

**FILED**  
**08-27-2021**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

APPEAL NO. 2021AP000340 CR

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STATE OF WISCONSIN,  
  
Plaintiff-Appellant,  
  
v.  
  
MICHAEL T. PACZKOWSKI,  
  
Defendant-Respondent.

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REPLY BRIEF OF PLAINTIFF-APPELLANT

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ON APPEAL FROM THE DECISION OF  
THE HONORABLE DANIEL S. JOHNSON, CIRCUIT COURT JUDGE  
CIRCUIT COURT FOR WALWORTH COUNTY, BRANCH II

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### **INTRODUCTION**

The State respectfully asks this court to reverse the trial court's order granting the defendant's motion to suppress evidence.

### **ARGUMENT**

**I. DEPUTY JAZDZEWSKI AND DEPUTY RUSKIEWICZ HAD THE REQUIRED DEGREE OF PROBABLE CAUSE TO ADMINISTER A PRELIMINARY BREATH TEST ("PBT") TO PACZKOWSKI.**

Paczkowski's brief focuses on the circuit court's determination that there was just one clear clue of impairment. However, this disregards the evidence presented and the deputies conclusions when evaluating the totality of the circumstances at the time of the complained conduct. As noted, the circuit court can consider the collective knowledge of the officer's and the officer's training and experience. See State v. Lange, 2009 WI 49, ¶ 19, 317 Wis. 2d 383, 766 N.W.2d 551. The deputies here, with their collective knowledge and experience, came to evaluate Paczkowski and determined there was more than one clue of impairment. These deputies were at the scene, observing the situation first hand and noting what they saw. The totality of the circumstances in the record shows more than one clear clue of impairment.

Deputies observed that Paczkowski had been involved in a one-vehicle accident, a changing story about how the accident occurred, "off" speech and bloodshot glassy eyes. Independently, an experienced deputy in Deputy Ruskiewicz, detected an odor of intoxicants on Paczkowski's person, which was corroborated by a third party citizen and Paczkowski himself. While looking at the totality of the circumstances, the scales tip in favor of utilizing the preliminary breath test to confirm or deny any suspicion of intoxication. See *County of Jefferson v. Renz*, 231 Wis. 2d 293, 304, 603 N.W.2d 541 (1999).

Paczowski's brief further points to several areas where there is an innocent explanation. Additionally, the circuit court independently points to an innocent explanation in weighing the accident and intoxication:

[s]o the fact the defendant was unsure exactly and initially how the accident happened or maybe even gave conflicting stories, certainly could be looked at as a basis for intoxication, but it also has an innocent explanation which is simply that often times when accidents happen, immediately we aren't exactly sure what occurred that caused the accident to take place.

R.19:41-42. See *State v. Welsh*, 108 Wis. 2d 319, 347, 321 N.W.2d 245 (1982) (Abrahamson, J., dissenting), rev'd on other grounds, 466 U.S. 740, 80 L.Ed.2d 732, 104 S.Ct. 2091 (1984). See also *State v. Nieves*, 2007 WI App 189, ¶14, 304 Wis. 2d 182, 738 N.W.2d 125 (police need not rule out

innocent explanations for behavior when there are reasonable inferences that favor probable cause or reasonable suspicion for the stop). In evaluating the circuit court's explanation for Paczkowski's inconsistent statement regarding the accident, the circuit court stated, it is typical for someone involved in an accident to be unable to explain the event immediately, and then later piece it together. R.19:41-42. However, it is also typical for an individual realizing they may be in trouble to lie about what happened. Therein lies the problem with this reasoning relied on by the circuit court, it is the very definition of an innocent explanation that officers should not have to rely on. While conducting this investigation, these deputies analyzed the situation as a whole and came to the conclusion; all these innocent explanations do not add up and should not be given credence. At a certain point, these innocent explanations are no longer innocent or alternative but rather not realistic.

The contention the circuit court was correct to assign little weight to Paczkowski's statements about drinking is misguided. In a common sense view of this situation, no driver after a single-vehicle crash who has had alcohol is going to accurately state how much they have consumed. The proverbial "two beers" is a standard response and

deputies/law enforcement know not to trust what an individual has to say regarding the amount of drinking. What should be focused on rather, is the fact Paczkowski, admitted to drinking to not only the deputy but everyone he had interaction with on this day; the concerned citizen, the deputies and Rescue. Again, the preliminary breath test tool would have been crucial in assessing how much Paczkowski had to drink since he was vague in his responses.

Paczkowski's brief points to the facts of *Renz* and how there is more substantial evidence of impairment in that case compared to the evidence presented here. Again, in *State v. Mata*, 230 Wis. 2d, 572, 602 N.W.2d 158 (Ct. App. 1999), the court expressed that "the question of probable cause turns on the facts of the particular case" and the "totality of the circumstances," and there is no need to engage in such factual comparisons. Even so, Paczkowski highlights an unpublished opinion in *State v. Faruzzi*, No. 2019AP167-CR. Paczkowski focuses on the facts of: a caller reporting the driver "might be intoxicated," the driver was speeding, had bloodshot and glassy eyes, all three officers testified the driver emitted a light odor of intoxicants, an empty beer bottle fell out of the car when the passenger exited, and the driver was argumentative. Here, the facts

illustrate: a single-vehicle crash, inconsistent statement about the crash, a concerned citizen advising Paczkowski admitted to drinking, deputies and Rescue stating Paczkowski admitted to drinking, bloodshot glassy eyes, "off" speech, and Deputy Ruszkiewicz detecting an odor of intoxicants on Paczkowski's person. Even though there is no need for factual comparisons, the facts here are more indicative of impairment than in *Faruzzi*. In particular, there is an unexplained accident as opposed to speeding; inconsistent story about what happened; admission of drinking vs. no discussion of drinking by subject in question; and "off" speech.

Based on the totality of the circumstances presented in this case, deputies had probable cause to administer a preliminary breath test to Paczkowski to confirm or deny any suspicion of alcohol. When looking at probable cause through a commonsense test here, the deputies passed the test.

#### **CONCLUSION**

Accordingly, for the reasons set forth above, as well as the reasons stated in the State's initial brief to this Court, the State respectfully requests that this Court reverse the circuit court's order granting Paczkowski's

motion to suppress evidence and to remand the case for further proceedings.

Electronically signed August 27, 2021, by:  
JJ Crawford, Attorney for Plaintiff-Appellant  
State Bar No. 1113067

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c).

- Monospaced font: 10 characters per inch; double spaces; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides.

The length of the brief is 1185 words.

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