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COURT OF APPEALS**

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2021AP001112-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Circuit Court Case No. 20CT166

CHRISTOPHER ANTONJE TEK,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT AND ORDER  
ENTERED IN ROCK COUNTY CIRCUIT COURT, THE  
HONORABLE KARL R. HANSON, PRESIDING.

**BRIEF OF PLAINTIFF-RESPONDENT**

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## **ISSUE PRESENTED**

1. Officer Rocha, when responding to the scene of a reported vehicle driving on flat tires, approached Mr. Tek's vehicle to make contact. Mr. Tek indicated he had a ride coming and if Officer Rocha did not put him in handcuffs or stop him, he would leave the scene. Did Officer Rocha's actions—subsequently placing Mr. Tek in handcuffs and holding him in the back of the squad car in order to further investigate—constitute an arrest without probable cause?

The circuit court answered, “no.”

## **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

The State requests neither oral argument nor publication. Pursuant to Wis. Stat. § 809.22(2)(b), the briefs submitted have fully presented the issue on appeal and developed the legal arguments on each side, such that this Court can resolve this case by applying the established legal principles to the facts of this case.

## **STATEMENT OF THE CASE**

On June 10, 2018, at approximately 4:30 AM, a civilian called the police to report a white Cadillac with flat tires driving around Richardson Street and Benton Avenue, a residential area in the City of Janesville. (44:10-11). Officer Benito Rocha (“Officer Rocha”) of the Janesville Police Department responded to dispatch and arrived on scene. (44:10). As Officer Rocha drove northbound on Richardson Street, he observed a vehicle with its headlights on ahead. (44:11-12). The vehicle was stopped on the same side of the road that Officer Rocha was driving on, but was positioned so that it was facing the oncoming traffic. (44:11). As Officer Rocha got closer to the vehicle, it turned its headlights off. (44:12).

Officer Rocha turned the search light of his squad car on the vehicle and observed one occupant sitting in the driver's seat. (44:12). When Officer Rocha approached the vehicle—a white Cadillac—he observed the front tire down to its rim and said to the driver, “Hi, how are you today?” (44:13-14; 22:0:20-0:37). The driver, who was later identified as Christopher Tek (“Mr. Tek”), did not respond. (22:0:37-00:42). Officer Rocha asked Mr. Tek what was going on and whether Mr. Tek could hear him. (22:0:43-0:46). Mr. Tek then states, “Put me in handcuffs,” and exited the vehicle. (22:0:47-0:49). As Officer Rocha again asked Mr. Tek what was going on and whether Mr. Tek had been drinking, Mr. Tek put his hands behind his back and repeatedly made statements that he had a ride coming and was “about to get picked up right now.” (22:0:49-1:00). Mr. Tek did not answer Officer Rocha's previous questions and instead continued to state, “I'm about to get picked up right now.” (22:1:00-1:25).

Officer Rocha then went into control maneuvers and placed Mr. Tek in handcuffs. (22:1:11-1:18). As Officer Rocha did so, he detected an odor of alcohol and an odor of marijuana coming from Mr. Tek. (44:15, 32-33). Officer Rocha then attempted to detain Mr. Tek in his squad car so that he could continue investigating the scene. (22:1:55-2:11). As Officer Rocha brought Mr. Tek toward the squad car, Mr. Tek became increasingly uncooperative and belligerent and repeatedly attempted to pull away from Officer Rocha. (22:2:11-2:30).

Once Mr. Tek was detained in the squad car, Officer Rocha and the other responding officers began to investigate the area. (22:2:30; 44:17-18). Officer Rocha assessed the damage to the Cadillac in greater detail, observing that in addition to the front right tire being down to its rim, the vehicle was missing two tires, the other remaining tire was also flat, and there was damage and paint-transfer on the front bumper. (22:6:45-7:35; 44:25). Officer Rocha and the other officers continued to investigate the scene and attempted to locate the missing tires. (22:3:31-3:57).

While assessing the scene, Officer Rocha commented to the other officers that Mr. Tek appeared to be clearly intoxicated and should be taken to the Rock County Jail to perform standard field sobriety tests. (22:3:20-3:27). For approximately five minutes, Officer Rocha and the other officers attempted to determine what Mr. Tek's vehicle had struck and searched Mr. Tek's vehicle in an attempt to find any identifying information. (22:4:55-6:26). Officer Rocha then approached his squad car to speak with Mr. Tek and asked Mr. Tek multiple times to identify himself. (22:7:52-8:09). Mr. Tek refused to provide his name and instead began to yell obscenities. (22:8:10). Because Mr. Tek was being uncooperative and continued to bang his head on Officer Rocha's patrol squad, Officer Rocha advised Officer Radloff to assist him in the travel to the Rock County Jail and immediately left the area. (23:8). Officer Danielson continued to investigate the scene. (23:8).

At the Rock County Jail Mr. Tek continued to be uncooperative and refused to respond to Officer Rocha after being read the informing the accused. (23:9;44:18). An evidentiary blood draw was subsequently performed on Mr. Tek, pursuant to a search warrant. (23:14). The Wisconsin State Crime Lab analyzed Mr. Tek's blood sample and determined he had a blood alcohol concentration of .162. (23:15-16). While at the Rock County Jail, Officer Rocha read Mr. Tek the Informing the Accused form and, after determining Mr. Tek had a prior Operating While Intoxicated ("OWI") conviction, Officer Rocha placed Mr. Tek under arrest for OWI as a second offense. (23:9). Mr. Tek was subsequently charged in Rock County Circuit Court case number 20CT166 with one count of Operating While Intoxicated as a second offense, contrary to Wis. Stat. § 346.63(1)(a), and one count of Operating with a Prohibited Alcohol Concentration as a second offense, contrary to Wis. Stat. § 346.63(1)(b).

Mr. Tek filed a motion to suppress and a suppression hearing was held on the matter on September 22, 2020. (44:3; 24:1). During the hearing, Officer Rocha testified and both body camera footage and police report were entered into the



record. (44:49). Officer Rocha testified that when he placed Mr. Tek in handcuffs and had Mr. Tek wait in his squad car, Mr. Tek was not under arrest but rather “was detained for investigation.” (44:16, 18). Officer Rocha specified that Mr. Tek was placed under arrest once he was transported to the Rock County Jail. (44:18-19).

At the hearing, Mr. Tek argued that he was placed under arrest as soon as Officer Rocha placed him in handcuffs, and because Officer Rocha did not have probable cause to arrest him at that time, all evidence that derived from that arrest should be suppressed. (44:40). The trial court disagreed and denied Mr. Tek’s motion, reasoning that “the arrest of Mr. Tek came at the time that he was placed in handcuffs,” but that it was not an impermissible arrest because probable cause existed. (44:56-58). Specifically, the trial court found that because Mr. Tek’s vehicle was parked “on the wrong side of the street in violation of Section 346.54 or .55,” there was probable cause to arrest Mr. Tek for a civil violation. (44:58).

One week later, on September 29, 2020, the trial court *sua sponte* superseded its oral ruling with a written decision. The written order, though differing in its reasoning, reached the same conclusion and denied Mr. Tek’s motion to suppress. (24:1-4). The written order determined that when Officer Rocha placed Mr. Tek in handcuffs, Mr. Tek was not under arrest. (24:3). Rather, “it was an effort to detain Tek so the police could undertake at least an elementary investigation...” (24:3). The decision focused on Mr. Tek’s indication that if he was not put in handcuffs or stopped, he would leave the scene. (24:3). Accordingly, the trial court concluded, “A reasonable person under this situation would, recognizing the unreasonable nature of the choice Tek presented, not consider Rocha’s response to be an arrest, but would instead recognize that Rocha intended to detain Tek so that he could start his investigation.” (24:3).

The trial court’s denial of Mr. Tek’s motion to suppress is the issue presently on appeal.

## STANDARD OF REVIEW

A trial court's order granting or denying a motion to suppress evidence presents a question of constitutional fact. *State v. Howes*, 2017 WI 18, ¶ 17, 373 Wis. 2d 468, 893 N.W.2d 812. Accordingly, this Court follows a two-step standard of review. First, this Court reviews any challenges to the circuit court's findings of historical fact under a clearly-erroneous standard. Second, this Court reviews the application of constitutional principles to those facts de novo. *State v. Abbott*, 2020 WI App 25, ¶ 10, 392 Wis. 2d 232, 242, 944 N.W.2d 8, 13 (citations omitted).

## ARGUMENT

The circuit court properly denied Mr. Tek's motion to suppress the evidence that derived from his arrest. First, contrary to his claim, Mr. Tek was not under arrest when Officer Rocha placed him in handcuffs and detained him in the squad car. Rather, Officer Rocha's initial stop of Mr. Tek was a permissible investigative *Terry* stop. Second, even if Officer Rocha's initial stop of Mr. Tek did constitute an arrest, there was sufficient probable cause. Thus, the circuit court properly denied Mr. Tek's motion to suppress, and this Court should affirm.

### **I. Officer Rocha's initial stop of Mr. Tek did not constitute an arrest, but rather an investigative *Terry* stop.**

Pursuant to the protection of the Fourth Amendment of the United States Constitution and sec. 11, Art. I of the Wisconsin Constitution, law enforcement is required to have probable cause in order to make an arrest. *State v. Young*, 2006 WI 98, ¶54, 294 Wis. 2d 1, 717 N.W.2d 729. There is, however, an exception to that general rule—an investigative *Terry* stop. In *Terry v. Ohio*, 392 U.S. 1, 22 (1968), the United States Supreme Court recognized that although an investigative stop is technically a “seizure,” a police officer may, in the appropriate circumstances, detain a person for

purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest. *State v. Quartana*, 213 Wis. 2d 440, 445, 570 N.W.2d 618 (Ct. App. 1997); Wis. Stat. § 968.24 (codifying the constitutional standard set forth in *Terry*).

Officer Rocha's initial stop of Mr. Tek did not constitute an arrest. Rather, Officer Rocha—after Mr. Tek indicated he would leave the scene if he was not handcuffed or otherwise stopped—was conducting an investigative *Terry* stop by detaining Mr. Tek so that he could investigate the scene. Indeed, Officer Rocha had reasonable suspicion to warrant a *Terry* stop and Officer Rocha's actions did not exceed the scope of a *Terry* stop.

***A. Officer Rocha had reasonable suspicion to warrant a Terry investigative stop.***

In order to conduct a *Terry* investigative stop, an officer need not possess probable cause, but rather reasonable suspicion. *State v. Post*, 2007 WI 70, ¶¶1, 8, 301 Wis. 2d 1, 733 N.W. 2d 634. Specifically, the officer must be able to point to “specific and articulable facts which would warrant a reasonable belief that criminal activity is afoot.” *Young*, 294 Wis. 2d 1, ¶21. The question of what constitutes a “reasonable belief” in *Terry* situations is a common sense test. *Post*, 301 Wis. 2d 1, ¶13. Accordingly, the critical question is whether the facts of the case would warrant a reasonable police officer, in light of his training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime. *Id.* Before initiating a brief investigative stop, an officer is not required to rule out the possibility of innocent behavior. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

Here, Officer Rocha had the necessary reasonable suspicion to warrant a *Terry* stop. Officer Rocha did not base his initial stop of Mr. Tek on a mere hunch, but rather Officer Rocha had numerous specific and articulable facts that criminal activity had occurred and/or was occurring. By the time Officer Rocha arrived at Richardson Street, he was

already aware that an eyewitness reported an individual attempting to drive a white Cadillac with flat tires on that road. These specific facts were then observed by Officer Rocha, in the exact reported location, when he saw a sole occupant in a white Cadillac with visibly deflated front tires.

Moreover, Mr. Tek's conduct when Officer Rocha first approached the vehicle further provided evidence of criminal activity afoot. Specifically, Mr. Tek at first failed to respond to Officer Rocha at all, and then proceeded to say "Put me in handcuffs" and exited the vehicle. Mr. Tek also ignored Officer Rocha's questions—including whether he had been drinking that evening—and instead just repeated the same statement over and over ("I'm about to get picked up"). Notably, the above-stated facts occurred before Officer Rocha ever placed Mr. Tek in handcuffs.

Additionally, Wisconsin courts have also recognized that the time of night can also contribute to a finding of reasonable suspicion. Particularly, in *State v. Lange*, the Wisconsin Supreme Court found that the time of the incident in that case, 3:00 AM on a Sunday morning (AKA "Saturday night bar-time traffic"), was a relevant factor in finding reasonable suspicion that the defendant had been Operating While Intoxicated. *State v. Lange*, 2009 WI 49, ¶ 32, 317 Wis. 2d 383, 766 N.W.2d 551; *Post*, 301 Wis. 2d 1, ¶36 (recognizing that driving at 9:30 PM, though not as significant as driving at "bar-time," can be relevant in finding reasonable suspicion). Here, the reporting caller observed Mr. Tek driving a white Cadillac with flat tires at 4:30 AM on Sunday, June 10, 2018 (i.e., Saturday night bar-time traffic).

Both cases cited above—*Lange* and *Post*—involve situations where reasonable suspicion was found for an OWI. The State believes the same reasonable suspicion existed in regard to Mr. Tek operating while intoxicated. Nonetheless, it is important to note that Office Rocha could have performed an investigative stop even if he did not have reasonable suspicion that Mr. Tek had operated while intoxicated. Indeed, "an officer may make an investigative stop if the officer 'reasonably suspects' that a person has committed or is about

to commit a crime, *or* ... that a person is violating non-criminal traffic laws.” *State v. Colstad*, 2003 WI App 25, ¶ 11, 260 Wis. 2d 406, 659 N.W.2d 394 (internal citation omitted) (emphasis added).

Finally, the reasonableness of an investigative *Terry* stop is based on the totality of the facts and circumstances. *Post*, 301 Wis. 2d 1, ¶ 22. When assessing the validity of an investigative stop, the reviewing court must look at all of the factors together as “the whole picture.” *Colstad*, 260 Wis. 2d 406, ¶ 16 (internal citation omitted). Here, the whole picture demonstrates that Officer Rocha—a trained officer with 11.5 years of experience—had reasonable suspicion that warranted a *Terry* investigative stop. (22:9).

***B. Officer Rocha’s conduct did not exceed the scope of a Terry stop.***

A brief investigatory stop is permitted when the length and scope of the detention is reasonable. *Colstad*, 260 Wis. 2d 406, ¶ 16. Accordingly, Wisconsin courts have recognized that if the scope of an investigatory stop is exceeded, then there are certain situations where that investigatory stop can turn into a de facto arrest. *State v. Blatterman*, 2015 WI App, ¶ 14, 362 Wis. 2d 138, 864 N.W.2d 26. First, “for the stop of a person to pass constitutional muster as investigatory, the detention must be temporary and last no longer than is necessary to effect the purpose of the stop.” *State v. Wilkens*, 159 Wis. 2d 618, 625-26, 465 N.W.2d 206 (Ct. App. 1990). Second, “the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” *Id.*

Here, Officer Rocha’s initial stop of Mr. Tek did not exceed the scope of a permissible investigatory *Terry* stop. First, Officer Rocha only detained Mr. Tek for the minimum length of time necessary. A hard and fast time limit rule for investigatory stops has been repeatedly rejected. *United States v. Place*, 462 U.S. 696, 709 (1983); *Wilkens*, 159 Wis. 2d at 626. Instead, when determining whether an investigatory detention was an appropriate duration, “a court must consider

whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.” *Wilkins*, 159 Wis. 2d at 626 (citing to *United States v. Sharpe*, 460 U.S. 675, 686 (1985)). In reaching a determination as to the duration of the stop, the reviewing court “should not indulge in unrealistic second-guessing.” *Id.* Wisconsin courts have recognized a wide range of time limits that were acceptable due to the circumstances of the investigative stop. *See e.g., Colstad*, 260 Wis. 2d 406, ¶ 17 (finding that a 30-45 minute stop was acceptable because the officer was assisting a victim, investigating and marking the scene, and taking photographs); *Wilkins*, 159 Wis. 2d at 628 (finding that a 60-80 minute stop was acceptable because the officers were assisting and questioning the victim).

In this case, Mr. Tek was detained for a brief period of time. In the time that Mr. Tek was detained in Officer Rocha’s squad car, Officer Rocha was diligent in his investigation. Specifically, Officer Rocha examined the damage to Mr. Tek’s vehicle, looked briefly for the missing tires, and looked for a way to identify Mr. Tek. Because of Mr. Tek’s failure to cooperate and his banging his head on the Officer Rocha’s squad car, Officer Rocha transported him to the jail. Officer Danielson remained to continue the investigation at the scene.

In addition to limiting the stop to the minimum amount of time necessary, Officer Rocha also employed the least intrusive means reasonably available given the circumstances of the stop. The moment of arrest, opposed to an investigative stop, occurs when a reasonable person in the defendant’s position would consider himself or herself to be ‘in custody,’ given the degree of restraint under the totality of the circumstances. *State v. Kiekhefer*, 212 Wis. 2d 460, 485, 569 N.W.2d 316 (Ct. App. 1997); *State v. Wortman*, 2017 WI App 61, ¶ 7, 378 Wis. 2d 105, 902 N.W.2d 56; *State v. Gruen*, 218 Wis. 2d 581, 594, 582 N.W.2d 728 (Ct. App. 1998).

The degree of restraint used by Officer Rocha during the investigative stop involved two investigative methods—placing Mr. Tek in handcuffs and having Mr. Tek wait in Officer Rocha’s squad car for a brief period of time while

Officer Rocha investigated the scene. While the State recognizes that those methods may be more intrusive than required in some situations, they constituted an appropriate degree of restraint in Mr. Tek's situation. First, although Mr. Tek was handcuffed—and claims that is the moment he was technically placed under arrest—handcuffs are not automatically deemed outside the scope of a *Terry* investigative stop. In other words, although the use of handcuffs is restrictive, it does not necessarily render a temporary detention unreasonable or transform a detention into an arrest. *Blatterman*, 362 Wis. 2d 138, ¶ 31. Instead, the use of handcuffs during an investigative stop must be justified by particular circumstances. *Id.*

Here, both the use of handcuffs and the detention of Mr. Tek in Officer Rocha's squad car for brief period of time were appropriate given the totality of the circumstances. With respect to the handcuffs, Mr. Tek made it very clear that they would be necessary. Not only did Mr. Tek state, "Put me in handcuffs" before Officer Rocha ever indicated anything of that nature, but Mr. Tek also voluntarily placed his hands behind his back. More significantly, Mr. Tek indicated through his repeated statements that he would leave the scene if Officer Rocha did not handcuff him or otherwise stop (i.e. "take") him. (22:0:47-2:11). The situation was further enflamed by Officer Rocha's understanding from Mr. Tek's statements and the circumstances that not only was Mr. Tek "about to get picked up," but that the vehicle that was going to assist Mr. Tek in leaving was approaching nearby. (44:15). Officer Rocha had a duty to investigate whether or not Mr. Tek had committed a crime. If Mr. Tek were to leave the scene without providing any information, as he clearly indicated he was going to do, Officer Rocha would not have been able to fulfill that duty. Thus, in this particular set of circumstances, the use of handcuffs and the brief detention of Mr. Tek was the least intrusive means necessary for Officer Rocha to complete an investigative stop.

To that end, Mr. Tek's arrest did not occur when he was detained in Officer Rocha's squad car, but rather when he was transferred to the Rock County Jail. Indeed, when conducting

an investigative stop, Wis. Stat. § 968.24 authorizes law enforcement to move a suspect short distances during the course of a temporary investigation. *Quartana*, 213 Wis. 2d at 445-46 (police may temporarily detain and question an individual “in the vicinity where the person was stopped”). When the suspect of an investigative stop is transferred to a secondary location, however, Wisconsin courts have recognized that the suspect could then reasonably assume he was under arrest. *Blatterman*, 362 Wis. 2d 138, ¶ 33 (Finding that the defendant, who had been handcuffed and detained in a squad car due to the circumstances of his investigatory stop, was not under arrest until law enforcement transferred him to the hospital).

In Mr. Tek’s case, he remained in the vicinity of where he was stopped for the entirety of his brief detention. Thus, it was not until Officer Rocha transferred Mr. Tek from the vicinity of his vehicle to the Rock County Jail that the investigative stop turned into an arrest.

**II. Even if Officer Rocha’s initial stop of Mr. Tek did constitute an arrest, there was sufficient probable cause.**

Even if this Court does find that Officer Rocha’s initial stop of Mr. Tek constituted an arrest, the trial court’s decision should still be affirmed because probable cause existed at that time. First, when Mr. Tek was placed in handcuffs, there was sufficient probable cause to arrest Mr. Tek for Operating While Intoxicated. Second, even if there was not sufficient probable cause to arrest Mr. Tek for an OWI, probable cause existed to arrest Mr. Tek for several other traffic offenses.

***A. Probable cause existed to arrest Mr. Tek for Operating While Intoxicated.***

Probable cause is the sum 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 a crime.” *State v. Anker*, 2014 WI App 107, ¶ 12, 257 Wis. 2d 565, 855 N.W.2d 483 (internal citation omitted). Probable cause should be judged by the totality of the circumstances available to the arresting officer at the time of arrest and on a case-by-case basis. *Id.* Probable cause to arrest “does not require proof beyond a reasonable doubt or even that guilt is more likely than not.” *State v. Reese*, 2014 WI App 27, ¶ 9, 353 Wis. 2d 266, 844 N.W.2d 396.

With respect to finding probable cause for an OWI, “although evidence of intoxicant usage—such as odors, an admission, or containers—ordinarily exists in drunk driving cases and strengthens the existence of probable cause, such evidence is not required.” *Lange*, 317 Wis. 2d 383, ¶ 37. Indeed, Wisconsin courts have recognized a wide range of factors that can help establish probable cause for an OWI. For instance, dangerous driving or unexplained erratic driving that causes an accident, as well as “belligerence and a lack of contact with reality” have all been recognized as factors that can create probable cause to arrest for OWI. See e.g., *Lange*, 317 Wis. 2d 383, ¶ 39 (dangerous driving); *Martell v. Klingman*, 11 Wis. 2d 296, 308, 105 N.W.2d 446 (1960) (unexplained erratic driving); *State v. Seibel*, 163 Wis. 2d 164, 182, 471 N.W.2d 226 (1991) (belligerence and lack of contact with reality). Additionally, the lack of any other drivers in the vicinity is also a recognized factor when finding probable cause for an OWI. *Reese*, 353 Wis. 2d 266, ¶ 13.

In this case, at the time Officer Rocha placed Mr. Tek in handcuffs, there existed probable cause to arrest Mr. Tek for OWI. Specifically, at the moment of arrest, Officer Rocha had the following knowledge: A civilian reported that, at 4:30 in the morning, a white Cadillac with flat tires was driving in the area of Richardson Street and Benton Avenue. Officer Rocha observed a car parked the wrong way on the wrong side of the road with its headlights on. As Officer Rocha approached the vehicle—a white Cadillac with a flat front tire and a sole occupant in the driver’s seat—the vehicle turned its headlights

off. When Officer Rocha made contact, the driver (Mr. Tek) did not respond. When Officer Rocha asked Mr. Tek what was going on, Mr. Tek said “Put me in handcuffs,” and exited the vehicle without direction to do so. When Officer Rocha asked Mr. Tek if he had been drinking, Mr. Tek would not answer the question. When Officer Rocha continued to try to communicate with Mr. Tek, Mr. Tek acted unclear and belligerent, and repeatedly stated he was about get picked up.

In his appeal, Mr. Tek emphasizes the fact that it was not until Officer Rocha was already handcuffing him that the odor of marijuana and alcohol became apparent. However, that fact is not dispositive. Moreover, in addition to the above-stated reasons, several other factors recognized by Wisconsin courts were present. For example, when Officer Rocha approached, Mr. Tek was the only driver on the road, and Officer Rocha had evidence of Mr. Tek’s unsafe driving (i.e., an eyewitness report that Mr. Tek was attempting to drive with flat tires at 4:30 AM in a residential neighborhood). Thus, with all of the factors considered together, Officer Rocha reasonably reached the conclusion that there was probable cause Mr. Tek had operated a motor vehicle while intoxicated.

***B. Probable cause existed to arrest Mr. Tek for several other traffic offenses.***

Even if this Court finds that Officer Rocha did not have probable cause to arrest Mr. Tek for OWI, the trial court’s decision should still be affirmed because probable cause existed to arrest Mr. Tek for several other offenses. Specifically, by the time Officer Rocha placed Mr. Tek in handcuffs, there was sufficient probable cause that Mr. Tek committed several traffic-related ordinance violations.

A law enforcement officer may arrest an individual for the violation of a municipal ordinance “if the arresting officer has reasonable grounds to believe that the person is violated or has violated [an] ordinance.” *City of Milwaukee v. Nelson*, 149 Wis. 2d 434, 460, 439 N.W.2d 562 (1989). The Wisconsin

Supreme Court has equated the term “reasonable grounds” as synonymous with “probable cause” with respect to a criminal arrest. *Id.* (internal citation omitted). The authority to arrest based on probable cause applies not only to criminal violations, but also to violations of traffic ordinances. *State v. Baudhain*, 141 Wis. 2d 642, 650, 416 N.W.2d 60 (1987) (Recognizing that Wis. Stat. § 345.22 provides that “a person may be arrested without a warrant for the violation of a traffic regulation if the traffic officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation.”).

Here, by the time Mr. Tek was placed in handcuffs, Officer Rocha had probable cause to arrest him for a minimum of two traffic ordinance violations. First, there existed probable cause that Mr. Tek violated a parking ordinance—Wis. Stat. § 346.54(1)(a). In his brief, Mr. Tek correctly recites the first part of 346.54(1)(a), which authorizes vehicles to park on either side of the roadway. (Br. of Appellant, Nov 4<sup>th</sup>, 2021, pg. 6). However, Mr. Tek failed to include the second half of 346.54(1)(a), which clearly states “a vehicle must be parked parallel to the edge of the street, *headed in the direction of traffic on the right side of the street.*” (emphasis added). Mr. Tek’s vehicle, by facing the opposite direction of traffic and, by his own admission, being parked on “the wrong side of the road,” was in clear violation of 346.54(1)(a). This violation was immediately apparent to Officer Rocha, providing him with sufficient probable cause to arrest Mr. Tek for the traffic violation.

Moreover, in addition to subsection (1)(a), Officer Rocha also had probable cause to arrest Mr. Tek for violation of Wis. Stat. 346.54(2), which states “No person shall stop or leave a vehicle standing in violation of this section.” By the time Officer Rocha had Mr. Tek in handcuffs, Mr. Tek had already turned off his vehicle, exited (without instruction to do so), and repeatedly indicated that he was going to leave and was “about to get picked up.” To that end, Mr. Tek provided Officer Rocha with probable cause that he was violating not only 346.54(1)(a), but also 346.54(2).

Second, in addition to the parking violation, Officer Rocha also had probable cause to arrest Mr. Tek for violation of Wis. Stat. § 347.45(1), the traffic ordinance regulating tire requirements. Specifically, 347.45(1) requires that “all automobiles ... shall be completely equipped with tires inflated with compressed air...” Here, Officer Rocha had probable cause that Mr. Tek violated that ordinance. First, Officer Rocha knew that an eyewitness reported an individual driving a white Cadillac with flat tires in the area of Richardson Street and Benton Avenue. Second, Officer Rocha subsequently came upon a white Cadillac on Richardson Street with a sole occupant in the driver’s seat—Mr. Tek—and observed a front tire down to its rim.

Thus, even if Officer Rocha did not have probable cause during his initial stop of Mr. Tek to arrest him for OWI, he had probable cause to arrest Mr. Tek for multiple traffic ordinance violations. Accordingly, even if Mr. Tek’s arrest took place as soon as Officer Rocha placed him in handcuffs, there was sufficient probable cause and the trial court’s decision should be affirmed.

### CONCLUSION

For the above-stated reasons, sufficient probable cause existed at the time of Mr. Tek’s arrest and, accordingly, the circuit court properly denied his motion to suppress. Thus, the State respectfully requests this Court to affirm the orders of the circuit court.

Dated this 18<sup>th</sup> day of February, 2022.

Respectfully submitted,

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### **CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. The length of the brief is 21 pages (excluding certification page) and 5,007 words (excluding cover, table of contents and certification).

Dated this 18<sup>th</sup> day of February, 2022.

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