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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2014AP816; 2014AP817; 2014AP818
Circuit Court Case No. 2013TR000184; 2013TR000185;
2013TR000192; 2013TR000193

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

FREDERICK C. THOMAS,

Defendant-Appellant

ON APPEAL FROM A FINAL ORDER ENTERED ON
MARCH 26, 2014 IN THE CIRCUIT COURT FOR MONROE
COUNTY,
BRANCH III, THE HON. DAVID J. RICE PRESIDING

PLAINTIFF - RESPONDENT'S BRIEF AND APPENDIX

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STATEMENT OF THE ISSUES

1. Whether an officer, upon observing a driver change lanes without signaling and without first ascertaining whether there was traffic in the destination lane, is justified in initiating a traffic stop.

   The circuit court answered **yes**.

2. Whether an officer, upon smelling alcohol, observing the driver's glassy eyes, and hearing the driver admit to drinking some vague quantity of alcohol, is justified in expanding the

scope of the stop for reasonable suspicion that the driver is intoxicated.

The circuit court answered **yes**.

3. Whether an officer, based on all the foregoing reasons and upon administering a standardized field sobriety test, has the requisite probable cause to administer a preliminary breath test.

The circuit court answered **yes**.

STATEMENT ON THE CASE AND FACTS

On January 15, 2013, Trooper Jason Holtz of the Wisconsin State Patrol was on duty and traveling eastbound on Highway 21 approaching the junction with Highway 94. (R. 25, p. 11.) Appellant Frederick C. Thomas III was also traveling eastbound on Highway 21, in the right-hand lane of a four-lane divided highway. (R. 25, p. 12.) As Trooper Holtz approached Mr. Thomas's car to pass him, Mr. Thomas changed lanes without ascertaining whether there were any cars in his destination lane, and without using his turn signal, cutting off Trooper Holtz. (Id.) Based on these violations of state law, Trooper Holtz initiated a traffic stop. (R. 25, p. 12-13.)

Upon initiating the traffic stop, Trooper Holtz "detected the unmistakable odor of alcohol," and that Mr. Thomas's eyes were glassy. (R. 25, p. 14.) Trooper Holtz asked Mr. Thomas how much he had to drink, which elicited an admission from Mr. Thomas that he had

consumed alcohol that evening. (Id.) Trooper Holtz then asked Mr. Thomas to step out of the car to perform a standardized field sobriety test. (Id.)

Trooper Holtz administered a horizontal nystagmus test, otherwise known as the HGN, on Mr. Thomas. (R. 25, p. 15.) Mr. Thomas's eyes lacked smooth pursuit and displayed nystagmus prior to 45 degrees, which are indicators of impairment. (R. 25, p. 16.) According to Trooper Holtz's training, when a driver like Mr. Thomas displays six clues or indicators on the HGN, it indicates that he or she has a blood alcohol content at or above .10, which is greater than the legal limit. (R. 25, p. 44.) Trooper Holtz has performed 800 to 900 HGN tests in his lifetime. (R. 25, p. 45.) In all those tests, nystagmus prior to 45 degrees (as exhibited by Mr. Thomas) would never indicates a BAC lower than the legal limit, except in individuals impaired by drugs such as PCP. (Id.) That is, in zero out of 800 to 900 HGN tests performed by Trooper Holtz has an individual exhibited nystagmus prior to 45 degrees and not been impaired by drugs or alcohol. (R. 25, p. 46.)

After ascertaining Mr. Thomas's advanced age and blood-pressure condition, Trooper Holtz determined that other standardized field sobriety tests would have reduced validity. (R. 25, p. 47.) Trooper Holtz believed them to be unnecessary, as he believed he

already had probable cause to arrest Mr. Thomas for operating a motor vehicle under the influence of alcohol, with or without a preliminary breath test (PBT). (R. 25, p. 31-32.) Trooper Holtz asked Mr. Thomas to submit to a PBT. (R. 25, p. 17.) The result of the PBT indicated that Mr. Thomas's blood-alcohol content was .164, or more than double the legal limit. (R. 25, p. 18.) Trooper Holtz then placed Mr. Thomas under arrest. (Id.) Mr. Thomas was cited for operating while intoxicated - 1st offense, operating with prohibited alcohol concentration - 1st offense, unsafe lane deviation, and failure to signal turn, in violation of Wis. Stat. §§ 346.63(1)(a), 346.63(1)(b), 346.13(1), and 346.34(1)(b).

Mr. Thomas's legal counsel sought suppression of the evidence against him in a hearing in Branch III of the Monroe County Circuit Court, before the Honorable J. David Rice. (R. 25.) The court found that "considering the totality of the circumstances, a law enforcement officer could reasonably believe that Thomas had committed the offense of operating while under the influence." (R. 31, p. 11.) Further, the court found:

> Having properly determined that he had probable cause to believe that the defendant had committed the offense of operating under the influence, Holtz properly requested that defendant submit to a PBT. The PBT result was .164. This test result, combined with the evidence of defendant's erratic driving, the odor of intoxicants, his admission to drinking, and his glassy eyes established probable cause to arrest the

> defendant for operating under the influence of alcohol. (R. 31, p. 11-12.)

The court specifically found that "even without the HGN test, Officer Holtz had probable cause to believe that the defendant had committed the offense of driving while under the influence so as to justify a PBT, and that with the PBT there was probable cause to arrest." (R. 31, p. 16.) The court denied the defendant's motion.

Mr. Thomas agreed to a stipulated trial, decided by the Hon. J. David Rice on March 26, 2014. (R. 48.) Judge Rice found Mr. Thomas guilty on all four violations, and sentenced him to pay forfeiture and costs, totaling $1,074.30, and revoked his operating privileges for seven months. (R. 48, p. 10.) Mr. Thomas now appeals the order denying his motion to suppress the evidence, filing a Brief and Appendix of Defendant-Appellant ("App. Brief") in September, 2014.

ARGUMENT

I. THE TRAFFIC STOP WAS PROPERLY INITIATED, AND EXTENDED BASED ON REASONABLE SUSPICION

Trooper Holtz executed a traffic stop on Mr. Thomas for violating traffic laws. He extended that stop based on reasonable suspicion that Mr. Thomas had been driving while under the influence of intoxicants. Nothing in this chain of events remotely infringed upon

Mr. Thomas's constitutional rights, and the circuit court's opinion should be upheld.

A. Standard of Review.

The question of whether the initiation or extension of a traffic stop is reasonable is a question of constitutional fact. State v. Knapp, 2005 WI 127, ¶19, 285 Wis. 2d 86, 700 N.W.2d 899. A question of constitutional fact is a mixed question of law and fact to which appellate courts apply a two-step standard of review. State v. Martwick, 2000 WI 5, ¶16, 231 Wis. 2d 801, 604 N.W.2d 552. The circuit court's findings of historical fact shall be reviewed under the clearly erroneous standard; the application of those facts to constitutional principles is reviewed independently. State v. Dubose, 2005 WI 126, ¶16, 285 Wis. 2d 143, 699 N.W.2d 582.

B. The Trial Court's Findings Were Not Clearly Erroneous.

Appellant asks this Court to find clear error in the trial court's factual determination that headlights are expected to be seen at night. (App. Brief at 16.) In support of said request, it proffers the position that headlights are less visible on clear nights without fog, rain, or snow, and less noticeable when there are fewer cars on the roadway. (Id.). Respondent asks the Court to deny such a finding of "clear error."

C. Traffic stops are constitutional where the defendant has committed traffic violations.

An officer has a reasonable suspicion if he or she is "'able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' the intrusion of the stop." State v. Post, 2007 WI 60 ¶10, 301 Wis. 2d 1, 733 NW 2d 634 (citing Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). In the context of a traffic stop, "an officer may make an investigative stop if the officer ... reasonably suspects that a person is violating the non-criminal traffic laws." County of Jefferson v. Renz, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999) (footnote and citations omitted). Trooper Holtz personally witnessed Mr. Thomas change lanes on the highway without using a turn signal or checking to see whether there were any other vehicles in his destination lane, in direct violation of two state statutes. (R. 25, p. 12.) This is far more than reasonable suspicion that Mr. Thomas violated non-criminal traffic laws; it is direct, first-hand knowledge of such a violation.

Appellant's claim that he avoided an accident that "would have been Trooper Holtz's fault" does not appear to be consistent with the facts presented in the present case. Wisconsin Statute 346.34(1)(a)(3) requires drivers to ascertain whether it is safe to change lanes before changing lanes. Wis. Stat. § 346.34(1)(a)(3) Appellant aptly characterizes the burden upon every driver as "to do all that they can."

(App. Brief at 20.) These laws "restate the common law standard of prudent conduct." Millonig v. Bakken, 112 Wis. 2d 445, 455, 334 N.W.2d 80 (1983). Prudent conduct while changing lanes on a highway is reasonably straightforward. Wisconsin Statute 346.34(1)(b) requires a driver changing lanes on a highway to utilize a turn signal. Wis. Stat. § 346.34(1)(b) Mr. Thomas did not do so. (R. 25, p. 12.) If Mr. Thomas had done so, he would have known that Trooper Holtz was in the destination lane, a fact of which he appeared completely unaware. (R. 25, p. 14.)

Appellant mischaracterizes the hypothetical accident as being *caused* by Trooper Holtz. (App. Brief at 19.) The Supreme Court of Wisconsin has found causal negligence when a driver changed lanes and signaled simultaneously, Thompson v. Howe, 77 Wis.2d 441, 253 N.W.2d 59 (1977), rendering it virtually impossible for Mr. Thomas to have no causal negligence for a hypothetical accident caused by changing lanes without signaling at all. If Mr. Thomas had struck another vehicle after he changed lanes suddenly, without signal and without checking his blind spot, he would have been largely (if not predominately) responsible for the accident. Id. The fact that the car he almost hit was operated by a state trooper does nothing to change that fact.

Mr. Thomas was charged with and found guilty of failure to signal his turn before deviating from his lane. (R. 48, p. 10.) Mr. Thomas was charged with and found guilty of unsafe lane deviation. (Id.) The Appellant may summarily assert that Mr. Thomas "ascertained his surroundings" without bothering to check his blind spot, (App. Brief. at 20), but nothing in record appears to support this assertion.

Since Trooper Holtz personally witnessed Mr. Thomas violating multiple non-criminal traffic laws, the traffic stop was based on more than reasonable suspicion. Therefore, it was wholly within the bounds of constitutional jurisprudence. Renz, 231 Wis. 2d at 310 (1999); *see also* State v. Griffin, 183 Wis. 2d 327, 331-34, 515 N.W.2d 535 (Ct. App. 1994).

D. Trooper Holtz had more than the requisite reasonable suspicion that Mr. Thomas was intoxicated.

Given that Trooper Holtz's initial traffic stop of Mr. Thomas was valid, the court should then turn to Appellant's allegation that Trooper Holtz extended the traffic stop to detention for intoxicated driving without reasonable OWI-related suspicion. An officer may lawfully extend a valid traffic stop if, during the stop, "the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is

committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place." State v. Colstad, 2003 WI App 25, ¶19, 260 Wis. 2d 406, 659 N.W.2d 394. Thus, the extension of Mr. Thomas's initial detention was lawful if Trooper Holtz "discovered information subsequent to the initial stop which, when combined with information already acquired, provided reasonable suspicion that [Thomas] was driving while under the influence of an intoxicant." Id. "In making this assessment, courts should not indulge in unrealistic second-guessing. In assessing a detention's validity, courts must consider the totality of the circumstances — the whole picture, because the concept of reasonable suspicion is not readily, or even usefully, reduced to a neat set of legal rules." State v. Wilkens, 159 Wis. 2d 618, 625-26, 465 N.W.2d 206 (Ct. App. 1990) (internal quotations omitted). What the Court must decide is whether during the initial traffic stop, did Trooper Holtz ascertain new information that, within the totality of the circumstances, would lead a reasonable officer in Trooper Holtz's position to reasonably suspect that Mr. Thomas was under the influence of alcohol?

Upon initiating the traffic stop, Trooper Holtz "detected the unmistakable odor of alcohol." (R. 25, p. 14.) Mr. Thomas's eyes "appeared glassy." (Id.) Mr. Thomas admitted to drinking alcohol,

identified in quantity only as "a couple." (Id.) Mr. Thomas was pulled over for dangerous lane deviation. (R. 25, p. 12.) Any one of these facts, if taken individually, might not lead to a reasonable suspicion that Thomas had been driving under the influence of an intoxicant. However, when examining the totality of the facts taken with rational inferences from those facts, Trooper Holtz had the requisite reasonable suspicion that Thomas was intoxicated necessary to extend the traffic stop to administer a standardized field sobriety test. *See* Post, 301 Wis. 2d 1 ¶13.

The cases Appellant cites in support of his appeal of this issue do not seem to have applicability to the specific facts situation of the present case. In State v. Kolman, 339 Wis. 2d 492, 809 N.W.2d 901 (Ct. App. January 12, 2012) (unpublished opinion), the officer initiated a traffic stop to inform the defendant that her center-mounted brake light was not operational. Id. at ¶ 3. The defendant did not commit any mistake or error while driving. Id. The defendant did not initially smell of intoxicants (or anything other than cigarettes). Id. at ¶ 4. She did not inform the officer that she had been drinking. Id. at ¶ 5. Despite all of these facts, the court found sufficient cause to expand the traffic stop for her to attempt to recite the alphabet, so the officer could better ascertain whether she had been drinking. Id. at 30. In County of Sauk v. Leon, 330 Wis. 2d 836, 794 N.W.2d 929 (Ct. App. November

24, 2010) (unpublished opinion), the appellate court found no reasonable suspicion where the totality of the circumstances were profoundly different. The court in Leon noted that the totality of the circumstances would be different in light of a "significant lane violation." Id. at ¶ 20. It also provided for distinction where an officer was "presented with a suspiciously vague admission of 'some' drinking or 'a few' drinks. Id. at ¶ 21. Moreover, the defendant in Leon was never even observed driving, which increased the necessary substantiality of the other factors in the totality of the circumstances. Id. at ¶ 20.

In sharp contrast, Mr. Thomas deviated into an occupied lane without signaling, and without ascertaining whether there was already a car occupying his destination lane. (R. 25, p. 12.) His eyes were glassy, he smelled of alcohol, he admitted to drinking, and he proffered only the vague quantity of "a couple" drinks. (R. 25, p. 14.) In the totality of the circumstances surrounding Mr. Thomas's traffic stop, Trooper Holtz had more than enough articulable indications to reasonably suspect that Thomas was intoxicated. Post, 301 Wis. 2d 1 ¶13.

II. TROOPER HOLTZ HAD PROBABLE CAUSE TO BELIEVE THE DEFENDANT WAS OPERATING A VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICANTS

Considering the totality of the circumstances, Trooper Holtz had probable cause to administer the preliminary breath test even before performing the HGN standardized field sobriety test. After performing the HGN standardized field sobriety test, Trooper Holtz had far more than the requisite probable cause to administer the PBT. The circuit court's ruling on this matter should be upheld.

A. Standard of Review.

Whether probable cause exists in a given set of undisputed facts is a question of law that appellate courts review de novo. State v. Drogsvold, 104 Wis. 2d 247, 262, 311 N.W.2d 243 (Ct. App. 1981). An officer must have "probable cause to believe" that the person stopped has violated a Wisconsin law, including operating a vehicle while under the influence of an intoxicant, in order to request that the person submit to a PBT. Wis. Stat. § 343.303. The level of probable cause necessary to administer a PBT is lower than the level of probable cause necessary to arrest. County of Jefferson v. Renz, 231 Wis. 2d 293, 603 N.W.2d 541 (1999).

"Probable cause to arrest does not require proof beyond a reasonable doubt or even that guilt is more likely than not. It is

sufficient that a reasonable officer would conclude, based upon the information in the officer's possession, that the defendant probably committed the offense." State v. Babbitt, 188 Wis. 2d 349, 357, 525 N.W.2d 102 (Ct. App. 1994) (internal citations omitted). Probable cause to arrest for OWI does not necessarily require a PBT or refusal of a PBT. Dane County v. Sharpee, 154 Wis. 2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990).

B. Trooper Holtz had more than the requisite probable cause to administer the PBT.

In State v. Wille, 185 Wis. 2d 673, 518 N.W.2d 325 (Ct. App. 1994), the court of appeals determined that the issue on a motion to suppress a breath or blood test is whether a reasonable officer, under the circumstances, could conclude that the defendant had probably committed the offense. In Wille, the defendant's erratic driving, odor of intoxicants, and statement that he "had to quit doing this" provided probable cause to order a blood draw to ascertain his BAC, despite the administration of neither field sobriety tests nor a PBT. Id. The court also found that the probable cause determination can be based upon a number of factors that might not be admissible at trial, including hearsay information, and that the officer is justified in relying upon his or her investigative experiences. Id. at 682-83. Similarly, Trooper Holtz was justified in relying upon his investigative experience in

assessing whether Mr. Thomas's erratic driving, odor of intoxicants, equivocal admission of a vague quantity of alcohol, and HGN test results constituted probable cause to administer the PBT.

In Renz, our supreme court described the requisite levels of reasonable suspicion and probable cause throughout an OWI investigation. If, in the course of a valid investigatory stop, the officer has cause to suspect that the driver is driving while impaired, the officer is permitted to request that the driver perform field sobriety tests to aid in determination of probable cause to believe the defendant might have driven while impaired, justifying use of a PBT. Id. at 310-11. The phrase "probable cause to believe" refers "to a quantum of proof that is greater than the reasonable suspicion necessary to justify an investigative stop ... but less than the level of proof required to establish probable cause for arrest." Id. at 317.

The facts in Renz are comparable to the facts in this case. In Renz, the driver displayed several indicators of intoxication: he smelled of intoxicants, he admitted to drinking that evening, and he exhibited six clues of intoxication on the HGN test. Id. at 296-98. The Supreme Court of Wisconsin concluded that despite the fact that Renz substantially completed four other field sobriety tests, the aforementioned indicators constituted "probable cause to believe" that he had been operating under the influence of alcohol, and as such, the

officer was permitted to request that the driver submit to a PBT. Id. at 317. While not exactly parallel, the facts in this case approximate those in Renz. Mr. Thomas committed traffic violations, nearly causing an accident. (R. 25, p. 12.) Thomas smelled of alcohol, admitted to drinking, had glassy eyes, and gave only vague descriptions of the quantity he drank. (R. 25, p. 14.) Erratic driving, the odor of alcohol, and the defendant's admission to consuming alcohol are all factors to be considered in the totality of the circumstances in determining whether the officer had probable cause to believe the defendant was operating a motor vehicle while under the influence of alcohol. In re: Smith, 2008 WI 23 ¶36, 308 Wis. 2d 65, 746 NW 2d 243.[1] The circuit court was correct in concluding that "even without the HGN test, Officer Holtz had probable cause to believe that the defendant had committed the offense of driving while under the influence so as to justify a PBT..." (R. 31, p. 16.)

The court was also correct to say that "[w]hen the HGN test results are added to the mix, the case for finding probable cause is even more convincing." Id. Probable cause to believe does not necessarily require the use of standardized field sobriety tests. State v. Goss, 2011 Wis 104 ¶ 4, 338 Wis. 2d 72, 806 N.W.2d 918. However, the test at

[1] Note that the Supreme Court of Wisconsin utilized these factors to find that the officer had probable cause to *arrest* Smith. Id. This burden is greater than the probable cause necessary for Trooper Holtz to administer a PBT.

the suppression hearing is whether a reasonable officer in Trooper Holtz's position could conclude that Thomas had committed an offense. Wille, supra, 185 Wis. 2d at 682-83. In determining whether probable cause exists, Holtz's conclusions based on his investigative experience may be considered. State v. DeSmidt, 155 Wis. 2d 119, 134-35, 454 N.W.2d 780, 787 (1990), cert. dismissed, 498 U.S. 1043 (1991); *see also* State v. Guy, 172 Wis. 2d 86, 91-92, 96, 492 N.W.2d 311, 313, 315 (1992), cert. denied, 113 S.Ct. 3020 (1993). Trooper Holtz is an experienced law enforcement officer: he has spent 13 years with the Wisconsin State Patrol, and has seven additional years as a military law enforcement officer. (R. 25, p. 11.) He has undergone training in wet and dry labs to perfect standardized field sobriety tests. (R. 25, p. 14-15.) He has administered this particular standardized field sobriety test 800 to 900 times. (R. 25, p. 45.) A reasonable officer in Trooper Holtz's position would rely on decades of experience and training in ascertaining whether a standardized field sobriety test indicated that Mr. Thomas was intoxicated or impaired.

In State v. Kasian, 207 Wis. 2d 611, 622, 558 N.W.2d 687 (Ct. App. 1996), the officer came upon the scene of a one-car accident, observing a damaged van next to a telephone pole. The officer noted that the defendant smelled of alcohol and had slurred speech. Id. The court held that these factors were enough to give the officer probable

cause to believe the defendant was driving while intoxicated, even though the officer did not have the defendant perform any field sobriety tests. Id. While Mr. Thomas's case involves a near-accident, the facts remain similar -- Trooper Holtz observed Mr. Thomas make erratic movements while driving, noted an odor of intoxicants about Thomas, and heard Thomas admit he had drank that evening. Observing a higher standard than passable in Kasian, Trooper Holtz performed a standardized field sobriety test and observed indicators of impairment. (R. 25, p. 14.) Appellant's brief hones in upon distinguishing whether the HGN displays impairment or a particular blood alcohol content. (App. Brief at 30.) This is a distinction without a difference. As the trial court noted, "the Wisconsin legislature has already concluded that a BAC of .08 or higher is prima facie evidence that the defendant is impaired. Therefore, a positive HGN test, indicative of a BAC of .08 or above, is prima facie evidence that defendant is impaired." (R. 31, p. 15.) It also ignores that the purpose of a field sobriety test is to help law enforcement officers assess situations by rational observation; "[a] field sobriety test could be as simple as a finger-to-nose or walk-a-straight-line test." State v. Swanson, 164 Wis. 2d 437, 453-54 n.6, 475 N.W.2d 148, 155 (1991).

Appellant essentially asks this Court to determine that the administration of a single standardized field sobriety test is insufficient

for "probable cause to believe," despite numerous precedents dictating otherwise. Kasian, supra, 207 Wis. 2d 611; Goss, supra, 2011 Wis 104; Wille, supra, 185 Wis. 2d at 684; *see also* Swanson, supra, 164 Wis. 2d at 453-54 n.6. This request is the exact opposite of the guidepost for jurisprudence regarding tests of probability:

> As the very name implies, it is a test based on probabilities; and, as a result, the facts faced by the officer need only be sufficient to lead a reasonable officer to believe that guilt is more than a possibility. It is also a commonsense test. The probabilities with which it deals are not technical: They are the factual and practical considerations of everyday life on which reasonable and prudent men and women, not legal technicians, act. Dane County v. Sharpee, 154 Wis. 2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990).

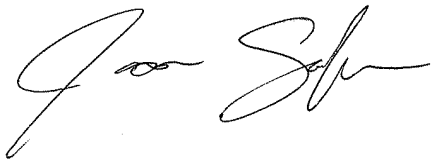
Mr. Thomas deviated into an occupied lane without signaling or checking his blind spot, nearly causing an accident. (R. 25, p. 12.) He smelled of alcohol, his eyes were glassy, and he admitted to drinking "a couple" drinks. (R. 25, p. 14.) The totality of those facts, in and of itself, justifies "probable cause to believe" and the administration of a PBT. Renz, supra, at 310-11. The additional failure of a standardized field sobriety test, administered by a trained and experienced officer, is considerably more than the requisite probable cause to administer a PBT.

CONCLUSION

Trooper Holtz initiated a traffic stop on Mr. Thomas for committing two traffic offenses. Upon discovering that Mr. Thomas smelled of alcohol, had glassy eyes, and admitted to drinking, that stop was lawfully extended based on reasonable suspicion. Relying upon his decades of experience in law enforcement, Trooper Holtz already had probable cause to administer a PBT, but instead investigated further by performing a field sobriety test, which Mr. Thomas failed. Armed with more than enough "probable cause to believe," Trooper Holtz then administered a PBT, which indicated a BAC of more than twice the legal limit, at which point Mr. Thomas was arrested. Every step in this process was performed in conformance with statute, case law, law enforcement procedure, common sense, and Mr. Thomas's constitutional rights. Mr. Thomas's suppression motion was properly denied. Respondent respectfully requests that Appellant's convictions be upheld, and his appeal be denied.

Dated this 15th day of December, 2014.

Respectfully submitted,



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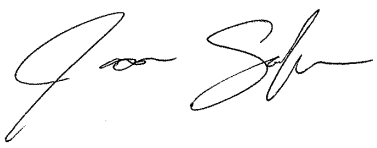
CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (8)

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes or footnotes, leading of minimum of 2 points, maximum of 60 characters per full line of body text. The length of this brief is 20 pages, 4,410 words.

Dated this 15th day of December, 2014.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

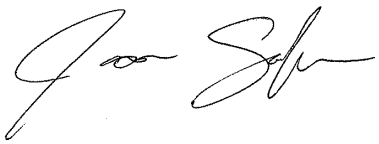
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

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

Dated this 15th day of December, 2014.

Respectfully submitted,



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