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**SUPREME COURT**

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Appeal No. 2024AP002230-CR

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STATE OF WISCONSIN,  
Plaintiff-Respondent,

v.

PETER JOSEPH IDELL  
Defendant-Appellant.

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On Appeal from the Final Orders Entered  
in the Circuit Court for Milwaukee County,  
The Honorable Kori L. Ashley and  
The Honorable Raphael F. Ramos Presiding

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**PETITION FOR REVIEW**

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## ISSUE PRESENTED FOR REVIEW

**Issue:** Should courts require the State to show more substantial evidence of suspicious impaired driving when an officer observes no bad or reckless driving prior to stopping a driver—but upon stopping the vehicle. Should reasonable suspicion to extend a traffic stop to complete additional OWI investigations require that the suspicious factors be more substantial when no bad driving justified the stop in the first place?

## REASONS FOR GRANTING REVIEW

Review is warranted because a decision by the Supreme Court will help develop, clarify or harmonize the law, and the case calls for the application of a new doctrine rather than merely the application of well-settled principles to the factual situation. *See* Wis. Stat. § (Rule) 809.62(1r)(c)(1). A ruling would help clarify whether the factors that contribute to reasonable suspicion to justify extending a traffic stop must be more substantial when an officer observes no bad driving but smells alcohol from inside the vehicle.

## STATEMENT OF THE CASE

### 1. *The traffic stop.*

Returning from an errand to the nearby convenience store, Peter Idell pulled over his vehicle for a traffic stop. (82:2; App. 91) It was about 7:45 pm on a Sunday evening, and the stop occurred across the street from his house. (28:25; App. 33). Idell rolled down his window and Idell carried on a conversation with Officer Carlson about why she stopped him: his expired registration. (82:2; App. 91). After a one-minute articulate conversation, Carlson returned to her squad car to check out Idell's driver's license. (82:2; App. 91; 27:3; App. 46).

Unbeknownst to Idell, Carlson caught a light odor of alcohol during that one-minute conversation. (82:2; App. 91). In turn, when

Carlson walked back to her car, she radioed for backup for an OWI investigation. (82:2; App. 91). Back in her car, Carlson checked out Idell's license and learned that Idell had one prior OWI from about ten years earlier. (82:2; App. 91).

For the next twelve minutes, Carlson sat in her car and waited for backup. (82:2; App. 91). She did not write a citation for the registration violation. (82:5; App. 94).

When backup arrived, an officer-in-training, Officer Roth, took over. (82:2; App. 91). Carlson briefed Roth on Idell's prior OWI and her suspecting alcohol. Roth then reengaged Idell. (82:2; App. 91). While Roth talked to Idell, Carlson told another officer why she did not initiate the OWI investigation. She said:

I would have taken [the OWI investigation] but I literally have two I'm like avoiding like the plague right now. Just don't feel like writing them. They're like all ready to go downtown and I'm just like, meh, I'd rather drive around. (66:7; App. 80).

After Officer Roth talked with Idell and Idell admitted to consuming several glasses of wine over the course of the day, Roth had Idell complete field sobriety tests. (28:17; App. 25). Idell later submitted a blood draw. (29:4; App. 54). The results later came back with a BAC of .146. (29:4; App. 54).

Based on these tests, the State charged Idell with one count of OWI (second offense) and one count of operating with a prohibited alcohol concentration (second offense). (1:1-2.)

## *2. The suppression motion.*

Mr. Idell questioned whether reasonable suspicion supported the second officer (Roth) conducting field sobriety tests and filed a motion to suppress all evidence obtained from the unlawful extension of the traffic stop. (10:3; App. 5). He argued that Officer Roth unlawfully extended the stop to have him complete field sobriety testing. (Id. at 3.)

Idell, argued that there was no bad driving, he was stopped in the evening hours (not during nighttime or the early morning hours) he coherently answered the officers' questions, and he had candidly explained that he consumed a couple of glasses of wine between 3:00 p.m. and 4:00 p.m., as well as a glass of wine within the preceding hour. (10:5; App.7) Idell argued that taken together, these factors failed to provide reasonable suspicion to justify field sobriety testing. (10:5; App.7).

The State opposed the motion contending that Officer Roth had reasonable suspicion to extend the stop to administer field sobriety testing because of several factors: an odor of alcohol, slurred speech, Idell's difficulties answering questions, and Idell's admission of recent consumption of wine, including within the preceding 30-to-45 minutes. (11:4).

### *3. The officer's testimony.*

The circuit court, the honorable judge Kori Ashley presiding, held a hearing on Idell's suppression motion. (28:1,3; App. 9,11).

To meet its burden, the State called one witness: Officer Roth. Roth first explained that, at the time of Idell's traffic stop, he was a new officer with two months of experience and was undergoing field training. (28: 5,16-18; App. 13,24-26.)

Next, the State played Officer Carlson's body cam video, and Roth confirmed that the video showed that:

- Carlson stopped Idell's vehicle, approached the vehicle, and questioned Mr. Idell; (28:20-21; App.28-29).
- Idell explained that the tags on his Illinois plates were expired because he owned the car for only six weeks; (28:20-21; App.28-29)
- Idell gave Officer Carlson his driver's license and offered to provide his insurance information; (28:20-21; App.28-29) and

- Thereafter, Carlson advised over the radio that Idell was exhibiting “OWI indicators.” (28:5; App. 13).

Roth testified that he and his field training officer responded to assist Carlson so that he could “get the experience for the OWI investigation,” because he was new. (28:5-6; App. 13-14).

Roth said that after he arrived Officer Carlson briefed him about the stop. (28:6; App. 14.) Officer Carlson told Roth why she stopped Idell and said that she detected the odor of alcohol on Idell’s breath. (28:12; App.20). Carlson added that Idell had a prior OWI conviction in 2009. (28:13; App. 21). Officer Roth acknowledged that Officer Carlson never reported any improper driving. (28:23-24; App. 31-32).

Roth then testified about his investigation; he testified that he approached Idell’s vehicle and asked Idell a series of questions. He learned that Idell went to a nearby store and purchased cigarettes, that Idell had “a couple” of glasses of wine at 3:00 p.m. or 4:00 p.m., and that Idell had another glass of wine within an hour of the stop. (28:6, 14, 25-26; App. 14, 22, 33-34). Officer Roth testified that he detected “a light odor of intoxicants coming from Idell’s breath.” (28:7, 14, 25; App.13, 22, 33).

Officer Roth testified he observed additional indicia of intoxication: that Idell’s speech was “[s]lightly slurred,” that Idell’s eyes were glossy and bloodshot, and that Idell suspiciously exited the car by “leaning with his hand on the door.” (28: 7, 14-15, 28-29; App. 13, 22-23, 36-37). Officer Roth explained that, based on the totality of the circumstances, he had Mr. Idell perform field sobriety testing. (28:17; App.25).

#### *4. The court’s fact-finding and denial.*

The circuit court denied the motion in an oral ruling and made factual findings that contradicted Officer Roth’s testimony. (27:3; App. 46). The circuit court confirmed that, at around 7:41 p.m., Mr. Idell was pulled over on March 31, 2019, for an equipment violation

relating to expired tags. (27:2-3; App. 45-46).

The court found that, according to the body cam footage, during their initial interaction, Officer Carlson informed Officer Roth of the equipment violation, that she could smell alcohol on Mr. Idell, and that she learned that Idell had a prior OWI in 2009. 27: 2-3; App. 45-46). The court also found that Officer Carlson did not indicate to Officer Roth that she observed any other signs of impairment. (27:2-3; App. 45-46).

The court further found that Idell and Officer Carlson “had a coherent conversation” and “that there were no other real signs of potential impairment” and that Mr. Idell’s were not bloodshot. (27:3; App. 46). The circuit court could not confirm whether Idell’s eyes were glassy. (27:3; App. 46).

The circuit court added that Mr. Idell “did not have slurred speech and he was able to answer [Officer Roth’s] questions.” (27:3; App. 46). The court also concluded that Idell did not suspiciously lean on the door when exiting the vehicle; instead, his hand was on the door because “it appeared to be because he was simply closing it.” (27:3; App. 46).

In its last part of fact finding, the court noted that it was undisputed that the officer did not observe any bad or impaired driving. (27:5; App. 48)

Despite its fact finding that contradicted Officer Roth’s testimony, the court concluded Roth had reasonable suspicion to justify prolonging the stop for field sobriety testing based on the following factors:

- (1) Idell’s admission to consuming wine between 3:00 p.m. and 4:00 p.m.;
- (2) Idell’s admission that he consumed another glass of wine within an hour of the stop;

- (3) The officer's knowledge of Idell's prior OWI;
- (4) The odor of alcohol; and
- (5) The possibility that Officer Roth observed glassy eyes.

(27:6; App. 49).

The court denied Idell's suppression motion. (27:6; App. 49).

*5. The guilty plea and sentencing.*

Thereafter, Idell pled guilty to count one: OWI-2<sup>nd</sup> offense. (29:11; App. 61).

At the plea hearing, the circuit court again clarified the underlying facts. It noted that there were "several things" referenced in the complaint that were not the case on the bodycam video; so it needed a clarified factual basis to support the plea. (29:4; App.54).

At sentencing, defense counsel emphasized the long duration between Idell's two OWI offenses—noting that Idell was just two weeks short of the ten-year mark. (29:13; App. 63). The circuit court noted that it was "an extremely close call" in terms of reasonable suspicion to extend the stop for the OWI investigation. (29:17; App.67). The circuit court deemed the case as a "minimums" case and sentenced Idell to five days in jail. (29:19; App.69).

*6. The postconviction motion.*

Idell filed a postconviction motion contending that his trial counsel was ineffective for failing to move to suppress the fruits of his traffic stop because it was unreasonably extended when the first officer on the scene waited for backup after detecting the odor of an intoxicant from Mr. Idell and learning of his prior OWI. (82:5; App.94).

A different judge reviewed the postconviction motion. The court, the honorable Judge Raphael Ramos presiding ordered a briefing schedule and both parties responded. (82:1,5; App. 90,94). <sup>1</sup>

Without a hearing, the court denied Idell's motion; it concluded that the first officer (Carlson) did not unlawfully extend the traffic stop to wait for backup before proceeding with the OWI investigation. (82:5,7-8; App. 94,96-97). Thus, had counsel filed a motion with that argument, it would have been denied. (82:7; App.96).

The circuit court found that the record supported that the extension of the traffic stop was supported by reasonable suspicion; specifically, that two factors justified reasonable suspicion: (1) The odor of intoxicants; and (2) knowledge of Idell's prior OWI conviction. (82:5; App. 94).

Thus, the circuit court found that the traffic stop for expired plates evolved into an OWI investigation after Officer Carlson smelled the odor of intoxicants and learned of his prior OWI. (82:5; App. 94).

In sum, the court found 12 minutes was not an unreasonable length of time for Officer Roth to run a registration check and wait for backup under these circumstances. (82:6; App.95). It emphasized that the briefing contained no authority to show that police cannot extend a stop to wait for backup or to run a registration or that requires an officer to issue a citation or commence roadside sobriety tests within twelve minutes of the initial stop. (82:6; App.95).

The court summarized its conclusion that the odor of intoxication and prior OWI conviction provide reasonable suspicion of additional criminal activity, and that the detention was not prolonged as it was part of an ongoing OWI investigation. (82:6-7; App. 95-96). Thus, this delay was distinguishable from that in *United States v. Rodriguez-Escalera*. (82:6-7; App. 95-96).

#### *7. Court of Appeals affirms circuit court ruling*

The Court of Appeals agreed with the circuit court that reasonable suspicion supported the extension of the traffic stop. *State v. Peter Joseph. Idell*, No. 2024AP2230-CR unpublished slip op. ¶24, (WI App. June 17, 2025). The court concluded that the odor of intoxicants coming from Idell and knowledge of a prior OWI justified

reasonable suspicion to extend the stop to conduct an OWI investigation. *Id.* ¶13. The court distinguished Idell’s case from the three unpublished cases that Idell cited. Those case also involved no bad or reckless driving but included the odor of alcohol and one other suspicious factor as the “building block factors” to form reasonable suspicion *Id.* ¶¶14-17.

## ARGUMENT

**1. The Court of Appeals previously stated that “building block” factors must be more substantial to create reasonable suspicion for an OWI investigation when a traffic stop involves no bad driving.**

The Court of Appeals previously stated that an officer must point to more significant factors to justify reasonable suspicion to extend a traffic stop for an OWI investigation when they observed no bad driving. *County of Sauk v. Leon*, No. 2010AP1593, unpublished slip op. 1118, 20 (WI App Nov. 24, 2010)). It is generally accepted that the “building blocks” factorial analysis described in *State v. Waldner* should govern such cases, including the present case. *State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996)). (“[B]uilding blocks of fact” must accumulate, raising reasonable inferences about a cumulative effect creating reasonable suspicion of impaired driving). These building blocks of fact (“factors”) commonly include:

- Time of night. See *State v. Post*, 2007 WI 60, 136, 301 Wis. 2d 1, 733 N. W.2d 634 (opining that the time of 9:30 at night, although not as significant as when poor driving takes place at or around bar time, is a significant factor when determining whether an officer had reasonable suspicion to make a traffic stop);
- Glassy eyes. See *State v. Haynes*, 2001 WI App 266, 112, 248
- Driver's admission of consuming alcohol. *State v. Hughes*, No. 2011AP647, unpublished slip op. 21 (WI App Aug. 25, 2011).

- Odor of alcohol; See *Id.* See also *Haynes*, 2001 WI App 266, 112.
- Bloodshot eyes; See *Haynes*, 2001 WI App 266, 112.
- Prior OWI convictions—especially the number of prior convictions when the number of priors subjects the driver to a .02 BAC requirement. See *State v. Lange*, 2009 WI 49, 1 33, 317 Wis.2d 383, 766 N.W.2d 551, (noting that prior OWI convictions are a permissible factor in determining the existence of probable cause for an intoxicated driving offense); see also *State v. Goss*, 2011 WI 104, 1125-27, 338 Wis. 2d 72, 806 N.W.2d 918 (odor of intoxicants on driver that officer knew was subject to 0.02 prohibited alcohol concentration limit provided level of probable cause that is required for a preliminary breath test because officer knew that suspect "could drink only a very small amount" before exceeding the legal limit); and
- Evidence of impaired driving. See *State v. Seibel*, 163 Wis. 2d 164, 171, 172, 471 N.W.2d 226 (Wis. 1991).

a. **Consistent application of the building block factorial analysis helps all parties: reviewing courts, counsel, and law enforcement.**

Taken together, these building block factors carefully guide a reviewing court's factorial analysis to determine when reasonable suspicion supports extending a traffic stop for an OWI investigation. Viewed somewhat like a checklist, this list of factors helps the relevant parties gauge the severity of the circumstances by the number of factors observed and attribute a level of significance to each factor.

Of course, case-by-case analyses remain needed because the factors' significance and credibility considerations can influence whether reasonable suspicion was shown. (See *State v. Adell*, 2021 WI App 72, ¶ 2, 399 Wis. 2d 399, 403, 966 N.W.2d 115, 117, Crediting the officer's experience in analyzing building block factors).

Regardless, consistent application of the building block factorial analysis requires parties to articulate what factors justify reasonable suspicion. However, the Court of Appeals previously required a change in the reasonable suspicion calculation for cases (like Idell's case) that involve no bad or reckless driving. In *County of Sauk v. Leon*, the Court of Appeals stated that these “building block” factors must be more substantial in the case of “somewhat unusual” OWI cases such as this—those that lack bad or reckless driving. *County of Sauk v. Leon*, No.2010AP1593, unpublished slip op. 1118, 20 (WI App Nov. 24, 2010)).

The court's proposed requirement appears to recognize that not every driver who drinks alcohol before driving violates Wisconsin's OWI laws. As noted in standard jury instructions: “Not every person who has consumed alcoholic beverages is ‘under the influence’ ....” WIS JI—CRIMINAL 2663. Rather, as the court noted: [I]nstead, reasonable suspicion of intoxicated driving generally requires reasonable suspicion that the suspect is “[u]nder the influence of an intoxicant ... to a degree which renders him or her incapable of safely driving.” See *State v. Gonzalez*, No. 2013AP2585-CR, [unpublished slip op.] ¶13, [(WI App May 8, 2014)] WIS. STAT. §§ 346.63(1)(a) and 346.01(1).

Thus, when no bad or reckless driving justifies the initial stop, it makes sense that the other factors must be more substantial to show a lack of safe driving. Although the court chose not to revisit its higher threshold standard in Idell's case, the circumstances in Idell's case provide this Court with an opportunity to clarify the standard: do officers need more substantial factors to show reasonable suspicion to extend a stop for an OWI investigation when the stop involves no observed bad or reckless driving?

- 2. This Court should review this case because the Court of Appeals decision provides an inconsistent analysis in reviewing when two suspicious factors, the odor of alcohol**

**and prior convictions create reasonable suspicion.**

On its face, this case asks whether two suspicious building block factors—one prior conviction and the odor of alcohol—create reasonable suspicion to extend a traffic stop for an OWI investigation when the stop involved no bad or reckless driving.

Wisconsin authorities appear to support that reasonable suspicion based on this combination (odor of alcohol plus prior conviction) depends on the number of prior convictions. For example, the cumulative effect of a detected odor of alcohol plus prior OWI convictions effectively creates reasonable suspicion per se when the number of prior convictions subjects the driver to a .02 BAC requirement. In those cases, law enforcement possesses reasonable suspicion based on prior convictions and the odor of alcohol because even a slight amount of alcohol can be above a .02. *Goss*, 2011 WI 104, ¶¶25-27. See also *Adell*, 2021 WI. App. 72, ¶¶27-30, 399 Wis.2d 399, 966 N.W.2d 115.

The Court of Appeals' decision here conflicts with that interpretation because *Idell* had only one prior OWI conviction and was therefore not subject to a .02 BAC. The Court of Appeals added that it interpreted the responding officer's apathy as raising additional suspicion. Given the benefits of clear guidance on this much-litigated issue, the bench, bar, and law enforcement would all benefit from this Court's clarification on the issues involved: does law enforcement need additional suspicion if no bad or reckless driving justified the stop? And, if so, in this case did the odor of alcohol and a prior conviction justify extending a traffic stop for an OWI investigation when it involves no bad driving?

**CONCLUSION**

For the reasons given above, Mr. Idell believes this case is appropriate for review and respectfully asks this Court to grant

review.

Respectfully Submitted,

Dated: July 17, 2025

Electronically signed by Jonathan D. Gunderson

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### **RULE 809.19 CERTIFICATION**

In accord with Wis. Stat. § 809.19(8), I certify that this petition satisfies the form and length requirements for a petition for review prepared using a proportional font: minimum printing resolution of 200 dots per inch, 13-point body text, 11-point text for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per line and a length of 3,210 words.

Dated: July 17, 2025

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