

RECEIVED

03-27-2017

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

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

**STATE OF WISCONSIN,
Plaintiff- Respondent,**

v. Appeal No. 2016AP002423

**MICHAEL J. MANSFIELD,
Defendant-Appellant.**

BRIEF OF PLAINTIFF-RESPONDENT

**ON APPEAL FROM A JUDGMENT OF CONVICTION,
ENTERED IN BARRON COUNTY CIRCUIT COURT,
THE HONORABLE JAMES C. BABLER, PRESIDING**

Angela L. Beranek
State Bar No. 1030659
Attorney for Plaintiff-Respondent
Barron County District Attorney's Office
1420 State Highway 25 North
Barron, WI 54812-3003
(715) 537-6220 (phone)
(715) 537-6155 (fax)
angela.beranek@da.wi.gov

TABLE OF CONTENTS

| | |
|--|-----|
| Table of Authorities..... | iii |
| Issues Presented for Review | 1 |
| Statement on Oral Argument and Publication | 3 |
| Supplemental Statement of the Case and Facts | 4 |
| ARGUMENT | 12 |
| I. POLICE RECEIVED INFORMATION FROM A CITIZEN-INFORMANT THAT SUPPLIED REASONABLE SUSPICION TO JUSTIFY THE STOP OF MANSFIELD’S MOTORCYCLE.. | 12 |
| A. Summary of the argument | 12 |
| B. Standard of review | 13 |
| C. Argument | 13 |
| II. GROUNDS FOR A PROTECTIVE SEARCH EXISTED, BUT MANSFIELD SURRENDERED HIS WEAPON AND CONTRABAND IN RESPONSE TO THE OFFICER’S INQUIRY | 20 |
| A. Summary of the argument | 20 |

| | |
|--|----|
| B. Standard of review | 21 |
| C. Argument | 21 |
| III. U.S. SUPREME COURT AND WISCONSIN PRECEDENT FORECLOSE MANSFIELD'S ARGUMENT THAT WISCONSIN'S IMPLIED CONSENT LAW IS UNCONSTITUTIONAL | 26 |
| A. Summary of the argument | 26 |
| B. Standard of review | 27 |
| C. Argument | 27 |
| IV. CONCLUSION | 29 |
| Certification | 32 |
| Certification of compliance with § 809.19(12), Stats | 33 |
| Certification of service, §809.80(4), Stats. | 34 |

TABLE OF AUTHORITIES

Cases

| | |
|--|------------|
| <i>Alabama v. White</i> , 496 U.S. 330, 110 S. Ct. 2412, 110 L.Ed.2d 301(1990).. | 13, 15 |
| <i>Birchfield v. North Dakota</i> , 136 S. Ct. 2160, 195 L.Ed.2d 560 (2016) | 27, 28 |
| <i>State v. Artic</i> , 2010 WI 83, 327 Wis. 2d 392, 786 N.W.2d 430 | 25 |
| <i>State v. Blackman</i> , 2016 WI App 69, 371 Wis.2d 635, 886 N.W.2d 94 . | 26, 28, 29 |
| <i>State v. Bridges</i> , 2009 WI App 66, 319 Wis. 2d 217, 767 N.W.2d 593..... | 21, 24 |
| <i>State v. Foster</i> , 2014 WI 131, 360 Wis. 2d 12, 856 N.W.2d 847 | 20 |
| <i>State v. Kolk</i> , 2006 WI App 261, 298 Wis.2d 99, 726 N.W.2d 337 | 15, 16 |
| <i>State v. Kyles</i> , 2004 WI 15, 269 Wis. 2d 1, 675 N.W.2d 449 | 22, 23 |
| <i>State v. Miller</i> , 2012 WI 61, 341 Wis. 2d 307, 815 N.W.2d 349 | 15 |

| | |
|--|----|
| <i>State v. Padley,</i> 2014 WI App 65, 354 Wis. 2d 545, 849 N.W.2d 867 | 27 |
|--|----|

| | |
|--|----|
| <i>State v. Pickens,</i> 2010 WI App 5, 323 Wis. 2d 226, 779 N.W.2d 1 | 23 |
|--|----|

| | |
|--|----|
| <i>State v. Post,</i> 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634 | 13 |
|--|----|

| | |
|---|----|
| <i>State v. Rutzinski,</i> 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516 | 19 |
|---|----|

| | |
|--|--------|
| <i>State v. Williams,</i> 2001 WI 21, 241 Wis. 2d 631, 623 N.W.2d 106 | 16, 78 |
|--|--------|

| | |
|---|----|
| <i>Terry v. Ohio,</i> 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) | 23 |
|---|----|

United States Constitution

| | |
|--------------------------------------|--------|
| U.S. Constitution, Amendment 4 | 25, 29 |
|--------------------------------------|--------|

Wisconsin Statutes

| | |
|---------------------|----|
| § 343.05..... | 27 |
| §346.63(1)(a) | 10 |
| §346.63(1)(am)..... | 10 |

| | |
|-----------------------------|--------|
| §346.65(2)(am)3 | 10 |
| §809.19, Stats. | 32, 33 |
| §809.23(1)(b)4, Stats. | 3 |
| §809.80(4), Stats. | 34 |
| 939.51(3)(a) | 10 |
| §961.41(3g)(e) | 10 |
| §961.573(1) | 10 |

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

**STATE OF WISCONSIN,
Plaintiff- Respondent,**

v. Appeal No. 2016AP002423

**MICHAEL J. MANSFIELD,
Defendant-Appellant.**

BRIEF OF PLAINTIFF-RESPONDENT

**ON APPEAL FROM A JUDGMENT OF CONVICTION,
ENTERED IN BARRON COUNTY CIRCUIT COURT,
THE HONORABLE JAMES C. BABLER, PRESIDING**

ISSUES PRESENTED FOR REVIEW

1. Whether information from a citizen-informant at the Turtle Lake Casino relayed by dispatch to law enforcement officers supplied reasonable suspicion for the

traffic stop of Mansfield's motorcycle.

The circuit court answered yes.

2. Whether the officer's knowledge, based on his training and seventeen years of law enforcement experience, that drug users frequently carry knives, supplied reasonable suspicion to justify a protective search.

The circuit court answered yes.

3. Whether the Wisconsin Implied Consent Statute is facially unconstitutional.

The circuit court answered no.

**STATEMENT ON ORAL ARGUMENT
AND PUBLICATION**

There is no need for oral argument of this appeal because it would not add to the arguments presented by the parties in their briefs.

The opinion should not be published in this case, which has been designated a one-judge appeal.
§809.23(1)(b)4, Stats.

SUPPLEMENTAL STATEMENT OF THE CASE AND FACTS

A. Statement of Facts.

A dispatcher from the Barron County Sheriff's Department relayed a report of a man smoking marijuana in the parking lot of the Turtle Lake Casino on August 28, 2015. R. 38 at 4-5, 12-13, 20-21. The report stated that the man and a passenger left the casino parking lot on a motorcycle at approximately 11:29 a.m. R. 38 at 6, 12-13, 21.

The dispatch call described a man with a buzz cut wearing jeans and a black sweatshirt with skulls on it, accompanied by a female with blonde hair wearing a white shirt and a black jacket, riding a black Harley-Davidson motorcycle. R. 38 at 5, 12, 20-21. Dispatch reported that the caller stated the motorcycle's saddlebags contained three bags of marijuana. R. 38 at 13, 20-22. The description did

not include the vehicle's license plate number. R. 38 at 16.

Dispatch received this information from Detective Jason Hagen, Barron County Sheriff's Department, which he obtained in a phone call from the casino. R. 38 at 5, 10. Dispatch did not identify the person who called Detective Hagen or describe how that person knew marijuana was involved. R. 38 at 10, 31-32.

Cumberland Police Chief Richard Rieper heard the dispatch call and proceeded to a point on U.S. Highway 63 about twelve miles from the casino. R. 38 at 12-13, 18. Approximately ten to fifteen minutes later, he observed a motorcycle and occupants matching the description supplied by dispatch. R. 38 at 12, 18, 22. Chief Rieper conducted a traffic stop of the motorcycle and identified its operator as Michael Mansfield and its passenger as Jen

Kelly. R. 38 at 13, 22.

Officer Greg Chafer of the Cumberland Police Department also heard the dispatch call and proceeded to the scene after receiving Chief Rieper's radio notification of the traffic stop. R. 38 at 20, 22. He made contact with Mansfield and Kelly and observed that their vehicle, appearance and clothing precisely matched the description provided by dispatch. R. 38 at 22-23.

In response to Officer Chafer's question, Mansfield acknowledged being present at the casino that morning. R. 38 at 24. Officer Chafer advised him of the complaint from the casino that Mansfield had been smoking marijuana in the parking lot and had three bags in the saddlebag of his motorcycle. R. 38 at 24. He told Mansfield "if he had anything in his motorcycle he might as well give it up

because Chief Rieper was in the process of calling the K-9 unit to our location.” R. 38 at 24.

He then advised Mansfield that he was going to pat him down for his own and Mansfield’s safety. R. 38 at 24. When Officer Chafer next asked if he possessed any sharp objects, Mansfield replied that he had a switchblade in his jeans pocket; he did not object when Officer Chafer removed a butterfly knife from Mansfield’s pocket. R. 38 at 25, 35. No pat-down took place. R. 38 at 34.

Mansfield made no action or statement that Officer Chafer perceived as a threat. R. 38 at 33. He had no reason to believe that Mansfield possessed a weapon. R. 38 at 33. Officer Chafer knew of nothing on Mansfield’s record that led him to believe he was dangerous. R. 38 at 33.

Officer Chafer justified his intent to pat the outside

of Mansfield's pockets because he was not familiar with Mansfield, and he was dealing with a possibility of drugs. R. 38 at 34. From training and seventeen years of law enforcement experience, Officer Chafer knew that drug users frequently carry knives. R. 38 at 20, 34, 36.

After the officer took possession of the knife, Mansfield reached into his other pants pocket and voluntarily removed a glass bowl of a type normally used for smoking marijuana, which contained burnt and unburnt marijuana residue. R. 38 at 25, 35. Officer Chafer again asked Mansfield if he had anything on his bike. R. 38 at 25. Mansfield opened up a saddlebag and pulled out three bags, two containing a green leafy substance, and one containing brown powder. R. 38 at 7, 25-26.

Subsequently, Detective Randy Cook of the Barron

County Sheriff's Office arrived at the scene of the stop. R. 38 at 4-6. He field-tested a sample of the brown powder and from one of the bags with green material, and received test results positive for THC. R. 38 at 7, 26.

Mansfield admitted to smoking marijuana and Officer Chafer observed his eyes were bloodshot. R. 38 at 28. He read the Informing the Accused form to Mansfield, then asked if he would submit to an evidentiary chemical test of his blood, to which Mansfield agreed. R. 38 at 28; R. 17. A blood draw was performed and a sample of Mansfield's blood was later mailed to the state hygiene lab. R. 38 at 29. Officer Chafer did not apply for a search warrant because Mansfield voluntarily submitted to a blood draw. R. 38 at 29.

In their capacity as law enforcement officers,

Detective Cook and Chief Rieper received reliable information from the casino in the past. R. 38 at 5, 9, 14. The casino's surveillance system covers its entire exterior and interior, except for the restrooms. R. 38 at 9.

B. Statement of the Case.

The State charged Mansfield in a five-count criminal complaint filed January 19, 2016, charging (1) operating a motor vehicle while intoxicated, third offense, §346.63(1)(a); §346.65(2)(am)3, Stats.; (2) operating a motor vehicle with a restricted controlled substance in his blood, §346.63(1)(am); §346.65(2)(am)3, Stats.; (3) possession of THC, §961.41(3g)(e), Stats; (4) possession of drug paraphernalia, §961.573(1), Stats.; and (5) possession of a switchblade knife, §939.51(3)(a), Stats. R. 7.

Counsel for Mansfield filed a motion to suppress, R.

15, and an addendum to the motion to suppress, R. 16. The circuit court, Hon. James C. Babler, presiding, held a motion hearing on May 5, 2016. R. 38. After hearing testimony, the circuit court made factual findings and denied the motions. R. 38 at 37-41, 45. Mansfield submitted a memorandum in support of the second motion to suppress on August 19, 2016. R. 20. The Court issued a decision denying the motion on October 3, 2016. R. 21.

On December 2, 2016, Mansfield entered a guilty plea to Count One, with Counts Two through Five dismissed and read-in. R. 27. The circuit court imposed a sentence of 45 days' jail, a fine and costs totaling \$1744, and a twenty-four month driver's license revocation. R. 29.

Mansfield filed timely notices of intent to pursue postconviction relief on December 9, 2016. R. 30, 31.

ARGUMENT

I. POLICE RECEIVED INFORMATION FROM A CITIZEN-INFORMANT THAT SUPPLIED REASONABLE SUSPICION TO JUSTIFY THE STOP OF MANSFIELD'S MOTORCYCLE.

A. Summary of the argument.

A citizen-informant reported observing Mansfield smoking marijuana in the parking lot of the Turtle Lake Casino. The citizen-informant's tip supplied police with a description of Mansfield's and his passenger's appearance and clothing, and the make and color of his motorcycle. The nature of the tip indicated the citizen-informant's observational reliability, police corroborated its description before making a traffic stop of Mansfield's vehicle, and the tip's reliability was supplemented by the exigency presented by the likelihood that Mansfield operated his vehicle while impaired. For those reasons, the circuit court

correctly held that the traffic stop was lawful.

B. Standard of review.

Whether a traffic stop is reasonable is a question of constitutional fact, to which the appellate court applies a two-step standard of review: the circuit court's findings of historical fact are reviewed under the clearly erroneous standard, and the application of those facts to constitutional principles is reviewed independently. *State v. Post*, 2007 WI 60, ¶ 8, 301 Wis. 2d 1, 6–7, 733 N.W.2d 634, 636–37 (citations omitted).

C. Argument.

Mansfield argues that police lacked reasonable suspicion to conduct an investigative stop of his vehicle. Relying primarily on *Alabama v. White*, 496 U.S. 330, 110 S. Ct. 2412, 110 L.Ed.2d 301 (1990), he contends that the

information known to police at the time of the stop lacked “the meticulous specificity and predictive nature” required for reliability of anonymous tips, negating the existence of a reasonable suspicion to justify the stop. Appellant’s Brief at (hereinafter “Brief”) at 19-20.

However, the informant who supplied the information to Detective Hagen was unidentified, not anonymous. The dispatch call identified the source as a person from the Turtle Lake Casino. R. 38 at 5. This person possessed the ability to quickly and directly report drug use at the casino to Detective Hagen, even when he was out of the office attending a training session. R. 38 at 10. The dispatch call didn’t provide identification but the informant’s identity presumably was known to or could be determined by police.

These facts indicate the tip relayed by Detective Hagen originated with a citizen informant, i.e., someone who happened upon a crime or suspicious activity and reported it to police. *See State v. Miller*, 2012 WI 61 ¶31 n.18, 341 Wis. 2d 307, 325, 815 N.W.2d 349, 358; *State v. Kolk*, 2006 WI App 261, ¶ 12, 298 Wis.2d 99, 109, 726 N.W.2d 337, 342. Citizen-informants are generally considered among the most reliable informants. *Id.* In contrast, an anonymous informant, someone whose identity is unknown even to the police, is considered reliable only if police are able to corroborate details in the informant's tip. *Id.*, *see also Alabama v. White*, 496 U.S. at 327-332, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990).

Wisconsin courts view citizen informants as reliable, even though other indicia of reliability may have not yet

been established, and apply a relaxed test of reliability that shifts from a question of “personal reliability” to “observational reliability.” See *State v. Williams*, 2001 WI 21, ¶ 36, 241 Wis. 2d 631, 650–51, 623 N.W.2d 106, 115. Evaluation of a citizen-informant’s reliability is based on the nature of the report, the ability to hear and see the matters reported and the extent to which it is verified by independent police investigation. *State v. Kolk*, 2006 WI App. 261 ¶ 13, 298 Wis.2d at 110, 726 N.W.2d at 342.

The information provided to police by the citizen-informant in this case satisfies that test. Detective Hagen received the report from a citizen-informant associated with the Turtle Lake Casino. R. 38 at 5. Casino personnel supplied reliable information to Detective Cook and Chief Rieper in the past. R. 38 at 9, 14. Although the record does

not reveal the means used to observe Mansfield smoking marijuana, police evidently believed the casino's comprehensive surveillance system was employed. R. 38 at 9. The citizen-informant notified police when Mansfield departed, which makes it plain that the tipster was an eyewitness. *See Williams*, 2001 WI 21 ¶ 33, 241 Wis.2d at 648, 623 N.W.2d at 114.

The citizen-informant supplied a detailed description of Mansfield's and Kelly's clothing and hair, and the make and color of the motorcycle, information which Chief Rieper corroborated prior to the stop. The informant also observed and reported that Mansfield possessed three bags of contraband in a saddlebag of his motorcycle. Although police were unable to corroborate that fact before the investigative stop, its accuracy indicates

that the citizen-informant's means of observation were clear.

Mansfield argues the informant could not have known that the substance he smoked was marijuana. Brief at 20-21. The record permits the reasonable assumption that the citizen-informant witnessed Mansfield using the glass bowl, described as a pipe normally used for smoking marijuana, which contained burnt and unburnt marijuana residue when surrendered to Officer Chafer. R. 38 at 25, 35. The informant could reasonably believe, based on visual observation alone, that Mansfield smoked marijuana in the glass bowl.

Mansfield argues that police didn't stop him at the casino, but twelve miles away. Brief at 21. However, Chief Rieper observed Mansfield and his passenger arrive in

Cumberland ten to fifteen minutes after he received the dispatch call reporting their departure from the casino. That length of time is consistent with travel at highway speeds for twelve miles.

Finally, the informant's tip indicated Mansfield operated a motor vehicle under the influence of a restricted controlled substance, presenting an imminent threat to public safety. Exigency can supplement the reliability of an informant's tip in order to form the basis for an investigative stop. *State v. Rutzinski*, 2001 WI 22, ¶ 26, 241 Wis. 2d 729, 743, 623 N.W.2d 516, 523–24. The allegations in the tip could suggest to a reasonable police officer that Mansfield operated his vehicle while impaired; this exigency strongly weighs in favor of immediate police investigation. *See Rutzinski*, 2001 WI 22, ¶ 38, 241 Wis. at

752, 623 N.W.2d at 527-28.

Police didn't stop Mansfield based on a hunch. They acted on information received from a source that police had found reliable in the past. The information accurately described Mansfield, his passenger and the motorcycle. Chief Rieper observed their arrival in Cumberland after an elapsed time consistent with the reported time of departure from Turtle Lake. On these facts, the circuit court correctly held that sufficient reasonable suspicion existed to justify the traffic stop.

**II. GROUNDS FOR A PROTECTIVE SEARCH
EXISTED, BUT MANSFIELD SURRENDERED
HIS WEAPON AND CONTRABAND IN
RESPONSE TO THE OFFICER'S INQUIRY.**

A. Summary of the argument.

When Officer Chafer announced his intent to perform a protective search and inquired about possession

of sharp objects, Mansfield stated that he possessed a switchblade knife. As the circuit court found, Officer Chafer's actions were reasonably based on inferences drawn from his law enforcement experience that drug users frequently carry knives.

B. Standard of Review.

A trial court's factual findings on a motion to suppress are upheld unless clearly erroneous. Whether the facts satisfy constitutional principles is a question of law for this court to decide. The appellate court is not bound by the trial court's decision on questions of law, but benefits from its analysis. *State v. Bridges*, 2009 WI App 66, ¶ 9, 319 Wis. 2d 217, 224, 767 N.W.2d 593, 596.

C. Argument.

Mansfield argues that no reasonable suspicion

existed for a pat-down search. He emphasizes that Officer Chafer did not believe that Mansfield was armed or consider him to be a threat. Brief at 23-24. However, an officer's belief that his safety or others' is in danger because an individual may be armed is not a prerequisite to conducting a protective search for weapons. *State v. Kyles*, 2004 WI 15, ¶ 23, 269 Wis. 2d 1, 13, 675 N.W.2d 449, 454

Officer Chafer justified his intent to pat the outside of Mansfield's pockets because he was not familiar with Mansfield, and he was dealing with a possibility of drugs. R. 38 at 34. From his training and seventeen years of law enforcement experience, Officer Chafer knew that drug users frequently carry knives. R. 38 at 20, 34, 36.

The circuit court correctly found the officer's experience supplied reasonable suspicion to ask for the

pat-down. R. 38 at 45. Due weight must be given to the specific reasonable inferences which the officer is entitled to draw from the facts in light of his experience. *Kyles*, 2004 WI 15, ¶ 4, 269 Wis. 2d at 7, 675 N.W.2d at 451-52; *Terry v. Ohio*, 392 U.S. 1, 27 (1968). Courts have frequently observed that illegal drugs and weapons go hand in hand. *State v. Pickens*, 2010 WI App 5, ¶ 31, 323 Wis. 2d 226, 241, 779 N.W.2d 1, 8.

Before any protective search occurred, Officer Chafer permissibly inquired about Mansfield's possession of sharp objects. R. 38 at 25. During a traffic stop, a police officer may make inquiries to obtain information confirming or dispelling the officer's suspicions concerning weapons or other dangerous articles; the response may provide information that is relevant to whether a protective search

is reasonable. *Bridges*, 2009 WI App 66, ¶¶ 19-20, 319 Wis. 2d at 229, 767 N.W.2d at 599 (citations omitted).

Mansfield responded to Officer Chafer's inquiry by volunteering that he carried a switchblade in his pocket, possession of which supplied the factual basis for Count Five of the criminal complaint. R. 7. He didn't object when the officer removed the knife, then Mansfield voluntarily produced the marijuana pipe and handed over the three bags of contraband.

Mansfield suggests coercion by mischaracterizing the encounter as "three or four police officers there at the scene at once." Appellant's brief at 23. In fact, Officer Chafer dealt with Mansfield one-on-one. Detective Cook had not yet arrived and Chief Rieper was occupied by running Kelly's license and contacting the K-9 unit. R. 38 at

6-7, 23-24. Kelly was immediately present and apparently unrestrained at the time. R. 38 at 23.

The encounter was cooperative, as Mansfield admits. Brief at 23, 25. He displayed no characteristics rendering him vulnerable to police manipulation, and he responded to the officer's request by voluntarily surrendering the contraband in his possession. *See State v. Artic*, 2010 WI 83, ¶ 33, 327 Wis. 2d 392, 414, 786 N.W.2d 430, 441.

Officer Chafer's experience reasonably indicated that Mansfield could be armed, generating sufficient reasonable suspicion for a protective search. Before any search occurred, Mansfield responded to the officer's permissible inquiry by surrendering the weapon and contraband in his possession. On these facts, no violation of the Fourth Amendment or Article I, Section II occurred.

III. U.S. SUPREME COURT AND WISCONSIN PRECEDENT FORECLOSE MANSFIELD'S ARGUMENT THAT WISCONSIN'S IMPLIED CONSENT LAW IS UNCONSTITUTIONAL.

A. Summary of the argument.

Mansfield argues that Wisconsin's implied consent statute is inherently coercive because refusal to comply with testing is punishable by civil penalties. His argument has been rejected by the United States Supreme Court, *Birchfield v. North Dakota*, 136 S. Ct. 2160, 195 L.Ed.2d 560 (2016), and the Wisconsin Court of Appeals, *State v. Blackman*, 2016 WI App 69 ¶ 11, 371 Wis.2d 635, 643, 886 N.W.2d 94, 98, *petition for review granted*. Alternatively, the good faith exception to the exclusionary rule applies because the officers acted in good faith compliance with existing law.

B. Standard of review.

The constitutionality of a statute presents a question of law reviewed de novo. *State v. Padley*, 2014 WI App 65, ¶ 16, 354 Wis. 2d 545, 560, 849 N.W.2d 867, 874.

C. Argument.

Mansfield moved the circuit court for dismissal on grounds that the Wisconsin implied consent statute, § 343.05, Stats., is unconstitutional. R.16; Brief at 25-31. In a written decision, the circuit court denied the motion. R. 21.

On appeal, Mansfield concedes that he consented to the blood draw, but argues his consent was coerced by the threatened civil sanction of lost driving privileges. Brief at 31. He contends that the holding of *Birchfield v. North Dakota*, 136 S. Ct. 2160, 195 L.Ed.2d 560 (2016)(motorists cannot be deemed to have consented to submit to a blood

test on pain of committing a criminal offense), should be extended to encompass civil penalties for refusal of testing. Defendant's brief at 30.

However, the circuit court aptly quoted the *Birchfield* decision:

Our prior opinions have referred approvingly to the general concept of implied-consent laws that impose civil penalties and evidentiary consequences on motorists who refuse to comply. (Citations omitted). Petitioners do not question the constitutionality of those laws and nothing we say here should be read to cast doubt on them.

R. 21, quoting *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2186 (2016).

Further, the Court of Appeals recently held that Wisconsin's implied consent procedure is not coercive:

"Impliedly consented," however, does not mean compelled. The implied consent law does not compel a blood sample as a driver has the right to refuse to give a sample. A driver may submit a sample (actual consent) or may withdraw consent (refusal) when law enforcement requests a sample. The choice is solely with the driver.

State v. Blackman, 2016 WI App 69 ¶ 11, 371 Wis.2d

635, 643, 886 N.W.2d 94, 98, *petition for review granted*.

Mansfield notes in passing that the Wisconsin Supreme Court accepted review of *Blackman*. Brief at 6. However, should *Blackman* be overruled on review, suppression would still be inappropriate because the officers acted in good faith reliance on Wisconsin law as it existed at the time of the traffic stop. Because the police reasonably relied on clear and settled law in this state, the good faith exception to the exclusionary rule precludes suppression of the blood draw evidence. *State v. Foster*, 2014 WI 131, ¶ 49, 360 Wis. 2d 12, 36–37, 856 N.W.2d 847, 859.

IV. Conclusion.

Mansfield contends that the stop, the frisk and the blood draw violated the Fourth Amendment, but all of his

arguments fail.

Police followed up on a citizen-informant's tip from the Turtle Lake Casino and corroborated its description of Mansfield, his passenger and motorcycle after observing him at a location consistent with his reported time of departure. Police had found information from this source to be reliable in the past and the informant's report of drug use added exigency to supplement the tip. On these facts, sufficient reasonable suspicion existed to justify the stop.

Officer Chafer's reliance on his experience with armed drug users rendered a protective search justifiable, but no search occurred. In response to the officer's inquiry about his possession of sharp objects, Mansfield voluntarily surrendered his illegally-possessioned weapon before the officer could perform a pat-down. Mansfield

suggests coercion, but the record indicates his actions were voluntary.

Mansfield argues that the blood draw made pursuant to implied consent violated the Constitution, but supplies no authority in support. Under authority existing at the time of the stop, and at present, Wisconsin's implied consent law is lawful.

The circuit court correctly found that Mansfield isn't entitled to relief on these grounds. This Court should affirm.

Respectfully submitted this 28th day of March, 2017.

Angela L. Beranek
Barron County District Attorney
State Bar No. 1030659
Attorney for Plaintiff-Respondent

Barron County District Attorney's Office
1420 State Highway 25 North
Barron, WI 54812-3003
(715) 537-6220 (phone)
(715) 537-6155 (fax)
angela.beranek@da.wi.gov

CERTIFICATION

I certify that this brief satisfies the form and length requirements of Rule 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 3802 words.

Dated this 28th day of March, 2017.

Angela L. Beranek
Attorney for Plaintiff-Respondent

**CERTIFICATION OF COMPLIANCE WITH WIS. STAT.
§ (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 Wis. Stat. § (Rule) 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 28th day of March, 2017.

Angela L. Beranek
Attorney for Plaintiff-Respondent

CERTIFICATION OF SERVICE, §809.80(4), Stats.

I certify that this brief was deposited in the United States Mail for delivery to the Clerk of the Court of Appeals by first-class mail on March 28, 2017. I further certify that the brief was correctly addressed and postage was prepaid.

Dated March 28, 2017.

Angela L. Beranek
Attorney for Plaintiff-Respondent