STATE OF WISCONSIN
IN SUPREME COURT

Appellate Case No. 2023AP1796

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

ASIF AHMED,

Defendant-Appellant-Petitioner.

APPEAL FROM A DECISION OF THE COURT OF APPEALS, DISTRICT II, FILED ON MARCH 14, 2024, APPEALING A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR LA CROSSE COUNTY, BRANCH I, THE HONORABLE GLORIA L. DOYLE PRESIDING, TRIAL COURT CASE NO. 22-TR-2265

BRIEF OF DEFENDANT-APPELLANT-PETITIONER

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WHETHER MR. AHMED'S REFUSAL TO SUBMIT TO AN IMPLIED CONSENT TEST WAS REASONABLE BECAUSE HE WAS ARRESTED WITHOUT PROBABLE CAUSE TO BELIEVE THAT HE OPERATED A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICANT IN VIOLATION OF THE FOURTH AMENDMENT?

Trial Court Answered: NO. The circuit court concluded that the officer in this case had probable cause to arrest Mr. Ahmed based upon the totality of the circumstances, and therefore, his refusal to submit to an implied consent test was unlawful. R20 at pp. 2-3; D-App. at 114-15.

Court of Appeals Answered: NO. The court of appeals found that the lower court's findings of fact were not clearly erroneous and, when taken together, rose to the level of establishing probable cause to arrest. D-App. at 106-12.

STATEMENT OF THE ISSUE PRESENTED TO THIS COURT

WHETHER LAW ENFORCEMENT OFFICERS MAY DECEIVE A DETAINED PERSON ABOUT THE LOCATION TO WHICH THEY ARE BEING TRANSPORTED, AND FURTHER, USE THE DETAINEE'S RELUCTANCE TO REMAIN AT THE LOCATION AS PROOF OF CONSCIOUSNESS OF GUILT?

Trial Court Answered: NOT APPLICABLE. The current incarnation of the issue Mr. Ahmed puts before this Court was not addressed by the circuit court. R20; D-App. at 10-0.

Court of Appeals Answered: YES. In reaching its decision, the court of appeals characterized Mr. Ahmed as arguing that:

"[I]t was reasonable for him to 'request that he be transported to the location to which he originally agreed to be taken from the location to which he never consented to go,' and that that request did not constitute a refusal to perform the walk-and-turn test as a factor supporting probable cause. However, Ahmed does not cite to any authority to support the proposition that a person does not refuse to perform a field sobriety test if the person does not consent to the location for the test."

> The court's implied conclusion that officers may engage in subterfuge, and thereupon, the officers may consider a detainee's protestation regarding the same as "proof of consciousness of guilt" places accused citizens in an untenable position in violation of the Due Process Clause of the Fourteenth Amendment, the Fourth Amendment to the United States Constitution, and Article I, § 11 of the Wisconsin Constitution. Slip Op. at 111; D-App. at 111.

STATEMENT OF THE CASE

On October 3, 2022, Mr. Ahmed was charged in La Crosse County with Operating a Motor Vehicle While Under the Influence of an Intoxicant—Second Offense, contrary to Wis. Stat. § 346.63(1)(a), and Unlawfully Refusing to Submit to an Implied Consent Test, contrary to Wis. Stat. § 346.63(1)(b). R1.

After retaining counsel, Mr. Ahmed requested a hearing on the lawfulness of his alleged refusal to submit to an implied consent test. R5. A hearing on the same was held on June 1, 2023. R15.

At the refusal hearing, the State offered the testimony of a single witness, the arresting officer, Kevin Lozano of the La Crosse Police Department. R15 at pp. 4-40. During the hearing, Officer Lozano's body-camera video recording of his encounter with Mr. Ahmed was received by the Court as Exhibit No.1. R15 at 33:9-10. At the conclusion of the hearing, the court ordered the parties to submit supplement briefs on the issue, *inter alia*, of whether probable cause existed to arrest Mr. Ahmed for operating a motor vehicle while under the influence of an intoxicant. R15 at 46:1-2.

Mr. Ahmed timely filed a supplemental brief as did the State. R16 & R17. After receiving the briefs of the parties, the circuit court issued a written decision denying all of Mr. Ahmed's pretrial motions. R20. The circuit court concluded that Mr. Ahmed's refusal was unreasonable under the circumstances, principally rely upon the odor of intoxicants, "other observations," and Mr. Ahmed's alleged declination to perform field sobriety tests in the parking lot of a local tavern. R20 at pp. 2-3; D-App. at 103-04.

On September 20, 2023, the Court entered an order finding Mr. Ahmed's refusal unlawful. R20; D-App. at 101.

It is from the foregoing judgment that Mr. Ahmed appealed to the court of appeals by Notice of Appeal filed on September 27, 2023. R22. The court of appeals rendered its decision adversely to Mr. Ahmed, and the same was filed on March 14, 2024. D-App. at 101-12.

STATEMENT OF FACTS

On October 2, 2022, Asif Ahmed was detained in the City of La Crosse by a deputy of the La Crosse County Sheriff's Office after allegedly having been involved in a single-vehicle motorcycle accident. R15 at 5:19-23. Shortly after his initial detention, Officer Kevin Lozano of the La Crosse Police Department arrived on the scene and took control of the investigation. *Id*.

At some point after arriving on scene, Officer Lozano observed that Mr. Ahmed had an odor of intoxicants emanating from his person. *Id*. at 6:20-25. When Officer Lozano questioned Mr. Ahmed about whether he had consumed any intoxicants, he responded that he had one Corona beer that morning. *Id*. at 6:25 to 7:2. Based upon these observations, Officer Lozano directed Mr. Ahmed to submit to a battery of field sobriety tests. *Id*. at 16:7-13.

The first field sobriety test Mr. Ahmed performed was the horizontal gaze nystagmus [hereinafter "HGN"] test. *Id*. at 26:25 to 27:3. Officer Lozano claimed to have observed six out of a possible six clues on this test. *Id*. at 8:6-9.

Mr. Ahmed was next asked to perform the walk-and-turn [hereinafter "WAT"] test. *Id*. at 8:17-20. Mr. Ahmed and the officer, however, disagreed whether the surface on which he was asked to perform the test was, in fact, level. *Id*. at 22:14-23. A debate ensued between them, ultimately resulting in Mr. Ahmed being arrested for Operating a Motor Vehicle While Under the Influence of an Intoxicant without ever having performed this or any other tests. *Id*. 8:21 to 9:8.

The foregoing is a general overview of what transpired between the officer and Mr. Ahmed, however, for purposes of Mr. Ahmed's appeal, there remain other highly relevant facts. For example:

> Mr. Ahmed remained wholly cooperative with Officer Lozano throughout his encounter with him at the scene. (R15 at 20:5-6);
>
> Officer Lozano informed Mr. Ahmed that he wanted to take him to an alternate location for field sobriety testing. (R15 at 16:7-13);
>
> Mr. Ahmed consented to be removed to the alternate locale. (*id*.);
>
> **Mr. Ahmed was informed that the alternate location was going to be City Hall. (*id*.);**

> Officer Lozano's intention was to take Mr. Ahmed to City Hall, however, after consulting with his supervisor, Officer Lozano changed his mind and instead elected to take Mr. Ahmed to an alternate location. (R15 at 17:13-25);
>
> Officer Lozano transported Mr. Ahmed to the parking lot at Bluffside Tavern. (R15 at 19:6-20);
>
> After changing the destination to which Mr. Ahmed was to be taken, Officer Lozano admitted that he could not recall whether he informed Mr. Ahmed of the change in plans prior to arriving at the Bluffside. (R15 at 19:21 to 20:1);
>
> Prior to arriving at the Bluffside, there had been no disagreement between Officer Lozano and Mr. Ahmed being willing to perform field sobriety tests. (R15 at 21:11-14);
>
> After arriving at the Bluffside, and informing Officer Lozano that he felt the parking lot on which he was being asked to perform balance and coordination tests was not level, Mr. Ahmed still "repeatedly told [Officer Lozano] that he was willing to do the field sobriety tests." (R15 at 22:14-16);
>
> "At no point from start to finish in this case did [Mr. Ahmed] ever indicate that he was unwilling to do the field sobriety tests." (R15 at 22:17-20);
>
> Because of what he perceived to be an unlevel surface at Bluffside, Mr. Ahmed said to Officer Lozano, "[O]fficer, if you could just drive me five minutes away [to City Hall], I'll do them [referring to the field sobriety tests]." (R15 at 22:21-23);

The primary focus of Mr. Ahmed's contention in this Petition is trained on a single finding, namely: The court of appeals' acknowledgement that Mr. Ahmed agreed to go with Officer Lozano to City Hall for field sobriety testing but was instead transported to an alternate location without consent and, when Mr. Ahmed complained about this fact, the court of appeals concluded that there was no authority which required consent from a detainee for the purpose of removal from the scene of his initial detention to an alternate location. D-App. at 112. This is the finding which implicates the constitutional issues Mr. Ahmed identifies below.

STATEMENT OF CRITERIA TO SUPPORT PETITION FOR REVIEW

1. Section 809.62(1r)(a): This Case Presents a Real and Significant Question of Constitutional Law.

This case presents a substantial question of constitutional law because the court of appeals diluted significant Fourth Amendment protections against officers engaging in dishonest or disingenuous conduct when securing consent to detain an individual at an alternate location. At some point, deviations from sound constitutional practice reach a threshold which should not be crossed, and Mr. Ahmed contends that, with respect to his providing consent to be removed from the scene of his initial detention to an alternate location, the officer in this matter crossed that threshold. The court of appeals also crossed this line when it summarily concluded that, even though Mr. Ahmed had been misadvised of the location to which he was being taken, it was still permissible for officers to draw a conclusion that Mr. Ahmed was being uncooperative when he complained about the same, and then use that inference as proof of consciousness of guilt.

It has long been held that law enforcement officers, for Fourth Amendment purposes, may not "mislead" an individual to obtain their consent to a search or seizure. *State v. Munroe*, 2001 WI App 104, ¶ 11, 244 Wis. 2d 1, 630 N.W.2d 223; *See* Section I.C., *infra*. Based upon the court of appeals' failure to recognize this well-established fact of constitutional law, Mr. Ahmed's petition presents a real and significant question of constitutional law which merits the granting of his petition.

2. Wis. Stat. § 809.62(1r)(c)2.: The Question Presented Is a Novel One Which Will Have Statewide Impact.

There exist ***no*** decisions of this Court which directly address whether law enforcement officers may engage in subterfuge—whether intentionally or inadvertently—in order to obtain consent to remove a person from one location to another and then, when the individual complains about begin taken to the alternate location, allowing those same officers to draw an inference that the person who is refusing to submit to field tests is doing so because they are cognizant of their guilt. The unfairness in this line of reasoning is manifest.

A decision of this Court will have statewide impact as literally **hundreds** of individuals are annually arrested in Wisconsin for operating while intoxicated violations which involve the administration of field sobriety tests at locations other than where the person's initial detention occurred. Cases of Mr. Ahmed's ilk arise in **all** seventy-two Wisconsin counties—especially northern counties which tend to more frequently experience inclement weather requiring removal of the person from one location to another for field sobriety testing. Clearly, § 809.62(1r)(c)2. is satisfied with respect to the issue presented in this Petition as having "statewide impact."

3. Wis. Stat. § 809.62(1r)(c)3.: The Question Presented Is Likely to Recur Unless This Court Intervenes.

The question presented by Mr. Ahmed is likely to recur based upon the numbers alone given the frequency with which individuals are arrested for impaired driving related violations in this State. With **tens-of-thousands** of arrests for impaired driving offenses occurring annually in Wisconsin, the *vast* majority of those cases will undoubtedly involve the administration of field sobriety tests, and concomitantly, many of these will involve the relocation of the subject for field testing. The gravity and pervasiveness of the issue raised herein compels review because of the very frequency with which it recurs daily throughout Wisconsin circuit courts. If no intervention is made by this Court to definitively address the issue Mr. Ahmed raises, the justice system will go on repeatedly denying defendants due process by permitting inferences of guilt to be premised upon law enforcement officer misrepresentations. *See* Section I.C, *infra*. This Court should, therefore, intervene to provide direction to courts throughout this State under § 809.62(1r)(c)3. lest this problem recur with high frequency.

4. Wis. Stat. § 809.62(1r)(d): The Decision of the Court of Appeals Is in Conflict With That of Another Court of Appeals' Decision.

The decision issued in Mr. Ahmed's case is in conflict with *State v. Munroe*, 2001 WI App 104, 244 Wis. 2d 1, 630 N.W.2d 223, which expressly prohibits law enforcement officers from engaging in deceit when securing consent to a search from an individual under the Fourth Amendment.

The court of appeals affirmed the decision of the circuit court, holding that reasonable inferences of guilt could be drawn from the fact that Mr. Ahmed complained about not being taken to the original location identified by Officer Lozano, *i.e.*, City Hall, rather than the location to which he was ultimately taken, *i.e.*, a local business parking lot. Because this inference is premised upon a misrepresentation made by Officer Lozano, it violates *Munroe*, notions of fundamental fairness, and due process.

STANDARD OF REVIEW

The issue presented in this Petition concerns whether law enforcement officers may draw inferences of guilt when those inferences are premised upon misrepresentations the officers earlier made to the accused. Because this question involves applying a constitutional standard to an undisputed set of facts, this Court reviews the constitutional question *de novo*. *State v. Samuel*, 2002 WI 34, 252 Wis. 2d 26, 643 N.W.2d 423.

ARGUMENT

I. "FREE AND VOLUNTARY" CONSENT TO A SEARCH CANNOT BE PREMISED UPON MISLEADING INFORMATION.

A. The Fourth Amendment in General.

Because the issue before this Court implicates the Fourth Amendment, the starting point for any analysis of the constitutionality of a seizure must begin with the foundations established by the Fourth Amendment itself. 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. "The 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 police action is not tolerated under the umbrella of the Fourth Amendment. As the Wisconsin Supreme Court noted in *State v. Boggess*, 115 Wis. 2d 443, 340 N.W.2d 516 (1983), "[t]he basic purpose of this prohibition is to safeguard the privacy and security of individuals against arbitrary invasions by government officials." *Id*. at 448-49; *see also Camara v. Municipal Court*, 387 U.S. 523, 528 (1967).

The Wisconsin Constitution provides coextensive protections against unreasonable searches and seizures under Article I, § 11. Wisconsin courts interpret the protections granted by Article 1, § 11 of Wisconsin's Constitution identically to those afforded by the Fourth Amendment. *See State v. Kramer*, 2009 WI 14, ¶ 18, 315 Wis. 2d 414, 759 N.W.2d 598; *State v. Phillips*, 218 Wis. 2d 180, ¶ 21, 577 N.W.2d 794 (1998).

When applying the protections against unreasonable searches and seizures, both federal and state courts have consistently held that "[c]onstitutional provisions for the security of persons and property should be **liberally construed**." *Mapp v. Ohio*, 367 U.S. 643, 647 (1961)(emphasis added), citing *Boyd v. United States*, 116 U.S. 616, 635 (1886).

> A close and literal construction deprives [these protections] of half their efficacy, and leads to gradual depreciation of the right [to be free from unreasonable searches and seizures], 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).

The foregoing authority does not stand alone as time and again the Supreme Court has consistently repeated that the Fourth Amendment "guaranties are to be **liberally construed to prevent impairment of the protection extended**." *Grau v. United States*, 287 U.S. 124, 127 (1932)(emphasis added). The High Court has admonished that "all owe the duty of vigilance for [the Fourth Amendment's] effective enforcement lest there shall be impairment of the rights for the protection of which it was adopted." *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931). Ultimately, "the Fourth Amendment . . . should be liberally construed **in favor of the individual**." *Sgro v. United States*, 287 U.S. 206, 210 (1932)(emphasis added).

It is under the rubric of the foregoing paradigm that the question presented by Mr. Ahmed must be analyzed. Thus, any "close calls"—in the common vernacular—with respect to whether the officer misleading Mr. Ahmed can be used as the basis for an inference of guilt should be resolved in Mr. Ahmed's favor.

B. Permissible Inferences in Drunk Driving Prosecutions.

As a starting point, Mr. Ahmed acknowledges that a suspect's refusal to perform field sobriety tests during an investigatory detention for an operating while intoxicated offense may be interpreted by law enforcement officers as proof of consciousness of guilt. *State v. Babbitt*, 188 Wis. 2d 349, 359-60, 525 N.W.2d 102 (Ct. App. 1994). That is not the issue with which his Petition is concerned.

Instead, Mr. Ahmed questions whether that same inference is permissible when a law enforcement officer has led a detainee into believing he was being transported to one location—to which the detainee consented—but instead, without obtaining further consent, is transported to an alternate location and then the person, whether through his actions or words, "refuses" to submit to field sobriety testing.

C. The Munroe *Decision.*

As noted above, the holding in *Munroe*, 2001 WI App 104, plays a central role in Mr. Ahmed's contention. More specifically, the facts of *Munroe* are as follows. Munroe obtained lodging at a hotel in the City of Glendale by paying cash for his room and when he did, contrary to a local ordinance, he failed to provide identification to the hotel clerk. *Id*. ¶ 3.

Local law enforcement officers were conducting a "hotel interdiction" at the time Munroe was lodging at the hotel. *Id*. ¶ 2. This interdiction involved officers "checking hotels in the city for 'anything illegal'—primarily drugs, but also guns and prostitution." *Id*. The officers eventually arrived at Munroe's room, knocked on his door, and requested entry. *Id*. ¶ 4. Munroe answered the door and allowed the officers in. *Id*.

After entering, the officer told Munroe that they were just "there to confirm his identification . . . ." *Id*. ¶ 5. When Munroe stated that he did not have a photo ID with him and instead showed the officers a social security card and provided his name, one of the officers "asked him if [he] could search his room for anything illegal." *Id*. ¶ 5. Munroe replied "that he would 'rather not.'" *Id*. The officers

continued to press the issue, and Munroe finally relented, allowing the search. *Id.* According to Munroe's testimony, he ultimately consented to the search "because the officers indicated that if he did not agree they would bring over a drug-sniffing dog." *Id.* ¶ 6. The search of Munroe's room yielded tetrahydrocannabinol, and Munroe was ultimately charged with illegal possession of the same. *Id.* ¶ 1. Munroe moved the circuit court to suppress the THC evidence on the ground that his Fourth Amendment rights were violated when his hotel room was search, but the court denied his motion. *Id.* Munroe appealed and the appellate court reversed. *Id.*

After acknowledging that consent to search must be freely and voluntarily given, the *Munroe* court observed the following in the segue to its ultimate holding:

> The officers entered Munroe's room for, ostensibly, one purpose: to check his identification. This stated purpose was not true (the officer admitted that they were on a drug, gun, and prostitution interdiction; certainly two armed officers were not dispatched to see who was either paying cash without showing a photo identification or registering under an alias), but it *was* the reason Munroe acquiesced to their entry and cooperated with them. They checked his identification and determined that he did not violate the Glendale ordinance that prohibits someone from registering in a motel under an assumed name. Once the officers were assured that Munroe had not violated the ordinance-again, this was the proffered but false reason for their having knocked on his door at 7 a.m.-their "license" granted by Munroe's acquiescence to their presence in his room vanished, because the lawfulness of an officer's actions turns on the officer's role or function at the time. *State v. Dull,* 211 Wis. 2d 652, 659, 663, 565 N.W.2d 575, 578-579, 580 (Ct. App. 1997) (officer's shift from community-caretaker function to that of law-enforcement).

Munroe, 2001 WI App 104, ¶ 11.

The *Munroe* court continued that "unlike the situation in *Phillips*, where the officers honestly 'explained that suspected drug dealing was the purpose of the visit,' and thus provided *Phillips* 'with sufficient information with which he could decide whether to freely consent to the search of his bedroom,' . . . , the officers here continued to mislead Munroe about their real reason for being in his room right up to the time that he finally agreed to let them search. *Munroe,* 2001 WI App 104, ¶13 (citation omitted).

Based upon the officers' misleading Munroe about the purpose of their interdiction, the court of appeals concluded its decision with a powerful—and relevant—observation:

> Sadly, the officers here used their ruse about wanting to check Munroe's identification to mimic those myrmidons of King George who bedeviled the colonists with their General Warrants and Writs of Assistance, which gave the king's agents license to search everywhere and everyone. Unlike the situation in *Phillips*, 218 Wis. 2d at 185, 577 N.W.2d at 797, the officers here were not investigating information that the object of their search was involved in any illegal activity; they were doing a general sweep. Their violation of Munroe's constitutional rights was purposeful and flagrant.

Munroe, 2001 WI App 104, ¶13.

Just as there was misleading trickery used by the officers in *Munroe*, the deception practiced by the officer in Mr. Ahmed's case is no less disturbing. The officers asked Mr. Ahmed to consent to being transported in the rear, secured portion of his squad car, to City Hall for field sobriety testing. Mr. Ahmed consented to this request, believing he was being taken to City Hall to ensure that the field sobriety tests would be fairly administered inside on an objectively flat surface. Unfortunately, Officer Lozano changed his mind, and instead elected to transport Mr. Ahmed to the parking lot of a tavern near the scene, which had already been determined to be not reasonably level.

Had Mr. Ahmed been apprised of his true destination, he would have been able to make an informed, intelligent, voluntary choice whether to consent to it or, do as he did, request that he be taken to the original location. Unfortunately, just like Munroe could not base his decision to permit law enforcement officers to enter his room on the true reason for their visit, Mr. Ahmed was in no better position here because his original consent to field sobriety testing was premised upon an officer-induced misapprehension that he was going to be taken to a level, indoor floor rather than a parking lot. *Munroe*, 2001 WI App 104, ¶11. Quoting *Munroe* is telling because the *Munroe* court's concern is directly adaptable to Mr. Ahmed's case if one does nothing more than replace a few equivalent words: "The officer's stated purpose [in taking Mr. Ahmed to City Hall] was not true . . . but it *was* the reason [Mr. Ahmed] acquiesced to [field sobriety tests]." The logic of the *Munroe* decision still holds even with substitutions premised upon the facts of Mr. Ahmed's case.

More specifically, *Munroe* is on all fours with the instant matter in that Munroe initially consented to being transported to the interior of City Hall. His

consent was premised upon his reasonable belief that he was being taken there to ensure fairness in the testing process. However, Officer Lozano failed to fulfill that promise, and when Mr. Ahmed protested against the alternate location, the court of appeals found it permissible to use that protestation as proof consciousness of guilt. If the *Munroe* court found that Munroe's single protestation should have ended the contact between him and law enforcement, it is no great leap to believe that Mr. Ahmed's *multiple* objections to being taken to a parking lot should carry even more weight as against any belief that he was objecting because he was "conscious of his guilt."

The evidence reveals that Mr. Ahmed did not refuse to perform field sobriety tests based upon "consciousness of guilt," but rather because he was engaged in a debate with Officer Lozano regarding whether the surface on which he was asked to perform the tests was level. **As Officer Lozano admitted, Mr. Ahmed not only remained entirely cooperative throughout his encounter with him, but importantly, he *never* refused to submit to field sobriety tests. All Mr. Ahmed ever did was request to be removed to the more level surface at the City Hall—the place he was originally told he was being taken.** It was perfectly reasonable for Mr. Ahmed to request that he be transported to the location to which he originally *agreed* to be taken from the location to which he *never consented* to go. From Mr. Ahmed's perspective, at the juncture when he arrived at the Bluffside Tavern, it would naturally appear to him that Officer Lozano had "duped" him. To use an *officer-induced* state of mind against Mr. Ahmed is patently unfair and violates the Fourth Amendment, due process, and fundamental fairness, and as described above, violates *Munroe*.

CONCLUSION

Because Officer Lozano misrepresented to Mr. Ahmed that he was going to be transported to City Hall for field sobriety testing, a court should not be permitted to draw a "proof of consciousness of guilt" inference from his hesitancy to perform field tests at a location to which he never consented to go. Mr. Ahmed respectfully requests that this Court reverse the decision of the circuit court denying his pretrial motion challenging probable cause to arrest.

Dated this 13th day of April, 2024.

Respectfully submitted:

MELOWSKI & SINGH, LLC

Electronically signed by:
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CERTIFICATION OF LENGTH

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 5,013 words.

I also certify that filed as a separate document is an appendix that complies with Wis. Stat. § 809.19(2)(a).

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

Dated this 13th day of April, 2024.

MELOWSKI & SINGH, LLC

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