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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT IV

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Case No. 2014AP2625-CR

ZACHARY F. GEYER,

Defendant-Appellant.

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ON APPEAL OF JUDGMENT OF CONVICTION, DECISION  
DENYING SUPPRESSION MOTION, AND DECISION  
DENYING MOTION FOR RECONSIDERATION, ENTERED IN  
THE SAUK COUNTY CIRCUIT COURT, THE HONORABLE  
PATRICK TAGGART, PRESIDING

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REPLY BRIEF OF DEFENDANT-APPELLANT

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**ARGUMENT**

**I. THE FACTORS CITED BY THE STATE DO NOT RISE TO THE LEVEL OF PROBABLE CAUSE TO ARREST OPERATING A MOTOR VEHICLE WHILE INTOXICATED**

There is no dispute in this case that the arresting officer, Deputy Uminski, observed evidence of alcohol consumption (strong odor of intoxicants, bloodshot/glassy eyes, his “somewhat lethargic” appearance, admission of consuming one alcoholic beverage). The question is whether there is enough additional evidence to provide a sufficient link between alcohol consumption and impairment. Because the investigation into whether Geyer was actually impaired was insufficient, the answer is no.

The State argues that one important fact in support of probable cause is that “At roughly 9:40 p.m., Geyer crashed into a stationary object, a guardrail, that resulted in severe damage to his vehicle on a clear night with dry road conditions” (State’s brief: 7). But at the time the arrest decision was made, neither officer (nor any other witness) had personally observed Geyer’s driving, such that they could attribute the accident to impairment. Neither officer had actually viewed the scene of the accident. Neither officer had investigated the road conditions.

Accordingly, unlike cases where courts previously found probable cause where an accident occurred and no field sobriety tests were given, *see, e.g., State v. Wille*, 185 Wis. 2d. 673 (Ct. App. 1994), *State v. Kasian*, 207 Wis. 2d 611 (Ct. App. 1996), and *State v. Lange*, 2009 WI 49, the police lacked the crucial connecting evidence between the accident and impairment. Without that, the remaining evidence was sufficient to create a suspicion of OMVWI, but not probable cause.

## **II. THERE IS NO AUTHORITY TO CONSIDER GEYER’S UNEQUIVOCAL ASSERTION OF HIS RIGHT TO REMAIN SILENT AS EVIDENCE OF CONSCIOUSNESS OF GUILT**

The State argues that in the context of probable cause, courts should be able to use a suspect’s invocation of a right to remain silent or speak to an attorney as evidence of consciousness of guilt (State’s brief: 10-11). The State cites no authority for such a finding, and therefore this argument should be rejected. Arguments unsupported by relevant authority are inadequately developed and must not be considered by this court. *State v. Shaffer*, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980).

## **CONCLUSION**

For the reasons discussed above, the defendant respectfully requests that this court reverse the judgment, reverse the orders denying the motion to suppress, and remand to the circuit court for further proceedings.

Respectfully submitted 4/3/15:



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#### **CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 401 words.

Dated 4/3/15:



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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.

Signed 4/3/15:



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