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

**Appeal No. 2023AP002120
Fond du Lac County Circuit Court Case Nos. 2022CT23**

STATE OF WISCONSIN,
Plaintiff-Respondent,
v.
MITCHELL D. BUTSCHLE,
Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF CONVICTION AND THE
DECISION OF THE TRIAL COURT RULING DENYING THE
DEFENDANT-APPELLANT MOTION FOR SUPPRESSION OF
EVIDENCE, IN FOND DU LAC COUNTY, THE HONORABLE PAUL G.
CZISNY, JUDGE, PRESIDING**

THE BRIEF OF THE Plaintiff-Respondent, STATE OF WISCONSIN

By: Catherine A. Block
Attorney for the Plaintiff-Respondent
State Bar No. 1053966

**Fond du Lac District Attorney's Office
160 S. Macy Street
Fond du Lac, WI 54935
(920) 929-3048**

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STATEMENT OF THE ISSUES

Did Deputy Michael Vis have the requisite level of suspicion to arrest Mr. Butschle?

The trial court answered: Yes.

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

Because this is an appeal within Wis. Stats. Sec. 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/FACTS

The defendant-appellant, Mitchell Butschle, (Mr. Butschle) was charged in the County of Fond du Lac, with operating a motor vehicle while under the influence of an intoxicant contrary to Wis. Stat. §346.63(1)(a) and with operating a motor vehicle with a detectable amount of a restricted controlled substance contrary to Wis. Stat §346.63(1)(am) both as second offenses and possession of drug paraphernalia contrary to Wis. Stat. Sec 941.573(1) on January 19, 2022. On March 15, 2022, Mr. Butschle, by counsel, filed a motion for suppression of evidence claiming the officer did not have the requisite level of suspicion to arrest him. A hearing on the motion was held on July 29, 2022, the Honorable Paul G. Czisny, Judge, presiding. The Court denied the motion by oral ruling on that same date. (R.45:29-31/App.22-24). A written Order was entered on October 18, 2023. On October 6, 2023, Mr. Butschle entered a guilty plea to count the charge of operating a motor vehicle with a restricted controlled substance and possession of drug paraphernalia. The Court imposed a jail sentence, a fine and revocation of Mr. Butschle's operating privileges. The defendant, by counsel, timely filed a Notice of

Intent to Seek Post-Conviction relief on October 17, 2023 and a Notice of Appeal on November 10, 2023.

The evidence pertinent to this appeal was introduced through the testimony of Deputy Michael Vis. The general nature of Deputy Vis's testimony as presented by Attorney Piel is not disputed.

In addition to an excerpt presented by Attorney Piel, Deputy Vis indicated that the vehicle did pull over slowly. (R.45:5/App.3). Also, in addition Vis noted that when he asked Mr. Butschle about drinking, Mr. Butschle seemed very nervous. Id.

Vis indicated that during the HGN testing that he noticed lack of smooth pursuit in the right and left eye, distinct and sustained nystagmus at maximum deviation in the left and right eye, and onset prior to 45 degrees in the left and right eye. Id. All which were signs of impairment based on his training and experience. Id.

Vis indicated that based on the totality, ... there wasn't a clue for walk-and-turn, but there was an indicator he had a hard time balancing on that Number 3 step and, then, the one-leg stand there was swaying. So I took all that stuff in together and made a decision to arrest. Id.

Vis indicated the prior to his decision to arrest that Mr. Butschle refused to take a PBT. Id.

Mr. Butschle entered a plea to the charge of operating a motor vehicle with a detectable amount of a restricted controlled substance on October 6, 2023. A Judgment of Conviction was entered on October 12, 2023. The defendant has appealed from the Judgment of Conviction and the Court Order denying his motion for suppression of evidence.

STANDARD OF REVIEW

The State does not disagree with Appellant's recitation of the standard of review.

ARGUMENT

DEPUTY VIS DID HAVE THE REQUISITE LEVEL OF PROBABLE CAUSE TO ARREST MR. BUTSCHLE

The state does not disagree with Appellant's recitation of applicable caselaw.

In Mr. Butschle's case, the evidence presented at the suppression hearing sufficiently showed Deputy Vis possessed probable cause to stop Mr. Butschle for a registration violation, established Deputy Vis had the requisite level of suspicion to extend the stop for field sobriety testing, and that there was sufficient suspicion to establish probable cause to believe Mr. Butschle probably operated a motor vehicle while impaired.

Here, Mr. Butschle was stopped for a registration violation. Deputy Vis testified that the vehicle took longer than normal to pull over and that slow speed could be an indicator of intoxicated driving. He was stopped because his registration was expired, and when lights were activated that Mr. Butschle was slow to pull over.

Deputy Vis testified he observed an odor of intoxicant from Mr. Butschle and his eyes were bloodshot and glossy.

Deputy Vis then performed field sobriety tests. He testified he performed a Horizontal Gaze Nystagmus test and observed all six of the six potential indicators of impairment. Deputy Vis performed two additional tests: the Walk and Turn and One Leg Stand test. On the One Leg Stand test, Deputy Vis indicated his training required him to look for four potential indicators of impairment and that there were two indicators of possible impairment.

The evidence adduced at the motion hearing is sufficient to show that Deputy Vis did have the required level of probable cause to arrest Mr. Butschle. The odor of intoxicant and the observations of Mr. Butschle's eyes suggested impairment. Also additional observations made by Deputy Vis provided additional indicators suggesting there was more than a possibility that Mr. Butschle operated

his motor vehicle while impaired. The court properly exercised its discretion in denying Mr. Butschle's motion for suppression of evidence.

CONCLUSION

The trial court did not err in finding that the Deputy Vis had probable cause to arrest Mr. Butschle for operating a motor vehicle while impaired. The Court should not vacate the Judgement of Conviction and should not reverse the order denying Mr. Butschle's motion.

Dated this 25th day of March, 2024.

Respectfully Submitted

Electronically Signed by Catherine A. Block
Catherine A. Block
Attorney for the Plaintiff-Respondent
State Bar No. 1053966

Mailing Address:

160 S. Macy Street
Fond du Lac, WI 54935
Phone: 920-929-3048

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 9 pages. The word count is 1649.

Dated this 25th day of March, 2024.

Respectfully Submitted

Electronically Signed by Catherine A. Block
Catherine A. Block
Attorney for the Plaintiff-Respondent
State Bar No. 1053966

Mailing Address:

160 S. Macy Street
Fond du Lac, WI 54935
Phone: 920-929-3048

**CERTIFICATION OF COMPLIANCE WITH RULE
809.19(12)**

I hereby certify that: I have submitted an electronic copy of this brief, 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 25th day of March, 2024.

Respectfully submitted,

Electronically Signed by Catherine A. Block

Catherine A. Block

Attorney for the Plaintiff-Respondent

State Bar No. 1053966

Mailing Address:

160 S. Macy Street

Fond du Lac, WI 54935

Phone: 920-929-3048