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STATE OF WISCONSIN

**07-12-2018**

IN SUPREME COURT

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OF WISCONSIN**

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No. 2017AP2006-CR

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STATE OF WISCONSIN,

Plaintiff-Appellant-Petitioner,

v.

JOHN PATRICK WRIGHT,

Defendant-Respondent.

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**PETITION FOR REVIEW, APPENDIX, AND REQUEST  
FOR SUMMARY DISPOSITION**

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## INTRODUCTION

Less than one year ago this Court addressed the propriety of a police officer asking a lawfully stopped motorist about whether they had weapons. *State v. Floyd*, 2017 WI 78, 377 Wis. 2d 394, 898 N.W.2d 560 (Pet-App. 110–29.) *Floyd* held, following the U.S. Supreme Court and this Court’s own precedents, that an officer can ask a driver whether there are any weapons in the vehicle, as part of ensuring officer safety during any traffic stop. This Court reasoned that brief questions about firearms during a routine traffic stop are negligibly burdensome, promote officer safety, and are permissible. *Floyd*, 377 Wis. 2d 394, ¶ 28 (Pet-App. 119.)

Despite that holding, the court of appeals held here in an unpublished but citable opinion that brief questions about firearms during a traffic stop are impermissible unless there is reasonable suspicion that the vehicle occupant might be armed. *State v. Wright*, No. 2017AP2006-CR, 2018 WL 3005943, ¶¶ 15–16 (Wis. Ct. App. June 12, 2018) (Pet-App. 101–09.) In reaching its opinion, the court of appeals made no reference to *Floyd*, though both parties commented extensively on the case during briefing.

The State asks this Court to review that decision, which plainly conflicts with *Floyd*. Because the error was so straightforward, the State also asks this Court to summarily reverse the court of appeals.

## ISSUE PRESENTED FOR REVIEW

This case raises one issue for review. Does asking a lawfully stopped motorist as to whether he is carrying any weapons, in the absence of reasonable suspicion, unlawfully extend a routine traffic stop? Both the trial court and the court of appeals held that it does and consequently suppressed the gun evidence the questioning produced.

The State asks this Court to grant its petition for review because this Court has previously held that general questions about firearms do not unduly extend a traffic stop, as they are negligibly burdensome and promote officer safety during the stop. *State v. Floyd*, 2017 WI 78, ¶¶ 27–28, 377 Wis. 2d 394, 898 N.W.2d 560 (Pet-App. 119.)

### **STATEMENT OF CRITERIA SUPPORTING REVIEW**

1. The court of appeals decision is in conflict with this Court’s controlling opinion in *State v. Floyd*, 2017 WI 78, 377 Wis. 2d 394, 898 N.W.2d 560. Wis. Stat. § (Rule) 809.62(1r)(d).

2. There are substantial and compelling reasons for review. Wis. Stat. § (Rule) 809.62(2)(c). The issue of officer safety during a traffic stop is of statewide importance and the court of appeals decision prohibiting questions about weapons, without reasonable suspicion, needlessly creates further risk for the police in fulfilling their traffic enforcement mission.

The court of appeals error is egregious, not only because it did not follow controlling precedent, but because it ignored *State v. Floyd* in its opinion, despite the case being argued by both parties at briefing. Though the court of appeals case is unpublished, as a citable one judge opinion its reasoning can be contagious, especially considering that *Floyd* is only one year old, and there are to date no published cases affirming its holding.

### **STATEMENT OF THE CASE**

On June 15, 2016, at approximately 11:00 p.m., Milwaukee Police Officer Kristopher Sardina stopped Wright’s vehicle for a burnt out front headlight. (R. 27:5–6.) Sardina made contact with Wright, the vehicle’s lone occupant. (R. 27:8.) Sardina introduced himself as a Milwaukee police officer, and informed Wright of the reason

for the traffic stop. (*Id.*)<sup>1</sup> Sardina asked Wright for his driver’s license, and inquired, for officer safety purposes, as to whether Wright was a carrying concealed weapon (CCW) permit holder and whether he had any weapons in the vehicle. (R. 27:9.) Wright advised that he had just finished his CCW permit class and that he did have a firearm in his glove compartment. (R. 27:10.) With Wright’s permission, Sardina’s partner retrieved the loaded gun from the glovebox. (R. 27:10–11.) Sardina ran a check on Wright’s CCW status and discovered that Wright did not have a valid permit. (R. 27:11.) Wright was then arrested for a CCW violation. (R. 27:11–12.)

Wright filed a motion to suppress the gun evidence arguing that the questions about his CCW status and as to whether he was carrying any firearms was beyond the scope of a traffic stop for a defective headlight. (R. 5:1–6.) Wright’s motion was heard on May 11, 2017. (R. 27:1–49.) On June 21, 2017, the trial court orally granted Wright’s motion and suppressed the gun evidence. (R. 29.) The trial court, in granting Wright’s motion, relied on *Rodriguez v. United States*, 135 S. Ct. 1609 (2015). The trial court reasoned that the *Rodriguez* principles were violated by extending a routine traffic stop to ask about weapons. (R. 29:7–8.)

On July 7, 2017, this Court issued its opinion in *State v. Floyd*, holding that *Rodriguez* permits brief questioning about weapons in a traffic stop: “Therefore, because the

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<sup>1</sup> At the motion hearing, Wright testified that he was not told about the headlight until after he was arrested for CCW. (R. 27:27.) While the trial court did not make a finding of fact as to this issue, the court of appeals, in its “Background” section, referenced Sardina’s testimony as to this point and did not discuss Wright’s version of events. *State v. Wright*, No. 2017AP2006-CR, 2018 WL 3005943, ¶ 4 (Wis. Ct. App. June 12, 2018) (Pet-App. 103.) And neither the trial court nor court of appeals opinion hinged on when and where Sardina told Wright about the defective headlights.

questions [about weapons] related to officer safety and were negligibly burdensome, they were part of the traffic stop’s mission, and so did not cause an extension.” *State v. Floyd*, 377 Wis. 2d 394, ¶ 28 (Pet-App. 119.) On July 11, 2017, the State filed a motion to reconsider in Wright’s trial court case, based on this Court’s holding in *Floyd*. (R. 13.) On September 1, 2017, without hearing or comment on the State’s motion to reconsider, the trial court issued its suppression order. The State appealed.

In the court of appeals, both the State and Wright discussed this Court’s holding in *Floyd*. The State argued that *Floyd* controls the core issue of the case and permits brief questioning about weapons during routine traffic stops; Wright attempted to distinguish his case to avoid *Floyd*’s orbit. On June 12, 2018, Judge Kessler, in a one-judge opinion, affirmed the trial court’s suppression order, relying on *Rodriquez v. United States. Wright*, 2018 WL 3005943 (Pet-App. 101–109.) The court of appeals made no mention of the *Floyd* holding in its opinion.

The State petitions for review and asks this Court to reverse the court of appeals.

## ARGUMENT

### **I. This Court should grant review as the court of appeals decision misreads *Rodriquez v. United States*, and conflicts with this Court’s holding in *State v. Floyd*.**

In *Rodriquez v. United States*, the United States Supreme Court held that a routine traffic stop cannot be extended to accommodate a dog sniff, in the absence of reasonable suspicion. But, *Rodriquez* also held that a traffic stop’s mission includes attending to safety concerns. *Rodriquez*, 135 S. Ct. at 1614. The Court reasoned that since traffic stops are especially fraught with danger to police

officers, an officer can lawfully take certain negligibly burdensome precautions in order to complete his mission safely *Id.* at 1616. Under that reasoning, brief questioning about weapons during a traffic stop, is not an unlawful extension of the stop since it is negligibly burdensome and promotes officer safety in completing the traffic stop mission.

In *Floyd*, this Court makes clear that *Rodriquez* permits brief questioning about weapons during a traffic stop, without reasonable suspicion that the defendant is armed and or dangerous. Floyd was stopped by the police for suspended registration. He was asked to exit his vehicle and the officer asked if he had any weapons on him that could hurt the officer. *Floyd*, 377 Wis. 2d 394, ¶¶ 2–5 (Pet-App. 115.) After Floyd denied having weapons the officer asked for permission to perform a safety search. Floyd consented and the subsequent search led to the discovery of illegal drugs. *Floyd*, 377 Wis. 2d 394, ¶ 5 (Pet-App. 115.) This Court held that the questions about weapons were permissible because they were negligibly burdensome and related to officer safety.<sup>2</sup> *Floyd*, 377 Wis. 2d 394, ¶ 28 (Pet-App. 119.)

In so concluding, this Court examined *Rodriquez* in detail. *Floyd* referenced *Rodriquez* extensively for the principle that the dangers inherent to traffic stops authorize an officer to take negligibly burdensome precautions in order to complete the traffic stop mission safely. *Floyd*, 377 Wis. 2d 394, ¶¶ 26–27 (Pet-App. 119.) *Floyd*'s holding permits the brief questions the officer posed to Wright here: do you have a CCW permit and are you in possession of any weapons?

The court of appeals ignored *Floyd* and misread *Rodriquez*, holding that since *Rodriquez* forbids a traffic stop

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<sup>2</sup> The State also argued that the police had reasonable suspicion to extend the traffic stop into areas other than expired registration. But, this Court's holding as to the propriety of the weapons questions was not tethered to reasonable suspicion.

being extended beyond the time necessary to complete the traffic stop mission, it forbids questioning about weapons, in the absence of reasonable suspicion. *Wright*, 2018 WL 3005943, ¶¶ 12–14 (Pet-App. 107–08.) This reasoning misses the point of both *Rodriquez* and *Floyd*. Officer safety questions do not extend a traffic stop. They are *part* of the stop, as officer safety concerns are present in all traffic stops, regardless of the reasons that precipitated the contact. As this Court aptly noted, officer safety is an integral part of every traffic stop’s mission. *Floyd*, 377 Wis. 2d 394, ¶ 26 (Pet-App. 119.)

*Floyd* is less than one year old. This is not a situation where a citable opinion can be dismissed as an anomaly in a legal terrain replete with contrary precedent. Therefore, this Court should grant this petition for review as the court of appeals opinion conflicts with *Floyd*, misreads *Rodriquez*, and applies reasoning that is both egregious and potentially contagious.

**II. This Court should grant this petition for review as the issue of officer safety during a traffic stop is of statewide importance.**

There can be no dispute that traffic stops are commonplace occurrences for a police officer. It is equally true that society has an interest in the police being able to perform this routine, but vital, function safely. The United States Supreme Court recognized the need for officer safety during a traffic stop by permitting a police officer to ask occupants to get out of lawfully stopped vehicle, without violating Fourth Amendment protections. *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977). This Court adopted the *Mimms* holding in *State v. Johnson*, establishing a bright line rule that a police officer may order a person out of a stopped vehicle incident to a valid traffic stop for a traffic violation. *State v. Johnson*, 2007 WI 32, ¶ 23, 299 Wis. 2d 675, 729 N.W.2d 182.

While the decision prohibited the extension of a traffic stop, without reasonable suspicion, *Rodriquez* specifically insulated safety concerns from this prohibition. *Rodriquez*, 135 S. Ct. at 1614. There is solid precedent for the notion that the police can take reasonable steps, in any traffic stop, to ensure officer safety.

In *Floyd*, this Court followed *Mimms*, *Johnson*, and *Rodriquez*, in noting that officer safety is an integral part of every traffic stop mission. *Floyd*, 377 Wis. 2d 394, ¶ 26 (Pet-App. 119.) *Floyd* echoed *Mimms* in observing that the dangers inherent to any traffic stop authorizes the police to take certain negligibly burdensome precautions to ensure completing the traffic stop mission safely. *Id.* ¶ 27 (Pet-App. 119.) From this vantage point, *Floyd* clearly held that brief questions about weaponry during a routine traffic stop do not unnecessarily extend the stop, but rather are part of every traffic stop. *Floyd*, 377 Wis. 2d 394, ¶ 28 (Pet-App. 119.)

Here, the court of appeals completely ignored the teachings of *Mimms*, *Johnson*, *Rodriquez*, and *Floyd*, in holding that the police cannot ask a stopped motorist brief questions about weapons, unless the officer has reasonable suspicion that the occupant might be armed. *Wright*, 2018 WL 3005943, ¶¶ 15–16 (Pet-App. 108–09.) This disregard for both United States Supreme Court and this Court’s precedent, cannot be dismissed as a minor error. The court of appeals created a citable authority that unnecessarily puts police officers at risk without adding to our Fourth Amendment protections.

This case meets this Court’s criteria for supreme court review.

**III. This Court should accept review and summarily reverse the court of appeals decision.**

Because the court of appeals' mistake was so clear, the State, pursuant to Wis. Stat. §§ (Rule) 809.14 and 809.21, also asks this Court for an order summarily reversing the court of appeals and remanding the matter back to the circuit court.

As the issue before this Court was fully ventilated less than a year ago in *Floyd*, the State sees no apparent benefit in reprising the matter with full briefing and argument. Accordingly, the State asks this Court to summarily reverse the court of appeals.

**CONCLUSION**

For all the above reasons, the State of Wisconsin asks this Court to accept its petition for review and summarily reverse the court of appeals decision.

Dated this 12th day of July, 2018.

Respectfully submitted,

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## **CERTIFICATION**

I hereby certify that this petition conforms to the rules contained in Wis. Stat. § 809.62(4) for a petition for review produced with a proportional serif font. The length of this petition is 2,221 words.

Dated this 12th day of July, 2018.

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DAVID H. PERLMAN  
Assistant Attorney General

## **CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.62(4)(b)**

I hereby certify that I have submitted an electronic copy of this petition for review, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rules) 809.62(4)(b) and 809.19(12). I further certify that this electronic petition for review is identical in content and format to the printed form of the petition for review filed as of this date.

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

Dated this 12th day of July, 2018.

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DAVID H. PERLMAN  
Assistant Attorney General

APPENDIX TO  
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## APPENDIX CERTIFICATION

I hereby certify that filed with this petition for review, either as a separate document or as a part of this petition, is an appendix that complies with Wis. Stat. § 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; (3) the findings or opinion of the circuit court necessary for an understanding of the petition; and (4) portions of the record 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 12th day of July, 2018.

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DAVID H. PERLMAN  
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE  
WITH WIS. STAT. § (RULE) 809.62(4)(b)**

I hereby certify that I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. §§ (Rules) 809.62(4)(b) and 809.19(13). 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 12th day of July, 2018.

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DAVID H. PERLMAN  
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