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SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2019AP797-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ISAAC D. TAYLOR,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

The State opposes Isaac D. Taylor's petition for review. The court of appeals correctly applied the applicable law when it affirmed Taylor's conviction for operating while intoxicated. Whether an officer has reasonable suspicion to initiate a traffic stop is a fact-intensive inquiry guided by well-established legal principles. *See, e.g.*, *State v. Rose*, 2018 WI App 5, ¶ 14, 379 Wis. 2d 664, 907 N.W.2d 463. Here, the court of appeals determined that the stop of Taylor's vehicle was supported by several factors, all of which have been recognized at one time or another as relevant to the reasonable suspicion inquiry. That the court of appeals decided the case on ground differing from those used in the circuit court is of no moment; it is equally well established that the court of appeals may affirm a decision of a circuit court on independent grounds. *See State v. Holt*, 128 Wis. 2d 110, 124–25, 382 N.W.2d 679 (Ct. App. 1985). Review of this case would add little to the caselaw in this area and is therefore inappropriate under Wis. Stat. § (Rule) 809.62(1r).

DISCUSSION

This Court should deny the petition because it does not meet the criteria set forth in Wis. Stat. § (Rule) 809.62(1r).

This Court's criteria for granting a petition for review exist in Wis. Stat. § (Rule) 809.62(1r). However, Taylor does little to engage with these criteria. Instead, his petition focuses on why he believes the court of appeals decision in his case was wrong. This Court's primary function is development of the law, while error correction falls to the court of appeals. *See Cook v. Cook*, 208 Wis. 2d 166, 188–89, 560 N.W.2d 246 (1997). In short, Taylor already had his opportunity to have any errors in his case corrected by the court of appeals, and he did not prevail. To have this Court review his case, he needs to present something more than an allegation that both

the circuit court and the court of appeals got it wrong. But he has not done so.

Taylor's petition largely echoes the position taken by the dissent in the court of appeals, which expressed concern about the possibility that the court, by affirming on grounds other than those used by the circuit court, became the factfinder in this case. The majority opinion addressed the dissent's concerns at length, though. *See State v. Isaac D. Taylor,* Appeal No. 2019AP797-CR, ¶ 11 n.2 (Wis. Ct. App. Dist. II, July 30, 2021). The majority correctly pointed out that the facts supporting a finding of reasonable suspicion were "fleshed out" at the suppression hearing, and that those facts were "undisputed." *Id.* ¶¶ 7, 11 n.2.

Taylor proposes that this Court grant review to announce a new rule that "if reasonable suspicion is to be found from the cumulation of innocent observations, that finding must rest on testimony by a police officer that the totality of the circumstances led him to be suspicious," or, in the alternative, "testimony about the significance of those observations in light of an officer's training and experience that would explain why an objective hypothetical police officer would be suspicious." (Pet. 27.) This proposed rule, however, has no basis in case law. Taylor offers no support for it other than to claim that the accumulation of facts—such as that occurred in this case—"is not what decisions like *Jackson*[1] contemplate." (Pet. 27.) But even Taylor's own formulation of the *Jackson* rule, drawn from the dissent—he says that the "question is 'what would a reasonable police officer reasonably suspect in light of his or her training and experience?'" (Pet. 25)—establishes that the testifying officer's own subjective beliefs are not central to the reasonable suspicion analysis.

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[1] *State v. Jackson*, 147 Wis. 2d 824, 434 N.W.2d 386 (1989).

To suddenly require that the reasonable suspicion analysis involve an officer's subjective beliefs about a situation would be a sea change in the law. Such a change is unsupported, if not contradicted, by the vast body of law concerning the Fourth Amendment and reasonable suspicion analysis. It is not necessary, and neither is this Court's review.

CONCLUSION

For the reasons discussed, this Court should deny Taylor's petition for review.

Dated this 16th day of September 2021.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rule) 809.19(8)(b) and 809.62(4) (2019–20) for a response produced with a proportional serif font. The length of this petition is 700 words.

Respectfully submitted,

JOHN A. BLIMLING
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. §§ (RULE) 809.19(12) and 809.62(4)(b) (2019–20)

I hereby certify that:

I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rule) 809.19(12) and 809.62(4)(b) (2019–20).

I further certify that:

This electronic response is identical in content and format to the printed form of the response filed as of this date.

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

Respectfully submitted,

JOHN A. BLIMLING
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