STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
CASE NO. 18 AP 1167

COUNTY OF DUNN,

Plaintiff-Respondent,

vs.

CASHE L. NEWVILLE,

Defendant-Appellant.

APPEAL FROM AN ORDER OF THE CIRCUIT COURT
FOR DUNN COUNTY, CASE NO. 17TR1318
THE HONORABLE ROD W. SMELTZER PRESIDING

DOAR, DRILL & SKOW, S.C.
Katie J. Bosworth (#1099686)
103 N. Knowles Ave
P.O. Box 388
New Richmond, WI 54017-0388
(715) 246-2211

Attorney for Defendant-Appellant
Cashe Newville

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Defendant-Appellant does not request oral argument on this appeal for the reason set forth in Wis. Stat. § 809.22(2)(b), but does request publication for the reasons set forth in § 809.23(a)(1).

STATEMENT OF THE ISSUES

1. Did Defendant-Appellant Cashe Newville forfeit his right to appeal the circuit court's denial of his Motion to Suppress when he entered a plea of "no contest" to Operating a Motor Vehicle while Under the Influence, 1st Offense, in violation of Wis. Stat. § 346.63(1)(a)?

2. Did the circuit err in denying Defendant-Appellant Cashe Newville's Motion to Suppress the results of his blood test, finding that the officer had reasonable suspicion to expand the scope of the traffic stop into an impaired driving investigation and conduct field sobriety tests?

3. Did the circuit err in denying Defendant-Appellant Cashe Newville's Motion to Suppress the results of his blood test, finding that the officer had probable cause to administer a preliminary breath test?

4. Did the circuit err in denying Defendant-Appellant Cashe Newville's Motion to Suppress the results of his blood test, finding that the officer had probable cause to arrest Newville?

STATEMENT OF THE CASE

On February 17, 2017, around 10:40 P.M., Defendant-Appellant Cashe Newville (hereinafter "Newville") was driving westbound on Highway 12 in Dunn County, Wisconsin. (R. 42:4-5, 17; App. 7-8, 20.) Newville was travelling at a speed of 47 miles per hour in a 55 mile per hour zone. (R. 42:4; App. 7.) At the same time, Deputy Brandon Scott with the Dunn County Sheriff's Office was on routine patrol travelling eastbound on Highway 12. (R.42:3-4; App. 6-7.) After Deputy Scott and Newville passed each other on Highway 12, travelling opposite directions, Scott maintains he saw either in his rearview mirror or by turning around and looking that Newville's rear registration lamp was out. (R. 42:17-18; App. 20, 21.) At that point, Scott turned his vehicle around and began to follow the Newville vehicle. (R. 42:17; App. 20.) Shortly after Scott turned his patrol car around and began following Newville, Newville activated his left turn signal and turned left onto 690th Avenue from Highway 12. (R. 42:19; App. 22.)

Deputy Scott initiated a traffic stop after observing Newville's rear registration lights to be out, Newville travelling at a slow rate of speed, and Newville crossing the center of the unmarked roadway of 690th Avenue.[1] (R. 42:5-6; App. 8-9.)

[1] At no time during the time Scott was following Newville on Highway 12, which Scott estimated to be over a mile, did Scott observe Newville swerving, abruptly stopping or accelerating, deviating from his lane, or driving in an inappropriate manner. (R. 42:19-20; App. 22-23.) The crossing of (what Scott estimated to be) the center of the unmarked road occurred on 690th Avenue. (*Id.*)

Newville promptly pulled over after Scott initiated his lights and sirens.[2] (R. 42:21-22; App. 24-25.)

Scott testified that Newville's demeanor throughout his interaction with him was cooperative. (R. 42:22; App. 25.) Newville was honest about his registration lamp being out. (R. 42:22; App. 25.) He was upfront with the officer in explaining that the vehicle's registration had not been properly transferred to him yet. (*Id.*) Newville also explained that he had slowed his speed in response to the officer's bright headlights in his rearview mirror, making it difficult for Newville to see the roadway. (R. 42:6; App. 9.) When Newville stepped out of his vehicle, he did not fall, lean on his vehicle for balance, or lose his balance in any way. (R. 42:22; App. 25.) He stood in an appropriate manner while speaking with Deputy Scott, and followed all of Deputy Scott's commands. (R.42:23; App. 26.) No odor of alcohol was detected on Newville's person. (*Id.*) Scott did not detect dilated pupils, fast speech, shaky hands, abnormal breathing, heavy sweating, abrupt mood changes, jaw clenching, or any other suspicious behavior. (R. 42:38, App. 41.) The only thing Scott observed after initiating the traffic stop was that there was a lighter in Newville's driver's side compartment. (R. 42:8; App. 11.)

After observing the lighter, Deputy Scott began asking Newville about prior

[2] Scott originally testified that Newville was "slow to stop" his vehicle in response to the officer activating his emergency lighting. (R. 42:6; App. 9.) However, when confronted with video evidence of the stop, Scott testified that Newville activated his brake lights within 1 second of Scott activating his lights and siren to initiate a traffic stop, and had pulled his vehicle over to the side of the road within 5 seconds. (R. 42:21-22; App. 24-25.)

drug use. (R. 42:8; App. 11.) Newville advised the officer he had not used methamphetamine for about two months, but was supposed to report to jail for a prior methamphetamine offense in the coming days. (R.42:8; App. 11.)

Deputy Scott then asked Newville to open his mouth and show the officer his tongue. (R. 42:9; App. 12.) Newville did so, and the officer observed a yellow film at the back of Newville's tongue. (R. 42:9; App. 12.) The reason the officer asked to look at Mr. Newville's tongue is that the officer believed a yellow film on one's tongue is indicative of methamphetamine use. (*Id.*) However, Deputy Scott was not trained as a drug recognition expert, and had no qualifications to evaluate persons for being under the influence of drugs other than alcohol. (R. 42:24; App. 27.)

After inspecting Newville's mouth, Deputy Scott asked Newville to perform a series of field sobriety tests (FST) designed to measure one's impairment by alcohol. (R. 42:9, 26-27; App. 12, 29-30.) The tests performed on Newville were not designed to measure impairment for drugs other than alcohol. (*Id.*) A different battery of tests, called a drug recognition evaluation (DRE), has been designed to evaluate whether persons are under the influence of drugs other than alcohol. (R. 42:25; App. 28.) The reason a different battery of tests is required to evaluate people for the presence of drugs than what is required to evaluate people for the presence of alcohol is that the human body exhibits different signs and symptoms when under the influence of drugs than those exhibited when under the influence of alcohol. (R. 42:25; App. 28.) A drug recognition evaluation was not performed on Newville until after he was arrested. (R. 42:26; App. 29.) Again, this was because Scott was not

trained or qualified to perform the drug recognition evaluation. (R. 42:24; App. 27.)

Of the standardized FST Scott performed on Newville (which were designed to measure for alcohol impairment), Newville passed all but one.[3] (R. 42:29; App. 32.) He passed the one-leg stand and the horizontal gaze nystagmus without indications of impairment, but had trouble with the walk and turn test.[4] (R. 42:29; App. 32.)

After administering FST to detect for the presence of alcohol, Deputy Scott administered a preliminary breath test to measure for alcohol consumption, the result of which was 0.00. (R. 42:30; App. 33.)

After obtaining a breath result of 0.00, indicating Newville had not consumed alcohol, Scott arrested Newville for operating a motor vehicle under the influence of an intoxicant. (R. 42:30; App. 33.) After his arrest, Newville was transported to the local hospital where a sample of his blood was drawn to be used against him as

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[3] Deputy Scott administered the one-leg stand, the walk and turn, and the HGN test, all of which are accepted within the scientific community as standardized field sobriety tests to detect for the presence of alcohol. (R. 42:9-13,26; App. 12-16, 29.) In addition, he performed two non-standardized field sobriety tests – the alphabet test and the counting test. (R. 42:29; App. 32.) Because those tests are non-standardized, meaning they have not been verified as accurate measures to detect the presence of drugs or alcohol, those results must be ignored.

Additionally, Scott administered the Romberg test, which is a standardized test used to detect impairment by drugs other than alcohol. (R. 42:29; App. 32.) The results of this must also be ignored, however, because Scott was not trained as a DRE and therefore had no qualifications to administer this test properly. (R. 42:24; App. 27.)

[4] The walk and turn test required Newville be able to follow directions. (R. 42:27; App. 30.) Newville advised officers at the scene that he could not read or write, and impliedly asserted that he had trouble following detailed instructions. (R. 42:27-28; App. 30-31.) Indeed, when looking at the video recording of Newville's arrest, he can be seen performing the physical portions of the walk and turn test relatively well; it is the instructional portions he had difficulty with. (*See* R. 24.)

evidence in the operating while under the influence case. (R. 42:26; App. 29.)

In summary, the officer observed an equipment violation by way of the license plate registration lamp being unlit. The officer initiated a traffic stop. Upon approaching the Newville vehicle the officer made no additional observations of suspicious behavior, or any observations indicating impairment. The officer did observe a lighter in Newville's vehicle. After observing the lighter, the officer began questioning Newville about prior drug use. Newville did not make any statements about recent drug use. The officer then seized Newville's person and conducted a search of his mouth by inspecting his tongue. He did this without a warrant. Then the officer administered FST which measured for the presence of alcohol, and Newville passed the majority of them. A PBT was conducted, confirming the results of the FST and establishing Newville was not under the influence of alcohol. Newville was then arrested for operating under the influence of an intoxicant.

As a result of the events of February 17, 2017, Newville was charged with various traffic citations, including operating a motor vehicle under the influence (OWI) in violation of Wis. Stat. § 346.63(1)(a). (R. 1.) Newville brought a motion challenging the use of the results of the blood test on grounds that the traffic stop, field sobriety tests, preliminary breath test, and arrest were all performed illegally and in violation of his constitutional rights. (R. 17; App. 52.) The Court denied Defendant's motion, finding the officer had reasonable suspicion to conduct the traffic stop on the basis of the registration lamp being out; had reasonable suspicion to expand the scope of the stop and question Newville about drug use on grounds

that the officer observed the lighter in Newville's car; had reasonable suspicion to conduct FST on the basis of the lighter and the officer's observations of Newville's tongue; and had probable cause to administer a preliminary breath test and arrest Newville. (App. 1.)

Newville appealed the circuit court's denial of his motion to suppress. Newville submits this brief in support of his request for appellate relief, arguing that the circuit court erred (1) in finding that the officer had reasonable suspicion to expand the scope of the stop from that of a traffic violation and conduct field sobriety tests; (2) in finding the officer had probable cause to administer a preliminary breath test; and (2) in finding that the officer had probable cause to arrest Newville. Appellant asks this Court to overturn the circuit court's denial of his Motion to Suppress.

ARGUMENT

I. NEWVILLE DID NOT FORFEIT HIS RIGHT TO APPEAL THE CIRCUIT COURT'S DENIAL OF HIS MOTION TO SUPPRESS BY ENTERING A PLEA OF NO CONTEST TO THE CITATION.

A. Standard of Review.

By entering a "no contest" plea, a person waives the right to raise non-jurisdictional issues on appeal, including any alleged constitutional rights violations. *County of Racine vs. Smith*, 122 Wis. 2d 431, 434 (Ct. App. 1984). An exception to the waiver rule exists in criminal cases for orders denying motions to suppress evidence of a defendant per Wis. Stat. § 971.31(10). *Id.* That exception, however, does not apply to traffic citation or civil forfeiture cases. *Id.* at 436-37.

According to *County. of Ozaukee v. Quelle*, such a waiver is not a jurisdictional bar to an appeal, but rather a principle of judicial administration. 198 Wis. 2d 269, 542 N.W.2d 196 (Ct. App. 1995), *abrogated on other grounds by Washburn Cty. v. Smith*, 2008 WI 23, 308 Wis. 2d 65, 746 N.W.2d 243. In other words, an appellate court has the discretion to determine whether the waiver rule should be applied. *Id.* In making said determination, the Court should consider (1) the administrative efficiencies resulting from the plea; (2) whether an adequate record has been developed; (3) whether the appeal appears motivated by the severity of the sentence; and (4) the nature of the potential issue. *Id.*

B. Principles of Judicial Administration Justify a Finding that Newville did not Forfeit his Right to Appeal.

First, Newville's no contest plea avoided administrative inefficiencies. The only viable defense in Mr. Newville's case was the motion to suppress evidence of his blood test based on the officer's unlawful stop and seizure. Because the law governing controlled substances prohibits **any** detectable amount in one's blood while driving, and given the results of Newville's blood test, this was not a case in which Newville had a viable defense at trial, even if his blood test results were positive from past use. It would have been a waste of judicial resources in this case to proceed to trial simply to preserve the suppression issue for appeal. Just as in *Quelle*, Newille's "no contest plea saved administrative costs and time" and, "improve[d] the administration of justice to avoid an unnecessary and protracted trial when the sole issue is a review of a suppression motion." 198 Wis. 2d at. 275.

Second, an adequate record on the suppression issues is before the Court. A written motion was filed with the circuit court, and a hearing on said motion was held. A complete transcript from the motion hearing is in the appellate record. All of the arguments made and issues raised in this appeal were also made and raised in the Appellant's written motion, and/or orally at the motion hearing before the circuit court. The circuit court had the opportunity to review all of the issues presently before the Appeals Court. As such, just as was the case in *Quelle*, the "issue[s] raised on appeal w[ere] squarely presented before the trial court and . . . we have an adequate record." 198 Wis. 2d at. 275.

With regard to the third factor, this appeal was not motivated by the severity of the sentence. Mr. Newville was sentenced according to standard OWI sentencing guidelines for Dunn County. He did not receive a more lenient sentence than he was likely to receive had he proceeded to trial and lost. His sentence was resolved by written stipulation (R. 27, 28), and he was therefore aware of the sentence he would receive as a result of his plea ahead of time.

In terms of the fourth *Quelle* factor, though there is ample case law in Wisconsin regarding reasonable suspicion and probable cause to arrest in the context of a traffic stop and OWI investigation, the application of said law to the facts of this case is one of first impression. Specifically, allowing an officer to stop a driver for a traffic violation and then proceed to search his body, using the results of said search to justify the expansion of the scope of the stop, is not a fact scenario that has been upheld as permissible by the Appellate Courts. In addition, whether the search of Newville's mouth and tongue was a permissible intrusion is an issue that has not been addressed by this Court. This case therefore presents issues for which an opinion from this Court would guide the bench and bar.

Finally, it should be noted that in this case the Plaintiff-Respondent is in agreement with Appellant that the principles of judicial administration justify a finding that the waiver rule should not operate as a bar to this appeal.

For all of the foregoing reasons, the Court should not apply the waiver rule, and should find that Newville did not forfeit his right to appeal.

II. THE CIRCUIT COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS EVIDENCE OF HIS BLOOD TEST FROM USE AT TRIAL.

A. Standard of Review.

The Appellate Court applies a two-step standard of review when reviewing a motion to suppress evidence. *See State v. Eason*, 2001 WI 98, ¶ 9, 245 Wis. 2d 206, 629 N.W.2d 625. First, the circuit court's findings of fact are upheld unless clearly erroneous. *See id.* Next, the circuit court's application of constitutional principles is reviewed *de novo*. *See id.*

B. The Police Officer did not have Reasonable Suspicion to Expand the Scope of the Traffic Stop into an Impaired Driving Investigation and Conduct Field Sobriety Tests.

Deputy Scott initiated a traffic stop after he observed Newville's rear registration lights to be out, Newville travelling at a slow rate of speed (47 miles per hour in a 55 mile per hour zone), and Newville crossing the center of the unmarked roadway of 690th Avenue. (R. 42:5-6; App. 8-9.) Appellant concedes that the officer had reasonable suspicion to conduct a traffic stop of Newville's vehicle on grounds that the defective registration lamps were an equipment violation.[5] *See State v. Houghton*, 2015 WI 79, ¶ 30, 364 Wis. 2d 234, 868

[5] It should be noted that the State could point to no traffic violation that Newville violated by travelling slightly under the speed limit, nor did the State cite a traffic code that prohibits crossing of the officer's estimation of the center of an unmarked roadway. Additionally, the video of the traffic stop calls into question whether Newville was crossing the center of the roadway at all. (R. 24.) Appellant concedes, however, that the traffic stop was justified by the equipment violation of the rear registration lamp being out.

N.W.2d 143 ("[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops.").

However, a police officer is only permitted to expand the scope of a traffic stop beyond an investigation into the traffic violation that prompted the initial stop when he or she becomes aware of **additional facts** that "give rise to an articulable suspicion that the person has committed or is committing an offense or offenses." *State v. Colstad*, 2003 WI App 25, 119, 260 Wis. 2d 406, 659 N.W. 2d 394 (emphasis added.) In determining whether there was reasonable suspicion to justify such an expansion, the Court looks to the totality of the facts and circumstances. *See State v. Post*, 2007 WI 60, ¶ 13, 301 Wis. 2d 1, 733 N.W. 2d 634. A law enforcement officer's hunch, or inchoate and unparticularized suspicion is insufficient. *Id.* at ¶10.

In order for Deputy Scott to lawfully expand the scope of the stop on February 17 from that of a traffic violation for the lamp being out into an investigation for impaired driving, he must have had some additional evidence – other than what prompted his initial stop – that would have led a reasonable officer to conclude Newville was committing another offense, in this case an impaired driving offense. In other words, Deputy Scott must have observed some other behavior or gathered some additional fact aside from the driving conduct and the lamp being out that would have led a reasonable officer to believe Newville was

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Indeed, the trial court found that the traffic stop was justified by the registration lamp being out, noting the driving over the center line and slowed driving may have been suspicious, but did not necessarily justify the stop. (R. 42:44; App. 47.)

driving while impaired. Here, there simply was no such additional facts or observed behavior. Mr. Newville was cooperative with and friendly to the officer. He was not leaning on his vehicle for balance, having trouble standing, fumbling with his license or vehicle controls, or exhibiting behavior indicative of drug use, such as dilated pupils, abnormal breathing, excessive nervousness, jaw clenching, heavy sweating, or any other unusual behavior whatsoever. Additionally, the officer did not detect an odor of alcohol on him, nor did he detect an odor of any drug or see any evidence of alcohol or drug use in the Newville vehicle. The only new information gathered by Deputy Scott before expanding the scope from that of a traffic violation to an impaired driving investigation was his observation of a lighter. A lighter is not evidence of impairment. It does not indicate an offense is being committed. Accordingly, the officer had no additional facts to justify his expansion of the traffic stop.

Nonetheless, after observing the lighter, the officer began asking Newville questions about prior drug use.[6] This was an unlawful expansion of the traffic stop without requisite suspicion, and as such all evidence gathered therefrom should have been suppressed. *See State v. Knapp*, 2005 WI 127, ¶ 24, 285 Wis. 2d 86, 700 N.W.2d 899 (citing *Wong Sun v. United States*, 371 U.S. 471, 485-488 (1963)).

[6] Even if this expansion was somehow permissible, no evidence was gathered during the officer's questioning that justified a further expansion or the administration of FST. During this colloquy about prior drug use, Newville stated the last time he used drugs was two months prior. (R. 42:8; App. 11.) Newville denied recent drug use. (*Id.*)

1. Deputy Scott further expanded the scope in violation of Newville's constitutional rights by seizing and searching Newville's person.

After the initial unlawful expansion of the scope of the traffic stop, Deputy Scott searched Newville's mouth and tongue for a yellow film. The State submitted no evidence whatsoever that a yellow film on one's tongue is indicative of drug use. Indeed, Deputy Scott was not certified as a drug recognition evaluator, and therefore was not properly trained or qualified to evaluate persons for being under the influence of drugs. (R. 42:24; App. 27.) His examination of Newville's mouth was based on exactly the type of hunch that is prohibited by the case law.[7] *See Post*, 2007 WI 60, ¶ 13.

However, even if a yellow film on the tongue was an indicator of recent drug use, an officer is not permitted to seize a suspect and start searching their person without reasonable articulable suspicion that they have something illegal on them. *See State v. McGill*, 2000 WI 38, ¶ 21, 234 Wis. 2d 560, 569, 609 N.W.2d 795, 801 (explaining that officers are barred by *Terry v. Ohio* from conducting "a protective frisk as a part of every investigative encounter. Rather, *Terry* limits the protective frisk to situations in which the officer is 'justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others.'")(citing Terry V. Ohio, 392 u.s. 1, 30-31(1968) The officer made no observations that justified the seizure and search of Newville's person.

[7] This is further demonstrated by the fact that an examination of a suspect's tongue is not a part of a drug recognition evaluation.

Scott's search of Newville's tongue was akin to an officer approaching a driver suspected of a mere traffic violation and telling him to step out of the car and submit to a search of his pockets. Upon so searching, if the officer found an empty alcohol bottle, surely this could not be used to justify the administration of FST. Deputy Scott impermissibly conducted a search of Newville's person and attempted to use the results thereof to justify a further investigation, i.e. administration of FST. To uphold the officer's actions in this case would allow police officers to conduct traffic stops for simple traffic code violations, and then search drivers without any evidence that the driver possessed contraband. Not only would this run contrary to the principles outlined in *Terry*, but it would also allow baseless investigative searches in an attempt to gather evidence to justify performing FST. This type of search is clearly barred by case law, which dictates the quantum of proof officers must have before conducting each sequential step in an impaired driving investigation. *See e.g. State v. Betow,* 226 Wis.2d 90, 94–95, 593 N.W. 2d 499 (Ct.App.1999).

C. The Police Officer did not have Probable Cause to Conduct a Preliminary Breath Test.

Wis. Stat. § 343.303 authorizes an officer to use a preliminary breath test (PBT) only when he or she has probable cause to believe that a person is operating a motor vehicle under the influence of an intoxicant. "Probable cause to believe" is understood to mean a quantum of proof greater than the reasonable suspicion necessary to justify an investigative stop, and greater than the reason to believe

that it is necessary to require a PBT from a commercial driver, but less than the level of proof required to establish probable cause of arrest. *Cty. of Jefferson v. Renz*, 231 Wis. 2d 293, 315, 603 N.W. 2d 541, 551 (1999). In addition, the probable cause to believe that a person is under the influence must be possessed by the officer prior to the administration of the PBT.[8] *Id.*

For all the reasons stated above, Deputy Scott did not have adequate information to justify the administration of FST in this case. But even if he had, Newville's performance on those FST did not justify administration of the preliminary breath test, because no additional evidence of impairment was gathered from his performance. The tests conducted on Newville measured for alcohol impairment, which Deputy Scott did not suspect Newville of. The majority of the tests administered either were not standardized (meaning they are not verified as accurate measures of alcohol consumption) or Newville passed them. Newville made no admissions of recent drug or alcohol use, and the officer did not make any observations to contradict his statements. In short, no evidence gathered from the administration of FST justified administration of the preliminary breath test. Accordingly, all evidence gathered therefrom should have been suppressed. *Knapp*, 2005 WI 127, ¶ 24.

[8] Accordingly, any evidence gathered from the DRE that was eventually performed on Newville after his arrest cannot be considered either by the officer in evaluating whether to administer the PBT/make an arrest, or by the Court in determining if probable cause to administer the PBT/make an arrest existed.

D. The Police Officer did not have Probable Cause to Arrest.

Warrantless arrest is not lawful except when supported by probable cause. Wis. Stat. § 968.07; *State v. Secrist*, 224 Wis. 2d 201, 209, 589 N.W.2d 387 (1999). Probable cause to arrest refers to "the quantum of evidence within the arresting officer's knowledge at the time of the arrest which would lead a reasonable police officer to believe that the defendant probably committed or was committing a crime." [9] *Id.* at 212 (citations omitted).

The officer did not have a warrant for Mr. Newville's arrest. As such, in order to lawfully arrest Mr. Newville for operating a motor vehicle under the influence of an intoxicant, the officer must have had knowledge that would have led a reasonable officer to believe that Mr. Newville was probably under the influence of an intoxicant at the time he operated a motor vehicle. *See* Wis. Stat. § 346.63(1)(a).

Deputy Scott did not suspect Newville of operating while under the influence of alcohol. He did not detect an odor of alcohol on Newville's person, nor did he detect any evidence of alcohol consumption in Newville's behavior or in his vehicle. Newville passed the majority of standardized field sobriety tests that were administered. His PBT result also indicated he had not consumed alcohol. As such, probable cause did not exist to justify a warrantless arrest of Mr. Newville for operating his motor vehicle under the influence of alcohol.

Additionally, Deputy Scott was not trained or qualified to administer a drug

[9] *See supra*, Footnote 8.

recognition evaluation, which would detect the presence of drugs in a driver. A DRE was not performed on Newville.[10] Newville did not exhibit any behavior indicative of drug use. He did not possess any items indicative of drug use. He made no statements indicating he had recently used drugs. Deputy Scott did not detect any odors indicating recent drug use. Accordingly, probable cause did not exist to justify a warrantless arrest of Mr. Newville for operating his motor vehicle under the influence of drugs.

Because the arrest was unlawful, all evidence gathered therefrom, including the blood test performed on Newville after his arrest, should have been suppressed from evidence. *Knapp*, 2005 WI 127, ¶ 24.

CONCLUSION

For all of the foregoing reasons, the Court must reverse the circuit Court's oral order denying Newville's motion to suppress, and order the case be dismissed, in its entirety.

Dated: November 20, 2018.

/s/ Katie J. Bosworth
DOAR, DRILL & SKOW, S.C.
By: Katie J. Bosworth (#1088686)
Attorneys for Defendant/Appellant
103 North Knowles Avenue
PO Box 388
New Richmond, WI 54017-0388
kbosworth@doardrill.com

[10] A DRE was performed post-arrest. *See supra*, Footnote 8.

CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix produced using the following font: Proportional serif font: Minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of a minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 4696 words.

I further 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 opinions 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 trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions or 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.

I further certify that I have submitted an electronic copy of this brief, 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 as of this date. A

copy of the certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: November 20, 2018.

/s/ Katie J. Bosworth
DOAR, DRILL & SKOW, S.C.
By: Katie J. Bosworth (#1088686)
Attorneys for Defendant/Appellant
103 North Knowles Avenue
PO Box 388
New Richmond, WI 54017-0388
kbosworth@doardrill.com