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COURT OF APPEALS

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Appeal No.: 2024 AP 1221 - CR

STATE OF WISCONSIN,

Plaintiff – Respondent,

v.

JONAH MICHAEL HOFFMAN,

Defendant – Appellant.

REPLY BRIEF AND APPENDIX OF DEFENDANT–APPELLANT

APPEAL FROM A JUDGMENT OF CONVICTION

ENTERED IN THE CIRCUIT COURT FOR WAUSHARA COUNTY
THE HONORABLE SCOTT C. BLADER PRESIDING

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ARGUMENT

II. DEPUTY SCHAUT DID NOT HAVE PROBABLE CAUSE TO SEARCH THE VEHICLE FOR OPEN INTOXICANTS.

When there has been an unlawful search, a common judicial remedy for the constitutional error is exclusion. *State v. Eason*, 2001 WI 98, 9–45, 245 Wis.2d 206, 629 N.W.2d 625. That is, illegally obtained evidence will be suppressed as a consequence of the law enforcement officers' misconduct. *Id.*

Wis. Stat. Sec 346.935 provides that:

“1) No person may drink alcohol beverages...while he or she is in any motor vehicle when the vehicle is upon a highway, 2) No person may possess on his or her person, in a privately owned motor vehicle upon a public highway, any bottle or receptacle containing alcohol beverages...if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed or released, and 3) The owner of a privately owned motor vehicle, or the driver of the vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept in the motor vehicle when it is upon a highway any bottle or receptacle containing alcohol beverages...if the bottle or receptacle has been opened, the seal has been broken or the contents of the bottle or receptacle have been partially removed or released... this subsection does not apply if the bottle or receptacle is kept in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the vehicle not normally occupied by the driver or passengers. (emphasis added).

It is undisputed that Deputy Schaut observed sealed, unopened bottles in the back Mr. Hoffman's vehicle. These bottles were placed behind the driver seat in a truck that does not have a

trunk. This is not a violation of the law. At no point did the deputy observe an open/unsealed bottle, shot glass, bottle-opener or any other indication that there was a violation of Wis. Stat. Sec. 346.935. The Plaintiff-Respondent cite *State v. Bons*, 2007 WI App. 124, 301 Wis. 2d 227, 731 N.W. 2d 367 in their argument; however, in that case the arresting officer could plainly view a “shot glass” sitting on the console of the vehicle in close proximity to the driver's seat. More importantly, the *Bons* case is further distinguishable since a key issue was whether there was consent by the defendant to search the vehicle. *Id.*

CONCLUSION

Mr. Hoffman’s Fourth Amendment Constitutional rights were violated when Deputy Schaut conducted a warrantless search of his vehicle, after advising Mr. Hoffman that “nothing would be happening with the OWI” and to call a ride to come pick him up and take him home.

Because Mr. Hoffman’s Fourth Amendment rights were violated, this Court should reverse the circuit court’s denial of his Motion to Suppress.

Dated this 21th day of February 2025.

Respectfully Submitted,
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FORM AND LENGTH CERTIFICATION

I, Chadwick J. Kaehne, hereby certify that this portion of the brief (respondent portion) conforms to the rules contained in s. 809.19 (8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 944 words.

Dated this 21th day of February 2025.

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ELECTRONIC BRIEF CERTIFICATION

I, Chadwick J. Kaehne, hereby certify in accordance with Sec. 809.19(12)(f), Stats, that I have filed an electronic copy of a brief, which is identical to this paper copy.

Dated this 21th day of February 2025.

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