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**STATE OF WISCONSIN  
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DISTRICT III**

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**Appellate Case No. 2014AP2369**

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**COUNTY OF LANGLADE,**

Plaintiff-Respondent,

**-vs-**

**CASEY JOSEPH STEGALL,**

Defendant-Appellant.

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**REPLY BRIEF OF DEFENDANT-APPELLANT**

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**Appealed from a Judgment of Conviction Entered in the Circuit Court for  
Langlade County, the Honorable Fred W. Kawalski Presiding  
Trial Court Case Nos. 12 TR 641 and 12 TR 642**

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## **REPLY TO STATE'S ARGUMENT**

### **I. The Fact That Sergeant Tainter Observed An Odor Of Intoxicants Should Not Factor Into The Court's Analysis As It Was Not Observed Until After Mr. Stegall Was Seized.**

Mr. Stegall's initial brief, pages 6-7, explains Mr. Stegall's position on when the seizure occurred and those arguments need not be repeated. However, it should be noted that the odor of intoxicants was *not* observed when Mr. Stegall opened his door. Rather, it was observed when Mr. Stegall "came outside." (R. 20, p. 6, ln. 11-14) Thus, with this fact in mind and the arguments previously made, it is Mr. Stegall's position that he was seized prior to the odor of intoxicants being detected. Thus, this fact should not factor into the Court's analysis.

### **II. The Issue In This Case Is Whether Or Not Sergeant Tainter's Testimony Was Sufficiently Supported By Specific And Articulable Facts.**

The County's argument that the "list" of erratic driving behaviors not observed is irrelevant and unnecessary misses the point. The issue is whether or not Sergeant Tainter's testimony was sufficiently objective and supported by specific and articulable facts.

Sergeant Tainter was repeatedly asked to clarify and flesh out why he thought Mr. Stegall's turn was too fast and reckless. In fact, Sergeant Tainter was specifically asked to explain objectively what it was about the turn that made it reckless. (R. 20, p. 13) Sergeant Tainter could only return to his opinion that it was "in a way that was too fast, and in his opinion ... was reckless." (R. 20, p. 13)

There were no specific facts underlying his opinion even when asked about a multitude of potential observations that might support such a conclusory statement. This is the relevance of the observations not observed. The testimony related only to Sergeant Tainter's perceptions or

feelings. According to the definition in Black's Law Dictionary cited in Mr. Stegall's original brief, this is the very opposite of objective.

This argument is enlarged upon in Mr. Stegall's initial brief to the Court and need not be further repeated.

### **III. Mr. Stegall's Alleged Failure To Respond To Sergeant Tainter Is Not Sufficient To Conduct A *Terry* Stop.**

The principal case relied upon by the trial court was *State v. Waldner*, 206 Wis. 2d 51, 556 N.W.2d 681 (1996). In *Waldner*, the defendant challenged the lawfulness of an investigatory stop. *See Id. at 56-57*. Waldner was observed briefly stopping at an intersection where there was no stop sign or signal and then turning on to a cross street and accelerating at a high rate of speed. *See Id. at 53*. He proceeded to stop in a legal, street-side parking space, pour a mixture of liquid and ice out the door, and then walk away from the car, initially ignoring the police officer's request to stop. *See Id. at 53-54*. The court found that standing alone, "these facts ... might well be insufficient"; however, when taken together, the facts "gave rise to a reasonable suspicion that something unlawful might well be afoot." *Id. at 58*.

Here, the single allegation that Mr. Stegall ignored the officer and continued into his home is insufficient to support the *Terry* stop that occurred in this case. This is especially true when we look at the totality of the circumstances described in the transcript and in Mr. Stegall's recitation of the facts, which includes the fact that Mr. Stegall voluntarily opened the door for Sergeant Tainter. (R. 20, p. 6).

### **CONCLUSION**

**WHEREFOR**, Mr. Stegall respectfully requests that this Court reverse the denial of his motion to suppress, vacate the judgment of conviction, and remand for further proceedings.

Dated this \_\_\_\_ day of March, 2015.

Respectfully submitted,

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## **CERTIFICATIONS**

I hereby certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is proportional serif font. The text is 13 point type and the length of the brief is 604 words.

Further, I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wis. Stat. § 809.19(12). The electronic brief is identical in content and format to the printed form of the brief.

Finally, I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on March 20, 2015. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Dated this \_\_\_\_\_ day of March, 2015

Respectfully submitted,

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