed Mr. McBride first just based on his movements,
20 and I feared that he could possibly be armed.

21 Q And what happened to the driver while you removed
22 Mr. McBride?

23 MS. KRUEGER: Objection. Beyond the scope of
24 the proceeding.

25 THE COURT: I'll allow a couple questions

1 here, counsel.

2 MS. DICK: That will be the last round.

3 THE COURT: Foundational.

4 THE WITNESS: I made contact with Mr. McBride,
5 and my partner approached and made contact with the
6 driver of the vehicle.

7 MS. DICK: But, again, it's just a repeat of
8 the question, not an additional one.

9 THE COURT: Wouldn't that be asked and
10 answered?

11 MS. DICK: He didn't answer it.

12 BY MS. DICK:

13 Q My question is what happened. Was the driver taken out
14 of the vehicle when Mr. McBride was?

15 A Not at the same time, but she was taken out of the
16 vehicle.

17 Q It was a female?

18 A Correct. Yes.

19 Q The pill bottle you found was on the floor of the car;
20 correct?

21 A Yes, the passenger's side between the passenger seat and
22 passenger door.

23 Q And you said that upon searching Mr. McBride that you
24 found a tan, chunky substance in a jacket pocket;
25 correct?

1 A That's correct.

2 Q It was one piece?

3 A Yeah, one chunk.

4 Q And the scale you said was in the center console. Was
5 that console open or closed?

6 A It was closed. It was on top of the center storage
7 compartment.

8 MS. DICK: I have nothing further.

9 THE COURT: Okay. Any redirect?

10 MS. KRUEGER: None from the State.

11 THE COURT: Thank you. You may step down.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness was excused.)

14 THE COURT: Any other witnesses?

15 MS. KRUEGER: No.

16 THE COURT: Okay. Defense, any witnesses?

17 MS. DICK: No thank you.

18 THE COURT: All right. Motion?

19 MS. KRUEGER: State moves for bind over.

20 MS. DICK: Move to dismiss without argument.

21 THE COURT: Based on the evidence I've heard,

22 I do find probable cause that I am going to bind

23 Mr. McBride over for trial on possession with intent to

24 deliver heroin between three to ten grams and possession

25 of narcotic drugs.

1 MS. KRUEGER: The State has filed signed and
2 dated electronic copies of the information. Provided
3 defense counsel with a paper copy and also provided a
4 packet of the discovery.

5 THE COURT: And that is the two counts I just
6 said; right?

7 MS. KRUEGER: Yes.

8 MS. DICK: Correct. On behalf of Mr. McBride,
9 I acknowledge a copy of the signed, dated, and filed
10 information. I will waive its formal reading in court.
11 I'll enter a plea of not guilty as to each count. I
12 also acknowledge receipt of paper discovery. It appears
13 to be an offer letter, as well as some CDs.

14 THE COURT: Your plea of not guilty is
15 entered. We'll give you a date before Judge
16 Protasiewicz.

17 MS. DICK: Thank you.

18 THE CLERK: Next court date is November 20th
19 at 8:30 for scheduling in Branch 24.

20 (Whereupon, the proceedings concluded.)
21
22
23
24
25

STATE OF WISCONSIN)

) S.S.

MILWAUKEE COUNTY)

I, DANIELLE N. HOLCOMB, Official Court Reporter, do hereby certify that I have reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place.

Dated November 15, 2018

Danielle N. Holcomb

Danielle N. Holcomb

INDEX TO EXAMINATIONS

<u>Witness</u>	<u>Page</u>
Officer Jose Rivera	
Direct Examination by Mr. Flynn	4
Cross-Examination by Ms. Morales	18
Redirect Examination by Mr. Flynn	27
Examination by The Court	28
Further Redirect Examination by Mr. Flynn	30
Recross-Examination by Ms. Morales	30

INDEX TO EXHIBITS

<u>No.</u>	<u>Exhibit Description</u>	<u>Identified</u>	<u>Off'd</u>	<u>Recv'd</u>
S-1	DVD	14	15	15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TRANSCRIPT OF PROCEEDINGS

(Proceedings commenced.)

THE CLERK: State of Wisconsin vs. Donte
McBride, 18-CF-5172.

Appearances, please.

MR. FLYNN: John Flynn for the State.

MS. MORALES: Mr. McBride appears in person
and with Attorney Reyna Morales.

Good morning, Your Honor.

THE COURT: Good morning.

Defense, you filed a Motion to Suppress?

MS. MORALES: That is correct.

THE COURT: State, you've received it?

MR. FLYNN: Yes.

THE COURT: Both parties have filed briefs
in support of their positions.

State, you have the burden of proof. You
may proceed.

MR. FLYNN: The State calls Officer Rivera.

OFFICER JOSE RIVERA,

called as a witness herein, having been first duly sworn on
oath, was examined and testified as follows:

THE CLERK: You may be seated.

Please state and spell your first and last

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

name for the record.

THE WITNESS: Jose Rivera, J-O-S-E;
R-I-V-E-R-A.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. FLYNN:

Q Officer, how are you employed?

A City of Milwaukee as a police officer.

Q For how long?

A Almost 12 years now.

Q Were you working as an officer in October of
2018?

A Yes.

Q What was your assignment back then?

A I was assigned to the Anti-Gang Unit at
District 5 with my partner, PO Eric Kradecki.

THE COURT REPORTER: Spelling, please.

Q K-R-A-D-E-C-K-I.

A Yes.

Q What were your general duties in that assignment
then?

A With the Anti-Gang Unit, we patrol high-crime
areas, respond to shots fired, drug dealing, things of that
nature.

1 Q On Saturday, October 28th of 2018, did you have
2 occasion to be in the alley around 416 East Locust Street?

3 A Yes.

4 Q Is that location in the City and County of
5 Milwaukee?

6 A It is.

7 Q What were you doing there?

8 A I was on patrol looking for any suspicious
9 activity, things of that nature.

10 Q So no specific crime at that point?

11 A No, no.

12 Q Are you familiar with this area?

13 A Yes. I've been patrolling the area for
14 approximately five years now.

15 Q Would you consider it a high-crime area?

16 A I would. I've taken many calls for service
17 regarding shootings, shots fired, drug dealings, things of
18 that nature.

19 Q Is that the reason why the Anti-Gang Unit goes on
20 patrol in this area?

21 A Yes. We attempt to disrupt crime.

22 Q That day were you on patrol -- or what time were
23 you on patrol?

24 A It was approximately like 11:15 p.m. at night.

25 Q And what were the conditions then?

1 A It was -- the weather was clear. It was dark
2 out.

3 Q Have you made many arrests in this area?

4 A I have. I have personally made arrests regarding
5 the illegal drugs and firearm possessions.

6 Q A large number?

7 A I would say yes.

8 Q Ballpark figure?

9 A At least over two dozen.

10 Q So on October 28th, 2018 after 11 p.m., did you
11 see anything that caught your eye?

12 A Yes. There was a vehicle parked in the alley at
13 that location with no lights on.

14 Q Do you know what kind of car it was?

15 A I believe it was a Nissan Pathfinder® SUV.

16 Q And it didn't have any lights on?

17 A No.

18 Q Why is that significant to you?

19 A It's parked in the alley, and it was in the
20 alleyway so traffic would have had to get around it, and I
21 could not tell anyone if anyone was inside of the vehicle
22 due to it being dark out.

23 **THE COURT:** What do you mean vehicles "had
24 to get around it"? What does that mean?

25 **THE WITNESS:** Alleys typical in Milwaukee

1 back.)

2 **THE COURT:** Go ahead, State.

3 Q (By Mr. Flynn) So to go back a bit, when you
4 illuminated the car and you saw that there were
5 people inside, did that change your thinking about
6 that parked car?

7 A Basically with it being dark out, the lights off,
8 and people inside of the vehicle is not normal, a little
9 suspicious to me, especially with being in the high-crime
10 area.

11 Q When you illuminated the inside of the car, you
12 saw how many people?

13 A Two.

14 Q You said that the front seat passenger
15 immediately began bending towards his waist area?

16 A Yes. He like bent down towards his waist area
17 and began to move his hands around.

18 Q What does that mean to you?

19 A From my experience in training and dealing with
20 similar situations, it's consistent with someone having
21 illegal narcotics or weapons on their person. Upon seeing
22 police, they try to hide those items.

23 Q In your training and experience, have you
24 arrested people who have hidden weapons in their waistband?

25 A Yes.

1 Q Multiple times?

2 A Yes.

3 Q In your experience, have you arrested people who
4 have hidden contraband/controlled substances in their
5 waistbands?

6 A I have.

7 Q That's a common hiding place for such items?

8 A For weapons, yes. Narcotics -- sometimes I've
9 recovered narcotics in the waistband. They try to hide it
10 from officers and other areas in the body.

11 Q And when you saw him make these movements, what
12 did you do next?

13 A I exited my vehicle. With my flashlight, I
14 ordered him to show me his hands.

15 Q At that point, were the squad car's lights and
16 sirens on?

17 A No.

18 Q I suppose I should clarify. Were you in a squad
19 car at that time?

20 A I was in a marked squad car, yes.

21 Q But the lights and sirens weren't on then?

22 A No.

23 Q Did you have your gun drawn?

24 A No.

25 Q But you say you did issue an order?

1 A Yes. As I exited my squad car, Mr. McBride was
2 still reaching inside of the vehicle. At that point, I
3 ordered him to show me his hands. I gave him a verbal
4 order, which he complied after that.

5 Q And you only issued that order after you had seen
6 him move towards his waist?

7 A Yes.

8 Q What did you do after you gave that order?

9 A I approached the vehicle and made contact with
10 Mr. McBride.

11 Q Now, you've referred to him as Mr. McBride. Did
12 you identify this front seat passenger?

13 A Yes.

14 Q It is Donte McBride?

15 A It is.

16 Q Do you see him in the courtroom today?

17 A Yes. He's seated at Defense's table wearing an
18 orange shirt.

19 **MR. FLYNN:** I'd ask the record to reflect
20 that the officer has identified the defendant.

21 **THE COURT:** Any objection, Defense?

22 **MS. MORALES:** Not for purposes of today's
23 hearing, Your Honor.

24 **THE COURT:** The record will reflect the
25 identification of the defendant by this witness.

1 Q (By Mr. Flynn) When you said you made
2 contact, what did you do exactly?

3 A I believe I asked him what was he reaching around
4 for, why are you reaching, something to that effect.

5 Q Did you open the door?

6 A I did.

7 Q Did you pull him out?

8 A Yes. He was removed from the vehicle.

9 Q Why did you do that?

10 A It was for my safety because his movements made
11 me fear that he might have a weapon on his person.

12 Q Did you handcuff him?

13 A Yes. He was detained.

14 Q And why did you handcuff him?

15 A It was for my safety with his movements because
16 he could be armed or a weapon might be in the vehicle.

17 Q When you opened the car door, did you see
18 anything that attracted your attention?

19 A Yes. Where he was seated, between his seat and
20 the driver's door, was an orange pill bottle without a
21 label that contained several green pills of oxycodone.

22 Q So did you see that when you opened the door and
23 before you took the defendant out of the car?

24 A Once I immediately opened the door, I saw it
25 right there.

1 Q And you said that it didn't have a label on it?

2 A That's correct.

3 Q What did that indicate to you in your training
4 and experience?

5 A He was possessing a controlled substance without
6 a prescription.

7 Q Why do you say that?

8 A Because of my training and experience, people who
9 normally carry prescription bottles, they have a label with
10 their name on it, and there was no label on this pill
11 bottle.

12 Q And was it towards the front of the seat or the
13 back of the seat?

14 A I believe it was towards like the back of the
15 seat, like between the front passenger seat and the door.

16 Q And so you pulled Mr. McBride out. What did you
17 do after pulling him out?

18 A I conducted a search/pat-down of his person. I
19 recovered an additional pill bottle from his front right
20 pocket that contained more pills. It was another pill
21 bottle without a label on it.

22 **THE COURT:** Again, we're going too fast for
23 the Court to take appropriate notes, so may I
24 have the last answer read back, please.

25 **THE COURT REPORTER:** Sure. One moment,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

please.

(Whereupon, the last answer was read
back.)

THE COURT: Thank you.

Next question, State?

Q (By Mr. Flynn) Why did you pat the defendant
down?

A For safety purposes. His reaching movements made
me feel that he could possibly be armed.

Q Now, I want to go back a bit to the pill bottle
you saw when you opened the door. Now, you testified that
it contained green pills, but was that immediately visible
to you upon opening the door?

A Yes.

Q Through the pill bottle?

A Yes.

Q Was it investigated later?

A It was.

Q What was the defendant wearing that evening?

A What was he wearing? I don't recall what he was
wearing.

Q Were you wearing a body camera that evening?

A Yes, I was.

Q And have you viewed that body camera footage from
the camera that you were wearing?

1 A Yes.

2 (State's Exhibit No. 1 was marked for
3 identification.)

4 MR. FLYNN: Permission to approach?

5 THE COURT: You may. The exhibit, to the
6 extent it has any audio, need not be recorded by
7 the court reporter pursuant to Supreme Court
8 rule.

9 MR. FLYNN: I'm showing you what I've marked
10 as Exhibit No. 1. The file on here is
11 Traffic_Stop2. Once it's on the screen, I'll ask
12 you to identify it.

13 MS. MORALES: This is the body cam footage,
14 correct?

15 MR. FLYNN: Correct, File 2.

16 MS. MORALES: Okay.

17 Q (By Mr. Flynn) Officer, are you familiar
18 with this?

19 A Yes.

20 Q Do you know what this is?

21 A That's my body cam from that night.

22 Q How do you know that?

23 A I reviewed it before we started this motion
24 hearing.

25 Q And upon your review, is it a fair and accurate

1 recording of the events from that evening?

2 A Yes.

3 MR. FLYNN: I'd move Exhibit No. 1 into
4 evidence.

5 (State's Exhibit No. 1 was offered into
6 evidence.)

7 THE COURT: Any objection, Defense?

8 MS. MORALES: Your Honor, as long as a
9 property foundation is laid, that's fine.

10 THE COURT: I think he did as to
11 authentication.

12 MS. MORALES: For purposes of today's
13 hearing, yes.

14 THE COURT: All right. Then Exhibit 1 is
15 received.

16 (State's Exhibit No. 1 was received into
17 evidence.)

18 MR. FLYNN: Permission to publish?

19 THE COURT: You may.

20 MR. FLYNN: Starting from 00.

21 THE COURT: One moment, State. It may be
22 advantageous for me to be closer since I've never
23 seen this before.

24 (Pause in proceedings.)

25 (Whereupon, the DVD was played.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. FLYNN: I've stopped it at 27 seconds.

I've gone back to 25 seconds.

Q (By Mr. Flynn) Officer, on the right side of the screen, is that the car that the defendant was in?

A Yes.

Q And to its right, is there another car back there?

A Yes.

Q Is that car parked off the alleyway?

A It is.

Q So this is how you were describing that the car was impeding the alley?

A Correct.

Q And at this point you have illuminated the car with your spotlight?

A Yes.

Q And you can see at least one person in this still frame?

A Yes.

MR. FLYNN: Thank you. Resuming from

25 seconds.

(Whereupon, the DVD was played.)

MR. FLYNN: I'm sorry. I meant to have sound. I'll go back to 30 seconds.

1 **MS. MORALES:** If you could go back to
2 21 seconds.

3 **MR. FLYNN:** Sure. From 20 seconds.
4 (Whereupon, the DVD was played.)

5 **MR. FLYNN:** I'm stopping it at 1:24.

6 Q (By Mr. Flynn) Officer, you saw your body
7 camera footage on Exhibit 1 there?

8 A Yes.

9 Q And you would agree, it doesn't show with any
10 definition the movements that you saw the defendant make?

11 A No. Not from the body cam.

12 Q Is that just in part the nature of body cameras?

13 A It is.

14 Q They are one fixed angle; whereas, you can move
15 your head and see different things?

16 A Yes.

17 Q Would you also say that you have training and
18 experience in observing people and particularly looking for
19 threats or suspicious activity?

20 A Yes.

21 Q And that training and experience assisted you
22 that evening?

23 A It did.

24 Q Officer, from the body camera footage, did you
25 see what the defendant was wearing on his top?

1 A I'm sorry. I didn't pay any attention. I know
2 he had a jacket.

3 Q Something with pockets?

4 A Yes.

5 **MR. FLYNN:** I have nothing further. Thank
6 you.

7 **THE COURT:** Defense?

8 **MS. MORALES:** Thank you.

9

10 **CROSS-EXAMINATION**

11 **BY MS. MORALES:**

12 Q Officer Rivera, this is not the first time that
13 you testified regarding this incident, correct?

14 A Correct.

15 **THE COURT:** Well, I don't understand. What
16 does that mean?

17 **MS. MORALES:** He was present at the
18 preliminary hearing, Your Honor. There should be
19 a transcript also in the e-File system.

20 **THE COURT:** Thank you. That clarifies it.
21 I had no idea what you were referring to.

22 **MS. MORALES:** I also cited to the transcript
23 on my moving document, Your Honor.

24 **THE COURT:** Very good.

25 Q (By Ms. Morales) So, Officer, right now on

1 direct, you indicated that you belong to the gang
2 unit, right?

3 A Yes, I did.

4 Q And this is on the east side of Milwaukee,
5 correct?

6 A The location, correct.

7 Q But on this instance, this was just normal
8 patrol, correct?

9 A Regular patrol with the Anti-Gang Unit, correct.

10 Q What I'm getting at, Officer, is that you had not
11 received any phone calls because of a ShotSpotter call
12 being sent to the area, correct?

13 A No.

14 Q You had not received any information on your
15 radio that they were looking for anyone regarding any
16 suspicious activity, correct?

17 A No.

18 Q You had not received any information that there
19 was a vehicle that was wanted that would match the
20 description that you came into contact with on that video,
21 correct?

22 A No.

23 Q So before having any contact with that vehicle,
24 there was absolutely no information that you had from
25 either the gang unit or the police department as to your

1 need to approach that vehicle?

2 A No.

3 Q In fact, in that vehicle if it's parked and no
4 one is there, the solution would be just to ticket the
5 vehicle, correct?

6 A Yes. It would get ticketed or towed if it's
7 obstructing traffic.

8 Q You were able to maneuver your vehicle around
9 that vehicle, right?

10 A Yes, I was.

11 Q In fact, did you take any measurements as to
12 exactly how big the alley was?

13 A That night, no, I did not.

14 Q Did you take any measurements subsequent to this
15 stop in preparation either of presenting the case to the
16 District Attorney's Office, coming to testify at
17 preliminary hearing, or coming to court today?

18 A Measurements, no.

19 Q And you've indicated that the reason that you
20 approached the vehicle -- can you tell us again what was
21 the reason that you would approach the vehicle where it
22 appears that two people are just, you know, sitting there?

23 A Mr. McBride's actions led me to believe that
24 something illegal was going on, the way he was reaching
25 around the vehicle, from training and experience consistent

1 with someone attempting to hide illegal weapons or illegal
2 drugs, contraband, things of that nature.

3 Q You've had an opportunity to review that video
4 just now and your testimony was that you also reviewed it
5 before coming here today, correct?

6 A Yes.

7 Q Correct me if I'm wrong, but on that video,
8 there's absolutely no movement by Mr. McBride, correct?

9 A You can't see from the video.

10 Q Now, let's go to this -- your squad is equipped
11 with video capabilities as well, correct?

12 A Yes.

13 Q Okay. My understanding of how the mechanism
14 works is that if you flip the switch to turn on the lights,
15 then the video goes back 30 seconds, correct?

16 A Correct.

17 Q In this instance, you would have been able to
18 just flip the switch or your partner would have been able
19 to flip the switch and do dash cam video, correct?

20 A Yes. It would turn our lights on.

21 Q It would turn your lights on, correct?

22 A Correct.

23 Q And in this case, that was not done, right?

24 A No.

25 Q Okay. So the only video that we can go by is the

1 video that we have from your body cam, correct?

2 A Yes.

3 Q And your partner was also wearing a body cam,
4 right?

5 A Yes.

6 Q And again, none of that movement that you're
7 talking about is captured either on your body cam or his
8 body cam.

9 A To my knowledge, no.

10 Q In fact, if you were to slow down the video, the
11 only thing that you see is Mr. McBride's hands being
12 positioned this way (indicating) the whole entire time that
13 he has contact before you opened the door to his vehicle,
14 correct?

15 A Just in that short period of time when I'm
16 approaching the vehicle, you hear me say, Let me see your
17 hands.

18 Q Is it fair to say also before you actually even
19 approached the vehicle, you had very short -- when you look
20 at the video and if you look at it, as you're turning, then
21 you can see the vehicle. So you had a very short amount of
22 time to observe the vehicle?

23 A That's correct, yes.

24 Q You were the driver on that squad, right?

25 A Yes.

1 Q Okay. So then when you turn around and then the
2 vehicle comes into view, that's just a couple of seconds,
3 correct?

4 A Yes, it's very quick.

5 Q It's very, very quick, right?

6 A Uh-huh.

7 Q And if you -- in fact, when we take a look at the
8 whole incident, by the time you approach the vehicle is
9 less than 20 seconds from the first time that you even
10 observed the vehicle, right?

11 A That sounds about right.

12 Q Okay. And by the time that you approach the
13 vehicle, it's about 25 seconds, right?

14 A I don't know about seconds, but if you say -- it
15 was very quickly, so...

16 Q Okay. Let's say it's less than a minute before
17 you make the decision to you, yourself, go and open up the
18 door of that vehicle, right?

19 A Yes.

20 Q Even though he's holding his hands up and there's
21 another officer there, instead of asking him his name or
22 any identifying information, the first thing that you do is
23 open up the door and pull him out of the vehicle, right?

24 A I asked him what was he reaching for, and then I
25 opened the door.

1 Q Okay. And then you are the one who immediately
2 pulls him out and starts searching him, right?

3 A Yes. That was me, correct.

4 Q Okay. Even though his hands are all the way up
5 here, right (indicating)?

6 A Yes, correct.

7 Q And let me go back as to the different types of
8 searches that you do, Officer. From looking at the video,
9 my understanding if you're concerned about weapons -- and
10 that was your concern that evening, correct?

11 A Yes.

12 Q Okay. My understanding when you are searching
13 for weapons is a pat-down type of search, correct?

14 A That's correct.

15 Q Because weapons, like the one that you're wearing
16 on your waist, tend to be hard objects, right?

17 A Yes.

18 Q And based on your training and experience, you're
19 able to touch through someone's clothing to make a
20 determination as to whether or not a hard object is there,
21 correct?

22 A Yes.

23 Q You were not able to feel anything on
24 Mr. McBride, right?

25 A Weapons?

1 Q Right.

2 A No.

3 Q It appears that you really did not even do a
4 weapons pat-down, or am I wrong?

5 A You're wrong.

6 Q You did a pat-down first before you went into his
7 pockets?

8 A Yes. I told him, I'm going to pat you down for
9 weapons.

10 Q Okay. So when we look at the video and it
11 appears that your immediately going into his pockets, is
12 that part of the pat-down?

13 A On the video, I pat him down and I locate a pill
14 bottle from patting him down. Also, I had already observed
15 a pill bottle in plain view without a label that contained
16 narcotics that was not his -- or he didn't have his name on
17 the label.

18 Q Based on your training and experience, would you
19 say -- is it easy or difficult to confuse the shape of a
20 pill bottle with the shape and feel of a gun?

21 A A gun, I would say "no."

22 Q Okay. So in this case, you did not find any
23 weapons on Mr. McBride?

24 A He did have no weapons, no.

25 Q Is it fair to say that immediately as you pull

1 him out of the vehicle, he is not free to leave?

2 A That's correct, because I wanted to
3 investigate -- what was going on inside of the vehicle with
4 his movements.

5 THE COURT: Let's not spend a lot of time on
6 this because I think the seizure occurred well
7 before there's physical contact.

8 MS. MORALES: Okay.

9 THE COURT: I don't wish to interfere with
10 the officer's testimony, but the Mendenhall case
11 would indicate that there's a show of authority
12 in compliance, and here, the show of authority
13 would have been the verbal commands.

14 That would likely be when the Court found
15 that there's an intrusion on the defendant's
16 Fourth Amendment rights.

17 MS. MORALES: Thank you.

18 THE COURT: Defense, is that okay?

19 MS. MORALES: That is okay, Your Honor.

20 THE COURT: Because that precedes any
21 physical contact. It actually precedes the
22 opening of the door by seconds.

23 MS. MORALES: Right.

24 THE COURT: This is a case of seconds.
25 That's what I would likely find if that's

1 helpful.

2 **MS. MORALES:** Based on the Court having
3 taken the time to read my motion and the
4 findings, I have no other questions of this
5 officer at this time.

6 **THE COURT:** Sure. I've reviewed the
7 preliminary hearing transcript now.

8 State?

9

10 **REDIRECT EXAMINATION**

11 **BY MR. FLYNN:**

12 Q Officer, why didn't you illuminate your squad
13 lights?

14 A Why did I?

15 Q Did not. Why did you not illuminate them?

16 A Turn them on. Oh, my squad lights. Because it
17 happened so quickly when I observed him. I exited the
18 vehicle and I feared that he could possibly have a weapon,
19 so I wanted to exit the vehicle in a quick manner and take
20 action from there.

21 Q Based on your training, do you have to be quick
22 when you suspect there may be a weapon?

23 A Yes. Just for safety purposes, you want to
24 always have the upper hand. You don't want them people to
25 have time to think about either getting a weapon or have

1 a -- just have a plan what to do when the officer approach,
2 if that makes sense.

3 **MR. FLYNN:** Thank you. Nothing further.

4 **THE COURT:** Defense?

5 **MS. MORALES:** Nothing further, Your Honor.

6 **THE COURT:** I have a question, but it's a
7 peculiar question and it may be answered by the
8 video. Since I've only seen the video one time
9 momentarily, can you just queue up the video and
10 perhaps I won't have to ask a question.

11 **MR. FLYNN:** I'll start it from around
12 17 seconds.

13 **THE COURT:** Defense, you may approach, too,
14 if you wish.

15 (Whereupon, the DVD was played.)

16 **MR. FLYNN:** Ending at 1 minute, 57 seconds.

17 **THE COURT:** Unfortunately, I didn't see the
18 question. So, Defense, feel free to object.

19

20

EXAMINATION

21 **BY THE COURT:**

22 Q In the video, Officer Rivera, one can detect that
23 it's dark out, correct?

24 A Yes.

25 Q And this was about 11:15 p.m., correct?

1 A Yes.

2 Q And you said you were in a marked squad?

3 A I was.

4 Q And you can infer from the light on the vehicle
5 that the defendant was in that your squad headlights were
6 on, correct?

7 A Yes.

8 Q When you said a marked vehicle, what does that
9 mean?

10 A I would say it's a police sign on the side of the
11 vehicle.

12 Q What color is the vehicle?

13 A Ours is black and white.

14 Q If you're standing where you were when you were
15 taking the defendant into custody and you looked back at
16 your vehicle, what would you see?

17 A You would see the police emblem and the spotlight
18 on and the headlights?

19 Q So even though it's dark out, you could see the
20 vehicle you exited from?

21 A Yes. You could see.

22 THE COURT: All right. Any follow-up
23 questions, State?

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FURTHER REDIRECT EXAMINATION

BY MR. FLYNN:

Q Based on your training and experience especially as a patrol officer, is it common for civilian vehicles to have a spotlight on them?

A No.

MR. FLYNN: Nothing else.

THE COURT: Defense, any follow-up questions?

MS. MORALES: Yes.

REXCROSS-EXAMINATION

BY MS. MORALES:

Q Is it fair to say that spotlights are very, very bright?

A They're bright, yes, correct.

Q Is it fair to say that once a spotlight is directed at somebody, that they might not be able to see anything because this spotlight kind of blinds them?

A If they're looking directly into it, it's possible.

Q All right. One last follow-up question, Officer. Eventually while having contact with Mr. McBride, you were able to verify that that was where he lived, right?

A Yes. Later, I found out that he lived there,

1 correct.

2 **THE COURT:** Officer, where is "there"?

3 **THE WITNESS:** The 416 East Locust.

4 **THE COURT:** So what does that mean in terms
5 of the alley? I assume he didn't live in the
6 alley?

7 **THE WITNESS:** No, not in the alley.

8 **THE COURT:** So where did he live at 416 East
9 Locust? Is it a building next to where that
10 vehicle was?

11 **THE WITNESS:** Correct, yes.

12 **THE COURT:** Okay. Go ahead, Defense.

13 Q (By Ms. Morales) That was my question, Your
14 Honor. So eventually, what he told you is that he
15 lived there and you were able to verify that that
16 was, in fact, his house?

17 A Correct.

18 Q And correct me if I'm wrong. The spotlight is a
19 light that you actually have to flick a switch for it to go
20 on, right?

21 A Yes.

22 Q Okay. You're not going to be going around the
23 alley with a spotlight on the whole time?

24 A No.

25 **MS. MORALES:** Okay. I have no other

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

questions.

THE COURT: And is it the spotlight for the driver or the passenger?

THE WITNESS: The driver's side. My squad car, just the driver's side.

THE COURT: Okay. State, any follow-up questions on the Court's questions?

MR. FLYNN: No.

THE COURT: Any follow-up questions, Defense, on the Court's questions?

MS. MORALES: No.

THE COURT: Thank you, Officer. You may step down.

(Witness excused.)

THE COURT: Any other witnesses, State?

MR. FLYNN: No.

THE COURT: Defense, any witnesses?

MS. MORALES: No.

THE COURT: You've talked with your client about his ability to testify today if he wants to?

MS. MORALES: Let me double-check again.

THE COURT: Sure.

(An off-the-record discussion was held between Ms. Morales and her client, Defendant

1 Donte McBride.)

2 MS. MORALES: Yes, Your Honor. I've had an
3 opportunity to double-check with him, and he will
4 not be taking the stand as to the stop.

5 THE COURT: Mr. McBride, is that correct?

6 THE DEFENDANT: Yes.

7 THE COURT: You know you have a right to
8 testify if you want to?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And have you had enough time to
11 talk to your attorney about the advantages and
12 disadvantages of testifying?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And you're choosing not to
15 testify today?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Has anyone made any threats,
18 promises, or used any pressure to make you choose
19 not to testify?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Counsel, do you believe his
22 decision not to testify is freely, voluntarily,
23 and intelligently made?

24 MS. MORALES: Yes.

25 THE COURT: The Court does as well. I'll

1 accept it. There are no other witnesses,
2 Defense?

3 **MS. MORALES:** No.

4 **THE COURT:** There was obviously another
5 person in the driver seat of this vehicle that
6 was stopped.

7 **MS. MORALES:** There were other witnesses,
8 but there's no witness for purposes of the
9 motion, Your Honor.

10 **THE COURT:** Okay. That's just a strategic
11 decision at this point?

12 **MS. MORALES:** Correct.

13 **THE COURT:** Okay. Then the evidence is
14 closed. One moment.

15 (Pause in proceedings.)

16 **THE COURT:** Go ahead, State. You have the
17 burden of proof.

18 **MR. FLYNN:** Thank you, Judge.

19 As you previewed, I do believe Mendenhall is
20 the controlling case in this instance, that
21 there's no seizure until there has been a show of
22 force.

23 I would agree, based on the evidence that
24 has come out, that there was a show of force when
25 Officer Rivera, outside of his squad car, ordered

1 the defendant to show his hands.

2 **THE COURT:** I would agree. I'll comment a
3 little more.

4 But as Officer Rivera is exiting his
5 vehicle, he's giving oral commands to the
6 occupants of the vehicle to show their hands,
7 he's doing it in a loud voice and clear, and
8 they're complying -- or at least in moments they
9 comply.

10 **MR. FLYNN:** Yes, Judge.

11 **THE COURT:** So that would be the moment of
12 the seizure, so your first argument should
13 address the reasonable suspicion for that
14 seizure.

15 **MR. FLYNN:** Yes, Judge. Based on Officer
16 Rivera's testimony, this isn't just a case of
17 furtive movements. This is a case where the
18 officer knows this is a high-crime area.

19 He has been an officer for 15 years. He has
20 been on patrol in this area. He knows that
21 there's frequent shootings and drug dealings.
22 He's made over two dozen arrests in this area.

23 He sees an occupied car with its lights off.
24 To him, that's suspicious. It could be
25 indicative of drug dealing. Immediately upon

1 sight of the police officers, the front seat
2 passenger, as Officer Rivera testified, he saw
3 the front seat passenger start reaching around
4 his waist.

5 And not just based on sight of a police car,
6 as I was attempting to draw out, I think the
7 spotlight itself, seeing a car manipulate a
8 spotlight around, I think one can infer from that
9 that it's a law enforcement vehicle of some kind.

10 Officer Rivera testified that the movements
11 around a waist is consistent for concealing
12 weapons or contraband. I'll point that his body
13 camera footage is highly consistent with his
14 testimony as to the date and time and location.

15 It's dark out. He's in an alley. He sees
16 that car. It has its lights off. There's people
17 in it. He's using his spotlight. He shines it
18 on the car. The car is parked in the alley, not
19 off to the side.

20 It's impeding traffic in that way. I think
21 all of these are the specific and articulable
22 facts that an officer needs to justify the
23 reasonable suspicion for the limited intrusion of
24 a Terry stop to investigate whether any criminal
25 activity is afoot.

1 **THE COURT:** All right. Defense, I'm
2 breaking this down. Your motion has a number of
3 points at which the officer could have violated
4 your client's rights.

5 I'm struggling with the fact that we're
6 running out of time here to do this. I think
7 each step needs to be thoroughly discussed. I
8 think the State has addressed the first issue,
9 the seizure under Terry, which permits certain
10 things.

11 I'm not saying that I agree with him yet
12 because I want to hear your argument, but I'm
13 very concerned we're running out of time. How do
14 you want to address this argument?

15 **MS. MORALES:** Did you want me to come back
16 at 1:30, Your Honor?

17 **THE COURT:** We're very busy. One moment.

18 (Pause in proceedings.)

19 **THE COURT:** Is that something you can do,
20 Counsel?

21 **MS. MORALES:** That is something I can do,
22 Your Honor.

23 **THE COURT:** And your client is in custody?

24 **MS. MORALES:** Correct, Your Honor.

25 **THE COURT:** All right. Let's have you

1 address this first issue. I know there are other
2 issues, and each decision by the Court affects
3 the later argument and decision, so let's just
4 deal with the initial seizure by the police.

5 The Court has already indicated that it
6 would find that under Mendenhall, the officer
7 intruded upon the defendant's Fourth Amendment
8 rights by commanding him to show his hands, and
9 that that needs to be justified under Terry v.
10 Ohio and other case law. The State has argued
11 that it is, but I'll let you respond.

12 **MS. MORALES:** Your Honor, if we take a look
13 at the totality of the circumstances, even taking
14 a look at the video and the limited information
15 that we have on the video, based on the fact that
16 that is the only information that we have.
17 Although the vehicle was equipped with a dash
18 cam, that was not activated.

19 There is not enough articulable facts in
20 this case that happened -- no specific and
21 articulable facts that happened testified to by
22 the officer, either at the preliminary hearing or
23 more specifically today, as to the reasons for
24 him to actually order my client to raise his
25 hands.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

There's been an alluding as to where the vehicle was parked or maybe that he could block traffic, but it appears that based on the testimony that the officer provided today, he was able to get around. This is on the east side, the lower east side of Milwaukee.

I don't know if I necessarily agree or like the statistics would agree that this is what you would call a hot zone or an area that is known for high-crime area. It is a mixed area. It's the Riverwest kind of mix bordering line with the east side area, getting very close to the Shorewood area.

Again, the officer testified repeatedly that there has been absolutely, you know, no information, no independent information that this vehicle was wanted in any way. This is a parked vehicle. It appears that someone is being dropped off at their home.

The officer testified that he was able to verify that that was the back area of the residence that Mr. McBride actually resided in. So as to that, the Terry steps, if you go back and you take a look at it, there is not enough, based on the testimony and based on all of the

1 information that we have, there's no specific and
2 articulable facts for him to even approach this
3 vehicle -- or even if he's approaching the
4 vehicle, to approach Mr. McBride.

5 He's not the driver; the other individual
6 would be the driver. He could just ask the
7 driver to move along. I've also made it a point
8 that I've detailed my arguments in written form
9 on the motion that I filed with the Court.

10 So in this instance we're asking as to that
11 one part, that there has to be a constitutional
12 reasonableness as to the approach of the officer
13 on that evening, not just the approach but the
14 way that it was done, Your Honor, which the Court
15 has already taken note of it.

16 **THE COURT:** All right. I will address this
17 first issue. I have to start with the assessment
18 of the State's witness, Officer Rivera. His
19 testimony, as presented in court, did not appear
20 to have any contradictions or conflict.

21 Defense did not point out any
22 contradictions, for example, the preliminary
23 hearing testimony and today's testimony. The
24 sequence of events appear to be consistent
25 internally and consistent with what the Court saw

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

on the video.

And he comes to the court as an officer that's been a City of Milwaukee police officer almost 12 years. And he appears to be doing his job in a professional and competent way. So the credibility of the officer is good.

However, Defense argues -- and the Court also looked carefully -- and while I do not have access to slow motion playing of the video and the video isn't necessarily focused always on the defendant, it's hard to see if the video showed the defendant in terms of the furtive movements.

But I will say this: The lack of seeing the furtive movements on the video doesn't necessarily, in this Court's mind, impeach Officer Rivera.

It merely is the Court's understanding that a body camera of an officer presents one perspective and view of the circumstances. And the fact that the body camera did not apparently show the defendant's furtive movements does not mean that the Court disbelieves Officer Rivera.

Again, the Court has to rely and take into account Officer Rivera's duty, the performance of his duty, and that he's a sworn police officer

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

doing his job. The Court recognizes that the video itself is simply another perspective, and this Court could analogize, and I think even in the analogy, it elevates the video to a higher level perhaps than an individual's testimony.

There's always the argument of which would a fact-finder give more credibility to, a video or a human being. But I think in this case, even if there was another witness that was comparable to the body camera and the other witness said, I didn't see the defendant make any furtive movements at the point Officer Rivera did, the Court still would be justified in accepting Officer Rivera's testimony of what he observed.

The fact that another officer or witness did not see the furtive movements by the defendant does not, by itself, impeach Officer Rivera; it merely gives a different perspective.

And there's clear case law that officers, when they have information of illegal or wrongful or suspicious conduct, they are not required to exclude explanations of lawful conduct or other explanations, they can proceed with the unlawful conduct inference.

Now, reaching down, by itself, isn't

1 unlawful, but I'm saying that the video's failure
2 to record, at least what the Court could see,
3 furtive movements by the defendant doesn't mean
4 that he did not make the furtive movements.

5 Rather, the Court looks at Officer Rivera's
6 testimony in its whole -- as Defense said, in the
7 totality of the circumstances -- and finds that
8 Officer Rivera is credible in his reciting of his
9 testimony about the defendant's furtive
10 movements.

11 And one of the reasons I think fact-finders
12 make conclusions, as I'm making, that is, that
13 Officer Rivera's testimony about the defendant's
14 furtive movements is credible and worthy of
15 belief is two things.

16 One, he took action upon his belief. And
17 one might say what the Court is talking about is
18 that he proceeded immediately and quickly, as he
19 said, to intervene in the circumstance.

20 If he felt the furtive movements were not
21 dangerous or did not put Officer Rivera and his
22 partner in lethal danger, then he probably would
23 have acted differently.

24 But in this case, he efficiently and
25 expeditiously went about opening the passenger

1 door, which again indicates that the passenger,
2 the defendant, is making the furtive movements.
3 He doesn't go to the driver or to the driver's
4 door or to a rear door or something else; he goes
5 directly to his business.

6 Secondly, the Court can hear on the video in
7 the moments of the officer dealing with his
8 concern for safety, which he testified to
9 repeatedly, that he had a legitimate concern for
10 safety because he kept asking, Do you have any
11 weapons? The defendant says "no" several times.

12 And then you hear on the tape words to the
13 effect by Officer Rivera, What are you reaching
14 around for or something along those lines.
15 Again, if Officer Rivera hadn't seen that, it
16 wouldn't make any sense to ask why he was
17 reaching.

18 The only sense the later question of what
19 was he reaching for is in the context that the
20 officer saw him reaching for something. This
21 entire discussion I'm having supports Officer
22 Rivera's testimony that he observed furtive
23 movements.

24 If the Court didn't believe him or the Court
25 felt that the video so damaged his testimony that

1 he was not worthy of belief, there wouldn't be a
2 finding of furtive movements. But the Court is
3 satisfied there is ample basis.

4 I'll repeat just briefly. The officer's
5 quick and expeditious action to intervene and
6 intercept in what the officer believed was a
7 highly dangerous situation.

8 For example, it doesn't take much
9 imagination to understand that two people in an
10 unilluminated vehicle in an alley could have
11 machine guns and immediately annihilate any
12 police that come upon them. So it's certainly
13 something the officers are trained for and makes
14 sense.

15 Then the officer's actions corroborate his
16 seeing the furtive movements and his question to
17 the defendant fairly soon after opening the
18 passenger door also corroborate the officer's
19 testimony. So I find the officer credible as to
20 his testimony as to the furtive movements.

21 Now, the next issue is that for reasonable
22 suspicion, the appropriate case law is Terry v.
23 Ohio -- I'm paraphrasing -- but the officer needs
24 to articulate specific facts and circumstances,
25 and there are a number here that are applicable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

It's not just the furtive movements. State, it's not just the high-crime area. High-crime area has been a factor for police in reasonable suspicion cases. But by itself, it is not enough. But as you've argued, there are a number of other factors here.

The Court is satisfied, despite Defense's arguments that this is not a high-crime area, the officer's testimony is sufficient that it would be classified as such. You said that he's aware of arrest for illegal drugs and firearms in the area.

He's been involved in two dozen such arrests in this area. I think that the high-crime area indicates why they're on patrol, but as Defense points out, they have no other specific information about a crime occurring or this vehicle being involved in crime.

But the officer then hits the next articulable fact is that he sees a vehicle with the lights off parked in the alley. There's an inference that the vehicle is partially blocking the alley, and there was later testimony that the vehicle could have been towed or ticketed, at least the consideration thereof. So the vehicle

1. is in an unusual place with the lights out.

2. Now, when the squad illuminates the vehicle
3. with the spotlight, they discover that there are
4. occupants. And this can be used for reasonable
5. suspicion because the discovery of occupants in
6. an unilluminated vehicle parked in the middle of
7. the alley is suspicious.

8. Again, by itself, probably not enough. But
9. it is one of the factors that I will discuss. So
10. you have the improperly parked vehicle and then
11. the discovery that there are indeed two occupants
12. in the front driver and passenger seats when it's
13. illuminated and that the vehicle is occupied, and
14. it takes seconds for an officer to make that
15. assessment.

16. But that's a dangerous situation, one in
17. which the suspicion is growing. So you have the
18. high-crime area, you have the vehicle in the
19. location it is, you have the discovery of two
20. occupants.

21. Then you see Officer Rivera's observation of
22. the defendant's furtive movements. Again, he
23. talked about the defendant bending down at the
24. waist, moving his hands around.

25. That was consistent with having drugs or

1 weapons and trying to hide them or dispose of
2 them. He's had experience with other persons who
3 have had firearms in their waistband and
4 sometimes drugs, also.

5 So again, what the officer did is consistent
6 with his articulable facts as he then ordered the
7 defendant to show his hands, and that's the point
8 of the seizure. I would say there's one other
9 factor the State touched on. It's also a factor
10 I think is legitimate. It's inferential.

11 But the Court is aware that furtive
12 movements are at a higher level than other bits
13 of information that officers articulate about
14 reasonable suspicion to stop.

15 And part of it is that furtive movements are
16 inherently dangerous in and of themselves. They
17 could be retrieving a weapon to use against the
18 police. They could be hiding a weapon or
19 concealing contraband, but the fact that this
20 happens in seconds and moments is critical to the
21 safety of the officers.

22 The inference that I'm talking about is that
23 the defendant, who's in the passenger seat --
24 there appeared to be no obstruction with his
25 clear windshield of his vehicle to see the

1 approaching vehicle -- the timing of the furtive
2 movements is particularly concerning to the
3 officer.

4 In other words, if the furtive movements had
5 occurred at a later moment, but they occur within
6 moments or seconds, according to the officer's
7 testimony, of the vehicle being illuminated.

8 This is an inference that the occupants,
9 that is, the defendant and the driver, saw a
10 vehicle, at least with that spotlight, but
11 arguably, saw a police vehicle.

12 His furtive movements are in response to
13 being detected by the police. And that that then
14 creates a consciousness of guilt and action to
15 secrete evidence and the like.

16 And there's a fair inference that people
17 don't drive around in their cars with pill
18 bottles on the floor board or in between the door
19 and the passenger seat, that there was actually
20 something that was related to his furtive
21 movement, that is -- it's by an inference but
22 that he's hiding one of the pill bottles.

23 So the Court has enumerated, I would say,
24 four separate factors, when taken together are
25 sufficient under the totality of the

1 circumstances. I give particular weight to the
2 furtive movements, but all of the factors that
3 I've cited are significant to the Court because
4 they all come in the context of officer's
5 protection and safety.

6 They justify the seizure, and the seizure
7 for a Terry stop justifies the pat-down. Because
8 as he said, he was concerned for his safety, and
9 the Court is aware that safety concerns apply to
10 the driver and to his partner on the scene.

11 So the Court is satisfied there is
12 articulable and specific reasonable suspicion to
13 do the Terry stop and that takes us up to the
14 frisk.

15 If you wish to argue more about the frisk,
16 that it was something more than a risk or it was
17 an actual arrest and search, I would let you do
18 that, Defense, at our next hearing this
19 afternoon. Fair enough?

20 **MS. MORALES:** Yes.

21 **THE COURT:** But as to the first step, the
22 Court does find that the seizure is justified
23 under Terry v. Ohio, and there's a Wisconsin
24 statute, I think it's 968.25 -- I could be wrong
25 about that -- but it basically incorporates the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Terry standard into Wisconsin law. I think I've given quite a bit of discussion to the Court's factors for it.

With that, we'll continue our discussion. Both sides will be able to make further arguments as to other actions by the police in this particular situation.

State, fair enough?

MR. FLYNN: Yes.

THE COURT: Defense?

MS. MORALES: Yes.

THE COURT: Then we'll see everyone at 1:30. We're adjourned.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
) ss.
 2 COUNTY OF MILWAUKEE)
 3
 4

5 I, LAURIE BURGHARDT, Official Court
 6 Reporter for the Circuit Court of Milwaukee County, do hereby
 7 certify that the foregoing is a true and accurate transcript
 8 of my original Stenographic notes taken on the proceedings in
 9 the above-entitled matter.

10 Dated this 3rd day of April, 2020, at
 11 Milwaukee, Wisconsin.
 12
 13
 14
 15
 16
 17

18 Electronically Signed By:
 19 LAURIE BURGHARDT
 20 OFFICIAL COURT REPORTER
 21
 22
 23
 24
 25

1 THE COURT: Okay. Then, State, you have the
2 burden of proof on that issue.

3 MR. FLYNN: Yes, Judge.

4 THE COURT: Proceed by argument.

5 MR. FLYNN: I'll start as sort of a side
6 argument. That Officer Rivera had the lawful
7 ability to pull the defendant out of the car once he
8 had reasonable suspicion to stop or seize the
9 defendant's person under Pennsylvania v. Mimms.

10 THE COURT: I'm familiar with the case.

11 MR. FLYNN: And so that I could elaborate a bit
12 more on that if need be, but for these purposes in
13 these circumstances the State argues it is lawful
14 with the Court's ruling and all the factors that you
15 can considered is a reasonable suspicion to stop.
16 It is not a significantly greater intrusion to pull
17 the defendant out of the car for purposes of
18 officer's safety.

19 And to touch back upon that especially
20 with regard to the Terry frisk, Your Honor, you'd
21 mentioned a lot of factors, and you gave them
22 different weight when it came to the stop, and the
23 standard for a Terry frisk is similar but slightly
24 different in that there needs to be specific and
25 articulable facts that the defendant was armed and

1 dangerous, but I think a lot of the things that you
2 were talking about go directly to that.

3 You found credible that Officer Rivera saw
4 and believed -- saw the defendant reaching for his
5 waist area. Officer Rivera testified that that is a
6 common place to hide weapons. He'd testified that
7 this was an area he knew to have firearms,
8 activities, and shootings. He's arrested two dozen
9 people in that area. I think he's demonstrated a
10 subjective belief that the defendant is armed and
11 dangerous.

12 Then he gets out of the car, shines a
13 flashlight on the defendant, and is saying show me
14 your hands. We hear him ask do you have a weapon?
15 I think that demonstrates his subjective belief
16 which well not controlling in any way I think goes
17 to the credibility of his assertions and beliefs.

18 THE COURT: One moment. Go ahead.

19 MR. FLYNN: So for very similar reasons I do
20 believe that there are specific and articulable
21 facts that the defendant was potentially armed and
22 dangerous that justify the not great intrusion that
23 is a frisk.

24 I think this is perhaps a bit muddy in
25 that before we get to the frisk Officer Rivera opens

1 the door, and they pull the defendant out. He sees
2 and comments about the pill bottle which may affect
3 perhaps a different later argument we might have
4 about whether or not that was then probable cause to
5 arrest the defendant where then any pat down or
6 frisk would be a search incident to arrest.

7 THE COURT: Go ahead. Expand on that argument.

8 MR. FLYNN: Sure. Because Officer Rivera had
9 reasonable suspicion to stop the car and because
10 under Pennsylvania v. Mimms he can pull the
11 defendant out. He's lawfully in a position he's
12 allowed to be when he's opening the car door where
13 the defendant is seated.

14 It is from that vantage point that as he'd
15 testified he saw an unlabeled orange pill bottle.
16 He said he could see the green pills inside of it,
17 and when I'd asked him about why that was suspicious
18 or what that indicated, to him he said normally
19 people who have prescriptions have a label on the
20 bottle, and that people who are unlawfully carrying
21 prescription drugs often don't have a label on the
22 bottle.

23 In that sense I believe his testimony
24 indicates to him it was readily apparent there was a
25 contraband just upon seeing it. He even remarks

1 that you have some pills. That's as he's taking the
2 defendant out.

3 So under the plain view doctrine then he
4 is in lawful possession. He makes an observation
5 from that lawful possession what he sees is
6 immediately known to him to be a contraband. Then
7 he would have justification to arrest the defendant
8 and then a search of the defendant would be a search
9 incident to a lawful arrest. A search of the car
10 would be a Carroll search, and he would have
11 constitutional justifications to do all of those.

12 THE COURT: All right. So there are basically
13 two theories or two ways to justify his action
14 according to your argument.

15 MR. FLYNN: Yes, Judge.

16 THE COURT: Go ahead, defense. You can respond
17 or elaborate.

18 MS. MORALES: Your Honor, in this case what I
19 did is that I took the time to break down my
20 arguments and also laid them out given the
21 information and the evidence that we had. Something
22 that we had and that the officer testified to this
23 morning is that, you know, he didn't know Mr.
24 McBride. There was absolutely no information even
25 though he says that this is a high crime area

1 although it was the lower east side, 416 East Locust
2 Avenue, that's a high crime area.

3 . There were absolutely no reports, no
4 calls of a suspicious vehicle, or of any illegal
5 activity going on in there. The video shows
6 basically Mr. McBride being extremely compliant. I
7 believe that even the first frame when you go into
8 it -- and I know the Court and everybody -- you
9 know, I've watched that video many times. I've
10 slowed it down, but what you can see is sometimes
11 you can see individuals are nervous or whatever.

12 I don't think that in this case you can
13 even make that assessment just because it is such a
14 fast decision that the officer makes in approaching
15 him, yelling at him, seizing him immediately, and
16 then going and opening up the door and grabbing him
17 and cuffing him.

18 He's immediately placed in less than a
19 minute from beginning to end of making those
20 commands and telling him to put his hands up. He's
21 immediately taken out of the vehicle, and then he's
22 immediately arrested.

23 And what's very important that you see on
24 the video is what you see on his lap is his phone
25 and some head phones, and the officer testified that

1 he was able to ascertain that this is my client's
2 residence. That is where he lived. So there is
3 nothing--

4 THE COURT: If I, may though, he's not living
5 in the vehicle in the alley?

6 MS. MORALES: He's not.

7 THE COURT: It's a residence maybe nearby. I
8 tried to pin that down, but I didn't get a clear
9 answer. That all I got was he'd lived in a nearby
10 building. So that is a vehicle search, not a search
11 of him. So I wouldn't spend a lot of time on that
12 argument.

13 MS. MORALES: I understand that, Your Honor,
14 but, you know, his address-- I understand that he's
15 not inside the house, but he's a passenger in a
16 vehicle that's parked in the back of his house.

17 THE COURT: All right.

18 MS. MORALES: There is nothing illegal for him
19 to be there.

20 THE COURT: No. He can be at that location.

21 MS. MORALES: He can be in the alley that's
22 near his house. He can be the passenger in a
23 vehicle that is not involved in any illegal
24 activity.

25 THE COURT: Sure, but the extra weight or

1 protection of the Fourth Amendment applies much less
2 in a vehicle which is movable and can go from
3 jurisdiction to jurisdiction than if he were inside
4 a home or apartment where the Fourth Amendment
5 protections are the greatest.

6 So again I'd just focus you on the facts.
7 He's a passenger in a vehicle albeit near his house,
8 but go ahead.

9 MS. MORALES: Your Honor, even though the Court
10 said that there is enough information there for a
11 stop -- for a Terry stop, that doesn't give the
12 officer carte blanche to conduct a frisk.

13 In this case the Court had the opportunity
14 to also view the video. So I'm going to that aspect
15 of it, and in the video, you know, I'm sure if the
16 officer was able to smell something or see baggies
17 or anything else, I'm sure that that information,
18 you know, would have been shared and would have been
19 testified to here.

20 In this instance the officer's testimony
21 was that he was concerned that there would be
22 weapons. The State continues to argue that maybe
23 for officer's security there was an issue with the
24 weapon.

25 The officer testified that it's very

1 difficult to confuse what a gun or a weapon would
2 feel to the touch as even over clothing as to what a
3 pill bottle would feel like. So even if the Terry
4 standard is met here, then the officer only has a
5 very limited -- just for safety of the officer to do
6 a very limited pat down to make sure that there is
7 no weapons here.

8 There were absolutely no weapons found.
9 There was nothing that would indicate that from Mr.
10 McBride's conduct and demeanor. He'd followed all
11 of the demands from the getgo. As soon as the
12 officer tells him to do something, he does it.

13 So, therefore, there is no indication that
14 by the time he's already pulled out of the vehicle
15 that Mr. McBride poses a danger to the officers at
16 this time or to anybody else in that neighborhood.
17 So based on that, Your Honor, I am asking that our
18 motion be granted.

19 THE COURT: Well, there are number of different
20 issues, and I think there are different standards.

21 State, in your response did you recite the
22 standard for reasonable suspicion for the Terry
23 frisk? In other words, I agree with counsel. The
24 Court decided whether there was reasonable suspicion
25 for the officer to stop and detain and intervene to

1 have the defendant removed from the vehicle. I'll
2 talk about Pennsylvania v. Mimms in a moment, but
3 did you recite the Terry standard for the frisk?

4 MR. FLYNN: Judge, I'd cited to State v.
5 Johnson, 2007 Wis2nd 32.

6 THE COURT: Where is that in your discussion?

7 MR. FLYNN: It's on the second page right
8 before .2.

9 THE COURT: I see it.

10 MR. FLYNN: Though it's my argument that the
11 facts underlying a Terry stop don't justify a Terry
12 frisk.

13 THE COURT: Oh, I agree. In certain cases you
14 have to have two different sets of analyses.

15 MR. FLYNN: And so I would perhaps amend that
16 with my argument that I made today based on the
17 testimony that came in.

18 THE COURT: All right. Just one moment. All
19 right.

20 To decide the defense's motion again the
21 Court starts with the applicable law. The Court
22 references Pennsylvania v. Mimms, at 434 U.S. 106.
23 United States Supreme Court decision 1997.

24 On page 111 the Court discusses this issue
25 of having a person who is stopped and steps out of

1 the vehicle. The Court writes against this
2 important interest. "We are asked to weigh the
3 intrusion into the driver's personal liberty
4 occasioned not by the initial stop of the vehicle
5 which was admittedly justified but by the order to
6 get out of the car. We think that this additional
7 intrusion can only be described as de minimus.

8 The driver is being asked to expose to
9 view very little more of his person than is already
10 exposed. The police have already lawfully decided
11 that the driver shall be briefly detained."

12 The only question is whether he shall
13 spend that period sitting in the driver's seat of
14 his car or standing alongside it. I'm omitting some
15 of the words, but what's at most a mere
16 inconvenience cannot prevail when balanced against
17 legitimate concerns for the officer's safety.

18 So the State is correct that the
19 applicable law justifies the officers at that point
20 in this detention of having the defendant step out
21 of the car, and it is a de minimus intrusion that
22 does not rise to the level of Fourth Amendment
23 protection.

24 But going back to the Court's question of
25 whether the standard for a Terry frisk is different

1 than the standard for a Terry stop and seizure the
2 Court goes to Terry versus Ohio 392 U.S. 1, 1968.
3 United States Supreme Court decision.

4 In paragraphs fifteen and sixteen-- I'm
5 sorry. I believe that pages fifteen and sixteen the
6 Court writes, "In this case there can be no question
7 than that Officer McFadden, sees the petitioner and
8 subjected him to a search when he took hold of him
9 and patted down the elder surfaces of his clothing.

10 We must decide whether at that point it
11 was reasonable for Officer McFadden to have
12 interfered with petitioner's personal security as he
13 did, and in determining whether the seizure and
14 search were unreasonable, our inquiry is a dual one.
15 Whether the officer's action was justified at its
16 inception and whether it was reasonably related in
17 scope to the circumstances which justified the
18 interference in the first place."

19 And I will recount but not as completely
20 and thoroughly as I did this morning in justifying
21 the officer's basis for the Terry stop and detention
22 and discuss why the Court feels that the officer's
23 action was justified at its inception.

24 To again repeat the reasons but not
25 completely the Court found the officer credible, and

1 the officer's testimony about the furtive movements
2 despite their not being apparent in the video still
3 the Court found that officer's testimony to be
4 highly credible and corroborated, and the Court
5 found that this was a high crime area. That the
6 discovery by Officer Rivera of a vehicle parked in
7 the middle of the alley, obstructing traffic in the
8 alley, and having no lights on was suspicious.

9 The fact that when Officer Rivera
10 illuminated the darkened van with the defendant and
11 the other person in it, that the defendant then made
12 furtive movements, that that, of course, was logical
13 in the sense that the defendant would have perceived
14 the police vehicle coming toward its position, and
15 that a darkened situation would have suddenly been
16 lightened by the stop light, and that within moments
17 the officer detected the furtive movements, and that
18 the furtive movements led the officer to believe
19 that officer's safety was in jeopardy.

20 And specifically that the bending down at
21 the waist and putting one hands in the waistband and
22 moving around was consistent with the hiding or
23 retrieving of a weapon and consistent with the
24 hiding and retrieving of a contraband, and that when
25 you look at the circumstances, the totality of the

1 circumstances, the Court commented on the officers
2 again within seconds but prompt removal of the
3 defendant from the passenger side of the vehicle
4 which confirmed the Court's view that the officer
5 was indeed concerned about officer safety because he
6 acted quickly and reasonably.

7 And also that some of the discussion the
8 officer had with the defendant were what was you
9 reaching for or words to that affect, and this is
10 all in the context of the officer issuing commands
11 just moments earlier. That they were to have their
12 hands up. So bending down, reaching around, and
13 reaching for your waistband was not consistent with
14 the demand.

15 And the officer confirmed what he said he
16 saw in my opinion by asking the defendant what was
17 he reaching for, and the Court also commented that
18 the discovery of one of the unlabeled pill bottles
19 -- I wasn't sure was on the floor board or between
20 the passenger seat and the car -- but it wasn't on
21 the person of the defendant, but that would actually
22 corroborate the defendant's furtive movement.

23 And that for all those reasons the Court
24 was satisfied when it was indeed a furtive movement
25 by the defendant, and that because of the factors

1 I've recited and others I'd discussed earlier there
2 was reasonable suspicion for the stop and detention.
3 Therefore, the Court finds in the Terry analysis
4 that this frisk, the first step, was justified at
5 its inception, and the Court finds again that it was
6 justified at its inception for the reasons I just
7 said.

8 The next prong is whether a Terry frisk
9 was reasonable related in scope to the circumstances
10 which justified the interference in the first place?
11 Again, this is, I think, a legal discussion that's
12 quite important because you don't want something
13 that's justified in its inception to be unlawfully
14 extended in its scope.

15 But the facts in this case are remarkably
16 close in time, and what the risk was was exactly for
17 the concern that the defendant might have been
18 secreting a weapon or retrieving a weapon to use
19 against the police. So the Terry frisk for weapons
20 was reasonably related in its scope to the
21 circumstances which faced the officer.

22 And when you look at Pennsylvania v.
23 Mimms, having the defendant who is the passenger in
24 the van come out of the van, that was a de minimus
25 intrusion not meriting additional Fourth Amendment

1 protection, and the officer's frisk which again
2 happened in seconds was not an additional intrusion
3 but justified under Terry versus Ohio.

4 And, State, what you'd cited in your brief
5 was a generalization of that. That the officer
6 needed to based upon specific and articulable facts
7 believe that the defendant was armed and dangerous.

8 And the Court's satisfied based on the
9 officer's testimony and the factors surrounding his
10 action that the officers had reasonable suspicion to
11 conduct the Terry frisk or pat down of the
12 defendant.

13 The Court knows that the degree of
14 certainty for the officer's actions may not be
15 absolute certainty but rather reasonable
16 probability. This is in the State versus Newer
17 case. So sometimes Courts have to grapple with the
18 degree of certainty that officers have in terms of
19 information or what they do and how certain they
20 are.

21 And defense argued well, no weapons were
22 found. Therefore, it is not reasonable to believe
23 that the defendant was armed and dangerous, but the
24 Court finds otherwise. It's a high crime area. The
25 officer testified as to prior arrests where firearms

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

and guns were involved, and the officer was involved in two such arrests recently to the events.

So there is a reasonableness to the officer's belief that and State points out his subjective belief both as to having the defendant and the other occupant, the driver, have their hands up and that he's patting him down almost immediately. That that is consistent with the subjective belief that indeed the defendant may have been armed, and that would have flowed logically from the furtive movement.

And again there is clear case law that officers don't need to take unnecessary risks in doing their job, but they can act reasonably.

So the Court's satisfied based on the Terry versus Ohio standard for the frisk. That the frisk was reasonable. The Court's satisfied that the officer was legally able to do the frisk because it was justified at its inception, and the Terry frisk was reasonably related in scope to the circumstances that justified the interference in the first place.

The Court then notes that again within moments and the officer testified that when he'd opened the door, he'd observed in plain view the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

unlabeled pill bottle, and I believe he said that the pill bottle was orange in color, and that it contained green pills.

But he testified that this was unusual and suspicious, and that based on his training and experience unlabeled pill bottles were often contrabands, and again the degree of certitude for his experience doesn't have to be absolute certainty. He doesn't have to absolutely know that the orange pills -- excuse me -- that the orange pill bottle with the green pills contains contraband.

He just has to have reasonable certainty based on his training and experience that that was the case, and I have the bottle was in the front passenger seat between the front passenger seat and the front passenger door. So I don't recall where it was on the video.

But as he's doing the Terry frisk, he discovers in -- I believe they show it was the jacket -- the front, right pocket of the defendant another pill bottle that also did not have a label with more pills, and that the discovery after that due to the pat down would be appropriate.

So the first pill bottle is appropriate

1 because under the plain view doctrine the three
2 prongs of that analysis have been met. The officer
3 must have prior justification for being in a
4 position in which the officer discovers the evidence
5 in plain view.

6 The evidence itself must be in plain view,
7 and the officer was justified in opening the door
8 and seeing the unlabeled pill bottle in plain view.
9 So he has prior justification. The item is in
10 actual, plain view.

11 And the third prong is that the evidence
12 seized in itself or with other facts known to the
13 officer must provide probable cause to believe there
14 is a connection between the evidence and criminal
15 activity, and again the Court's discussed the
16 officer's training and experience to believe that an
17 unlabeled pill bottle probably contained
18 contrabands, and that that was his experience as an
19 officer.

20 And the Court finds that that is
21 reasonable and that that is sufficient probable
22 cause to seize the pill bottle. That again I don't
23 know if it's on the floor board or in between the
24 seat and the door, but it is not in the actual
25 possession of the defendant. It's somewhere lower

1 in the car.

2 And then there is the discovery of the
3 orange pill bottle, and the officer believed that
4 the pill bottle in the defendant's right, front
5 jacket pocket also contains contraband. That's
6 justified pursuant to the frisk. So the officer
7 would then have probable cause to arrest.

8 I look at that seizure of the pill bottle
9 in the jacket pocket as occurring before the
10 physical detention of the defendant, but again it's
11 seconds or moments, and in either case whether the
12 search incident to arrest is actually before or
13 after the arrest doesn't make a big difference.

14 So long as there is probable cause to
15 arrest, and the probable cause isn't just the
16 officer's analysis and understanding of the two pill
17 bottles. It is the totality of the circumstances
18 that goes back to having the Court recite again
19 everything.

20 The primary vehicle's in an unusual
21 situation in the alley partially obstructing
22 traffic. The vehicle's dark. The officers don't
23 know that there is anyone in there. They shine
24 their spotlight. They discover two individuals in
25 there. Almost immediately the passenger, the

1 defendant, does a furtive movement which creates
2 concerns for officer's safety, and then the officer
3 takes prompt action to protect himself and others,
4 and goes through in this case the justified steps
5 under Terry versus Ohio for the stop and seizure for
6 the Terry frisk and ultimately for the seizure of
7 the contraband and the two pill bottles, and there
8 is ample probable cause to arrest at that point, and
9 when you look at the video, it's all very much
10 corroborated as far as what the officer did once
11 that door of the vehicle is opened.

12 So, defense, did you have any additional
13 objections that I haven't covered or discussed?

14 MS. MORALES: No, Your Honor.

15 THE COURT: And, State, any further discussion?

16 MR. FLYNN: No, thank you.

17 THE COURT: All right. Go ahead, defense. You
18 have anything else?

19 MS. MORALES: No. I've outlined all of my
20 issues.

21 THE COURT: You did, and as I said, I've
22 reviewed your discussion. Part of the difficulty
23 you face and the Court does as well unless I hear
24 the testimony and understand the circumstances until
25 I make credibility determinations regarding the

1 officer and the circumstances and until the Court
2 weighs the evidence and determines its importance
3 and its relationship to the legal principles is it
4 is very hard, I think, for you to bring a motion
5 that has all the legal nuances that need to be
6 discussed, but I think we've done a good job trying
7 to determine them, and I think your objections have
8 been fairly straightforward to the Court.

9 So I did not see any other arguments, and
10 hearing nothing further then the motion to suppress
11 is denied.

12 And we have the final pretrial. Did you
13 wish to go forward on that?

14 MS. MORALES: Your Honor, I'm going to need to
15 discuss my client's options.

16 THE COURT: That's fine. We'll pass your case.
17 (Recess taken.)

18 THE CLERK: State of Wisconsin versus Donte
19 McBride. 18CF51722.

20 MR. FLYNN: John Flynn for the State.

21 MS. MORALES: Mr. McBride appears in person and
22 with Attorney Reyna Morales. Good afternoon, Your
23 Honor.

24 THE COURT: Good afternoon. Previously the
25 Court heard and decided the defense's motion to

1 suppress, and now I see materials for a plea. Do
2 you intend to go forward with the plea, defense?

3 MS. MORALES: Yes, Your Honor.

4 THE COURT: And do you want a plea and
5 sentencing?

6 MS. MORALES: I don't know if the Court has
7 time. Otherwise, I'm willing to be here Monday
8 morning to do the sentencing.

9 THE COURT: We can do it all on Monday since it
10 now looks like I won't have anything on Monday.

11 MR. FLYNN: Judge, the State has a preference
12 for going forward so that I can call off my
13 witnesses that would appear.

14 THE COURT: Okay. Well, then can we do
15 sentencing on Monday?

16 MR. FLYNN: Absolutely.

17 THE COURT: Defense, is that okay?

18 MS. MORALES: Yes, Your Honor. My client would
19 then stay here because he's revoked himself as a
20 consequence of this case.

21 THE COURT: Oh, okay. Sorry to hear that. All
22 right.

23 MR. FLYNN: Judge, just to add to my earlier
24 position the State would not object to the Court
25 changing Monday to a plea and sentencing.

1 THE COURT: We can do the plea now. I think we
2 can do it. You've persuaded me. So, State,
3 compliance with victim notification law?

4 MR. FLYNN: Yes, Judge.

5 THE COURT: Any request for restitution?

6 MR. FLYNN: No.

7 THE COURT: One moment. Negotiations, State?

8 MR. FLYNN: In exchange for pleas of guilty to
9 Counts 1, 2, and 3 the State is moving to dismiss
10 and read in the second and subsequent offense
11 enhancer. The State at sentencing will be leaving
12 the sentence to the discretion of the Court.

13 THE COURT: So you are not making any
14 recommendation?

15 MR. FLYNN: No recommendation.

16 THE COURT: And, defense, you're free to argue?

17 MS. MORALES: That is correct, Your Honor.

18 THE COURT: Is that a correct statement of the
19 negotiations?

20 MS. MORALES: Yes.

21 THE COURT: Mr. McBride, how do you feel today?

22 THE DEFENDANT: Yes. I agree with it.

23 THE COURT: Okay. How do you feel?

24 THE DEFENDANT: I'm okay.

25 THE COURT: Good. Thank you. I know you've

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

been listening attentively to the Court, and you've been very cooperative. So I appreciate that.

I just need a further moment. Thank you, Mr. McBride.

I've heard from the attorneys about a plea bargain. You know what the plea bargain agreement is between you and your attorney and the State? You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And sometimes plea bargains have changes like charges can be reduced and dismissal and read ins. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: When something's dismissed and read in, dismissed means that that part or that charge is dropped, and read in means the Court can consider the facts and circumstances of whatever is dismissed. So dismissal means there is no sentence or consequence, but the read in means the Court can know about it and consider it. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I've been told in this case that you are going to plead guilty to Counts 1, 2 and 3, they're all charged as a second or subsequent

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

offense, and that the second or subsequent offenses for all three are being dropped and read in. Is that your understanding?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And incidentally the Court would hear about a prior conviction for a drug offense any ways when the attorneys talk about your character and your prior, criminal record. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So this is favorable to you. Just the second or subsequent offense enhancer makes more prison available and taking away makes less prison available. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Then after the Court accepts your pleas to Counts 1, 2 and 3 the State is not going to make any recommendation or they're going to say sentence up to the Judge and not recommend anything as far as a sentence. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And your attorney's free to argue for you. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have any questions about the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

plea negotiations?

THE DEFENDANT: No, Your Honor.

THE COURT: State, any earlier, formal plea offers that were more favorable?

MR. FLYNN: Judge, there was a prior offer extended. Under the original information the defendant was only charged with possession with intent to deliver heroin, three to ten grams and possession of narcotic drugs. That offer was rejected in April of 2019, and this amended information was filed. No better offers were conveyed under this information.

THE COURT: All right. Defense, do you agree?

MS. MORALES: Yes.

THE COURT: And we have the amended information that was filed on April 9th, 2019, State?

MR. FLYNN: Yes.

MS. MORALES: Yes.

THE COURT: Okay. And, Mr. McBride, do you understand what the State just said with the prior negotiations and how it was revoked?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you have a copy of the amended information in front of you.

THE DEFENDANT: Yes, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: I'd ask you to follow along with me if you would. You're charged in Count 1 with possession with intent to deliver a controlled substance, heroin, three to ten grams. The second or subsequent offense enhancer is dropped and read in.

You're charged on or about Saturday, October 27th, 2018, at 416 East Locust Street in the city and county of Milwaukee that you knowingly possessed with intent to deliver heroin, a controlled substance, in an amount more than three grams but not more than ten grams all done contrary to law. Do you understand that charge?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Upon conviction for this Class E felony the maximum, possible penalties is a fine of not more than \$50,000, imprisonment for not more than fifteen years, or both. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. One moment. Fifteen years is broken into two parts with two potential maximums. You face up to ten years potential initial confinement in prison and up to five years potential extended supervision. Do you understood

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And the subsequent offender enhancer is dropped, and the Court may suspend your drives operating privilege for not than six months or no more than five years. If your driving privileges are already suspended, any suspension must be served consecutively. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In Count 2 you're charged with possession with intent to deliver, Oxycodone. It was charged as a second or subsequent offense, but the second or subsequent offense is dropped and dismissed and read in. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: But the remaining charge is that on or about Saturday, October 27th, 2018, at 416 East Locust Street in the city and county of Milwaukee that you'd possessed with intent to deliver a controlled substance, Oxycodone, all done contrary to law. Do you understand that charge?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Upon conviction for this Class E felony the maximum, possible penalties is a fine of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

not more than \$50,000, imprisonment for not more than fifteen years, or both. Do you understand those penalties?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Likewise, the fifteen years is broken down into two parts, two potential maximums. Your face up to ten years potential initial confinement and up to five years potential extended supervision. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In Count 3 you're charged with possession with intent to deliver fentanyl. A second or subsequent enhancer's dropped and dismissed. You're charged that on or about Saturday, October 27th, 2018, at 416 East Locust Street in the city and county of Milwaukee that you possessed with intent to deliver a controlled substance, fentanyl, all done contrary to law. Do you understand that charge?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Upon conviction for this Class E felony the maximum possible penalties is a fine of not more than \$50,000, imprisonment for not more than fifteen years, or both. Do you understand those penalties?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE DEFENDANT: Yes, Your Honor.

THE COURT: Again, the fifteen years is broken down into two parts with two potential maximums. You face up to ten years potential initial confinement in prison and up to five years potential extended supervision. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And because the Court could sentence you to the maximum terms consecutive the potential exposure is thirty years potential initial confinement and fifteen years potential extended supervision. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: State, do you agree with my math?

MR. FLYNN: Yes.

THE COURT: If the Court were to impose any period of initial confinement, you must serve every day of that initial confinement in prison subject to three exceptions. The first exception reduces initial confinement. That is, you can get credit for time already served.

The second exception may reduce initial confinement in that if the Court makes you eligible for various prison programs and later you successfully complete those prison programs, that

1 may reduce initial confinement.

2 The third exception increases initial
3 confinement. If your extended supervision is
4 revoked and you're reconfined, that would be an
5 additional initial confinement. Do you understand
6 all that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Upon conviction for these three
9 felonies you realize that you can never possess a
10 firearm at any time in the future? Understood?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: If you did and you were convicted
13 of possession of a firearm by a person who is a
14 felon, you face a Class G felony. The penalties are
15 up to a \$25,000 fine, ten years in prison, or both.
16 Do you understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: In addition, you can't vote until
19 your civil rights are restored. Understood?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And you have to provide a DNA
22 sample Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Now, you realize that the Court had
25 no part in any plea negotiations in this case? You

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Furthermore, the Court is not required to follow anyone's recommendation. That is, the Court's not bound by anyone's recommendation. Understood?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The Court's free to impose the maximum penalties consecutive despite any plea agreement. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: If you're not a citizen of the United States, you're advised that a plea of guilty to these offenses may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law. Understood?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Then what's your plea to Count 1, possession with intent to deliver heroin, three to ten grams, or on about October 27th, 2018? What's your plea?

THE DEFENDANT: Guilty.

THE COURT: And what is your plea to Count 2, possession with intent to deliver Oxycodone on or

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

about October 27th, 2018?

THE DEFENDANT: Guilty.

THE COURT: And what is your plea to Count 3, possession with intent to deliver fentanyl on or about October 27th, 2018?

THE DEFENDANT: Guilty.

THE COURT: To help the Court to accept your guilty pleas I'm now showing you two forms your attorney gave me, the Plea Questionnaire and Waiver of Rights form and the addendum. As to these forms, did you read them?

THE DEFENDANT: Yes sir.

THE COURT: Did you understand them?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you sign and date them?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is the information you and your attorney put on the forms true and correct?

THE DEFENDANT: Yes.

THE COURT: Do you understand them to the best of your knowledge?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I see you're twenty-eight years old, true?

THE DEFENDANT: Yes, Your Honor.

1 THE COURT: You have eleven years of schooling
2 and a HSED?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you have any difficulty
5 understanding English?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Do you read and write English?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand the charges are
10 all felonies, true?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And are you receiving any therapy
13 or counseling for a mental health disorder?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Have you had any alcoholic
16 beverages, medicine, or drugs within the last
17 twenty-four hours?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: The Court in going over the Plea
20 Questionnaire and Waiver of Rights form is to make
21 sure that I know that you know you could have had a
22 jury trial or a Court trial about these charges.
23 Did you know that.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: In fact, this was set for trial on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Monday, true?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And the Court trial is where the Judge hears the evidence and decides whether someone is guilty or not guilty beyond a reasonable doubt as to all the elements of the offense. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And the jury trial is where twelve jurors hear the evidence and decide whether someone is guilty or not guilty beyond a reasonable doubt as to all the elements of the offense. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Also, all twelve jurors have to agree. That is, they have to be unanimous as to whether someone is guilty or not guilty. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you have various trial rights when you have this Court or jury trial. You have the right to present evidence. The right to subpoena witnesses to court. The right to testify if you want to. The right to not testify and remain silent, and no one can comment about your silence.

1 You have right to confront in court people
2 who would testify against you, and the right to have
3 your attorney cross examine or ask witnesses
4 questions. The State would have to prove you guilty
5 beyond a reasonable doubt as to all the elements of
6 the offense. Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: But as I hope you already know,
9 when someone pleads guilty, we don't have a Court or
10 jury trial. You know that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: So you give up all those
13 constitution trial rights we've been talking about,
14 true?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And in the addendum you have
17 additional rights and defenses, and they're called
18 understandings. You were also told about your
19 rights and understood the addendum, but you've
20 talked about those understandings with your
21 attorney?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And we did have a motion hearing in
24 this case. So you may appeal that, but as to any
25 other motions that are brought, you understand that

1 when you plead guilty, you give up your right to
2 challenge the constitutionality of police action?

3 THE DEFENDANT: Yeah, Your Honor.

4 THE COURT: And all the other understandings in
5 the addendum, you're giving up those rights? You
6 understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Counsel, what steps did you take to
9 make sure your client understands the rights and
10 defenses he gives up when he pleads guilty?

11 MS. MORALES: I've met with him. I've provided
12 him with a copy of all of the discovery. I've also
13 provided him with all the filings that have been
14 done in this case.

15 THE COURT: You went through the Plea
16 Questionnaire and Waiver of Rights form and addendum
17 with him thoroughly?

18 MS. MORALES: I did, and I also went over the
19 elements by going over the jury instructions on the
20 these charges.

21 THE COURT: Thank you. Mr. McBride do you
22 agree with what your attorney just told me?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Except for the plea agreement has
25 anyone made any threats, promises, or used any

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

pressure to make you plead guilty?

THE DEFENDANT: No, Your Honor.

THE COURT: Did you read and understand the criminal complaint?

THE DEFENDANT: Yes, Your Honor.

THE COURT: So you understand what that's all about, true?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you were present during the motion hearing. So that covered a lot of ground. That would also be a part of the plea. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Your attorney submitted jury instructions?

MS. MORALES: Yes.

THE COURT: And I'm not clear. All three counts were possession with intent to deliver with the second or subsequent dropped and read in. You gave me possession of a controlled substance. I don't need that, do I?

MS. MORALES: I don't think so, Your Honor, but I also gave the other one, the possession with intent to deliver.

THE COURT: You did. So, sir, I have

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE DEFENDANT: Yes.

THE COURT: Oh, I'm sorry. I'd missed the most important one, and the fourth element is that the defendant intended to deliver the heroin, Oxycodone, or fentanyl depending on what count we're talking about, but you understand those four elements?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And I'll direct your attention then to the amended information and the complaint. Back on October 27, 2018, were you at 416 East Locust Street in Milwaukee?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You were a passenger in that vehicle?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And for Count 1 did you possess some suspected heroin?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Where was the suspected heroin that night?

THE DEFENDANT: It was located in my jacket.

THE COURT: All right. Was it in that orange pill bottle?

THE DEFENDANT: No.

THE COURT: It was somewhere else?

1 THE DEFENDANT: Yes, Your Honor.
2 THE COURT: Where was it?
3 THE DEFENDANT: In my left jacket pocket.
4 THE COURT: In the left jacket pocket, and how
5 was it packaged?
6 THE DEFENDANT: In a bag.
7 THE COURT: A clear, plastic bag?
8 THE DEFENDANT: Yes, Your Honor.
9 THE COURT: And if we'd looked at that clear,
10 plastic bag what would see? A powder, chunk,
11 crystal, something else?
12 THE DEFENDANT: Yes, Your Honor. Just one
13 piece.
14 THE COURT: It was a chunk?
15 THE DEFENDANT: Yes.
16 THE COURT: What color?
17 THE DEFENDANT: I believe tan.
18 THE COURT: Tan?
19 THE DEFENDANT: Yes, Your Honor.
20 THE COURT: Very good. And how did the
21 suspected heroin get in your left jacket pocket?
22 THE DEFENDANT: I already had it there.
23 THE COURT: Right. Did you put it in there?
24 THE DEFENDANT: Yes, Your Honor.
25 THE COURT: So previously you'd handled it?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. And you knew or believed
3 that the suspected heroin was heroin, correct?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And you know now that the heroin
6 was tested by the police and determined to be, in
7 fact, heroin, true?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And let me hear the amount before
10 we talk about the intent to deliver. State, how
11 much heroin was there?

12 MR. FLYNN: Judge, not to jump ahead a bit,
13 too, but as to the heroin/fentanyl mixture, it's the
14 same substance that forms the basis of Count 3. The
15 total weight of the mixture was 9.2 grams.

16 THE COURT: All right. Thank you for that
17 clarification. It will speed up the Count 3
18 discussion, but I think we have to have a separate
19 one for each. So you know the substance of
20 suspected heroin was later tested and found to be
21 heroin, correct?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And do you know what 9.2 grams
24 would look like in terms of volume? How much space
25 it would take up?

1 THE DEFENDANT: Approximately.

2 THE COURT: But you know what that would be?

3 THE DEFENDANT: Approximately. Yes, Your
4 Honor.

5 THE COURT: Was that the amount you had
6 approximately?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. And you'd possessed the
9 suspected heroin with the intent to deliver; that
10 is, to transfer or attempt to transfer to another
11 person?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: The Court's satisfied as to Count 1
14 that the defendant understands the elements of the
15 offense, and that he's admitted to them.

16 Let's jump to Count 3 because it should go
17 very quickly. You've heard the prosecutor indicate
18 that this 9.2 grams also tested for fentanyl. Did
19 you hear that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And that's the controlled substance
22 in Count 3? You understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And so the suspected fentanyl was
25 this tan chunk in your left jacket pocket. Is that

1 true?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And so when you admit that you've
4 possessed the heroin you also admit that you
5 possessed the fentanyl, correct?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And you knew or believed that the
8 substance was fentanyl as well, correct? Did you
9 know or believe that it had fentanyl?

10 THE DEFENDANT: No, Your Honor, because you
11 would never know. I didn't know.

12 THE COURT: Okay. Well, I can understand that.
13 Defense, how do you want to address this?

14 MS. MORALES: I've shared with him the results
15 of the test.

16 THE COURT: So he'll agree that it was, in
17 fact, fentanyl?

18 THE DEFENDANT: Yeah.

19 THE COURT: The test is already done?

20 THE DEFENDANT: Yes, Your Honor. I agree with
21 that.

22 THE COURT: But you'll admit that you were
23 going to either transfer it or attempt to transfer
24 it, correct?

25 THE DEFENDANT: Yes, Your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: And you knew it had the possibility of containing fentanyl, correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And you'd possessed it with the intent to deliver the fentanyl, correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. I'm satisfied for Count 3 and I'm sure defense will remind me that essentially they have two, Counts 1 and 3, for the same object or amount of substance, and then as to Count 2, was there some suspected Oxycodone?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Where was that?

THE DEFENDANT: In my pocket on the floor.

THE COURT: Okay. And how was it packaged?

THE DEFENDANT: In a bottle.

THE COURT: Do you remember what color the bottle was?

THE DEFENDANT: Yes, Your Honor. Orange.

THE COURT: And was the Oxycodone in chunk, powder, pill, or some other form?

THE DEFENDANT: Yes, Your Honor. Pill form.

THE COURT: Do you know how many pills there were?

THE DEFENDANT: Approximately 158.

1 THE COURT: Do you know how many milligrams the
2 pills were, if you know?

3 THE DEFENDANT: Yes. Fifteen and twenty.

4 THE COURT: Fifteen and twenty?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: So you admit that you'd possessed
7 this suspected Oxycodone?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And you know that it was tested--
10 Was this actually tested, State?

11 MR. FLYNN: So, Judge, in cases with
12 pharmaceuticals like this, there is a visual
13 analysis done. Approximately ninety of the pills
14 were found to be visually consistent with Oxycodone.
15 Then one was tested using the science they have, and
16 so that one pill they'd tested did identify the
17 presence of Oxycodone, and that one pill weighed .10
18 grams.

19 THE COURT: All right. Again, Mr. McBride, you
20 understood that the suspected Oxycodone, at least
21 one pill of it was tested. It tested positive for
22 Oxycodone. You know that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And so the inference is that the
25 other 157 pills were Oxycodone. You understand

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you knew or believed that the pills were Oxycodone, correct?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you'd possessed the Oxycodone with intent to deliver. Agreed?

THE DEFENDANT: Yes, Your Honor.

THE COURT: 158 pills would be quite a few pills for one person. You understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And the Court's satisfied for all three counts that the defendant understands the elements of the offense, and that he's admitted to them.

You realize when you admit or plead guilty, the State is no longer required to prove you guilty beyond a reasonable doubt as to those elements. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you had enough time to go over this case with your attorney?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you satisfied with your attorney?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Did you see police reports when
3 you've worked with your attorney?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: You saw that video that we've seen
6 in court many times, I assume?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you have any questions?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Okay. And are you pleading guilty
11 to these three charges because, in fact, you are
12 guilty?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Thank you. Counsel, are you
15 satisfied your client understands the elements of
16 the offenses, the maximum, possible penalties, and
17 all the rights and defenses he gives up when he
18 pleads guilty?

19 MS. MORALES: Yes.

20 THE COURT: State, do you agree to the jury
21 waiver?

22 MR. FLYNN: Yes.

23 THE COURT: And, defense, were there any--

24 MS. MORALES: Yes.

25 THE COURT: --material witness-- Well, I guess

1 because you're contesting the Court's fact-finding
2 in the motion, I'm not going to ask you to stipulate
3 to the complaint. The Court finds an additional
4 factual basis, though, in the Court's evidentiary
5 findings in the motion hearing, and, State, I know
6 you'd offered the complaint as an additional factual
7 basis, but the defense won't agree to that. That's
8 fine.

9 The Court finds that the defendant is
10 entering his guilty pleas freely, voluntarily, and
11 intelligently. The Court finds there is a factual
12 basis for each count.

13 The Court convicts Defendant McBride
14 guilty of Count 1, possession with intent to deliver
15 heroin, three to ten grams; Count 2, possession with
16 intent to deliver Oxycodone; and Count 3, possession
17 with intent to deliver fentanyl all on or about the
18 date of offenses of October 27, 2018, and order a
19 judgment of conviction be entered in the record.

20 Sentencing date is Monday, madam clerk?

21 THE CLERK: Yes. Next court date will be
22 September 30th at eight-thirty for sentencing.

23 THE COURT: And are you asking for remand,
24 State?

25 MR. FLYNN: Yes, Judge.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Defense, any objection?

MS. MORALES: No, Your Honor. He's serving a sentence. It's academic at this point.

THE COURT: The Court remands pursuant to his guilty pleas. Thank you, Mr. McBride.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

I, KATHLEEN WORDEN, an Official Court Reporter,
in and for the Circuit Court, Milwaukee County, Wisconsin,
do hereby certify that I reported the foregoing 53 pages
of proceedings and that the same is true and correct in
accordance with my original stenographic notes taken at
said time.

Dated this 20th day of May, 2021, at Milwaukee,
Wisconsin.

Electronically signed by:
KATHLEEN S. WORDEN

101-1 Traffic Code

101-37	Implied Consent
101-40	Transfer of Title
101-41	Permitting Unauthorized Person to Drive
101-41.5	Driving After License Revocation or Suspension
101-42	Miscellaneous Highway Provisions
101-43	Traffic Signs, Defacement or Removal
101-44	Bus Stop Locations and Regulations
101-50	Fees for Special Parking Signs, Meters, etc.
101-51	Use of Low-speed Vehicles on City Streets
101-53	Dockless Mobility Systems
101-55	Streetcar Mass Transit Way

101-1. Title and Adoption of State Laws.

1. TITLE. Chapter 101 shall be known and may be referred to and cited as The Milwaukee Traffic Code.

2. ADOPTION OF STATE LAWS. The city of Milwaukee adopts s. 23.33 and chs. 340, 341, 342, 343, subch. 6 of ch. 344, 345, 346, 347, 348, 349, 941.01 and 941.03, Wis. Stats., and all subsequent amendments thereto defining and describing regulations with respect to vehicles and pedestrians and traffic for which the penalty is a forfeiture only, including but not limited to provisions for stipulation, conditions of deposit or bail, penalties unless another provision for such penalties, provisions for stipulation, conditions of deposit or bail is provided in this chapter.

101-2. Display of Registration Plates. 1. CITY ADOPTS STATE RULE. The city of Milwaukee adopts s. 341.15, Wis. Stats., 1969, and all subsequent amendments thereto.

2. PENALTY. Upon conviction of a violation of s. 341.15, Wis. Stats., 1969, so adopted, the court shall enter a judgment of forfeiture against the violator, payable to the city, within the range of forfeitures provided by statute for violation of such section in addition to taxable costs and, in default of payment thereof, order confinement in the county jail or house of correction until such forfeiture and costs are paid, but not to exceed 30 days.

101-3. Rules of the Road. 1. CITY ADOPTS STATE RULE. The city of Milwaukee adopts ch. 346, Wis. Stats., 1969, and all subsequent amendments thereto defining and describing regulations with respect to vehicles and traffic for which the penalty is a forfeiture only, including penalties to be imposed; except as provided in s. 101-34. Excluded from this general adoption of ch. 346, Wis. Stats., is s. 346.94(4), Wis. Stats. The city of Milwaukee also adopts s. 346.63(1), Wis. Stats., prohibiting driving or operating a motor vehicle while under the influence of an intoxicant or a controlled substance or a combination of an intoxicant and a controlled substance while that person has a blood alcohol concentration of more than 0.0 but not more than 0.8.

2. PENALTY. Upon conviction of a violation of any section of ch. 346, Wis. Stats., 1969, so adopted, the court shall enter a judgment of forfeiture against the violator, payable to the city, within the range of forfeitures provided by statute for violation of such section in addition to taxable costs and, except as provided in s. 101-34, in default of payment thereof, order confinement in the county jail or house of correction until such forfeiture and costs are paid, but not to exceed 30 days. The municipal court shall suspend an operator's license for violation of the Milwaukee ordinance enacted in conformity with s. 346.63(1), Wis. Stats.

101-3.5. Operators to be Licensed.

1. LICENSE REQUIRED. Except as provided in sub. 3, no person may operate a motor vehicle upon a highway in this city unless the person has a license issued to him or her by the Wisconsin department of transportation, which license is not revoked, suspended, canceled or expired. A valid chauffeur's license satisfies the requirements of this section only when the licensee is operating a vehicle in the performance of his or her duties as chauffeur. No person may operate a motor-driven cycle unless the person possesses a valid operator's license which has been specifically endorsed for motor-driven cycle operation. No person may

Traffic Code 101-24.1

side parking do not apply to these locations. Specific locations are to be found in the common council proceedings; the official record on file in the city clerk's office, and the code on file in the legislative reference bureau.

2. POSTING OF SIGNS.

The commissioner of public works is directed to post signs at appropriate places in each such area to inform the public of the provisions of this section.

101-24.1. Blocking a Driveway. It shall be unlawful for any vehicle to be parked on or blocking the entrance to any private driveway or garage without the consent of the owner of such driveway so as to prevent free passage of vehicles.

101-24.2. Blocking Traffic. It shall be unlawful for any vehicle to be parked or left standing on a highway in such a manner as to obstruct traffic.

101-24.5. Vehicle Identification Numbers.**1. DEFINITION.** In this section:

a. "Chief of police" means the police chief or any employee of the police department acting on the chief's behalf.

b. "Commissioner of public works" means the commissioner of public works or any employee of the department of public works acting on the commissioner's behalf.

c. "Identification number" means the numbers, letters or combination of numbers and letters assigned by the manufacturer of a vehicle or vehicle part or by the Wisconsin department of transportation and stamped upon or affixed to a vehicle or vehicle part for the purpose of identification. This term does not include the letters, numbers or combination thereof on vehicle license plates.

d. "Owner" shall include the lessee of a vehicle if the vehicle is registered or required to be registered by the lessee pursuant to ch. 341, Wis. Stats.

2. PROHIBITED.

a. No person may remove, alter or obliterate an identification number.

b. No person may make it impossible to read a motor vehicle's identification number from outside the vehicle.

3. REMOVAL OF VEHICLE.

If the chief of police or commissioner of public works finds, on any alley, street, highway or public place within the city, any vehicle on which the identification number has been removed, altered, obliterated or made impossible to read, including any vehicle on which the identification number is not readily visible when observed from outside the vehicle, the chief or commissioner may have the vehicle immediately removed to a suitable place of impoundment. If the identification number cannot be identified, the impounded vehicle shall be presumed to be contraband. If the identification number can be identified, a notice informing the registered owner of the location of the vehicle, the procedure for reclaiming the vehicle and the availability of an informal hearing before the city attorney shall be sent to the registered owner's last known address as registered by the owner with the state department of motor vehicles within 72 hours after removal.

4. DISPOSAL OF UNCLAIMED VEHICLES. As soon as practical after removal and impoundment of a vehicle under sub. 3, a duly authorized representative of the commissioner of public works shall appraise the value of such motor vehicle based on the prevailing market. Such vehicle shall be disposed of according to s. 105-65.

State v. Neal, 382 Wis.2d 271 (2018)

915 N.W.2d 730, 2018 WL 1633577, 2018 WI App 35

382 Wis.2d 271

Unpublished Disposition

See Rules of Appellate Procedure, Rule 809.23(3), regarding citation of unpublished opinions. Unpublished opinions issued before July 1, 2009, are of no precedential value and may not be cited except in limited instances. Unpublished opinions issued on or after July 1, 2009 may be cited for persuasive value.

NOTE: THIS OPINION WILL NOT APPEAR IN A PRINTED VOLUME. THE DISPOSITION WILL APPEAR IN A REPORTER. Court of Appeals of Wisconsin.

STATE of Wisconsin, Plaintiff–Respondent,

v.

Lindsey Dawayne NEAL,

Defendant–Appellant.†

Appeal No. 2017AP1397-CR

DATED AND FILED April 3, 2018

APPEAL from a judgment of the circuit court for Milwaukee County, Cir. Ct. No. 2016CF1796: TIMOTHY M. WITKOWIAK, Judge. *Affirmed*.

Before Kessler, Brash and Dugan, JJ.

Opinion

KESSLER, J.

*1 ¶ 1 Lindsey Dawayne Neal appeals a judgment of conviction, following a guilty plea, of one count of possession with intent to deliver cocaine (between one and five grams) and one count of obstructing an officer. Neal argues that the circuit court erroneously denied his motions to suppress evidence obtained as a result of a stop and frisk. We affirm.

BACKGROUND

¶ 2 On April 25, 2016, Neal was charged with one count of possession of cocaine, with intent to deliver, and one count of obstructing an officer. According to the criminal complaint, Milwaukee Police Officers Sean Mahnke, Mark Dillman, and Ismar Kulenovic were on patrol on the night of April 21, 2016, in the City of Milwaukee when they saw a silver Toyota

parked in the middle of an alley, blocking traffic. The officers activated their squad lights and approached the vehicle. The officers asked the occupants to exit the vehicle. When the driver and the passenger (Neal) exited the vehicle, Dillman and Kulenovic conducted a pat-down of Neal and uncovered nothing. Mahnke stated he observed a firearm under Neal's seat. Mahnke then attempted to detain Neal, however, Neal fled. Two officers caught Neal and arrested him. Upon his arrest, Neal told Kulenovic that he had crack cocaine in his pants pocket. Kulenovic found a clear plastic corner-cut baggie containing a white substance in Neal's pocket, along with \$1518.00. Mahnke returned to the vehicle and recovered the firearm. The entire stop was recorded by the squad car's dashboard camera ("dashcam").

¶ 3 Neal filed a motion to suppress "anything obtained as a result of the stop, frisk and arrest of the defendant and his vehicle," arguing that: the arresting officers did not have reasonable suspicion that he violated any traffic laws justifying the traffic stop; the officers acted inappropriately by asking Neal and the driver if they were armed instead of inquiring about why they were parked in the alley; and, at the time of the stop, the officers had no reason to believe that Neal or the driver were armed and dangerous.

¶ 4 At a hearing on the motion, the circuit court viewed the dashcam video and found, based on the language of Milwaukee, Wis. Traffic Code 101–24.2, that the Toyota was illegally parked in a manner that obstructed traffic and the officers had reasonable suspicion to stop the vehicle. The dashcam video clearly shows that it was dark and that the original observation by the officers appears to be from a significant distance from the vehicle in question. The court noted that the entire stop lasted approximately one minute before Neal fled. The court stated that the next legal issue it had to address was "whether the officers should have seized the defendant prior to ... at least patting him down and seized [him] prior to him running." Defense counsel requested that the officers testify about the details of the stop. The circuit court denied the request, stating the dashcam video provided all of the necessary details, but gave counsel an opportunity to brief the issue of whether Neal was unlawfully detained prior to his attempt to flee officers. The court also allowed the State to call Mahnke to testify as to the accuracy of the dashcam video. The video does not show the gun referred to in the complaint, nor was there any testimony during the suppression hearing about the observation of a gun.

State v. Neal, 382 Wis.2d 271 (2018)

915 N.W.2d 730, 2018 WL 1633577, 2018 WI App 35

*2 ¶ 5 Following the hearing, Neal filed a supplemental suppression motion, arguing that “the subsequent police action after the [initial stop] transformed the seizure into an unreasonable one.” Neal argued that following the initial traffic stop, the officers acted in an intrusive manner by frisking Neal without having reason to believe that he was armed and dangerous. Because the officers uncovered nothing during the frisk, Neal argued, he was unlawfully detained.

¶ 6 The circuit court denied the motion, finding that the duration of the stop “was not ... very long” before Neal “decided to leave the scene,” creating probable cause for his arrest. Neal subsequently pled guilty. This appeal follows.

DISCUSSION

¶ 7 On appeal, Neal argues that the circuit court erred in denying his suppression motions because: (1) there was no reasonable suspicion for the initial seizure; (2) there was no basis for the frisk and protective search of the vehicle; and (3) there was no basis for the extension of the seizure.

¶ 8 When reviewing a motion to suppress, we apply a two-step analysis. *See State v. Dubose*, 2005 WI 126, ¶ 16, 285 Wis. 2d 143, 699 N.W.2d 582. First, we review the circuit court’s findings of fact under the clearly erroneous standard, *see State v. Smier*, 2011 WI App 15, ¶ 9, 331 Wis. 2d 431, 793 N.W.2d 920 (2010), with the circuit court acting as the ultimate arbiter of witness credibility, *see Noll v. Dimiceli’s, Inc.*, 115 Wis. 2d 641, 644, 340 N.W.2d 575 (Ct. App. 1983). We search the record for evidence supporting the circuit court’s findings. *See State v. Jackson*, 147 Wis. 2d 824, 829, 434 N.W.2d 386 (1989).¹ Second, “we must review independently the application of relevant constitutional principles to those facts.” *See Dubose*, 285 Wis. 2d 143, ¶ 16.

The officers had reasonable suspicion to justify the stop

¶ 9 An officer must have reasonable suspicion that a traffic law has been or is being violated to justify a traffic stop. *State v. Houghton*, 2015 WI 79, ¶ 30, 364 Wis. 2d 234, 868 N.W.2d 143. Reasonable suspicion depends on an officer’s ability “to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). An officer may conduct an investigatory stop of a vehicle

based on a noncriminal traffic violation. *State v. Colstad*, 2003 WI App 25, ¶¶ 11, 13, 260 Wis. 2d 406, 659 N.W.2d 394.

¶ 10 What constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable officer reasonably suspect in light of his or her training and experience. *Id.*, ¶ 8. Courts must look to the totality of the circumstances when determining whether reasonable suspicion existed. *State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996). Reasonable suspicion is evaluated under an objective test. *Id.* at 55–56. Although an inchoate, unparticularized suspicion or hunch will not suffice, *id.* at 56, when an officer observes lawful but suspicious conduct, he or she has the right to temporarily detain the individual for the purpose of inquiry if a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn. *Id.* at 60.

*3 ¶ 11 Here, the State called none of the arresting officers to testify about the stop,² and when the defense requested to do so, its request was denied based on the circuit court’s conclusion that the dashcam provided a credible depiction of events. While we note that the better practice is to allow an arresting officer to testify at a suppression hearing, we conclude that the facts in the record, although extremely thin, support reasonable suspicion for the stop. The complaint alleges, with no testimony to the contrary, that the vehicle Neal was in was obstructing traffic in an alleyway—a violation of a local traffic ordinance. *See Colstad*, 260 Wis. 2d 406, ¶¶ 8–9 (When there is reasonable suspicion to believe a person is violating a law or a traffic ordinance, a police officer may, consistent with the Fourth Amendment’s protection against unreasonable seizures, detain the person for an investigative stop.). The ordinance, titled “Blocking Traffic” states: “It shall be unlawful for any vehicle to be parked or left standing on a highway in such a manner as to obstruct traffic.” *See Milwaukee, Wis. Traffic Code 101–24.2*. The dashcam clearly shows the vehicle parked towards the middle of the alley, blocking traffic in at least one direction. Accordingly, the stop was reasonable.

Search and seizure

¶ 12 The Fourth Amendment of the United States Constitution protects the right of individuals against unreasonable searches and seizures. U.S. Const., amend. IV. Wisconsin courts “consistently follow[] the United States Supreme Court’s interpretation of the search and seizure provision of the

State v. Neal, 382 Wis.2d 271 (2018)

915 N.W.2d 730, 2018 WL 1633577, 2018 WI App 35

[F]ourth [A]mendment in construing the same provision of the state constitution.’ ” *State v. Kiper*, 193 Wis. 2d 69, 80, 532 N.W.2d 698 (1995) (citation omitted). We judge police officers’ actions against a standard of reasonableness, which “depends ‘on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.’ ” See *State v. Malone*, 2004 WI 108, ¶ 21, 274 Wis. 2d 540, 683 N.W.2d 1 (citation and one set of quotation marks omitted).

¶ 13 A traffic stop’s acceptable duration is determined by the “mission” of the seizure. See *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). If an officer becomes aware of additional suspicious factors during a valid traffic stop, and those factors are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the stop, the stop may be extended and a new investigation may begin. *Colstad*, 260 Wis. 2d 406, ¶ 19. The validity of the extension is evaluated under the same criteria as the initial stop. *Id.*

¶ 14 The issue therefore is whether there were articulable facts which would cause a reasonable police officer to suspect that criminal activity was afoot. See *Waldner*, 206 Wis. 2d at 55–56. When determining whether reasonable suspicion exists, we consider the totality of the circumstances. See *State v. Williams*, 2001 WI 21, ¶ 22, 241 Wis. 2d 631, 623 N.W.2d 106. This inquiry must necessarily take into account both the quantity and the quality of the suspicious factors. *Id.*

¶ 15 Without testimony by an arresting officer at the suppression hearing, we can only rely on the other facts in

the record, which come from the notarized complaint and the dashcam video. We conclude that the facts in the record support the minimal detention which occurred before Neal attempted to flee the officers. The officers initially stopped the vehicle because they believed that a traffic violation was in progress. The complaint reports that the officers asked the occupants to exit. The dashcam video shows that after Neal was patted-down, Mahnke looked in the vehicle and observed a firearm under Neal’s seat. See *Maryland v. Wilson*, 519 U.S. 408, 415 (1997) (On a lawful traffic stop, an officer may order the driver and the passengers to exit the vehicle without violating the Fourth Amendment’s prohibition against unreasonable seizures.). The pat-down occurred before Mahnke saw a gun in the vehicle. The time between the pat-down and Neal’s attempt to flee was less than one minute. Hence, we conclude that the officers did not unconstitutionally prolong the traffic stop. Because Neal resisted and attempted to flee, the officers had probable cause to arrest. After obtaining probable cause to arrest, the officers discovered the items Neal disclosed to them, which Neal later sought to suppress.

*4 ¶ 16 For the foregoing reasons, we affirm the circuit court.

By the Court.—Judgment affirmed.

All Citations

382 Wis.2d 271, 915 N.W.2d 730 (Table), 2018 WL 1633577, 2018 WI App 35

Footnotes

† Petition for Review Filed

1 Although it would be inadmissible at trial, at this stage in the proceedings, a circuit court may consider the allegations in the criminal complaint. See *State v. Zamzow*, 2016 WI App 7, ¶ 13, 366 Wis. 2d 562, 874 N.W.2d 328, *aff’d*, 2017 WI 29, 374 Wis. 2d 220, 892 N.W.2d 637 (Generally, a circuit court’s reliance on hearsay evidence at a suppression hearing does not offend a defendant’s right to due process.).

2 Although Mahnke testified at the suppression hearing, he only testified as to the accuracy of the dashcam video.

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.

APPENDIX CERTIFICATION

I hereby certify that filed with this petition or response, either as a separate document or as a part of this petition or response, is an appendix that complies with Wis. Stat. § (Rule) 809.62(2)(f) and that contains, at a minimum:(1) a table of contents; (2) the decision and opinion of the court of appeals; and (3) the findings or opinion of the circuit court necessary for an understanding of the petition.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 18th day of January 2023.



KIERAN M. O'DAY
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE WITH
WIS. STAT. §§ (RULES) 809.19(13) and 809.62(4)(b)
(2019-20)**

I hereby certify that:

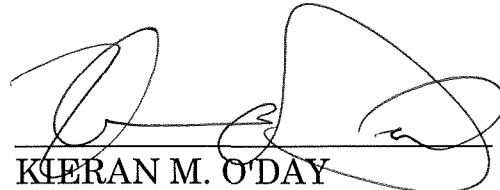
I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. §§ (Rules) 809.19(13) and 809.62(4)(b) (2019-20).

I further certify that:

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

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

Dated this 18th day of January 2023.


KIERAN M. O'DAY
Assistant Attorney General

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200

201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300