**STATE OF WISCONSIN**
**COURT OF APPEALS**
**DISTRICT II**

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**Appellate Case No. 2022AP98**

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**CITY OF WEST BEND,**

Plaintiff-Respondent,

-vs-

**PETER F. PARSONS,**

Defendant-Appellant.

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**APPEAL FROM AN ORDER OF JUDGMENT ENTERED IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, BRANCH III, THE HONORABLE TODD K. MARTENS PRESIDING, TRIAL COURT CASE NO. 20-CV-611**

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# BRIEF OF DEFENDANT-APPELLANT

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## STATEMENT OF THE ISSUE

WHETHER THE LAW ENFORCEMENT OFFICERS IN THE INSTANT CASE LACKED SUFFICIENT GROUNDS TO ENLARGE THE SCOPE OF MR. PARSONS' DETENTION IN VIOLATION OF MR. PARSONS' RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES UNDER THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, § 11 OF THE WISCONSIN CONSTITUTION?

> Trial Court Answered: NO. The trial court concluded that the detaining officer permissibly extended the scope of Mr. Parsons' detention because he observed Mr. Parsons to be smoking (which could have been done to mask the odor of an intoxicant), he admitted to consuming one beer, and the stop occurred after midnight. R33 at 26:10 to 29:17; D-App at 101-04.

## STATEMENT ON ORAL ARGUMENT

The Defendant-Appellant will NOT REQUEST oral argument as this appeal presents a question of law to an uncontroverted set of facts which can be addressed by the application of legal principles the type of which would not be enhanced by oral argument.

## STATEMENT ON PUBLICATION

The Defendant-Appellant will NOT REQUEST publication of this Court's decision as the issue before this Court is premised upon the unique facts of the case and is of such an esoteric nature that publishing this Court's decision would likely have little impact upon future cases.

## STATEMENT OF THE CASE

Mr. Parsons was charged in the City of West Bend, Washington County, with, *inter alia*, Operating a Motor Vehicle While Under the Influence of an Intoxicant, contrary to Wis. Stat. § 346.63(1)(a) as adopted by West Bend Municipal Ordinance No. 7.01, and Operating a Motor Vehicle with a Restricted Controlled Substance, contrary to Wis. Stat. § 346.63(1)(am) as adopted by West Bend

Municipal Ordinance No. 7.01, arising out of an incident which occurred on August 23, 2019. R10 and R13.

Mr. Parsons retained private counsel who entered a plea of Not Guilty on his behalf and, on July 16, 2020, a trial was held before the Mid-Moraine Municipal Court. R8. Mr. Parsons was found guilty at the conclusion of the municipal trial, and thereafter he timely filed a Notice of *De Novo* Appeal along with a Jury Tender in the Circuit Court for Washington County. R5.

After Mr. Parsons appealed to the circuit court, his counsel filed a pre-trial motion alleging that the scope of Mr. Parsons' detention had been unreasonably enlarged beyond its original purpose in violation of the Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution. R18.

An evidentiary hearing was held on Mr. Parsons' motion on March 19, 2021, before the Honorable Todd K. Martens. R33. At the hearing, the City proffered the testimony of a single witness, the arresting officer, Brock Bateman. R33 at pp. 4-21. At the conclusion of the hearing, the court issued its oral ruling denying Mr. Parsons' motion. R33 at 26:10 to 29:17; D-App at 101-04.

Subsequently, Mr. Parsons waived his right to a jury trial, opting instead for a court trial. R35 at p.2. Following the testimony and at the conclusion of the court trial, Mr. Parsons was found not guilty of the operating while intoxicated charge and guilty of the operating with a restricted controlled substance charge. *Id*.

It is from the adverse decision of the lower court that Mr. Parsons appeals to this Court by Notice of Appeal filed on January 20, 2022. R34.

## STATEMENT OF FACTS

On February 17, 2019, Mr. Parsons was stopped and detained in the City of West Bend by Officer Brock Bateman of the West Bend Police Department for allegedly having an expired registration plate on his vehicle. R33 at 6:14-21; 7:1-15. Mr. Parsons' registration, however, was not expired. Rather, he had a valid temporary plate displayed in his rear window which Officer Bateman did not notice because it was partially obscured by snow. R33 at 8:8-14. Officer Bateman first observed the valid temporary registration plate when he activated his "takedown

lights" before he approached Mr. Parsons. R33 at 8:6-9; 9-5-7. Prior to his approaching Mr. Parsons, Officer Bateman observed that Mr. Parsons committed no other traffic violations during the time he followed him. R33 at 16:8-10.

Within seconds of making contact with Mr. Parsons, Officer Bateman requested that Mr. Parsons provide him with his driver's license which Mr. Parsons did without fumbling or displaying any indicia of impairment. R33 at 17:16-18. Additionally, Officer Bateman asked Mr. Parsons for his insurance and registration information which Mr. Parsons also provided without any difficulty. R33 at 17:25 to 18:6.

After taking Mr. Parsons' license and proof of insurance, Officer Bateman engaged in an interrogation of where Mr. Parsons had been earlier in the evening and whether he had consumed any intoxicating beverages. R33 at 10:8-15; 17:18-24. Mr. Parsons admitted to consuming one beer at Applebee's Restaurant. R33 at 10:13-15; 17:22-24. Officer Bateman also observed that Mr. Parsons was smoking a cigarette and that some of the ash from the cigarette was falling onto his pants. R33 at 11:10-13; 11:16-25. Officer Bateman believed that drivers smoke cigarettes as "a common tactic . . . to mask the odor of illicit substances and/or intoxicants." R33 at 11:12-13.

At the evidentiary hearing, Officer Bateman also claimed that when he was interrogating Mr. Parsons, he "observed that most of his responses were a response of 'hum.'" R33 at 9:16-19. During the course of the hearing, several portions of the video record of Officer Bateman's encounter were played for the court. R33 at 12:12 to 13:20.[1] Upon further review of these portions of the video record, Officer Bateman was forced to concede on cross examination that Mr. Parsons was actually providing verbal answers rather than mostly "hums," including but not limited to "hello," "sure," "one beer," "Applebee's," and further, provided his address and telephone number. R33 at 19:22 to 21:18.

Based upon the foregoing observations, Officer Bateman asked Mr. Parsons to submit to a battery of field sobriety tests. R33 at 11:10-13. Mr. Parsons agreed to submit to the requested tests, and thereafter alighted from his vehicle whereupon he was transported to the local fire department for the administration of the tests due to the inclement weather conditions. R33 at 11:14-15; 14:11-25.

[1]The video recording was received by the court as Exhibit No. 1. R33 at 15:7. R19.

## STANDARD OF REVIEW ON APPEAL

The question presented to this Court concerns whether an undisputed set of facts requires the suppression of evidence obtained by the City after the unconstitutional enlargement of the scope of Mr. Parsons' detention. Constitutional questions of this nature, based upon undisputed facts, merit *de novo* review by this Court. *State v. Jahnke*, 2009 WI App 4, ¶ 4, 316 Wis. 2d 324, 762 N.W.2d 696.

## ARGUMENT

### I. MR. PARSONS' DETENTION WAS EXPANDED BEYOND WHAT IS CONSTITUTIONALLY PERMISSIBLE.

#### *A. The Constitutional Perspective on the Permissible Scope of Investigatory Detentions.*

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend IV. It has long been recognized that "[t]he Fourth Amendment's purpose is to prevent arbitrary and oppressive interference by law enforcement officials with the privacy and personal security of individuals" *State v. Riechl*, 114 Wis. 2d 511, 515, 339 N.W.2d 127 (Ct. App. 1983). Capricious or arbitrary police action is not tolerated under the umbrella of the Fourth Amendment. "The basic purpose of this prohibition is to safeguard the privacy and security of individuals against **arbitrary** invasions by government officials." *State v. Boggess*, 115 Wis. 2d 443, 448-49, 340 N.W.2d (1983)(emphasis added); *Michigan v. Tyler*, 436 U.S. 499, 504 (1978); *see also Camara v. Municipal Court*, 387 U.S. 523, 528 (1967).

The appropriate measure of whether a detention is constitutionally reasonable is an *objective* test examined under the totality of the circumstances.

> **The test is an objective test.** Law enforcement officers may only infringe on the individual's interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime. **An inchoate and unparticularized suspicion or 'hunch'. . . will not suffice.**

*State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987)(internal quotations omitted; emphasis added); *United States v. Pavelski*, 789 F.2d 485, 489 (7th Cir. 1986). "When determining if the standard of reasonable suspicion [is] met, those facts known to the officer must be considered together as a totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990)." *State v. Powers*, 2004 WI App. 143, ¶ 7, 275 Wis. 2d 456, 685 N.W.2d 869.

Once a person is detained for Fourth Amendment purposes, *State v. Betow*, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999), holds that the person's detention may not be enlarged beyond its original purpose unless new facts come to light which justify an enlargement of the detention. *Id*. at 93-95. *Betow* provides that once a driver is stopped for a traffic violation, he or she may not be detained for purposes apart from those which justified the initial stop unless ***additional observations are made which give rise to a reasonable inference that other crimes have been committed***. *Id*. More specifically, the *Betow* court noted:

> The key is the "reasonable relationship" between the detention and the reasons for which the stop was made. If such an "articulable suspicion" exists, the person may be temporarily stopped and detained to allow the officer to "investigate the circumstances that provoke suspicion," as long as "the stop and inquiry [are] reasonably related in scope to the justification for their initiation." **If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun**. The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop.

*Id.* at 94-95 (quotations in original; emphasis added), citing *Berkemer v. McCarty*, 468 U.S. 420, 439 (1975).

It is important to note that the foregoing holding in *Betow* can be distilled down into one critical statement, to wit: The detaining officer must become aware of "*additional suspicious factors*" which are "*sufficient to establish* that the person has committed *a separate violation*." These components of the *Betow* test will be examined below, and upon this examination, it will become readily evident that the circuit court's ruling in this case was erroneous.

### *B. Application of the Law to the Facts.*

#### 1. "Additional Suspicious Factors."

The first question this Court must examine is whether any "additional suspicious factors" existed in this case which would have alerted the officer

involved to the possibility that Mr. Parsons may have done more than operated with an expired registration (which, notably, he actually did not). But this inquiry begs the question of what facts did exist under the "*totality* of the circumstances" because it is this "totality of the circumstances" which underlies the Fourth Amendment's reasonable suspicion standard.

As it turns out, the "additional factors" in the instant case were far from "suspicious." In fact, all of the "additional factors" known to Officer Bateman at the time he encountered Mr. Parsons mitigated against and wholly undercut any justification to further detain him. To this end, it is relevant to note that the evidentiary record is devoid of any proof, testimony, or evidence that Mr. Parsons:

> Slurred his words;
>
> Had bloodshot or glassy eyes;
>
> Had an odor of intoxicants about his person;
>
> Committed any cognizable traffic offenses;
>
> Weaved or swerved within his designated lane of travel;
>
> Delayed responding to the officer's signal to stop;
>
> Parked his vehicle improperly;
>
> Was uncooperative with officers;
>
> Had any alcoholic beverages in his vehicle;
>
> Had any difficulty appropriately answering the officer's questions;
>
> Displayed any problems with his coordination, such as fumbling for his driver's license, registration, or insurance; and
>
> **Ever exhibited any of the "typical" indicia of impairment.**

Beyond the foregoing, it is telling that the record does not demonstrate that Mr. Parsons' mentation was impaired. More specifically, it is part of the "common stock of knowledge" that alcohol does not discriminate. That is, alcohol impairs *both* mentation and coordination. This is precisely why field sobriety tests are meant to be *divided* attention tasks, *i.e.*, they are deliberately designed to assess both a person's physical coordination ***and*** their ability to think clearly. Throughout the course of his interrogation by Officer Bateman, Mr. Parsons appropriately responded to the questions put to him about where he had been, what he had been drinking, *etc*., and when queried about his telephone number and address, he provided accurate information. This conduct clearly demonstrates that Mr. Parsons

had both an awareness of his surroundings and what was expected of him during a traffic stop. This is evidence of the fact that Mr. Parsons' ability to think clearly was not impaired, which undermines the notion that sufficient facts existed to justify an enlargement of the scope of his detention.

It is evident from the foregoing recitation of facts that *none* of the "classic" or "typical" indicia of impairment existed in this case for Officer Bateman to conclude that anything more than an expired registration offense occurred (which, of course, it had not). Cast in this light, it remains for this Court to assess whether what was observed by Officer Bateman rose to the level of establishing a reasonable suspicion to further detain him for an impaired-operation offense.

### 2. "Sufficient to Establish a Separate Violation."

Even if one considers what was actually observed by Officer Bateman which arguably may support a conclusion that an impaired operation offense was afoot—such as Mr. Parsons' smoking a cigarette, admitting to consuming "one beer," and replying with a "hum" on more than one occasion to the officer's questions—these facts, when taken together, do not rise to the level of establishing a reasonable suspicion to enlarge the scope of Mr. Parsons' detention.

First, Mr. Parsons' smoking a cigarette adds nothing to the reasonable suspicion calculus because16.4% of people living in Wisconsin smoke.[2] Given that nearly one-in-five people in Wisconsin smoke, the officer's conclusory assumption that Mr. Parsons was doing so solely to mask the odor of intoxicants is demonstrably unreasonable under the Fourth Amendment by analogy to a line of cases which recognizes that observations of "normal" behavior are relatively meaningless when it comes to a Fourth Amendment inquiry.

To understand Mr. Parsons' point in the foregoing regard, it is first necessary to acknowledge that "the 'touchstone of the Fourth Amendment is **reasonableness**.'" *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)(emphasis added), quoting *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). Thus understood, State and Federal courts of supervisory jurisdiction have long recognized that "weaving within one's own lane" does ***not*** rise to the level of establishing a reasonable suspicion to detain a motorist for a traffic infraction. *State v. Post*, 2007 WI 70, ¶ 18, 301 Wis.2d 1, 733 N.W.2d 634. The *Post* court referred to this as the "common-sense" approach to law enforcement. *Id*. ¶ 13. In support of a common-sense approach to Fourth Amendment reasonableness inquiries, the *Post* court favorably relied upon two cases, namely: *United States v. Lyons*, 7 F.3d 973 (10th Cir. 1993) and *United States v. Colin*, 314 F.3d 439 (9th Cir. 2002).

[2]*See* https://www.cdc.gov/tobacco/data_statistics/fact_sheets/adult_data/cig_smoking/index.htm.

The *Lyons* court observed that "[i]ndeed, if failure to follow a perfect vector down the highway or keeping one's eyes on the road were sufficient reasons to suspect a person of driving while impaired, **a substantial portion of the public would be subject each day to an invasion of their privacy**.'" *Lyons*, 7 F.3d at 976 (emphasis added); *Colin*, 314 F.3d at 446; *Post*, 2007 WI 70, ¶ 20. When relying on the *Lyons* holding, the *Post* court found that such an extreme approach in dealing with the public was patently *un*reasonable under the Fourth Amendment. *Post*, 2007 WI 70, ¶ 21. Instead, the alternative "common-sense approach" was adopted and, in the instant case, this approach has significant merit because if it was true that smoking was an indicator of "odor-masking," then "a substantial portion of the public would be subject each day to an invasion of their privacy." Because Mr. Parsons' act of smoking is something so commonly done—much like the motoring public's inability to perfectly bisect a lane of travel—common sense dictates that it has no value in the reasonable suspicion calculus.

Second, this Court has previously observed in *State v. Gonzalez*, 2014 WI App 71, Case No. 2013AP2535-CR, Wisc. App. LEXIS 379 (Ct. App. May 8, 2014)(unpublished),[3] that the admission to consuming an intoxicant prior to operating a motor vehicle *is not illegal*. The *Gonzalez* court observed:

> "Not every person who has consumed alcoholic beverages is 'under the influence' …." Wis JI—Criminal 2663. Instead, reasonable suspicion of intoxicated driving generally requires reasonable suspicion that the suspect is "[u]nder the influence of an intoxicant . . . to a degree which renders him or her incapable of safely driving." *See* Wis. Stat. §§ 346.63(1)(a) and 346.01(1).

*Gonzalez*, 2014 WI App 71, ¶ 13. In another case particularly on point with Mr. Parsons', the notion that a driver's admission to consuming alcohol does not provide sufficient grounds to expand the scope of a detention was echoed by the court in *County of Sauk v. Leon*, No. 2010AP1593, 2011 WI App 1, 330 Wis. 2d 836, 794 N.W.2d 929 (Ct. App. Nov. 24, 2010)(unpublished).[4] In *Leon*, the court found that the "admission of having consumed one beer with an evening meal, together with an odor [of intoxicants] of unspecified intensity," was not sufficient to provide reasonable suspicion of intoxicated driving. *Id*. ¶ 28. In the instant matter, very much *unlike* the facts of *Leon*, there is not even an observed "odor of intoxicants" to bolster Officer Bateman's decision to remove Mr. Parsons from his vehicle for field sobriety testing. Thus, if the *combined* odor of alcohol *and* Leon's admission to

[3]This is a limited precedent opinion which may be cited for its persuasive value pursuant to Wis. Stat. § 809.23 (2021-22).

[4]This is a limited precedent opinion which may be cited for their persuasive value pursuant to Wis. Stat. § 809.23 (2021-22).

consuming "one beer"—which notably was also Mr. Parsons' claim—was insufficient to support an independent conclusion that a reasonable suspicion existed to enlarge the scope of Leon's detention, then certainly in this case Mr. Parsons' admission to consuming "one beer" is even less incriminating.

A more detailed analysis of *Gonzalez*, 2014 WI App 71, is further instructive in this matter. More specifically, the *Gonzalez* court examined whether the extension of Ms. Gonzalez's detention to include an investigation for impaired driving was justified under the circumstances of her stop. *Id*. ¶ 1. Ms. Gonzalez was initially detained for having a defective headlight—an equipment violation as opposed to a moving violation. *Id*. ¶ 3. After the detaining officer approached Gonzalez's vehicle, he observed that Ms. Gonzalez had an odor of intoxicants about her person, but he did not observe any slurred speech or bloodshot eyes. *Id*. ¶ 4. Nevertheless, the officer had Gonzalez alight from her vehicle to perform field sobriety tests. *Id*. ¶ 5.

Gonzalez moved to suppress the evidence obtained after the enlargement of the scope of her detention, proffering that the odor of an intoxicant did not provide sufficient grounds to justify the extension of her stop for the equipment violation. *Id*. ¶ 6. The circuit court denied Ms. Gonzalez's motion on the ground that (1) she had an odor of intoxicants emanating from her person, and (2) she had "told an untruth" to the officer because she denied consuming intoxicants yet the odor was not coming from her vehicle but rather from her person. *Id*. ¶¶ 1, 7.

The court of appeals reversed the decision of the lower court. *Id*. ¶ 26. In so doing, the *Gonzalez* court noted that "[a]part from the odor of intoxicants, the officer observed no physical indicators of intoxication, such as slurred speech or bloodshot eyes." *Id*. ¶ 14. The same is true of Mr. Parsons' case, but in a manner far more favorable to him. In this case, like *Gonzalez*, there were no observations of any moving violations. Also like *Gonzalez*, Officer Bateman made no observation that Mr. Parsons had slurred speech or bloodshot eyes. Finally, *unlike* the defendant in *Gonzalez*, Mr. Parsons had no odor of intoxicants emanating from his person. When examined side-by-side in this fashion, the *Gonzalez* decision leads to but one conclusion in Mr. Parsons' case, namely that Officer Bateman lacked a reasonable suspicion to enlarge the scope of his detention.

Finally, there is the matter of Officer Bateman's assertion that he found Mr. Parsons' "hum" responses unusual. As the cross examination of the officer revealed, Mr. Parsons was not merely giving "hum" responses to the questions being put to him. Rather, he greeted the officer with a "hello," and when he had questions put to him about where he had been, whether he consumed any intoxicants, what his telephone number was, what his address was, *etc*., he responded intelligently and with more than a simple "hum." When Officer Bateman was confronted with the

objective video evidence on cross examination, he had to concede all of the foregoing, thereby rendering his testimony on direct examination suspect at best.

When the factors which allegedly supported a reasonable suspicion to extend the scope of Mr. Parsons' detention are examined in light of the *Gonzalez* and *Leon* decisions, there really is only one, wholly unavoidable conclusion which can be drawn and that is that Officer Bateman lacked additional facts "sufficient to establish a separate violation."

Similarly, the facts proffered by Officer Bateman can be examined on a side-by-side basis with the facts known to the officers in *Betow*, 226 Wis. 2d 90. Once done, the same conclusion can be reached in Mr. Parsons' case as was reached in *Betow*. First, the driving behavior between the two cases is a not even a "wash." That is, a minor traffic violation—namely speeding—was observed in *Betow*. In this case, the infraction was not of a moving nature, but rather, was the result of the officer's erroneous belief that Mr. Parsons had an expired registration. Mr. Parsons' driving behavior is *less* egregious than that observed in *Betow* because in the instant case, there were no observations of any poor driving behavior on Mr. Parsons' part.

The one *objective* fact present in *Betow*—*i.e.*, the mushroom being stitched onto Betow's wallet—is utterly absent in Mr. Parsons' case to the extent that it is not illegal to smoke cigarettes in Wisconsin whereas it remains illegal to consume psychedelic mushrooms. Despite the moving violation and the representation of an illicit mushroom being on Betow's wallet, the court of appeals *still found* these factors insufficient to enlarge the scope of Betow's detention.

In the end, the lower court's decision to deny Mr. Parsons' motion was erroneously made in light of all of the foregoing. This Court should, therefore, reverse the lower court's order and remand this case for further proceedings not inconsistent with such a ruling.

### *C. Other Considerations.*

If the "key" to enlarging the scope of a stop and detention is, as the *Betow* and *Berkemer* Courts held, having a "reasonable relationship" between the further investigation and the "circumstances that provoke [the] suspicion," this case falls woefully short of meeting that standard just as the nervousness of Betow and the mushroom on his wallet fell short in *Betow*, 226 Wis. 2d 90. The record in this case actually provides no justification whatsoever for Officer Bateman to enlarge the scope of Mr. Parsons' detention because, quite simply, there was no nexus to an alcohol-related driving offense which was established by the officer.

This case is one in which there really is no additional evidence that can be

related back to an impaired driving offense under § 346.63(1)(a). Officer Bateman lacked sufficient facts upon which to enlarge the scope of Mr. Parsons' into a full-blown investigation for his possibly operating while under the influence of an intoxicant. If the fact of Betow's nervousness coupled with him having an embroidered mushroom on his wallet was insufficient to compel his further detention, then surely, the *absence* of *any* evidence of Mr. Parsons' impairment does not lend itself to further detaining him to investigate a potential impaired driving violation.

The Fourth Amendment context in which Mr. Parsons raises the issue of his extended detention must not be overlooked for it is well-settled that Fourth Amendment "provisions for the security of persons and property should be **liberally construed**." *Mapp v. Ohio*, 367 U.S. 643, 647 (1961)(citation omitted; emphasis added). "A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. **It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon**." *Schneckloth v. Bustamonte*, 412 U.S. 218, 229 (1973)(emphasis added). Whether an investigatory detention is constitutionally reasonable turns upon "'a particularized and objective basis' for suspecting **the person stopped [is engaged in] criminal activity**." *Ornelas v. United States*, 517 U.S. 690, 696 (1996)(citation omitted; emphasis added); *State v. Powers*, 2004 WI App. 143, ¶ 7, 275 Wis. 2d 456, 685 N.W.2d 869. Absent proof of any wrongdoing, a detention is constitutionally unreasonable. *United States v. Cortez*, 499 U.S. 411, 418 (1981); *Brown v. Texas*, 443 U.S. 47, 51 (1979); *Delaware v. Prouse*, 440 U.S. 648, 661-63 (1979); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). Because proof of any wrongdoing is absent in the instant case, this Court has a "duty" to "liberally construe" the Fourth Amendment to guard Mr. Parsons against "stealthy encroachments" on his right to be free from unreasonable searches and seizures, and should, therefore, reverse the decision of the lower court.

## CONCLUSION

Mr. Parsons respectfully requests that this Court reverse the decision of the court below on the ground that objective facts to enlarge the scope of his detention under the totality of the circumstances did not exist in violation of Mr. Parsons' Fourth Amendment right to be free from unreasonable searches and seizures, contrary to *State v. Betow*, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999).

Dated this 28th day of March, 2022.

Respectfully submitted:
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Electronically signed by:
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## CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 5,307 words.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wis. Stat. § 809.19(12).

Dated this 28th day of March, 2022.

**MELOWSKI & SINGH, LLC**

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