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| **From:** | Kapusta-Pofahl, Karen |
| **Bcc:** | Charles Myadze (myadzec@gmail.com); Greg Gelembiuk (gwgelemb@wisc.edu); Keith Findley; Kim Jorgensen (dokithia@gmail.com); Luke Schieve (lschieve@exactsciences.com); Tom Brown (tbrown@ulgm.org); Veronica Figueroa (veronicaf@unidoswi.org) |
| **Subject:** | FW: BWC helping defendant prove claim |
| **Date:** | Monday, January 4, 2021 9:37:37 AM |
| **Attachments:** | State v. Jennings decision.pdf |

[BCC BWC]

Dear Committee,
Co-Chair Findley requested that I send this information and attachment out to you for our meeting tonight. I will also be attaching it in Legistar.
Best,
Karen

This synopsis is cut and pasted from the State Public Defender's email newsletter:

*by* ADMIN *on* DECEMBER 23, 2020

**State v. Frederick Jennings**, 2019AP1539-CR, 12/22/20, District 1 (not recommended for publication); case activity (including briefs)
Three officers noticed Jennings either in or near the passenger side of a Toyota having dark tinted windows. They detained him, found marijuana and contraband in the car, arrested him, and found heroin in his pocket. Jennings moved to suppress arguing that officers lacked reasonable suspicion for the detention. Two officers testified at the suppression hearing. They contradicted each other and the body cam video, none of which supplied reasonable suspicion for the stop. While the circuit court denied suppression, the court of appeals reversed.
It was undisputed that the tint on the Toyota's windows was so dark it violated a Milwaukee city ordinance, which meant that it could not be legally driven on the highway. But the State did not allege that Jennings drove the vehicle. And tinted windows alone cannot justify a stop. Opinion, ¶¶24-27 *But see* ***State v. Floyd***, 2016 WI App 64, ¶16, 371 Wis. 2d 404, 885 N.W.2d 156, *aff'd on other grounds*, 2017 WI 78, 377 Wis. 2d 394, 898 N.W.2d 560 (tinted widows plus other facts can contribute to reasonable suspicion to extend a lawful stop).
Officer Newport testified that he saw Jennings make a furtive movement in the front passenger seat of the Toyota. In contrast, Officer Schwarzhuber's testified that Jennings was already standing outside the Toyota when the squad car approached him. In further contrast, the video did not show Jennings or anyone in or near the Toyota. It first captured Jennings on a walkway.

The State urged the court of appeals to rely on Newport's testimony. But the court of appeals said this would require it to disregard Schwarzhuber's account, which the circuit court also found credible. Jennings argued that none of the accounts (including the video) added up to reasonable suspicion. "Zero + zero + zero really does equal zero." Opinion, ¶21.
The court of appeals agreed. Given these unusual circumstances, the State failed to

prove reasonable suspicion. Opinion, ¶¶35-37.
The State also pointed out that when the officers exited their squad car and ordered Jennings to stop he didn't do so immediately. The court of appeals said: "so what?"

> . . . "when an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about [their] business." [***Illinois v. Wardlow***, 528 U.S. 119, 125 (2000)]; *see also* ***State v. Young***, 2006 WI 98, ¶73, 294 Wis. 2d 1, 717 N.W.2d 729 (individuals have "the right to disregard the police and walk away without giving rise to reasonable suspicion"). We have determined that the officers did not have reasonable suspicion to detain Jennings at the time they exited the squad car and ordered him to stop. To be sure, if an individual responds to police presence with "unprovoked flight," that fact may contribute to reasonable suspicion—this is because "flight, by its very nature, is not 'going about one's business[.]'" ***Wardlow***, 528 U.S. at 125. But merely failing to respond to a command to stop is far from "unprovoked flight"; rather, it falls squarely into the category of "disregard[ing] the police and walk[ing] away[.]" ***Young***, 294 Wis. 2d 1, ¶73. Opinion, ¶41.