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**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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**REPLY BRIEF OF PLAINTIFF-APPELLANT**

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Respectfully submitted,

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## ARGUMENT

**A. The circuit court's findings of fact support a finding by this court that officers had reasonable suspicion to extend the traffic stop to conduct field sobriety testing.**

**1. The basis for the traffic stop itself may be considered in the totality of the circumstances leading to reasonable suspicion to extend the traffic stop.**

The respondent states that appellant is incorrect in the assertion that the reason for the stop was uncontroverted. However, the record supports that the respondent did not challenge the reason for the stop in the first place during the trial court proceeding, nor did the circuit court specifically find that the defendant did stop at the stop sign as testified by Officer Fah. The circuit court merely observed that the failure to stop wasn't clear on the video, but then went on to say that officers should have given the respondent a ticket for failing to stop at the stop sign and let him go on his way. (R.20, p. 30). Therefore, the State has no need to argue, or for this Court to find, that the trial court's finding was clearly erroneous. It is easy to infer that there was sufficient evidence that the defendant did fail to stop as he did not litigate that point at any time during the suppression hearing. More importantly, the fact of the respondent's bad driving can be taken into account in the decision to extend the stop for field sobriety testing. *See, State v. Colstad*, 2003 WI App 25, ¶ 21, 260 Wis. 2d 406, 659 N.W.2d 394.

**2. There was clearly reasonable suspicion to extend the traffic stop for the performance of field sobriety testing applying a de novo review to the totality of the circumstances found by the circuit court.**

In his reply brief, the respondent repeatedly confused the trial court's findings of historical fact and the *application* of those findings to constitutional principles. Consequently, this confusion leads him to apply the wrong standard of review. The application of those constitutional facts are entitled to de novo review by this court and the clearly erroneous standard does not apply. *See, State v. Robinson*, 2010 WI 80, ¶ 22, 327 Wis.2d 302, 318 NW.2d 463. For example:

- “The circuit court found that the defendant’s vehicle going onto the curb was not an issue and therefore did not contribute to reasonable suspicion. . . .” (Respondent’s Brief, p. 5). The circuit court made the *factual* finding that the defendant went onto the curb, but in its *application* of that fact, did not give it great weight in determining the totality of circumstances underlying reasonable suspicion.
- “The circuit court did not specifically address the intentional movements by the driver toward the center console. However, the circuit court did suggest that the officers could have asked more questions about looking under the sweatshirt . . . .” (Respondent’s Brief, p. 5). The circuit court’s suggestion that the officers should have investigated the sweatshirt over the console/passenger seat

area first implies the *fact* the officer did see suspicious movement. She then *applied* that fact and found that they should have deviated from the purpose of the stop to enquire about what the sweatshirt was concealing. She then further *applied* it to the constitutional principle and gave it no weight to the determination of reasonable suspicion.

- “The circuit court indicated that there was a random smell of alcohol, and that under the totality of the circumstances, this smell was not sufficient for reasonable suspicion.” (Respondent’s brief, pp. 5-6). The circuit court found the fact that there was an odor of alcohol, but then gave that fact little weight in the *application* of that fact to the totality of circumstances.

The respondent asserts that the circuit court may have doubted aspects of the officers’ testimony. (Respondent’s brief, p. 6). However, the respondent fails to cite to any support for this conclusion in the circuit court’s findings of fact. Therefore, his contention that Court found the testimony of either officer questionable or unreliable is legally unsupported.

This court is entitled to look at all of the facts found by the circuit court and give them the weight this court deems appropriate. Essentially, the respondent and the circuit court took each fact and indicated there were

innocent explanations for them. This ignores the principle affirmed by the Wisconsin Supreme Court that innocent explanations for officers observations need not be ruled out before conducting further investigation. *State v. Hogan*, 2015 WI 76, 364 Wis. 2d 167, 868 N.W.2d 124.

The appellant further relies on the arguments raised in it's brief-in-chief.

### 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 17th day of October, 2024.

Respectfully submitted,



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**CERTIFICATION****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 788 words.

A handwritten signature in cursive script that reads "Jessica Skemp". The signature is written in black ink and is positioned above a horizontal line.

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