

**STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT III**

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**Appeal No. 2015AP000462  
Shawano County Circuit Court Case No. 2014TR004200**

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**IN THE MATTER OF THE REFUSAL OF KORY V.  
AMBROZIAK**

**COUNTY OF SHAWANO,**

Plaintiff-Respondent,

v.

**KORY V. AMBROZIAK,**

Defendant-Appellant.

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**AN APPEAL FROM THE JUDGMENT OF CONVICTION  
BEFORE THE HONORABLE JAMES R. HABECK,  
JUDGE SHAWANO COUNTY CIRCUIT COURT**

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**THE REPLY BRIEF AND APPENDIX OF THE  
DEFENDANT-APPELLANT KORY V. AMBROZIAK**

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## ARGUMENT

The crux of the County's argument is that the evidence adduced at the refusal hearing was sufficient to provide a reasonable officer with probable cause that Mr. Ambroziak was operating while intoxicated. Brief of the Plaintiff-Respondent at page 4. The County fails to address Mr. Ambroziak's argument that Deputy Rogers had the additional suspicion to continue to detain Mr. Ambroziak by requesting that he perform field sobriety tests.

"If, during a valid traffic 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, the stop may be extended and a new investigation begun." *State v. Betow*, 226 Wis.2d 90. at 94-95, 593 N.W.2d 499 (Ct.App. 1999).

Deputy Rogers testified that he initially stopped Mr. Ambroziak's vehicle for spinning his tires and throwing up debris. However, in response to the County's question "Did you make any observations of the driver when you were talking to

him?” (R.21:6/ Reply App.1), Deputy Rogers specifically stated “Just a strong odor of intoxicant.” *Id.*

Rogers testified that based on his observations he believed that Mr. Ambroziak was impaired. (R.21:7/ A.App. 5). At that point he asked Mr. Ambroziak if he would perform field sobriety tests. Mr. Ambroziak refused to perform the tests, explaining to the deputy that he was on probation and would be going to jail for violating probation anyway. Subsequently, Deputy Rogers inquired as to why Mr. Ambroziak was drinking if he was on probation. Mr. Ambroziak said because it was his 21<sup>st</sup> birthday. (R.21:8/Reply App.2). Mr. Ambroziak said he had consumed a lot. *Id.* The statements regarding drinking and celebrating his 21<sup>st</sup> birthday occurred after Deputy Rogers had asked and Mr. Ambroziak refused field sobriety testing. Moreover, while Deputy Rogers stated he observed slurred speech and bloodshot eyes, the record is unclear if those observation were made before or after the request for field sobriety tests.

Because the information gained by Deputy Rogers after the stop was insufficient to extend the stop by asking Mr. Ambroziak to perform field sobriety tests, the continued detention of Mr. Ambroziak was unreasonable and violated both

the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution.

### **CONCLUSION**

Because of the above, the trial court erred when it found the officer had the appropriate level of suspicion to request field sobriety tests and that the refusal was improper. The court should reverse the trial court's ruling and vacate the judgment of conviction.

Dated this 16<sup>th</sup> day of July, 2015.

Respectfully Submitted

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## **FORM AND LENGTH CERTIFICATION**

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 10 pages. The word count is 1327.

Dated this 16th day of July, 2015.

Respectfully Submitted

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**CERTIFICATION 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 16th day of July, 2015

Respectfully submitted,

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## **APPENDIX CERTIFICATION**

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or a judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 16<sup>th</sup> day of July, 2015.

Respectfully submitted,

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## **APPENDIX**