

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2018 AP 001956
Green Lake County Circuit Court Case Nos. 2018TR000129

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

FAITH A. PARAFINIUK,

Defendant-Appellant.

AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND THE DECISION OF THE TRIAL
COURT FINDING THAT MS. PARAFINIUK REFUSED
CHEMICAL TESTING, IN GREEN LAKE COUNTY, THE
HONORABLE MARK T. SLATE, JUDGE, PRESIDING

THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT FAITH A. PARAFINIUK

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In re Refusal of Anagnos, 2012 WI 64, 341 Wis.2d
576, 815 N.W.2d 675. 4

Wisconsin Statutes

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Wis. Stat. §346.18(4). 3

ARGUMENT

The State attempts to expand the scope of Wis. Stat. §346.18(4), and create an obligation where none exists. The State seeks to extend Wis.Stat. §346.18(4) to require drivers to yield to vehicles traveling on adjacent roadways. The State argues that drivers should anticipate the movements of drivers on adjacent roadways. Wis. Stat. §346.18(4), does not require that for which the State argues. The statute is clear, in terms of yielding the right of way, a vehicle before entering a highway from a non-highway access must yield to all other vehicles on that particular highway. There is no obligation to anticipate the movements of drivers in adjacent parking areas, or on adjacent highways.

Here, when Ms. Parafiniuk turned onto Old Green Lake Road, Officer Downs was still on Highway 23, and he was turning simultaneously. Contrary to the State's contention, Officer Downs had the obligation to yield to Ms. Parafiniuk. See Wis. Stat. §346.31 (Turn should be made with "due regard for all other traffic"). Here, Officer Downs should have anticipated the movement of the traffic on Old Green Lake Road, before he turned from Highway 23. Thus, contrary to the State's conclusion, Downs had the obligation, not Ms.

Parafiniuk. Based on the above, there was no traffic violation. Thus, the stop of Ms. Parafiniuk's vehicle was not justified and unconstitutional.

Finally, the State argues the defense waived the argument concerning the extension of the traffic stop. Brief of Plaintiff-Respondent page 5. The Court specifically addressed this argument, and found Officer Downs had sufficient suspicion to "extend the traffic stop to perform field sobriety tests." (R.20:36/ReplyApp. 1). Reasonable suspicion and probable cause are an issue in the context of refusal hearings. See *In re Refusal of Anagnos*, 2012 WI 64, 341 Wis.2d 576, 815 N.W.2d 675. Logically, the Court must also consider whether the officer had the requisite level of suspicion to extend the stop. To meet this test, the officer must show additional specific and articulable facts, which taken together with rationale inferences from those facts, reasonably warrant the officer's continued intrusion. *Terry v. Ohio*, 392 U.S.1, 21, 88 S.Ct. 1868, 20 L. Ed.2d 889 (1968). The officer's suspicion must be based on something more than a hunch. *Id.*

This issue is adequately addressed in the Brief of Defendant-Appellant. However, to reiterate, the additional factors observed by Officer Downs would not have provided

him with reasonable suspicion that Ms. Parafiniuk was operating a motor vehicle while impaired or with a detectable amount of a restricted controlled substance in her system. Because of this, Officer Downs was not justified to extend the traffic stop for field sobriety testing. His decision to extend the traffic stop was based on nothing more than an inchoate and unparticularized hunch.

CONCLUSION

Because of the above, the trial court erred in finding the stop and continued detention were justified. The Court should reverse the order and vacate the refusal.

Dated this 22nd day of January, 2019.

Respectfully Submitted

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FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 11 pages. The word count is 1452.

Dated this 22nd day of January, 2019.

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**CERTIFICATION 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 s. 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 22nd day of January, 2019.

Respectfully submitted,

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APPENDIX CERTIFICATION

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 s. 809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) 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 this appeal is taken from a circuit court order or a 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 22nd day of January, 2019.

Respectfully submitted,

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APPENDIX