

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 27, 2012

Diane M. Fremgen
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. 2011AP1356-CR

Cir. Ct. No. 2010CM923

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAWN M. FLETCHER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Dawn Fletcher appeals a judgment of conviction for possession of marijuana. She contends the dog sniff conducted during a traffic

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

stop was illegal and, as a result, the circuit court erred by denying her suppression motion. We affirm.

BACKGROUND

¶2 At the motion hearing, officer Nathan Thornborrow testified that on November 27, 2010, at approximately 9:07 p.m., he stopped a vehicle that was missing half of its temporary license plate. Fletcher was a passenger in the vehicle. When Thornborrow approached the vehicle, he observed the four occupants shifting around and lighting cigarettes. After explaining the purpose of the stop to the driver, Thornborrow collected the registration paperwork and the occupants' driver's licenses.

¶3 Thornborrow returned to his squad car to write a warning citation for the license plate violation and to run warrant checks on the occupants. He also radioed dispatch to request a K-9 officer come to the scene.

¶4 Approximately five minutes later, officer Nick Prey and his canine partner arrived. Prey testified that when he arrived, Thornborrow was running the occupants' names through dispatch and writing a warning citation. Prey walked the canine around the vehicle, and the canine alerted for controlled substances.

¶5 When Thornborrow returned to the stopped vehicle, Prey informed Thornborrow that the canine had alerted for controlled substances. Thornborrow and Prey had the occupants exit the vehicle. The officers searched the vehicle and found marijuana in the glove compartment.

¶6 Fletcher was charged with possession of marijuana. She moved to suppress evidence of the search. The court denied the motion. Fletcher subsequently pled no contest to the charge.

DISCUSSION

¶7 On appeal, Fletcher concedes the initial stop was lawful. She argues the dog sniff was illegal because the officer had no reasonable suspicion to detain the occupants of the vehicle to request a dog sniff. Her argument is foreclosed by *Illinois v. Caballes*, 543 U.S. 405, 410 (2005). There, the United States Supreme Court held that a dog sniff conducted around a vehicle incident to a lawful traffic stop is not a search within the meaning of the Fourth Amendment. *Id.* at 410; *see also State v. Arias*, 2008 WI 84, ¶42, 311 Wis. 2d 358, 752 N.W.2d 748. As a result, Thornborrow did not need reasonable suspicion to request the dog sniff. *See State v. Miller*, 2002 WI App 150, ¶10, 256 Wis. 2d 80, 647 N.W.2d 348.

¶8 Fletcher relies on *State v. Gammons*, 2001 WI App 36, 241 Wis. 2d 296, 625 N.W.2d 623.² However, her reliance on *Gammons* is misplaced because the facts of *Gammons* are totally different. In *Gammons*, we determined a traffic stop became an unlawful detention when an officer continued to detain a vehicle after the purpose of the traffic stop had concluded. *Id.*, ¶24. Here, Thornborrow requested the dog sniff during the course of the lawful traffic stop, and Prey arrived and promptly conducted the dog sniff before Thornborrow had finished writing the warning citation. Because the dog sniff did not prolong the time it took Thornborrow to complete the original purpose of the stop, Fletcher was not

² Fletcher also cites two unpublished per curiam opinions for persuasive value. These citations violate WIS. STAT. RULE 809.23(3)(b), which prohibits citation to unpublished opinions, except for *authored* opinions issued after July 1, 2009.

She also cites a one-judge opinion for persuasive value. However, that case involves an officer who found drugs on a defendant after conducting a frisk search without reasonable suspicion. A dog sniff conducted around the exterior of a vehicle is not a search. *Illinois v. Caballes*, 543 U.S. 405, 409-10 (2005).

unlawfully detained while Prey conducted the dog sniff. *See Caballes*, 543 U.S. at 408, 410; *Arias*, 311 Wis. 2d 358, ¶42.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

