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STATE OF WISCONSIN

Court of Appeals

DISTRICT THREE

Case No. 2016AP002423 – CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL J. MANSFIELD,

Defendant-Appellant.

Appeal from an order of the Barron County Circuit Court, case 2016CM000025, the Honorable Judge James C. Babler presiding

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BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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STATEMENT OF THE LEGAL ISSUES

1. Whether an anonymous tip, consisting of the conclusory statement that someone was smoking what appeared to be marijuana on a motorcycle, without any further detail or corroboration constitutes the reasonable suspicion necessary to stop a motorcyclist twelve miles away from the site of the incident?

   The District Court ruled that there was sufficient basis for the stop.

2. Whether the association of drug suspects, as a class of people, with a propensity to carry dangerous weapons alone, without any other indication that an individual suspect may be dangerous, warrants a search based on the belief in a reasonably prudent officer that his or her safety was endangered because the suspect may be armed?

   The District Court ruled that there was sufficient basis for the search.

3. Whether Wisconsin's Implied Consent Statute is facially unconstitutional.

   The District Court ruled that it is not.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Issue I and II, regarding search and seizure, are constitutional in nature, and, therefore, Mr. Mansfield recommends oral argument and publication.

No oral argument or publication is necessary for Issue III, regarding the constitutionality of the Wisconsin Implied Consent Statute, because the Wisconsin Supreme Court has recently accepted for review a case on the same legal issue as the instant case, *State v. Blackman*, 2017 WI 8.

I STATEMENT OF THE CASE: STATEMENT OF FACTUAL BACKGROUND

Anonymous tipster reports seeing someone smoking what he or she believed to be marijuana in the casino parking lot, but provides no basis for this belief.

On August 28th of 2015, at 11:29 a.m., Officer Cook heard a dispatch report on the police radio. *Transcript of May 5, 2016 Motion Hearing (Hereinafter Mot. Hr'g) p. 4: 22-25.* The radio dispatch said that Turtle Lake Casino had called Police reporting that someone had seen a male and a female in the parking lot smoking marijuana, and that the couple on the motorcycle had left the parking lot. *Mot. Hr'g p. 5: 1-8.*

The Police Dispatch report included information about what the couple were wearing, and that they were riding a motorcycle. *Mot. Hr'g p. 5: 5-7.* The report lacked any other information, including the identity of the caller, a description of the suspect's activities, or a prediction of where the motorcycle had gone after leaving the parking lot. *See, Mot. Hr'g* 32:7-11. The arresting Officer, Officer Chafer, testified that he did not know the identity of the person who had called

from the casino, what they said, or why the casino caller believed that Mr. Mansfield had marijuana in his possession. *Mot. Hr'g pp. 31:16-25; 32:1.*

Fifteen minutes after receiving the anonymous tip, at approximately noon, four police officers drive twelve miles away from the Casino, where they stop Mr. Mansfield.

At some time between 11:30 and 12:00 o'clock in the afternoon, about fifteen minutes after receiving the anonymous tip, Officer Reiper was looking for two people on a motorcycle coming from a spot that was twelve miles away. *Mot. Hr'g p.18:2-15.* Officer Reiper stopped Mr. Mansfield, who was driving a motorcycle. *Mot. Hr'g p.13:16-19.* Three or four officers and three or four police cars eventually all converged at the scene. *Mot. Hr'g p. 32:15-23.*

Officers learn that Mr. Mansfield was at the casino, then, without gaining any more information, immediately pat him down.

Officer Chafer asked Mr. Mansfield if he had won any money at the casino. Mr. Mansfield replied that he had not. *Mot. Hr'g p. 24:2-7.* Officer Chafer advised Mr. Mansfield that he had received a tip from the

casino that someone was smoking marijuana in the parking lot and had marijuana in the bags of a motorcycle. *Mot. Hr'g p. 24:9-11.* The officer then advised Mr. Mansfield that if he had anything in his motorcycle "he might as well give it up" because the officers were in the process of calling the k-9 unit. *Mot. Hr'g p. 24:12-21.* Mr. Mansfield didn't say anything. *Id.*

Immediately after that interaction, Officer Chafer informed Mr. Mansfield that he would pat him down. *Mot. Hr'g p.24:21-24.* Officer Chafer asked if Mr. Mansfield had anything sharp in his pockets. Mr. Mansfield replied that he had a knife in one pocket. *Mot. Hr'g 25:1-16* Officer Chafer received the knife from the pocket. *Id.* Mr. Mansfield then recovered a glass bowl, which could be used as a smoking device, from the other pocket. *Id.* Officer Chafer asked Mr. Mansfield if he had anything in the bike. *Mot. Hr'g p. 25:21-23.* Mr. Mansfield then walked over to the bike and produced three bags of marijuana. *Mot. Hr'g p. 26:1-2.*

Officer reads Mr. Mansfield the Informing the Accused Form and takes his blood.

Officer Chafer read the Informing the Accused Form. After being read the form, Mr. Mansfield submitted to a chemical test of his blood. *Mot. Hr'g pp. 28: 24-25; 29: 1-3.*

II Statement of the Case: Statement of Procedural background

On 01-19-2016, Mr. Mansfield was charged, in Barron County Wisconsin, with Operating Under the Influence in the Third Degree under Wisconsin Statute 346.63(1)(a),and three additional counts: Operate with Restricted Controlled Substance, Possession of THC, Possession of Drug Paraphernalia, Possession of switchblade knife.

On 2-16-2016, Mr. Mansfield filed a Motion to Suppress evidence of the blood test. On 05-05-2016, there was a Motion Hearing on the Motion to Suppress. At the hearing, the Honorable Judge Babler made findings of fact. *Mot. Hr'g p. 41.* At that hearing, Mr. Mansfield argued that the blood draw evidence should be suppressed because police obtained the evidence by an

illegal stop and search, which was not based on reasonable suspicion.

Judge Babler made a finding of law that: An officer's experience that people he has confronted with drugs often have knives is reasonable suspicion to support a pat down. *Mot. Hr'g p. 45.*

Mr. Mansfield then filed a separate Motion to Suppress, arguing that Mr. Mansfield's consent to the test was coerced by the threatened sanction of lost driving privileges and that Wisconsin Statutes Section 345.305 is facially unconstitutional.

On 10-03-2016, the District Court Judge decided to allow evidence of the blood test in and denied Mr. Mansfield's motion, finding that the blood draw did not violate the constitution.

On 12-02-2016, Mr. Mansfield pled guilty to Count 1. The Court accepted his guilty plea, finding him guilty on Count 1, and dismissing but reading-in the other counts.

Mr. Mansfield now appeals findings of law of the Trial Court.

SUMMARY OF THE ARGUMENT

Mr. Mansfield was subjected to an unreasonable search and seizure, because police did not have reasonable suspicion, which is legally prerequisite to stop or search.

Police received an anonymous tip, consisting of a conclusory statement that someone was smoking what appeared to be marijuana, without any detail or a single corroborating fact. The fact that he matched the generic description given by the anonymous tipster, of a motorcyclist wearing a black sweat shirt, is far from being specific enough to carry the requisite indicia of reliability. Police use that tip as justification for stopping Mr. Mansfield on a busy road, twelve miles away from the site of the tip.

The totality of the circumstances show no reasonable suspicion: Police had no idea where the suspect went after he left the casino; they had no idea how the tipster knew that the suspect was smoking marijuana; they had no idea who the tipster was.

Similarly, the totality of the circumstances demonstrate that there was no reasonable suspicion to

search Mr. Mansfield. The police officer who searched Mr. Mansfield admitted that the sole premise for his search was his belief that Mr. Mansfield may be the suspect who was seen smoking marijuana, combined with his association of drug suspects in general with weapon possession. The mere association of all drug suspects with weapons, and no more support does not justify a search of the person, and is violative of Mr. Mansfield's constitutional rights.

Finally, Mr. Mansfield urges that Wisconsin Statute Section 343.305 (Implied Consent Statute) is facially unconstitutional. Warrants are required to take a suspect's blood in driving/operating under the influence cases, because of the extreme intrusiveness of blood tests as a method of search. In this case, there was no warrant to search Mr. Mansfield's blood, but he gave blood after being read the Informing the Accused form. Mr. Mansfield's consent to the search was not voluntary. The threatened sanction of lost driving privileges, in the Informing the Accused form is a coercive measure which invalidates consent under the Fourth Amendment.

ARGUMENT

I Police violated Mr. Mansfield's Constitutional right to be free from unreasonable search and seizure by subjecting him to an illegal stop and search of his person: police went beyond their investigative powers throughout the investigation and arrest. There was no basis for the stop or the pat down.

A. Standard of Review

The legal issues raised require this Court to apply the undisputed facts to constitutional standards. As such, this case presents a question of law, which Wisconsin courts review de novo. *State v. Jackson*, 147 Wis.2d 824, 829, 434 N.W.2d 386 (1989). *See also, State v. Rutzinski*, Wis. 2d 729, 736, 623 N.W.2d 516, 520 (2001).

B. There was no lawful basis for stopping Mr. Mansfield: An anonymous tip consisting of a conclusory statement that someone was smoking what appeared to be marijuana, absent a single corroborating fact, does not give rise to reasonable suspicion necessary to stop a motorist on a busy road twelve miles away from the site of the tip.

The United States Constitution guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no

Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." USCS Const. Amend. 4.

Article I, Section 11 of the Wisconsin Constitution also provides a right to security against unreasonable searches and seizures. *See, State v. Secrist*, 224 Wis.2d 201, 208, 589 N.W.2d 387 (Wis. 1999) (Wisconsin Courts have consistently conformed interpretation of Article I, Section 11 and its protections with the law developed by the United States Supreme Court under the Fourth Amendment).

All investigative traffic stops are governed by the constitutional reasonableness requirement: All searches and seizures must be objectively reasonable under the circumstances existing at the time of the search or seizure. *State v. Waldner*, 206 Wis.2d 51, 55-56, 556 N.W.2d 681 (Wis. 1996). *Whren v. United States*, 517 U.S. 806, 810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). In order for an investigative stop to be objectively reasonable, the officer conducting the stop

must have a reasonable suspicion that the driver or occupants of the vehicle have committed an offense. *United States v. Hensley*, 469 U.S. 228, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985).

Reasonable suspicion requires that at the time of the stop, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, objectively warrant a reasonable person with the knowledge and experience of the officer to believe that criminal activity is afoot. *Hensley*, 469 U.S. at 226, 105 S.Ct. 675.

To determine whether there was reasonable suspicion to conduct the stop, a reviewing court must analyze the facts of the particular case, and balance the interests of the individual being stopped to be free from unnecessary or unduly intrusive searches and seizures, and the interests of the State to effectively prevent, detect, and investigate crimes. *Hensley*, 469 U.S. at 228.

In order to justify a stop and investigative search based on an informant's tip, the police must consider its reliability and content. *State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516. There is no per se rule of reliability, but in assessing the reliability of a tip, all facts are taken in light of the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 233, 233, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983).

An informant's veracity can create sufficient reliability to justify an investigative stop. If there are strong indicia of the informant's veracity, there need not necessarily be any indicia of the informant's basis of knowledge. *See, Adams v. Williams*, 407 U.S. 143, 32 L. Ed. 2d 612, 92 S. Ct. 1921 (stop upheld and officer allowed to presume that informant's tip was reliable because officer knew the informant).

However, where the informant is not personally known and without some degree of independent reliability, as in the instant case, the Court has ruled that some "more information will be required to

establish the requisite quantum of suspicion than would be required if the tip were more reliable." *Alabama v. White*, 496 U.S. 330, 110 L. Ed. 2d 301, 110 S. Ct. 2412 (1990). Corroboration is required where the informant's tip is anonymous.

In *White*, the police received an anonymous telephone call stating that the defendant would depart from a particular address at a particular time, in a brown Plymouth station wagon with the right taillight lens broken, that they would drive to a certain named motel, and be in possession of a brown case containing approximately one ounce of cocaine. The police went to the address indicated by the informant and located a station wagon matching the vehicle described in the tip. At the time indicated by the informant, the officers observed the defendant leave the building and enter the station wagon.

The officers then followed the defendant's vehicle as it headed along the most direct route to the motel named in the tip. Just prior to reaching the motel, the officers stopped the defendant and searched her car.

The White Court found that it was a 'close case', but that these specific predictions allowed police to make an inference that the informant had a firm basis of knowledge and provided that requisite indicia of reliability to justify the stop. *Alabama v. White*, 496 U.S. 332, 110 L. Ed. 2d 301, 110 S. Ct. 2412 (1990).

White is distinguishable from the instant case because of a key difference: while there was an anonymous tip, and a description of what the suspect looked like, there was no prediction of the future behavior of the suspect and there was no indication of where to find the suspect, or when to find the suspect there.

The reason that the *White* Court decided that the suspicion was reasonable, was the meticulous specificity of and predictive nature of the informant's tip. That specificity and predictive nature is totally absent in the Mansfield tip. The tipster did not describe how he knew that Mansfield was smoking marijuana. The tipster did no describe why he or she thought the product being smokes was marijuana, as

opposed to another legal substances consumed by smoking. Furthermore, at the time of the tip, Mansfield was not only no longer in the parking lot where the tip was made, he was twelve miles away, driving on a public road during the middle of the day.

The ambit of reasonable suspicion does not extend to allow police to stop motorists randomly based on anonymous and generic tip such as the *Mansfield* tip. For if it did, anonymous informants could call and state that they saw someone using marijuana, and police would be allowed to stop anyone on a motorcycle, on any road, who happens to be wearing the right color clothing.

Mr. Mansfield's admission that he was at the casino cannot be used as justification for the stop. The admission was given only after Mr. Mansfield had already been stopped. The right against unreasonable searches and seizures does not begin after a suspect has already been stopped, but, crucially, prevents the stop from happening in the first place, absent reasonable suspicion.

C. There was no lawful basis for police to search Mr. Mansfield: The police officer who searched Mr. Mansfield admitted that he had searched because he thought Mr. Mansfield may be a drug suspect, and the officer associated drugs with weapon possession. This association of drugs with weapons and no more support does not justify a search of the person, and is violative of Mr. Mansfield's constitutional rights.

The standard of reasonable suspicion based on the totality of the circumstances is the same for a protective search of weapons as for an investigative detention. Specifically, the test for the reasonableness of a protective search for weapons is an objective one and asks whether a reasonably prudent officer in the circumstances would be warranted in the belief that his or her safety or that of others was in danger because the person may be armed with a weapon and dangerous. *Terry v. Ohio*, 392 U.S. 1 (U.S. 1968).

The "reasonable suspicion" must be based upon "specific and articulable facts," which, taken together with any rational inferences that may be drawn from those facts, must establish that the intrusion was reasonable. *Terry*, 392 U.S. at 27, 88 S.Ct.

The Wisconsin Supreme Court has held that "a police officer's fear or belief that his or her safety or that of others was in danger" may be considered as a part of the totality of the circumstances. *State v. Kyles*, 2004 WI 15, ¶ 34, 269 Wis. 2d 1, 19, 675 N.W.2d 449, 457.

In the instant case, there are virtually no specific and articulable facts, other than the arresting officer's statement (a statement he later contradicted) that he associated drug suspects with weapons, which would implicate a rational inference that the intrusion of a protective search was reasonable.

Mr. Mansfield conducted himself cooperatively and calmly throughout the encounter with police, the stop occurred on the side of a road during the daylight hours, and there were three or four police officers there at the scene at once.

The arresting officer himself agreed that he did not think that Mr. Mansfield was a threat to himself or others throughout the encounter. The officer responded

to the question, "would you agree with me that he [Mansfield] didn't do anything to you or any officers for you to think that he was a threat in any way?" with the reply, "[n]o, he did not." *Mot. Hr'g p. 33: 8-16.*

Then, the officer contradicted his own statement (that he thought the suspect may have weapons) by responding to the question "[n]o one told you - you had no reason to believe that he [Mansfield] had a weapon on him?" with the reply: "[n]o." *Id.*

The officer's statement that he associates drug crime with weapons is not a coherent argument in the context of this stop. The officer suspected Mr. Mansfield of possessing marijuana. Marijuana, unlike hallucinogens or other more addictive substances, does not create an automatic assumption in the reasonable person that the person possessing it must be dangerous and have a weapon.

In sum, the only articulable fact that the officer could cite for why he searched Mr. Mansfield's person is his association of drug suspects with weapons.

However, the totality of the circumstances demonstrate that Mr. Mansfield cooperated with law enforcement and that there was no reasonable articulate reason to suspect Mr. Mansfield of possessing weapons. It is not constitutional under the totality of the circumstances test to automatically pat down every drug suspect irrespective of the circumstances of the individual suspect and situation.

II Wisconsin Statute Section 343.305 (Implied Consent Statute) is facially unconstitutional.

A. Standard of Review

This legal issue requires this Court to apply the undisputed facts to constitutional standards. As such, this case presents a question of law, which Wisconsin courts review de novo. *State v. Jackson,* 147 Wis.2d 824, 829, 434 N.W.2d 386 (1989). *See also, State v. Rutzinski,* Wis. 2d 729, 736, 623 N.W.2d 516, 520 (2001).

B. Police did not have a warrant to search Mansfield.

The Fourth Amendment of the United States Constitution, provides that citizens have the right "to be secure in their persons, houses, papers, and

effects," and protects individuals "against unreasonable searches and seizures." The Fourth Amendment requires that "no warrant shall issue but upon probable cause." The Fourth Amendment, by requiring a showing of probable cause, mandates the weighing of the rights of individual citizens against governmental interest in preventing crime. *See, United States v. Di Re*, 332 U.S. 581 (1948). The Fourth amendment probable cause requirement stands as the arbiter between individual citizens and the threat of governmental intrusion; it stands as a guarantee of the American democratic value of liberty.

In Mr. Mansfield's case, a judge never assessed whether probable cause was present to support a warrant to take Mr. Mansfield's blood. The United States Supreme Court is the law of the land. They have spoken, and a warrant is now required to take a suspect's blood in a driving/operating while under the influence case. *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2184 (U.S. 2016).

The state has argued that Mr. Mansfield consented and therefore, a warrant in this case was not required. If his consent would have been voluntary, we agree, a probable cause analysis would not be required. Consent to a search is an established exception to the Fourth Amendment requirements of both a warrant and probable cause. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 36 L. Ed. 2d 854, 93 S. Ct. 2041 (1973); *State v. Xiong*, 178 Wis. 2d 525, 531, 504 N.W.2d 428 (Ct. App. 1993). However, Mr. Mansfield's consent was not voluntary, thus his blood was seized without a finding of probable cause by a judge and robbed of the benefit of a bedrock constitutional right.

C. Mr. Mansfield's consent to search/seizure was ineffective because it was not voluntary.

Mr. Mansfield does not contest the fact that he consented to the blood draw, but his consent was not voluntarily given. Mr. Mansfield's right to be free from an unreasonable search and seizure was violated because his consent to the blood test was not voluntary. In making a determination regarding the voluntariness of consent, the court examines the

totality of the circumstances, including the circumstances surrounding consent and the characteristics of the defendant. *State v. Artic*, 2010 WI 83, 32-33, 327 Wis. 2d 392, 768 N.W.2d 430.

At the trial court, the State bore the burden of proving by clear and positive evidence the search was the result of a free, intelligent, unequivocal, and specific consent without any duress or coercion, actual or implied. *Gautreaux v. State*, 52 Wis. 2d 489, 492, 190 N.W.2d 542 (1971). The State did not meet this burden. The kind of consent that Mansfield gave does not fit under the plain language definition of consent, nor does it fit the legal description of consent.

When officers read Mr. Mansfield the 'Informing the Accused' form, he was given an ultimatum and put under duress. The Informing the Accused Statute reads, in pertinent part: If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. Wis. Stat. § 343.305 (2016).

The only conceivable purpose that the 'Informing the Accused form' serves is to pressure a suspect to take the blood test. Logic dictates that choices are made independently, and threat changes choice to ultimatum.

Legal definitions of uncoerced choice support the plain language definition, providing that, "[t]he question is whether it [inculpatory statement] was obtained under such circumstances that it represents the uncoerced free will of the declarant or whether the circumstances deprived him of the ability to make a rational choice." *Roney v. State* (1969), 44 Wis.2d 522, 533, 171 N.W.2d 400.

D. Recent United States Supreme Court precedent demonstrates that blood tests are extremely intrusive and supports that Mr. Mansfield was coerced into taking the blood test.

Birchfield sharply distinguishes blood from breath tests in general, providing that, "[b]lood tests are significantly more intrusive, and their reasonableness must be judged in light of the availability of the less invasive alternative of a breath test." *Birchfield v.*

North Dakota, 136 S. Ct. 2160, 2184 (U.S. 2016). This distinction, between the inherent invasiveness of blood tests and other tests is relevant in the instant case to demonstrate that the potential for invasion of a personal security right is exceptionally high.

Civil penalties for refusal are not at issue in *Birchfield*, and the court does not engage in an analysis of their coerciveness. However, the Birchfield court does make clear that there is a substantial difference between the intrusiveness of blood tests and breath tests.

The Court, found that blood tests "require piercing the skin" and extract a part of the subject's body, and thus are significantly more intrusive than blowing into a tube. The Court reasoned that "[a] blood test also gives law enforcement a sample that can be preserved and from which it is possible to extract information beyond a simple BAC reading. That prospect could cause anxiety for the person tested." *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2164 (U.S. 2016)

citing *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 628 (U.S. 1989).

The *Birchfield* Court relied on its findings about the intrusiveness of blood tests to hold that motorists may not be criminally punished for refusing to submit to a blood test based on legally implied consent to submit to them. *See, Birchfield v. North Dakota*, 136 S. Ct. 2160, 2187 (U.S. 2016). If criminal penalties for refusal are coercive to motorists, civil penalties are too: A threat is a threat, irrespective of the degree of harm threatened.

In sum, Mr. Mansfield's consent to submit to a blood test was coerced by the threatened sanction of lost driving privileges. Wis. Stat. § 343.305 (Implied Consent Statute) is facially unconstitutional.

CONCLUSION

Mr. Mansfield was subjected to an unreasonable search and seizure. Police lacked reasonable suspicion which is legally prerequisite to stop or search.

Mr. Mansfield's stop was illegal: When Police received an anonymous tip, consisting of a conclusory statement that someone was smoking what appeared to be marijuana, without any detail as to how he or she knew it was marijuana, or a single corroborating fact, this tip alone is insufficient to support reasonable suspicion.

Mr. Mansfield's search was illegal: The mere association of all drug suspects with weapons, and no more support does not justify a search of the person, and is violative of Mr. Mansfield's constitutional rights. Mr. Mansfield's blood test resulted from an illegal search and seizure of his person. For the foregoing reasons, it is respectfully requested that the Court of Appeals reverse the findings of law of the trial court on the issue of stop and seizure, and

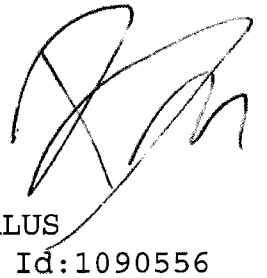
reverse the judgement of conviction against Mr. Mansfield.

Mr. Mansfield urges that Wisconsin Statute Section 343.305 (Implied Consent Statute) is facially unconstitutional. Warrants are required to take a suspect's blood in driving/operating under the influence cases, because of the extreme intrusiveness of blood tests as a method of search. In this case, there was no warrant to search Mr. Mansfield's blood, but he gave blood after being read the Informing the Accused form.

Mr. Mansfield's consent to the search was not voluntary. The threatened sanction of lost driving privileges, in the Informing the Accused form is a coercive measure which invalidates consent under the Fourth Amendment. For the foregoing reasons, Mr. Mansfield requests that the Court of Appeals reverse the judgement of conviction against him, and find that the Wisconsin Implied Consent Statute is not constitutional.

Dated this 24th day of February, 2017.

Respectfully submitted,



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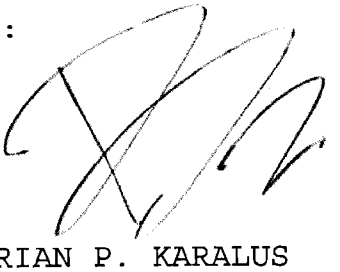
CERTIFICATION AS TO FORM/LENGTH

I 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, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 4,375 words.

Dated this 24th day of February, 2017.

Signed:



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CERTIFICATE OF COMPLIANCE
WITH RULE 809.19(12)

I hereby certify that:

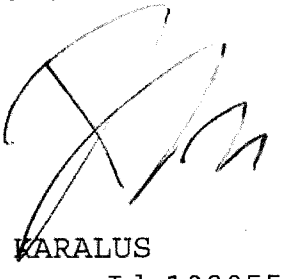
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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 24th day of February, 2017.

Signed:



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CERTIFICATION AS TO 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 § 809.19(2)(a) 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.

Dated this 24th day of February, 2017.

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