

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 16, 2010

A. John Voelker
Acting 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. 2010AP664-CR

Cir. Ct. No. 2009CM1796

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL E. BALLENGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
GREGORY E. GRAU, Judge. *Affirmed; attorney sanctioned.*

¶1 HOOVER, P.J.¹ Michael Ballenger appeals a judgment of conviction for third-offense operating with a prohibited alcohol concentration.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

Ballenger argues a delay during the course of the traffic stop exceeded the time limits of a *Terry* stop.² We reject Ballenger's undeveloped assertion and affirm.

BACKGROUND

¶2 While on patrol on a rural Marathon County road shortly after midnight, deputy Brian Campbell passed an oncoming vehicle that appeared to be traveling outside the fog line. Campbell turned his squad car around to observe the vehicle and then saw the vehicle drive into the oncoming traffic lane by half the car width. After the vehicle made a sudden turn onto a side road when Campbell caught up to it, Campbell stopped the vehicle.

¶3 When Campbell made contact with the driver, identifying him as Ballenger, Campbell smelled the odor of intoxicants from within the vehicle and observed Ballenger's eyes were bloodshot and glassy. Ballenger admitted he was coming from the Coral Bar and that he had consumed approximately five beers while there. Ballenger also requested that Campbell give him a ride home. Deputy Campbell then returned to his squad and ran Ballenger's information with dispatch.

¶4 Dispatch informed Campbell that Ballenger had a "caution indicator" listed on the in-house records. A caution indicator is designed to inform officers that a person has prior police contacts involving unsafe behavior, such as fighting with officers. Additionally, Campbell had a previous contact with Ballenger involving firearms being removed from Ballenger's residence, and was aware of several other incidents at the residence involving weapons. Rather than

² See *Terry v. Ohio*, 392 U.S. 1 (1968).

returning to Ballenger's vehicle and conducting field sobriety tests, Campbell requested back-up out of concern for his safety. It took the back-up squad car fifteen to twenty minutes to arrive. Ballenger was eventually arrested for operating while intoxicated.

¶5 Ballenger moved to suppress all evidence, arguing Campbell unreasonably prolonged the duration of the traffic stop. The court denied the motion, concluding that, at the time of the backup request, Campbell already had probable cause to arrest Ballenger for operating while intoxicated and, further, the request and delay were reasonable under the totality of the circumstances.³ Ballenger pled guilty to operating with a prohibited alcohol concentration of .15. Ballenger now appeals.

DISCUSSION

¶6 Ballenger argues Campbell unreasonably prolonged the duration of the *Terry* traffic stop. Ballenger fails, however, to even describe a *Terry* stop as a temporary investigative stop, much less cite a single case addressing the proper scope or duration of *Terry* stops. Ballenger also fails to mention or address the circuit court's conclusion that Campbell already had probable cause to arrest him at the time Campbell created the delay by requesting backup. Therefore, we

³ Ballenger's brief's appendix does not include any portion of the suppression motion hearing transcript—neither deputy Campbell's testimony nor the court's factual findings or reasoning for denying the motion. Yet, as required by rule, counsel certified to this court that his appendix contains "the findings or opinion of the circuit court [and] portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues." See WIS. STAT. RULE 809.19(2)(a), (b). "Filing a false certification with this court is a serious infraction" justifying the imposition of sanctions. *State v. Bons*, 2007 WI App 124, ¶¶23-25, 301 Wis. 2d 227, 731 N.W.2d 367. We therefore direct Ballenger's counsel to pay \$50 to the clerk of this court within thirty days of the date of this decision.

conclude Ballenger, despite requesting multiple extensions of time to file his brief, failed to articulate an argument sufficient to require our review. *See State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (appellate court may decline to address issues that are inadequately briefed; arguments that are not supported by legal authority will not be considered).

¶7 Further, after the State responded with an argument including citations to, and analysis of, cases concerning the duration of *Terry* stops, Ballenger failed to file a reply brief and address those arguments. We deem Ballenger's failure to reply as a concession. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). In any event, were we to reach the merits of Ballenger's argument, we would conclude the delay was reasonable under the totality of the circumstances.

By the Court.—Judgment affirmed; attorney sanctioned.

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

