

**FILED**  
**09-03-2024**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT IV

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Case No. 2024AP001180-CR

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STATE OF WISCONSIN,  
Plaintiff-Appellant,

v.

ALEX MARK HAGEN,  
Defendant-Respondent.

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ON APPEAL OF AN ORDER GRANTING A MOTION TO SUPPRESS,  
ENTERED IN LA CROSSE COUNTY CIRCUIT COURT, THE  
HONORABLE RAMONA A. GONZALEZ, PRESIDING

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**BRIEF OF PLAINTIFF-APPELLANT**

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Respectfully submitted,

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### **STATEMENT OF ISSUE**

Did law enforcement have reasonable suspicion to expand a traffic stop for failure to stop for a stop sign, in violation of Wis. Stat. Sec. 346.46 in order to request field sobriety testing after they observed the suspect vehicle go onto the curb while pulling over, intentional movements by the driver toward the center console, an odor of intoxicants coming from the vehicle, slightly slurred speech by the driver, the driver's watery and glossy eyes, and an open box of beer in the back seat?

The Circuit Court answered: no.

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

Oral argument is not requested by the Appellant in this case, as the briefs of the parties will be sufficient to fully develop the issues. Further, oral argument would be of marginal value in furthering the arguments of the parties. Wis. Stat. Sec. 809.22(2)(b). Likewise, publication is not requested by the Appellant as this is a one-judge appeal as directed by Wis. Stat. Sec. 752.31(2) and (3).

### **STATEMENT OF FACTS**

On October 12, 2023, Officer Charles Fah was on duty patrolling the Village of Holmen in La Crosse County, Wisconsin. (R. 20 p. 5; A-App p. 8). Officer

Fah has been a police officer for three years. (R. 20 p. 4; A-App p. 7). He also has training and experience in detecting motorists who may be operating under the influence of intoxicant. (R. 20 pp. 4-5; A-App pp. 7-8). His squad car had a video camera operating. (R. 20 p. 5; A-App p. 8; Ex. 1). He also was wearing a body-worn camera. (R. 20 p. 9; ; A-App p. 12; Ex. 1). He noted during his testimony that the video doesn't capture events as clearly as what he can see in person. (R. 20 p. 14; A-App p. 17;). An assisting officer, Officer Stoner, also wore a body-worn camera. (R. 20 p. 17; A-App p. 20; Ex. 1).

At approximately 8:11 pm, Officer Fah observed a vehicle, driven by Alex Hagen, on the southbound off-ramp from U.S. Highway 53 fail to stop at a stop sign at the intersection of the ramp and County Highway OT. (R. 20 p. 7; A-App p. 10). The vehicle then proceeded westbound on County Highway OT. (*Id.*) County Highway OT at this location has one lane in each direction and has a small shoulder. (R. 20 pp. 10-11; A-App pp. 13-14). Officer Fah followed the vehicle and turned on his emergency lights to perform a traffic stop. (R. 20 p. 8; A-App p. 11). Officer Fah noted that the vehicle took an above average time to pull over based on his experience. (*Id.*) So much so, that he then activated his siren to get the driver's attention. (*Id.*) When the vehicle did pull over, it's two passenger side tires went up on the curb and the rear passenger side tire stayed up on the curb. (*Id.*) Officer Fah testified

that although the shoulder is narrow there, it is not typical for drivers to go up on the curb when pulling over. (R. 20 p. 11; A-App p. 14).

Officer Fah testified that while the vehicle was pulling over, he noticed Mr. Hagen reaching around the center console of the vehicle. (R. 20 p. 8; A-App p. 11). Mr. Hagen was driving a large pickup truck. (R. 20 pp. 12-13; A-App pp. 15-16). Officer Fah was also driving a tall vehicle and he used a spotlight through Hagen's rear window, so he had a good vantage point from which to observe the movement. (R. 20 p. 13; A-App p. 16).

Officer Fah then approached the vehicle and made contact with Mr. Hagen. He observed a cooler in the back seat, a sweatshirt lying over the console area, and could smell the odor of intoxicants coming from the vehicle. (R. 20 p. 9; A-App p. 12). The sweatshirt was in the area that Mr. Hagen was seen digging or moving. (R. 20 p. 15; A-App p. 18). No other occupants were noted in the vehicle. Officer Fah also did not observe any empty cans in the vehicle. (R. 20 p. 10; A-App p. 13). Officer Fah then went back to his squad to perform a records check and called for additional officers. (R. 20 pp. 9-10; A-App pp. 12-13). Officers Stoner and Inglett arrived shortly thereafter. (R. 20 p. 10; A-App p. 13).

Officer Stoner arrived with his field training officer, Officer Inglett. (R. 20 p. 18; A-App p. 21). This was his first OWI investigation, and he had completed the 720-hour police academy at Western Technical College. (R.

20 p. 16; A-App p. 19). Officer Stoner observed the pack passenger-side tire up on the curb. (R. 20 p. 18; ; A-App p. 21). He saw an open box of Busch Light in the back seat of the vehicle. (R. 20 p. 19; A-App p. 22). He spoke with Mr. Hagen and also noted a slight odor of intoxicants coming from the vehicle, a “hoodie” (sweatshirt) seemingly covering something on the passenger seat, that Mr. Hagen had watered-over, glossy eyes, and a slight slur to his speech. (R. 20 p. 19; ; A-App p. 22). Mr. Hagen was not disoriented or confused in speaking with the officers. (R. 20 pp. 20-21; A-App pp. 23-24). After making those observations and conferring with Officer Fah, he decided to perform standardized field sobriety tests. (R. 20 pp 19–20; A-App pp. 22-23). Mr. Hagen was subsequently arrested for Operating under the Influence of an Intoxicant, a violation of Wis. Stat. Sec. 346.63 (1)(a).

The Circuit Court in her findings of fact found that Officer Fah “felt” there was no reasonable suspicion to conduct field sobriety tests. (R. 20 p. 29; A-App p. 32). She also found that she did not hear any slow or slurred speech on the video. (*Id.*) She found that it would be difficult to see due to the rain that was falling and there wasn’t much room for Mr. Hagen to pull over and that maybe Mr. Hagen didn’t realize he was on the curb due to the size of his vehicle. (*Id.*) She found that the odor of intoxicants could not be attributed to Mr. Hagen. (R. 20 p. 30; A-App p. 33). And further found that officers were required to ask questions about the cans of beer in the cab and to search

for what was hidden under the sweatshirt. (R. 20 p. 31; A-App p. 34). The Circuit Court found that under the totality of the circumstances there was not reasonable suspicion to request Mr. Hagen to perform field sobriety tests. (R. 20 p. 30; A-App p. 33). She then granted Mr. Hagen's motion to suppress. (R. 20 p. 32; A-App p. 35).

### **STANDARD OF REVIEW**

When reviewing a decision on a motion to suppress, this Court upholds the circuit court's factual findings unless they are clearly erroneous, but it independently applies constitutional principles to the facts. *State v. Matalonis*, 2016 WI 7, ¶ 28, 366 Wis. 2d 443, 875 N.W.2d 567.

### **ARGUMENT**

#### **Officer Stoner had reasonable suspicion to extend the traffic stop for FSTs.**

##### **A. An officer must have reasonable suspicion to lawfully extend a traffic stop.**

“The Fourth Amendment to the U.S. Constitution protects individuals from unreasonable searches and seizures.” *State v. Hogan*, 2015 WI 76 at ¶ 34, 364 Wis. 2d 167, 868 N.W.2d 124. It is beyond dispute that an officer may stop a vehicle based on reasonable suspicion of a traffic violation. *Id.* But that stop “may ‘last no longer than is necessary to effectuate’” its purpose. *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citation omitted).

“Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.*

“After a justifiable stop is made, the officer may expand the scope of the inquiry only to investigate ‘additional suspicious factors [that] come to the officer’s attention.’” *Hogan*, 2015 WI at ¶ 35 (citing *State v. Betow*, 226 Wis. 2d 90, 94, 593 N.W.2d 499 (Ct. App. 1999)). “An expansion in the scope of the inquiry, when accompanied by an extension of time longer than would have been needed for the original stop, must be supported by reasonable suspicion.” *Id.*

Reasonable suspicion means that the police officer “possess[es] specific and articulable facts that warrant a reasonable belief that criminal activity is afoot.” *State v. Young*, 2006 WI 98, ¶ 21, 294 Wis. 2d 1, 717 N.W.2d 729. What constitutes reasonable suspicion is a common-sense, totality-of-the-circumstances test that asks, “[w]hat would a reasonable police officer reasonably suspect in light of his or her training and experience?” *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). That suspicion cannot be inchoate, but rather must be particularized and articulable: “[a] mere hunch that a person . . . is . . . involved in criminal activity is insufficient.” *Young*, 294 Wis. 2d 1, ¶ 21.

“Although officers sometimes will be confronted with behavior that has a possible innocent explanation, a combination of behaviors—all of which

may provide the possibility of innocent explanation—can give rise to reasonable suspicion.” *Hogan*, 2015 WI at ¶ 36. In other words, police do not need “to rule out the possibility of innocent behavior before initiating a brief stop.” *Waldner*, 206 Wis. 2d at 59.

“It follows that the legality of the extension of the traffic stop in this case turns on the presence of factors which, in the aggregate, amount to reasonable suspicion that [the driver] committed a crime the investigation of which would be furthered by [his] performance of field sobriety tests.” *Hogan*, 2015 WI at ¶ 37.

**B. The observations made by Officer Fah can be taken into account in determining whether Officer Stoner had reasonable suspicion in the totality of the circumstances to request field sobriety testing.**

Under the collective knowledge doctrine, officers can rely and act on the basis of the knowledge of other officers without themselves knowing the underlying facts, so long as reasonable suspicion or probable cause underlies the collective knowledge of the other officers. *See, e.g., State v. Pickens*, 2010 WI App 5, ¶¶ 12-15, 323 Wis. 2d 226, 779 N.W.2d 1; *United States v. Hensley*, 469 U.S. 221, 232 (1985).

**C. Whether Officer Fah felt there was reasonable suspicion for field sobriety tests is not relevant to the Court’s determination of reasonable suspicion.**

Reasonable suspicion for a traffic stop, and the extension of that stop, is based on “objective facts observed by the officer, not the officer’s subjective intent.” *State v. Sykes*, 2005 WI 48, ¶ 29, 279 Wis. 2d 742, 695 N.W.2d 277 (citing *Badhuin*, 141 Wis. 2d at 650–51). Whether or not Officer Fah felt there was a reason to request field sobriety tests does not determine the issue. It is whether the facts that were observed created that objective standard of reasonable suspicion. Further, there was no testimony at the motion hearing whether or not Officer Fah believed there to be reasonable suspicion<sup>1</sup>. Therefore that finding by the Circuit Court should be disregarded.

**D. Officer Stoner had reasonable suspicion that Mr. Hagen was Operating a Motor Vehicle Under the Influence of an Intoxicant and properly requested he perform field sobriety tests.**

It is undisputed that Mr. Hagen failed to stop at the stop sign at the intersection of the Highway 53 off-ramp and County Highway OT. (R. 20 p. 22; A-App p. 25). That is an incident of bad driving which could be

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<sup>1</sup> A likely explanation of Officer Stoner being the officer to request Mr. Hagen to perform field sobriety tests is that he was an officer in a training program who had not had the opportunity to conduct them in the field previously. This was his first OWI investigation. (R. 20 p. 16). Therefore he needed the experience.

intentional, or because he didn't see the sign due to impairment from consumption of alcohol.

Both officers testified that they could smell an odor of intoxicants coming from the vehicle. (R. 20 pp. 9, 19; A-App pp. 12, 22). The Circuit Court found that this odor could not be attributable to Mr. Hagen. (R. 20 p. 30; A-App p. 33). However, the officers are entitled to investigate whether that odor was coming from the driver himself. *See, Hogan, 2015 WI.*

Further, the officers observed Mr. Hagen acting suspiciously - movements consistent with concealing something prior to contact with law enforcement (R. 20 pp. 9, 13, 19; A-App pp. 12, 16, 22), observed an open box of beer, Busch Light, in the back seat of the vehicle (R. 20 p. 19; A-App p. 22), noted slight slurred speech when Mr. Hagen spoke (R. 20 p. 19; A-App p. 22), observed that he was not able to properly control his vehicle when stopping – that Mr. Hagen pulled onto the curb when stopping his vehicle (R. 20 pp 8, 18; A-App pp. 11, 21).

Although each fact observed by the officers may have an innocent explanation, taking them as a whole, under the totality of the circumstances, can give rise to reasonable suspicion to investigate further. *See, Hogan, 2015 WI at ¶ 36.* And that is clear here. The officers had reasonable suspicion to extend the lawful traffic stop and request Mr.

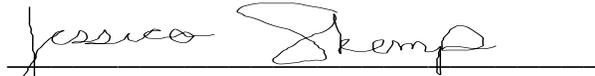
Hagen perform field sobriety testing, and the Circuit Court erred in granting the defendant's motion to suppress.

### CONCLUSION

The Court should reverse the Circuit Court's order granting the defendant's motion to suppress and remand the case back for further proceedings.

Dated this 3rd day of September, 2024.

Respectfully submitted,



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## CERTIFICATIONS

### FORM AND LENGTH 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 produced with a proportional serif font. The length of this brief is 2,880 words.

### APPENDIX CERTIFICATION

I hereby certify that filed with this brief is an appendix that complies with Wis. Stat. § 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 s. 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 first names and last initials 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.

  
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