

**FILED**  
**10-31-2023**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT III  
CASE NO. 2023AP000561-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TROY A. WRY,

Defendant-Appellant.

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**ON APPEAL FROM THE DECISION AND ORDER ENTERED IN  
THE CIRCUIT COURT FOR RUSK COUNTY,  
CASE NO. 21 CT 03,  
THE HONORABLE BEVERLY WICKSTROM, PRESIDING**

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**DEFENDANT-APPELLANT'S BRIEF**

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ROBERT PAUL MAXEY  
State Bar No. 1112746

**NELSON DEFENSE GROUP**  
811 First Street, Ste. 101  
Hudson, WI 54016  
(715) 386-2694  
robert@nelsondefensegroup.com

Attorneys for the Defendant-Appellant

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES .....	3
ISSUE PRESENTED .....	5
STATEMENT ON ORAL ARGUMENT AND PUBLICATION .....	5
STATEMENT OF THE CASE AND FACTS .....	6
ARGUMENT .....	12
<b>I. DEPUTY JILEK LACKED REASONABLE SUSPICION NECESSARY TO STOP WRY’S VEHICLE FOR A TRAFFIC VIOLATION.</b> .....	12
<b>a. Introduction and standard of review.</b> .....	12
<b>b. Deputy Jilek detained Wry without possessing an objectively reasonable suspicion that Wry had committed or was committing an offense.</b> .....	13
CONCLUSION .....	19
CERTIFICATION .....	20

**TABLE OF AUTHORITIES**

	<u>Page</u>
<b>Cases</b>	
<i>County of Sauk v. Leon</i> , 2011 WI App 1, 330 Wis. 2d 836, 794 N.W.2d 929 .....	15
<i>Mapp v. Ohio</i> , 367 U.S. 643 (1961) .....	19
<i>Ornelas v. United States</i> , 517 U.S. 690 (1996) .....	13–14
<i>State v. Anderson</i> , 2019 WI 97, 389 Wis. 2d 106, 935 N.W.2d 285 .....	14
<i>State v. Betow</i> , 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999).....	12
<i>State v. Carroll</i> , 2010 WI 8, 322 Wis. 2d 299, 778 N.W.2d 1 .....	13, 19
<i>State v. Floyd</i> , 2017 WI 78, 377 Wis. 2d 394, 898 N.W. 560 .....	12
<i>State v. Houghton</i> , 2015 WI 79, 364 Wis. 2d 234, 868 N.W.2d 143 .....	12
<i>State v. Kieffer</i> , 217 Wis. 2d 531, 577 N.W.2d 352 (1998) .....	15
<i>State v. Kolk</i> , 2006 WI App 261, 298 Wis. 2d 99, 726 N.W.2d 337 .....	14–15
<i>State v. Newer</i> , 2007 WI App 236, 306 Wis. 2d 193, 742 N.W.2d 923 .....	17
<i>State v. Post</i> , 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634 .....	13, 16
<i>State v. Richardson</i> , 156 Wis. 2d 128, 456 N.W.2d 830 (1990) .....	12

**TABLE OF AUTHORITIES CONTINUED**

	<u>Page</u>
<b>Cases</b>	
<i>State v. Rutzinski</i> , 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516 .....	15
<i>State v. Vorburger</i> , 2002 WI 105, 255 Wis. 2d 537, 648 N.W.2d 829 .....	12
<i>State v. Washington</i> , 2005 WI App 123, 284 Wis. 2d 456, 700 N.W.2d 305 .....	13
<i>State v. Young</i> , 2006 WI 98, 294 Wis. 2d 1, 717 N.W.2d 729 .....	12
<i>United States v. Hughes</i> , 606 F.3d 311 (6th Cir. 2010) .....	16
<i>Wong Sun v. United States</i> , 371 U.S. 471 (1963) .....	13, 19
 <b>Constitutional Provisions</b>	
U.S. Const. amend. IV .....	12
Wis. Const. art. I, § 11 .....	12
 <b>Statutes</b>	
Wis. Stat. § 346.63(1)(a) .....	6
Wis. Stat. § 346.63(1)(b) .....	6
Wis. Stat. § 752.31(2) .....	5
Wis. Stat. § 809.23(3) .....	15
Wis. Stat. § 968.24 .....	12–13

## **ISSUE PRESENTED**

### **I. Whether Deputy Jilek had reasonable suspicion to stop Wry's vehicle?**

The circuit court answered: "Yes."

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

Because this is an appeal within Wis. Stat. § 752.31(2), the resulting decision is not eligible for publication. Because the issues in this appeal may be resolved through the application of established law, the briefs in this matter should adequately address the arguments; oral argument will not be necessary.

## STATEMENT OF THE CASE AND FACTS

On February 12, 2021, the state filed a criminal complaint in Rusk County charging Wry with one count of Operating While Intoxicated (“OWI”) and one count of Operating with Prohibited Alcohol Concentration (“PAC”), both as third offenses, contrary to Wisconsin Statutes secs. 346.63(1)(a) and (1)(b). (4:1–4).

On July 14, 2021, Wry filed a motion to suppress the evidentiary fruits of the unlawful detention in this case on the grounds that the deputy involved in the traffic stop, Deputy Braden Jilek, Rusk County Sheriff’s Department, detained Wry without possessing an objectively reasonable suspicion that Wry had committed, or was committing, an offense. (14:1–4).

The circuit court held an evidentiary hearing on the suppression motion on August 24, 2021. (15). During the evidentiary hearing, Deputy Jilek testified, as set out below. (15:2).

On the evening of October 2, 2020, dispatch alerted Jilek to a complaint alleging that an individual driving a dark colored pickup truck “had showed up at [the complainant’s] house potentially intoxicated and ... was asked to leave and did so.” (15:4).

Dispatch did not provide any further identifying details to Jilek concerning the suspected vehicle aside from the complainant’s limited description of the vehicle’s body style and color. (15:10).

Dispatch likewise did not provide any additional information to Jilek that indicated whether the complainant smelled alcohol or observed any distinct signs of impairment, amongst other indicators; nor did the state present any evidence at the suppression hearing relevant to the complaint’s reliability.

Jilek started heading towards the complainant’s residence which was located on Broken Arrow Road in Rusk County. (15:5, 9). While en route, Jilek received an update from dispatch advising that the pickup truck had allegedly returned to the complainant’s residence before departing again. (15:10).

Jilek was traveling on Broken Arrow Road on his way to the complainant's residence when he allegedly saw a vehicle matching the complainant's limited description pass by him traveling in the opposite direction. (15:10). Jilek turned around and began to follow the vehicle. (15:10–11).

While following the pickup truck, Jilek observed the vehicle deviate within its lane of travel. (15:11). Jilek testified that Broken Arrow Road is "a dirt road so there was not an actual centerline." (15:11). He further elaborated, "I didn't believe it to cross the centerline at all. I believed it to be swerving in its own lane." (15:11). He also testified that the vehicle "had narrowly missed a couple of mailboxes." (15:5). Jilek nevertheless did not initiate a traffic stop.

The pickup truck then turned onto Highway 27. (15:11). Jilek continued to follow the vehicle. Jilek testified that Highway 27 has "full road markings and center and fog lines." (15:11). Jilek testified that while following the pickup truck on Highway 27, he did not observe the vehicle cross any lane lines. (15:11). Nor did he observe any other dangerous or problematic driving, such as the vehicle getting too close to other vehicles, drastic speed variations, unnecessary braking, or any equipment-related traffic violations. Jilek testified that the pickup truck merely "continued to swerve in its own lane." (15:5). Still, Jilek did not initiate a traffic stop.

Jilek continued to follow the pickup truck until it entered Chippewa County, at which point he ended his pursuit. (15:6, 11–12). Jilek confirmed that despite following the pickup truck for this extended period, he did not observe who the driver of the vehicle was. (15:12).

Jilek ultimately lost sight of the pickup truck as it traveled further into Chippewa County. He decided at this point to run the pickup truck's license plate number. (15:12). His search returned an address for the vehicle's registered owner. (15:6). Jilek testified that the address was in Rusk County on Dalvin Street in the

Village of Sheldon. (15:6–7). Jilek proceeded to Sheldon “in an attempt to potentially located [*sic*] the vehicle if it came back.” (15:7).

Jilek parked near the corner of County Road Double V and Spur Road. (15:7). He testified that after “sitting at that location for approximately 10 to 15 minutes or so,” he observed a pickup truck coming into Sheldon. (15:7). Jilek began following this pickup truck into Sheldon. (15:7–8). While following the vehicle, he observed that its license plate number matched that of the pickup truck he had been following earlier on Broken Arrow Road and Highway 27. (15:8). He also observed that the pickup truck matched the complainant’s description. (15:8).

Still, Jilek observed no traffic or equipment violations while following the pickup truck into Sheldon. He nevertheless activated his red and blue emergency lights and initiated a traffic stop. (15:8).

After considering the parties’ written arguments, on January 3, 2022, the circuit court issued an oral ruling denying Wry’s motion to suppress. (41:11 (A:112)). The court noted that the call that Jilek had been responding to was “[n]ot a call from a motorist on a highway which -- who -- who remained anonymous or a call from a motorist on a highway who couldn’t necessarily be found later on, but a call from a residence which could be identified for purposes of later proceedings that indicated that there was a truck in their driveway” and “the driver of the truck was possibly intoxicated.” (41:5–6 (A:106–07)).

Yet, in addressing the complainant’s “basis for thinking Mr. Wry was intoxicated,” the court conceded, “Well we don’t know because ... none of that information was developed in the record.” (41:6 (A:107)). The court speculated, “Maybe, you know, that information was given to dispatch, but not given to Deputy Jilik [*sic*].” (41:6 (A:107)). “But in any event, there isn’t any information to understand or to know why they thought Mr. Wry was intoxicated when he was in their driveway.” (41:6 (A:107)).

Still, the court continued, “We do know that [Wry] was asked to leave. We do know that he left and came back later, and then -- then left again. Which is -- well at 11:35 at night, I guess, is unusual behavior.” (41:6 (A:107)). “And that’s what the -- that’s what [Jilek] had in his head as he drove down Broken Arrow Road and identified the vehicle as one matching the description.” (41:6–7 (A:107–08)).

The court noted that Jilek testified that as he was following the suspected pickup truck on Broken Arrow Road, the vehicle was “swerving in it’s [*sic*] own lane of traffic, and narrowly missed a couple of mailboxes.” (41:4 (A:105)). Yet, the court acknowledged Broken Arrow Road’s lack of lane markings. (41:7 (A:108)). And ultimately, while the court characterized the pickup truck’s alleged driving behavior on Broken Arrow Road as “suspicious” and “out of the ordinary,” it nevertheless conceded that “we know weaving in your own lane isn’t enough to -- to cause a traffic stop to -- to occur. It’s not sufficient behavior to create the need for a traffic stop.” (41:7 (A:108)).

The court next noted that the pickup truck then turned south on Highway 27 and Jilek “continued to follow.” (41:4 (A:105)). Jilek “continued to notice that the vehicle was swerving in it’s [*sic*] own lane of traffic into Chippewa County.” (41:4 (A:105)).

Yet, the court acknowledged that Jilek stopped following the pickup truck when it moved into Chippewa County. (41:7 (A:108)). “Why he stopped, I guess I -- I don’t know. I -- I -- it might be in the transcript, I didn’t read it. That closely. I should say I didn’t read that that closely to determine why he stop following.” (41:7–8 (A:108–09)). Nevertheless, the court confirmed that Jilek “broke off following the vehicle when the vehicle went into Chippewa County.” (41:4 (A:105)).

But in any event, Jilek “ran a license plate and found the registered owner of the vehicle by running the license plate; and that was the defendant, Mr. Wry.” (41:4 (A:105)). Jilek was further “given an address ... that was on Dalvin Street in the

Village of Sheldon.” (41:4 (A:105)). He therefore “went there and just kind of stake the place out, I guess, for lack of a better term.” (41:4 (A:105)).

“So [Jilek] went there and he parked near Mr. Wry’s house. And low [*sic*] and behold, 15, 20, 25 minutes later, here comes the same vehicle, identified again by the description and the license plate, up to Mr. Wry’s home and a traffic stop was effectuated.” (41:8 (A:109)). The court further noted that Jilek “indicated that the vehicle matched the description of a suspicious vehicle that we had gotten. That he had been reported on Brown Arrow Road 30 to 25 to 30 minutes beforehand. It also matched the description of the vehicle that he had been following from Broken Arrow Road.” (41:5 (A:106)). Jilek thereafter “activated his emergency lights and conducted a traffic stop.” (41:5 (A:106)).

The court emphasized that “[a]t this point, what the officer I think needs is reasonable suspicion to believe that a -- a traffic violation is being committed.” (41:8 (A:109)). The court found that while Jilek “doesn’t have enough information I don’t believe to arrest Mr. Wry or at that point to ask him to do field sobriety tests or to ask him to take a chemical test of his breath. ... I do believe he has enough to conduct a traffic stop.” (41:8 (A:109)).

The court addressed the fact that despite having this above information and observing such “out of the ordinary” driving behavior, Jilek nevertheless made the decision to not initiate a traffic stop on either Broken Arrow Road or on Highway 27. “What the defendant says is wait a minute. You let him go. You let him drive down Highway 27 into Chippewa County. And you didn’t see that truck for 15, 20, 25 minutes. Anything could of happened. That drunk driver, who was not Mr. Wry, could of gone some place; and Mr. Wry got in the truck and drove home stone cold sober. So you don’t know that the driver didn’t change. You don’t know what happened.” (41:9–10 (A:110–11)).

Nonetheless, the court concluded, “But I don’t think that’s the point. I think the point is that the officer at that time had enough information by which he was

entitled to make a stop to conduct further investigation of the circumstances behind the observations he had made and the information that he -- he had in the case.” (41:10 (A:111)).

The court further elaborated, “Officers don’t have to discount every possibility. Officers don’t have to discount that the weaving was because he leaned over to turn the channel on the radio station, or that he dumped his McDonalds French fries on the floor. Officers don’t have to discount that. What they have is the information in front of them. And they have the ability to act on that information when there is reasonable suspicion to believe that there is a traffic violation taking place.” (41:10 (A:111)).

“And in this case that’s what the officer had. He had a person calling, identifying someone that had been asked to leave, that was possibly intoxicated, left, came back; and then had unusual driving behavior while the officer was found.” (41:10–11 (A:111–12)).

The court therefore determined that “the stop of Mr. Wry in the Village of Sheldon or around the Village of Sheldon by the deputy was appropriate given the information that he had at his disposal.” (41:11 (A:112)).

Wry now appeals to this Court.

## ARGUMENT

### I. DEPUTY JILEK LACKED REASONABLE SUSPICION NECESSARY TO STOP WRY'S VEHICLE FOR A TRAFFIC VIOLATION.

#### a. Introduction and standard of review.

Both the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution protects citizens from unreasonable searches and seizures. *State v. Young*, 2006 WI 98, ¶ 18, 294 Wis. 2d 1, 717 N.W.2d 729. This Court, when construing the Wisconsin Constitution, consistently follows the United States Supreme Court's interpretation of the Fourth Amendment. *State v. Floyd*, 2017 WI 78, ¶ 19, 377 Wis. 2d 394, 898 N.W. 560.

A traffic stop, even if only for a brief period and for a limited purpose, constitutes a seizure within the meaning of our Constitutions. *Floyd*, 2017 WI 78 at ¶ 20. As with any seizure, "reasonableness is the 'ultimate standard' embodied by the Fourth Amendment." *State v. Vorburger*, 2002 WI 105, ¶ 38, 255 Wis. 2d 537, 648 N.W.2d 829.

A traffic stop is justified when an officer "reasonably believes the driver is violating a traffic law." *State v. Betow*, 226 Wis. 2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999); *see also State v. Houghton*, 2015 WI 79, ¶ 79, 364 Wis. 2d 234, 868 N.W.2d 143 ("[A]n officer's reasonable suspicion that a motorist is violating or has violated a traffic law is sufficient for the officer to initiate a stop of the offending vehicle."); Wis. Stat. § 968.24 (codifying the reasonable suspicion standard for investigative stops).

Determining whether an officer had reasonable suspicion to stop an individual involves an objective, common sense analysis of the totality of the circumstances, considering the facts in the record and rational inferences from those facts. *State v. Richardson*, 156 Wis. 2d 128, 139–40, 456 N.W.2d 830 (1990).

The government carries the burden of proving that a traffic stop was reasonable. *State v. Post*, 2007 WI 60, ¶ 12, 301 Wis. 2d 1, 733 N.W.2d 634. When the government fails to meet that burden, the traffic stop in question is unconstitutional, and all evidence obtained from that unlawful seizure must be suppressed. *State v. Carroll*, 2010 WI 8, ¶ 19, 322 Wis. 2d 299, 778 N.W.2d 1; *Wong Sun v. United States*, 371 U.S. 471, 487–88 (1963).

Jilek did not have an objectively reasonable suspicion that Wry was under the influence of an intoxicant, nor that he had committed or was committing any offense when Jilek required Wry to submit to detention. Accordingly, the evidence derived from the stop must be suppressed.

When reviewing a trial court’s ruling on a motion to suppress evidence, a reviewing court will uphold any factual findings unless clearly erroneous. *State v. Washington*, 2005 WI App 123, ¶ 11, 284 Wis. 2d 456, 700 N.W.2d 305. The reviewing court, however, independently decides whether the facts establish that a particular seizure occurred, and, if so, whether it violated constitutional standards. *Id.*

**b. Deputy Jilek detained Wry without possessing an objectively reasonable suspicion that Wry had committed or was committing an offense.**

The test for reasonable suspicion is whether, under the totality of the circumstances, “the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.” *Post*, 2007 WI 60 at ¶ 13; *see also* Wis. Stat. § 968.24.

An “inchoate and unparticularized suspicion or ‘hunch’” will not suffice. *Post*, 2007 WI 60 at ¶ 10 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). “Rather, the officer ‘must be able to point to specific and articulable facts which, taken together, reasonably warrant’ the intrusion of the stop.” *Post*, 2007 WI 60 at ¶ 10 (quoting *Terry*, 392 U.S. at 21); *see also Ornelas v. United States*, 517 U.S. 690,

696 (1996) (holding that an officer may conduct a traffic stop only if the officer has a “particularized and objective basis” to believe that the person has been engaged in illegal activity).

The government failed to prove that Jilek’s stop of Wry’s vehicle was based upon an objectively reasonable suspicion that the vehicle’s driver had committed or was committing an offense.

The circuit court nevertheless held that Jilek’s stop of Wry’s vehicle “was appropriate given the information that he had at his disposal.” (41:11 (A:112)). The court specifically found that the initial complaint of a “possibly intoxicated” driver combined with the observation of “unusual driving behavior” provided Jilek with the necessary reasonable suspicion to believe that Wry was driving impaired:

What [officers] have is the information in front of them. And they have the ability to act on that information when there is a reasonable suspicion to believe that there is a traffic violation taking place. And in this case that’s what the officer had. He had a person calling, identifying someone that had been asked to leave, that was possibly intoxicated, left, came back; and then had unusual driving behavior while the officer was found.

(41:10–11 (A:111–12)).

The circuit court, however, erred in denying Wry’s motion to suppress, as the totality of the circumstances do not support a finding that Jilek possessed specific and articulable facts to reasonably suspect that Wry was driving impaired.

First, there is no evidence in the record regarding the caller’s basis for thinking Wry was intoxicated, and the details of the complaint that Jilek was able to corroborate were relatively weak.

While information supplied by a citizen may justify an investigative stop in some circumstances, *State v. Anderson*, 2019 WI 97, ¶ 36, 389 Wis. 2d 106, 935 N.W.2d 285, “there must be some type of evaluation of the reliability of [the citizen complainant],” *State v. Kolk*, 2006 WI App 261, ¶ 13, 298 Wis. 2d 99, 726 N.W.2d 337. “The reliability of such a person should be evaluated from the nature of his report, his opportunity to hear and see the matters reported, and the extent to which

it can be verified by independent police investigation.” *Id.*; see also *State v. Rutzinski*, 2001 WI 22, ¶ 18, 241 Wis. 2d 729, 623 N.W.2d 516 (“Tips should exhibit reasonable indicia of reliability. In assessing the reliability of a tip, due weight must be given to ... the informant’s basis of knowledge”). The government bears the burden of proving a tipster’s basis of knowledge by clear and convincing evidence. *State v. Kieffer*, 217 Wis. 2d 531, 541–42, 577 N.W.2d 352 (1998).

Here, the circuit court conceded that there is no evidence in the record regarding the caller’s basis for thinking Wry was intoxicated. “Well we don’t know [the complainant’s basis for thinking Mr. Wry was intoxicated] because ... none of that information was developed in the record.” (41:6 (A:107)).

Further, the details that Jilek was able to corroborate prior to initiating the traffic stop were relatively weak. Jilek was merely able to corroborate that Wry’s pickup truck matched the complainant’s limited description of the suspected vehicle’s body style and color. (15:10). That the caller would have possessed such readily available information undermines the reliability of the complainant’s other claims. *Kolk*, 2006 WI App 261 at ¶ 16.

Given the complete lack of information regarding the caller’s basis for thinking Wry was intoxicated, as well as the weak corroborating evidence, the initial complaint is insufficient to be given much weight in the reasonable suspicion calculus. Therefore, the question of reasonable suspicion to initiate the traffic stop primarily rests on Jilek’s independent observations of Wry’s pickup truck.

Nothing about Wry’s driving behavior, however, suggests that alcohol caused him to lack “the clear judgment and steady hand necessary to handle and control a motor vehicle.” *County of Sauk v. Leon*, 2011 WI App 1, ¶ 15, 330 Wis. 2d 836, 794 N.W.2d 929 (quoting WIS JI–CRIMINAL 2663) (unpublished but citable pursuant to Wis. Stat. (Rule) 809.23(3)).

Jilek followed Wry’s pickup truck for an extended period as it traveled on Broken Arrow Road and then on Highway 27. Jilek testified that as he was following

the pickup truck on Broken Arrow Road, he observed the vehicle deviate within its lane of travel. He further elaborated, “I didn’t believe it to cross the centerline at all. I believed it to be swerving in its own lane.” (15:11). Yet, as Jilek testified to and the circuit court further acknowledged, Broken Arrow Road is a dirt road, and it therefore has no traffic markings or lines painted on it. (15:11; 41:7 (A:108)).

Moreover, in *State v. Post*, the Wisconsin Supreme Court held that “weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle.” 2007 WI 60 at ¶ 2. The circuit court likewise conceded the same, noting that “weaving in your own lane isn’t enough to -- to cause a traffic stop to -- to occur. It’s not sufficient behavior to create the need for a traffic stop.” (41:7 (A:108)).

The circuit court nevertheless pointed to Jilek’s testimony that the pickup truck’s weaving in its own lane had caused it to “narrowly miss[] a couple of mailboxes” on Broken Arrow Road. (41:4 (A:105)).

Importantly, however, when it comes to Fourth Amendment seizures in the traffic stop context, “it is not sufficient for a police officer to know the facts that give rise to reasonable suspicion; the officer must *also*, at the time of the stop, know or reasonably believe that those facts *actually* give rise to ... reasonable suspicion.” *United States v. Hughes*, 606 F.3d 311, 316 (6th Cir. 2010) (emphases in original). Stated differently, “in order for a traffic stop to be permissible under the Fourth Amendment, a police officer must know or reasonably believe that the driver of the car is doing something that represents a violation of law.” *Id.*

Presumably, Jilek is a reasonable officer with sufficient training and experience. If Jilek reasonably believed that this driving behavior that he alleges to have personally observed on Broken Arrow Road actually gave rise to a reasonable suspicion that the vehicle’s driver was intoxicated, he would have certainly initiated a traffic stop at that time. Yet, Jilek made the decision not to initiate a traffic stop of the pickup truck upon observing this alleged weaving on Broken Arrow Road.

Instead, Jilek allowed the pickup truck to continue on Broken Arrow Road and then turn onto Highway 27. (15:11). Clearly, the pickup truck's alleged driving behavior on Broken Arrow Road adds nothing to the reasonable suspicion inquiry, as Jilek permitted the driver to leave the rural road and turn onto the two-lane state highway even after observing this driving behavior.

Jilek then testified that while following the pickup truck on Highway 27, he did not observe any dangerous or problematic driving, or any equipment-related traffic violations. (15:11). Jilek's observations of the pickup truck's driving behavior on Highway 27 therefore dissipated any reasonable suspicion of impairment that existed, even assuming for the sake of argument that it did exist at one point. *See State v. Newer*, 2007 WI App 236, ¶ 8, 306 Wis. 2d 193, 742 N.W.2d 923 (providing support for the proposition that even once-existing reasonable suspicion might "dissipate" depending on facts that later come to an officer's attention).

Jilek's actions (or lack thereof) on Highway 27 further support a finding that the requisite reasonable suspicion was lacking in this case. Not only did Jilek not initiate a traffic stop of the pickup truck on Highway 27, he stopped following the pickup truck altogether, thereby allowing the vehicle to continue on its way into Chippewa County, totally free from Jilek's surveillance. (15:6, 11–12).

Again, a reasonable officer in Jilek's position and with his experience and training would have certainly initiated a traffic stop on Highway 27 if he or she had observed one or more indicia of intoxication while following Wry's pickup truck. Clearly, Jilek did not reasonably believe that his personal observations of Wry's pickup truck, even when combined with the information he had received from dispatch concerning the initial complaint, actually gave rise to a reasonable suspicion that the vehicle's driver was intoxicated. Had he believed such, he would have initiated a traffic stop on Highway 27. Yet, Jilek did no such thing.

The fact that Jilek completely lost sight of the pickup truck for approximately 20 minutes following his decision to break off his pursuit of the vehicle further undermines the circuit court's conclusion that reasonable suspicion existed. (15:7). Ironically, the circuit court in its oral ruling laid out exactly why any reasonable suspicion, if it existed at all, completely vanished due to the pickup truck being out of Jilek's sight for this considerable amount of time:

What the defendant says is wait a minute. You let him go. You let him drive down Highway 27 into Chippewa County. And you didn't see that truck for 15, 20, 25 minutes. Anything could of happened. That drunk driver, who was not Mr. Wry, could of gone some place; and Mr. Wry got in the truck and drove home stone cold sober. So you don't know that the driver didn't change. You don't know what happened.

(41:9–10 (A:110–11)). These reasonable suspicion problems arising from the pickup truck being unaccounted for for this extended period are only compounded by Jilek confirming that he did not observe who the driver of the pickup truck was despite following the vehicle for this extended period. (15:12).

These issues above are enough to dissipate any reasonable suspicion of impairment that existed, even assuming for the sake of argument that it did exist at one point. Yet, Jilek testified that after losing sight of the pickup truck, he decided to run the vehicle's license plate number. (15:12). His search returned an address for the vehicle's registered owner. Jilek proceeded to this address and parked nearby. After "sitting at that location for approximately 10 to 15 minutes or so," he observed the pickup truck that he had been following earlier head towards his location. (15:7). Jilek began following this pickup truck. (15:7–8).

Importantly, however, Jilek observed no traffic or equipment violations while following the pickup truck. As such, Jilek did not make any observations that could give rise to reasonable suspicion during this time.

Therefore, Jilek's stop of Wry's pickup truck was not based upon an objectively reasonable suspicion that the vehicle's driver had committed or was committing an offense. Thus, all of the evidence obtained as a result of this unlawful

seizure must be suppressed. *Wong Sun*, 371 U.S. at 484; *Carroll*, 2010 WI 8 at ¶ 19; *see also Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (“We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court.”).

### CONCLUSION

For the foregoing reasons, this Court should vacate Wry’s conviction, reverse the order of the circuit court denying his suppression motion, and remand for further proceedings.

Dated this 31st day of October, 2023.

Respectfully submitted,

Electronically signed by:

ROBERT PAUL MAXEY

State Bar No. 1112746

**NELSON DEFENSE GROUP**

811 First Street, Ste. 101

Hudson, WI 54016

(715) 386-2694

robert@nelsondefensegroup.com

Attorneys for the Defendant-Appellant

### **CERTIFICATION BY ATTORNEY**

I hereby certify that this brief conforms to the rules contained in §. 809.19 (8) (b), (bm) and (c) for a brief. The length of this brief is 5,219 words.

I further certify that filed with this brief is an appendix that complies with §. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under §. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 31st day of October, 2023.

Electronically signed by:

ROBERT PAUL MAXEY

State Bar No. 1112746

**NELSON DEFENSE GROUP**

811 First Street, Ste. 101

Hudson, WI 54016

(715) 386-2694

robert@nelsondefensegroup.com

Attorneys for the Defendant-Appellant