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

**Appeal No. 2022AP000794
Winnebago County Circuit Court Case Nos. 2019TR12117**

COUNTY OF WINNEGABO,

Plaintiff-Respondent,

v.

RYAN C. KALTENBACH,

Defendant-Appellant.

**AN APPEAL FROM THE DECISION THE TRIAL
COURT DENYING THE DEFENDANT MOTION FOR
SUPPRESSION OF EVIDENCE IN CIRCUIT COURT
FOR WINNEBAGO COUNTY, THE HONORABLE
TERESA S. BASILIERE, JUDGE, PRESIDING**

**THE REPLY BRIEF OF THE DEFENDANT-APPELLANT
RYAN C. KALTENBACH**

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ARGUMENT

In arguing Officer Hebert had sufficient suspicion to detain Mr. Kaltenbach for field sobriety testing, the State compares this case to *State v. Glover*, 2011 WI App. 58, 332 Wis.2d 807, 798 N.W.2d 321, unpublished but used by the State for persuasive value. However, the facts in *Glover* are substantially different than those herein.

Unlike stopping Mr. Kaltenbach's vehicle for a defective headlamp, in *Glover*, the officer stopped the defendant for speeding. Clearly, speeding could be a potential indicia of general intoxication (unable to conform one's speed to the posted limit might amount to impairment). Furthermore, unlike Mr. Kaltenbach's case, in *Glover*, the defendant admitted drinking at a bar, and was driving near bar closing. While Mr. Kaltenbach was driving around midnight (not bar closing), he was not coming from a bar, rather a haunted house.

Unlike a speeding violation, the fact that Mr. Kaltenbach was operating his motor vehicle with a defective headlamp at midnight, does not provide any indicia that Mr. Kaltenbach was less able to safely operate his motor vehicle. Furthermore, the fact that Mr. Kaltenbach admitted to consuming two beers, without more (i.e. Red, glassy or blood shot eyes, slurred

speech, motor coordination problems, poor driving etc.) does not amount to sufficient suspicion that Mr. Kaltenbach operated his motor vehicle while under the influence of an intoxicant. The additional observations made by Officer Hebert after the stop for an equipment violation did not provide the officer with the requisite level suspicion to continue to detain Mr. Kaltenbach for field sobriety testing. Thus, the continued detention was unreasonable and not based on sufficient reasonable suspicion.

Because of this, the trial court erred in denying Mr. Kaltenbach's motion for suppression of evidence.

CONCLUSION

Because Deputy Hebert's continued detention of Mr. Kaltenbach was unreasonable, the trial court erred when it denied his motion for suppression of evidence. The court should reverse the trial court's ruling and vacate the judgment of conviction.

Dated this 9th day of November, 2022.

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 6 pages. The word count is 832.

Dated this 9th day of November, 2022.

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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 9th day of November, 2022.

Respectfully submitted,

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