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DISTRICT III

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2016AP001815-CR

State OF WISCONSIN,

Plaintiff-Respondent,

vs.

BRIAN ZIEGLMEIER,

Defendant-Appellant.

Appeal from the circuit court for Marathon County, Branch
4, case number 2015-CM-002267, the Honorable Greg Grau,
Circuit Court Judge, from the denial of the defendant's
motion to Suppress.

BRIEF OF THE PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of the Issue	1
Statement on Oral Argument	1
Statement of the Facts	1
Argument	4
Conclusion	7
Certification	9

TABLE OF AUTHORITIES

<u>CASES CITED</u>	<u>PAGE(S)</u>
<i>County of Sauk v. Leon</i> , 330 Wis.2d 836, 794 N.W.2d 929. . .	7
<i>State v. Alsteen</i> , 108 Wis.2d 723, 324 N.W.2d 426 (1982). . .	4
<i>State v. Anderson</i> , 155 Wis.2d 77, 454 N.W.2d 736. . . .	5
<i>State v. Colstad</i> , 260 Wis.2d 406, 659 N.W.2d 394	5
<i>State v. Gonzalez</i> , 354 Wis.2d 625, 848 N.W.2d 905	7
<i>State v. Pharr</i> , 115 Wis.2d 334, 340 N.W.2d 498 (1983). . .	4
<i>State v. Waldner</i> , 206 Wis.2d 51, 556 N.W.2d 681	5

STATUTES CITED

§ 346.63(1)(a)Wis. Stats.	4
§ 809.22(2)(B), Wis. Stats.	1

STATEMENT OF THE ISSUE

1) whether the State proved that the officer had reasonable suspicion to extend the stop to investigate an OWI offense.

STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The County does not request oral argument. Oral argument is not necessary because "the briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost." Wis. Stat. § 809.22 (2) (b) (2013-14). Publication is not necessary.

STATEMENT OF THE FACTS

On May 4, 2016 the trial court heard Ziegelmeier's motion to suppress. At that hearing, Wausau police officer Pilsner testified. She testified that she had 25 years of

law enforcement experience and that she was on duty on December 6, 2015 at 1407 hours. Pilsner stated that she detected a vehicle travelling 17 miles per hour over the posted 25 mile per hour speed limit on southbound Merrill Avenue in Wausau and that she stopped the vehicle for speeding. Pilsner identified Ziegelmeier as the vehicle operator. (R.Doc.,19. Ps.1-4)

Also, Pilsner testified that during the initial contact with Ziegelmeier she ascertained that Ziegelmeier was aware that he was speeding, that he was headed to a nearby tavern and that he admitted to having two beers. Furthermore, Pilsner smelled the odor of intoxicants coming from Ziegelmeier and that after running Ziegelmeier's information she also found that Ziegelmeier had an active arrest warrant. (R.Doc.,19. Ps.4-6)

Subsequently, Ziegelmeier was removed from his vehicle and taken into custody for the active arrest warrant. It was at this point that Pilsner testified that "we could really smell the alcohol and decided to do field sobriety tests." (R.Doc.,19 Ps.5-6)

Upon the close of evidence, the trial court denied Ziegelmeier's motion to suppress. The trial court first acknowledged that this was a totality of the circumstances

test and then listed the facts that factored into its decision. (R.Doc.,19 Ps.16-18)

First, the trial court took into consideration that Ziegelmeier was "doing 42 miles an hour in a 25 mile an hour zone on a rather major road in the city of Wausau in the middle of the afternoon." (R.Doc.,19 P.16) The trial court further expounded on that issue by finding that travelling that fast when only a couple of blocks from the final destination and while being fully aware of the outstanding arrest warrant would lead an reasonable officer to infer that Ziegelmeier's judgment was impaired. (R.Doc.,19 Ps.16-18)

Second, the trial court watched the squad video recording of the police interaction with Ziegelmeier that had been provided by Ziegelmeier's attorney prior to the suppression hearing. The trial court found that upon viewing that squad video that it determined that there was some evidence of confusion by Ziegelmeier when he was requested to produce insurance documentation. The court found that that confusion could be considered by a reasonable officer when evaluating reasonable suspicion for detecting impaired judgment.(R.Doc.,19. ps.16-18.)

Third, the trial court considered that Pilsner testified she could smell the odor of an intoxicant coming from Ziegelmeier. And lastly, the court considered the Ziegelmeier admitted to consuming multiple beers. (R.Doc.,19. P.18)

Subsequently, Ziegelmeier plead No Contest to Operating While Intoxicated as a third offense in contravention of §346.63(1)(a). (R.Doc.,20. Ps.1-18)

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED ZIEGELMEIER'S MOTION TO SUPPRESS BECAUSE A REASONABLE OFFICER WOULD HAVE HAD REASONABLE SUSPICION TO EXTEND THE TRAFFIC STOP AND INVESTIGATE AN OWI OFFENSE.

A. Standard of Review

An appellate court reviews a trial court's evidentiary rulings according to the erroneous exercise of discretion standard. *State v. Pharr*, 115 wis.2d 334,342, 340 N.W.2d 498(1983). Also, if a trial court applies the proper law to established facts, appellate courts will not find a misuse of discretion if there is any reasonable basis for the trial court's ruling. *State v. Alsteen*, 108 Wis.2d 723, 727, 324 N.W.2d 426 (1982).

Specifically, "if during a 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. The validity of the extension is tested in the same manner, and under the same criteria as the initial stop." *State v. Colstad*, 260 Wis.2d 406, §19, 659 N.W.2d 394.

Furthermore, the test is an objective one. What would a reasonable police officer reasonably suspect based upon the facts before that officer. The officer's subjective intent does not come into play. *State v. Waldner*, 206 Wis.2d 51, 54, 556 N.W.2d 681. Also, see *State v. Anderson*, 155 Wis.2d 77, 83, 454 N.W.2d 736.

B. The reasonable officer analysis.

It is clear that a reasonable police officer of 25 years of experience would reasonably conclude that there was reasonable suspicion that Ziegelmeier was impaired to the point that field sobriety tests were necessary to protect the public.

The articulable facts and circumstances that Officer Pilsner had at her fingertips were that Ziegelmeier was speeding 17 MPH over the posted limit in an area and at a time that was suspicious. Furthermore, the officer knew that Ziegelmeier was speeding at a high rate and that Ziegelmeier knew that he had an active arrest warrant and that detection and imprisonment were very possible under the circumstances. (R.Doc.,19 Ps.3-6)

Also, Pilsner detected the odor of intoxicants emanating from Ziegelmeier, elicited a confession from Ziegelmeier that he had consumed multiple beers and that he was proceeding to a tavern. (R.Doc.,19 Ps.3-6) Lastly, Ziegelmeier exhibited confusion about his insurance issue and a reasonable officer, under the objective standard, could have inferred further clues of impairment. (R.Doc.,19. P.17)

Clearly, Officer Pilsner had reasonable suspicion to extend the traffic stop to conduct field sobriety tests. Also, the length of the extension is irrelevant as Ziegelmeier was lawfully arrested for the arrest warrant and not going anywhere, anytime soon. (R.Doc.,19 P.5)

Ziegelmeier does cite two unpublished Rule 809.23(3) cases for the proposition that Pilsner was unreasonable to

conduct field sobriety tests. But neither of those cases apply here as there were less factors to consider. In *State v. Gonzalez*, 354 Wis.2d 625, 848 N.W.2d 905, 2014 WI App 71 (Attached to Ziegelmeier's Appendix ps.123-127) Gonzalez was stopped for an equipment violation and the only factor available to the officer was the odor of an intoxicant coming from Gonzalez's vehicle. In *County of Sauk v. Leon*, 330 Wis.2d 836, 794 N.W.2d 929 (Attached to Ziegelmeier's Appendix ps.128-132) there was no evidence of bad driving and the officer's only factors consisted of an odor of intoxicants coming from Leon's breath and the admission of consuming one beer. In the present case Officer Pilsner had more to go on than just two factors. Clearly the two unpublished cases cited by Ziegelmeier are of no relevance to the case before the Court.

CONCLUSION

Based on the above analysis, this court should uphold the trial court's ruling denying Ziegelmeier's motion to suppress.

Dated this 9 day of January, 2017, at Wausau, WI.

Respectfully submitted:

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CERTIFICATION OF FORM AND LENGTH

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief produced using the following font:

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Dated: January 9, 2017.

Signed,

Attorney Sidney A. Brubacher

CERTIFICATION OF MAILING

I certify that on this 9th day of January, 2017, pursuant to sec. 809.80(3)(b) and (4), the original and nine copies of the Brief of Plaintiff-Respondent were

served upon the Wisconsin Court of Appeals via United States first-class mail in properly addressed, postage paid Envelopes. Three copies of the same were served upon Counsel of record for Defendant-Appellant via United States first-class mail in properly addressed, postage paid Envelopes.

Signed,

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CERTIFICATION OF ELECTRONIC BRIEF

I certify that on this 9th day of January, 2017, I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of sec. 809.19(12) of the Wisconsin Statutes. I further certify that this electronic brief is identical in content and in 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 filled with the court and served on all opposing parties.

Signed,

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