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STATE OF WISCONSIN
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DISTRICT IV

01-23-2013

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2012 AP 1663
Circuit Court Case No. 2011 TR 7630

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

TRAVIS M. RANTA,
Defendant-Appellant.

REPLY BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM THE CIRCUIT COURT
FOR SAUK COUNTY, BRANCH 2,
THE HONORABLE JAMES EVENSON PRESIDING

Respectfully submitted,

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ARGUMENT

First, the State, in its Statement of the Facts, cites the testimony of Patrick Cowan. Ranta asserts the testimony of Patrick Cowan is irrelevant because he was not present during the stop or arrest of Ranta. The only relevant facts are those facts that were known to Ranger Lane because the probable cause analysis is based on the objective facts known to the arresting officer. The State cites to said rule in its own brief, citing the Kasien case. "In determining whether probable cause exists, we must look to the totality of the circumstances to determine whether the 'arresting officer's knowledge at the time the arrest', would lead a reasonable police officer to believe...that the defendant was operating a motor vehicle while under the influence of an intoxicant'." State v. Kasian, 207 Wis.2d 611, 621, 558 N.W.2d 687 (Ct. App. 1996) emphasis added.

Second, the State, in its Statement of the Facts, indicates, "However, based on his training and experience, Lane knew that the elimination rate of alcohol in people is less than .02 per hour, (33:34), and therefore 'in the period of 2 hours it would be impossible to go from a .15 to below .08.' (33:35)." The Court sustained the Ranger's testimony that it would be impossible and, therefore, this Court should

not consider that part of the Ranger's testimony.

Finally, the State argues that Ranta displayed "several indicators" of intoxication at the time of the stop; those indicators being speeding, an odor of intoxicants on his breath, and bloodshot eyes. Speeding is not indicative of driving while intoxicated. There was no testimony that Ranta's driving was reckless or erratic. The odor of intoxicants is not indicative of intoxication. It is not illegal to drink intoxicants and drive, rather only to drive while materially impaired by the consumption of intoxicants. Wis. Stats. § 939.22(42). Bloodshot eyes are also not solely indicative of intoxication. Even taken together, these "indicators" would not lead a reasonable officer to believe Ranta was intoxicated. If this Court adopts the State's reasoning, then an officer would never need to conduct field sobriety tests when an odor of intoxicants is present. Instead, officers are trained to conduct standard field sobriety tests to help determine whether an individual is impaired. The standard field sobriety tests in the instant case yielded no indication of intoxication. Therefore, the PBT was illegally requested.

CONCLUSION

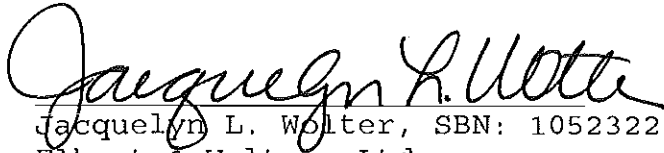
For the reasons stated in his brief in chief and this Reply Brief, Ranta requests this Court determine that Ranger Lane did not possess the requisite level of probable cause to request a PBT.

Dated this 21st day of January, 2013.

Signed,

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CERTIFICATION

I certify that this brief meets the form and length requirements of Wis. Stat. § 809.19(8)(b) & (c) (2009-2010) in that it is Desktop Publishing or Other Means (monospaced font, 10 characters per inch, double spaced, a 1.5 inch left margin, and all other margins 1 inch). The length of the brief is 5 pages.

Three copies of the appellant's brief were served by U.S. Mail on counsel for the State of Wisconsin, the Plaintiff-Respondent.

Dated this 21st day of January, 2013.

Signed,

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CERTIFICATE OF COMPLIANCE WITH RULE § 809.19(12)

I hereby certify that I have submitted one electronic copy of this reply brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).


I further certify that this electronic reply brief is identical in content and format to the printed form of the reply brief filed as of this date.

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

Dated this 21st day of January, 2013.

Signed,

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