STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

APPEAL #15AP901 CR
Case No. 13-CT-1249

STATE OF WISCONSIN,
PLAINTIFF - RESPONDENT

vs.

PAUL R. VANDERLINDEN,
DEFENDANT - APPELLANT

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ON APPEAL FROM THE CIRCUIT COURT FOR OUTAGAMIE COUNTY,
THE HONORABLE MITCHELL J. METROPULOS, PRESIDING

# BRIEF AND APPENDIX OF PLAINTIFF - RESPONDENT

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## TABLE OF AUTHORITIES

CASES CITED:



## POSITION ON ORAL ARGUMENT AND PUBLICATION

The State of Wisconsin does not believe that oral argument or publication is necessary in this case as this case does not present any unique or previously undecided issues. Presently existing caselaw covers the issues presented in this case.

## STATEMENT OF ISSUES

**WAS THE COURT IN ERROR WHEN IT DECIDED THAT OFFICER KRIEG OF THE APPLETON POLICE DEPARTMENT HAD REASONABLE SUSPICION TO STOP A VEHICLE DRIVEN BY PAUL VANDERLINDEN ON OCTOBER 9, 2013?**

**ARGUMENT**

In order to justify a stop which is made for investigatory purposes, the State or Police must have a reasonable suspicion which is grounded in specific articulable facts and reasonable inferences from those facts, that an individual is or was violating the law. *State v. Colstad,* 2003 WI App 25. ¶8, 260 Wis.2d 406, 659 N.W.2d 394.

In reviewing the question of whether a police officer had reasonable suspicion to make a stop, the Appellate Courts in the State of Wisconsin have held that the Circuit Court's Findings of Fact will be upheld unless they are against the great weight and clear preponderance of the evidence, and whether those facts satisfy the constitutional requirement of reasonableness is a question of law and the Appellate Court is not bound by the lower Court's decision on that specific issue. *State v. Waldner,* 206 Wis.2d 51, 58, ¶1, 556 N.W.2d 681 (1996). The Supreme Court of the State of Wisconsin, in that same case of *State v. Waldner at* ¶3, citing *State v. Guzy*, 139 Wis.2d 663, 671, 407 N.W.2d 548 (1987), also pointed out that the test to be used for determining whether an investigatory stop was reasonable "… is an objective one, focusing on the reasonableness of the officer's intrusion into the

defendant's freedom of movement. Law enforcement officers may only infringe on the individual's interest to be free of a stop and detention if they had suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed or was committing or is about to commit a crime. An 'inchoate and unparticularized suspicion or "hunch" … will not suffice.'"

In the case at hand, the Court found after testimony at a Motion Hearing held on August 15, 2014, that Officer Krieg had reasonable suspicion to stop Paul VanderLinden's vehicle. The Court found that there were reasonable inferences for the officers to stop the vehicle and to investigate the situation. The Court found that the stop was lawful.

The Trial Court exercised discretion to a great degree and addressed virtually every fact and circumstance which went into the decision in finding that the stop of the vehicle driven by Paul VanderLinden was reasonable and made with reasonable suspicion.

The Court addressed the fact that the tips were not "anonymous" and as a result, Off. Krieg would not have had to independently verify a basis for the stop above and beyond the tips. The tipsters were identified and the Court recognized that fact. (R37 at 31). On that same page

of the Motion Hearing transcript the Court then focused on the main question at hand which was "… whether or not what had been reported was enough to allow the officer to stop the vehicle and then to do an independent investigation to determine whether or not this defendant was the operator of a motor vehicle while intoxicated, so the officer did not need probable cause to stop the vehicle and it would not appear that based on this information that the officer had probable cause, but I do think that the information that he received rises to the level of reasonable suspicion". (R37 at 31).

The Trial Court then went on to address the germane considerations referred to in ¶3 of the *Waldner* opinion addressed above. The Trial Court stated, "There are a number of inferences that can be taken from the reporting that someone's been drinking before driving. One reasonable inference is that the person's consumed alcohol, but has not risen to the level of being intoxicated, and I think the officer under these circumstances has the authority then to stop a vehicle to determine if the person's intoxicated." (R37 at 31)

On the next page, the Court then states, "The other reasonable inference is he possibly could be intoxicated. The observations made that there were two beers consumed,

one beer in the pocket, I think the reasonable inference of that is that the beer is going to be consumed in short order. The other reasonable inferences is that although there had been two observed consumptions of beer, especially when one is slugged in the parking lot, that is reasonable to assume that the person had had more beer, perhaps more alcohol, prior to that, so I do think it's reasonable for the officer to at least investigate as to whether or not this person was, indeed, intoxicated while driving, so I am going to find that the stop was lawful …." (R37 at 32).

Many appellate decisions, in addressing the same issue(s) as presented in this case have looked to State v. Colstad in deciding what constitutes a reasonable suspicion to make an investigatory stop. The Colstad Court pointed out that reasonable suspicion "… is a common sense test: under all the facts and circumstances present, what would a reasonable officer reasonably suspect in light of his or her training and experience. *State v. Colstad*, 260 Wis.2d 406, 414, ¶8, 659 N.W.2nd 394, citing State v. Young, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997) . Additionally, in the case of *State v. Waldner* the Supreme Court further expounded and pointed out that courts must look to the totality of the circumstances in determining

whether reasonable suspicion exists. *State v. Waldner 206 Wis. 2d at 58, ¶7.* The Trial Court, in this case, conducted such an assessment of the facts as they were presented to Officer Krieg.

The defendant, Paul VanderLinden, contends that this case revolves around officers' using lawful acts to form the basis of a reasonable suspicion to justify a stop. Much like the facts in *State v. Waldner*, this case before the Court may involve acts which, by themselves, are lawful. However, lawful acts, standing alone, are not determinative on whether or not an officer has reasonable suspicion to justify an investigatory stop. The *Waldner* Court pointed out, "The Fourth Amendment does not require a police officer who lacks precise level of information necessary for probable cause to arrest to simply shrug his or her shoulders and thus possibly allow a crime to occur or a criminal to escape. The law of investigative stops allow police officers to stop a person when they have less than probable cause. Moreover, police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop". *State v. Waldner at 59*, ¶8, *Citing State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d. 763 (1990).

Officer Krieg testified at the Motion Hearing on August 15, 2014, about the time and circumstances, as well as the particulars of the tips called in which were the reasons for the stop of the vehicle driven by Paul Vanderlinden. (R37 at 4-22).

Similar to the circumstances found by Sgt. Annear in the *Waldner* case, in this case Off. Krieg, under the totality of the circumstances, would have been performing poor police work if he had failed to investigate the reports of the informants who called from the movie theater to alert the police to the conduct and actions of Paul VanderLinden.

**CONCLUSION**

For the reasons state herein above, the State of Wisconsin requests the Court to uphold the decision of the Trial Court which found that Off. Krieg of the Appleton Police Department had reasonable suspicion to stop a vehicle driven by Paul VanderLinden on October 9, 2013.

RESPECTFULLY SUBMITTED this  day of November, 2015.

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**CERTIFICATION OF FORM AND LENGTH**

I hereby certify that this Brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a monospaced font. The length of the brief is 8 pages.

Further, I hereby certify that I have submitted an electronic copy of this brief, including/excluding the appendix, if any, which complies with the requirements of §809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief as filed on this date. A copy of this certificate had been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 2nd day of November, 2015.

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**CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY**

**I certify that on November 3rd,** 2015, this brief or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

DATE: November 2nd, 2015

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**APPENDIX**

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**CERTIFICATION OF APPENDIX**

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 Wis. Stats. § (Rule) 809.10(2)(a); That is and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or 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.

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