

**FILED**  
**04-09-2025**  
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**COURT OF APPEALS**

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT 2

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**City of West Bend,**  
*Plaintiff-Respondent,*

*vs.*

Appeal No. 24-AP-2559

**Logan Patrick Lang,**  
*Defendant-Appellant.*

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*ON APPEAL FROM A JUDGMENT ENTERED BY THE  
WASHINGTON COUNTY CIRCUIT COURT  
THE HONORABLE RYAN J. HETZEL, PRESIDING*

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**BRIEF OF PLAINTIFF-RESPONDENT**

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## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The City does not request oral argument. This appeal is to be decided by one judge and is therefore ineligible for publication. Wis. Stats. §§ 752.31(2)-(3), 809.23(1)(b)(4).

## STATEMENT OF THE CASE

A City of West Bend police officer saw a pickup truck pull out of a school parking lot after 11:15 p.m., and continue driving without any lights turned on. (R. 27:7.) The officer pulled over the pickup; Lang was the only person inside. (R. 27:11.)

The officer asked Lang where he was coming from; Lang was either confused, evasive, or some combination of the two—Lang could only say he was coming from “right down the road” and could only identify the name of one street he had been driving on. (R. 26, Axon Body 3 Video at 23:18:30-23:19:05.) There were lengthy pauses, up to 9 to 10 seconds long, in between Lang’s responses to the officer. (*Id.*, R. 31:5.)

The officer could detect a faint odor of intoxicants coming from the pickup. (R. 27:14.) Even though the officer told Lang the officer could smell an odor of alcohol, Lang three times denied having consumed any alcohol. (R. 27:15.)

The officer returned to his squad, radioed for a backup officer, and advised Lang another officer would soon arrive in order to administer field sobriety tests. (R. 27:17.)

Ultimately, Lang was arrested and cited for operating while under the influence of an intoxicant and operating without lamps lighted. Lang consented to the officer’s request for a blood test, which resulted in a blood alcohol concentration of 0.180 g/100 mL, so

Lang was cited for operating with a prohibited alcohol concentration. (R. 38:1, R. 40:8, R. 2.)

Lang timely filed a jury demand under Wis. Stat. § 800.035(5)(c), bypassing municipal court and bringing the citations before the circuit court in the first instance. (R. 5.) Lang filed a motion to suppress, arguing that the officer lacked reasonable suspicion to extend the initial traffic stop into an OWI investigation. (R. 20.) The circuit court held an evidentiary hearing on the suppression motion. (R. 27.) After briefing, the circuit court denied Lang's motion to suppress in a written decision. (R. 31.)

Ultimately, the parties proceeded to a court trial, where the circuit court found Lang guilty of both operating while under the influence of an intoxicant, and of operating with a prohibited alcohol concentration. (R. 52:3.) Judgment was entered on the PAC citation. (R. 50.) Lang appeals from the judgment of conviction, arguing that the circuit court erred in denying Lang's motion to suppress. (R. 48.)

## ARGUMENT

### **I. The officer had reasonable suspicion to extend the traffic stop**

The officer had reasonable suspicion that Lang was operating while under the influence. This Court should affirm the circuit court's finding that the officer had reasonable suspicion to extend the stop for field sobriety tests.

#### *A. Standard of review and applicable principles of law*

In appellate review of a motion to suppress evidence, the circuit court's factual findings are to be upheld unless clearly erroneous. *State v. Smiter*, 2011 WI App 15, ¶ 9, 331 Wis. 2d 431, 793 N.W.2d 920. However, this Court reviews *de novo* the legal question of

whether those facts constitute reasonable suspicion. *State v. Powers*, 2004 WI App 143, ¶ 6, 275 Wis. 2d 456, 685 N.W.2d 869.

After a justifiable traffic stop is made, police may expand the scope of the detention to investigate “additional suspicious factors [that] come to the officer’s attention.” *State v. Hogan*, 2015 WI 76, ¶ 35, 364 Wis. 2d 167, 868 N.W.2d 124, quoting *State v. Betow*, 226 Wis. 2d 90, 94, 593 N.W.2d 499 (Ct. App. 1999). Such an expansion, when accompanied by an extension of time longer than necessary for the original stop, must be supported by reasonable suspicion. *Hogan*, 364 Wis. 2d 167, ¶ 35. “[T]he legal extension of a traffic stop is essentially a *Terry* investigative stop.” *Id.*, quoting *State v. Arias*, 2008 WI 84, ¶ 35, 311 Wis. 2d 358, 752 N.W.2d 748.

The extension of a traffic stop requires only that an officer be able to point to specific, articulable facts that, when taken together with rational inferences from those facts, would lead a reasonable officer to believe that unlawful activity might be afoot. *State v. Waldner*, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996). While an officer might observe “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*, 364 Wis. 2d 167, ¶ 36, citing *United States v. Arvizu*, 534 U.S. 266, 274-75 (2002). While any one fact, in isolation, may be insufficient to form reasonable suspicion, the relevant inquiry is the effect of the totality of the facts and inferences from those facts. *Waldner*, 206 Wis. 2d at 58.

Reasonable suspicion cannot comprise merely a “hunch” or an “inchoate and unparticularized suspicion.” *Terry v. Ohio*, 392 U.S. 1,

27 (1968). However, reasonable suspicion “need not rise to the level required for probable cause, and it falls considerably short of satisfying a preponderance of the evidence standard.” *Arvizu*, 534 U.S. at 274. Accordingly, the Wisconsin Supreme Court has described the reasonable suspicion standard a “low bar.” *E.g.*, *State v. Nimmer*, 2022 WI 47, ¶ 25, 402 Wis. 2d 416, 975 N.W.2d 598.

*B. The officer had reasonable suspicion to extend the stop*

When Officer Gall informed Lang that the stop was going to be extended, the officer was aware of all of the following facts:

1. Lang was driving at night without turning his lights on.

An intoxicated person is less likely to be aware of the rules of the road and more likely to violate those rules. *State v. Vaaler*, No. 2019AP2174-CR, unpublished slip op. ¶ 16 (WI App Aug. 6, 2020.) Lang points to an unpublished case where the defendant was driving with a “defective headlight;” the court in that case did not appear to factor the defective headlight into the reasonable suspicion calculus. *State v. Gonzalez*, No. 2013AP2585-CR, unpublished slip op. ¶¶ 1, 3 (WI App May 8, 2014.) Lang errs by calling the facts of *Gonzalez* “the exact same circumstances.” (Appellant’s Br. at 16). A driver who turns on their headlights, unaware that one of their lamps is defective, is quite different than a driver who takes to the road at night failing to turn their lights on at all. As the circuit court correctly reasoned, “This is not an equipment problem, but rather an operator error.” (R. 31:4.) Lang’s apparent oblivion to driving after 11:15 p.m. without any lights on at all would lead a reasonable officer to question whether Lang was able to think clearly, appropriately

observe the state of his vehicle, or appropriately observe that there was nothing illuminating the road – and, from that, reasonably infer that Lang was impaired.

2. Lang had difficulty responding to simple questions about where he was coming from.

The officer asked Lang where he was coming from. He said “um, right down the road.” (R. 26, Axon Body 3 Video at 23:18:30-23:18:33.) When the officer asked where he was before pulling over to send text messages, Lang said “um, just literally right down the road.” (*Id.* at 23:18:42-23:18:46.) When asked “where at,” Lang responded “Um, Silverbrook and...[9-10 second pause] I guess I don’t know the other road.” (*Id.* at 23:18:46-23:19:00.) Ultimately, Lang stated he was coming from a friend’s house. (*Id.* at 23:19:00-23:19:05.)

A reasonable officer would take note of at least two suspicious factors here. First, Lang appeared to have difficulty in remembering, describing, or otherwise verbalizing where he was coming from. When Lang stated he was coming from “down the road,” the officer asked “where at?”—not “what street were you on” or “what address were you coming from.” Despite the simple, general nature of the officer’s question, Lang appeared stumped, and remained silent for nearly a full 10 seconds while trying to verbalize a response. (R. 31:5.) While Lang suggests that he “responded appropriately” to questions put to him (Appellant’s Br. at 15), the circuit court’s factual finding was that Lang “appeared baffled.” (R. 31:4.)

Second, a reasonable officer could conclude that Lang was being evasive in his answers by twice responding with some variation of “down the road” to the officer’s question of where Lang was coming from. While a suspect’s refusal to cooperate or answer questions does not alone create reasonable suspicion, a suspect’s evasiveness is a relevant consideration in assessing whether suspicion is reasonable. *State v. Olson*, 2001 WI App 284, ¶ 8, 249 Wis. 2d 391, 639 N.W.2d 207.

3. The officer could smell the slight odor of an intoxicant coming from the vehicle.

Lang was the only person in the truck. The third time the officer approached Lang’s truck, the officer states “I know you said you haven’t had anything to drink tonight, I’m having like a faint odor coming from the truck...are you sure you haven’t had anything to drink tonight?” (R. 26, Axon Body 3 Video at 23:24:30-23:24:41.)

The unpublished cases cited by Lang appear to concern instances where the odor of intoxicants was apparently the sole factor in an officer’s reasonable suspicion analysis. That was simply not the case here; the odor of intoxicants was but one of several suspicious factors that, in their totality, would lead a reasonable officer to suspect Lang to be operating while under the influence.

4. Despite smelling an odor of alcohol, Lang denied three times having consumed any alcohol.

The officer first asked Lang “have you been drinking at all tonight?” When Lang responded in the negative, the officer asked

“none at all?” When Lang continued to respond in the negative, the officer asked “not even one?” Lang again said “no.” (R. 26, Axon Body 3 Video at 23:19:41-23:19:46.) As the officer testified, Lang’s insistence that he had not had anything to drink made the faint odor more suspicious, not less – that most people would simply state they had previously had one or two drinks. (R. 27:15-16.)

Returning to the governing legal principles, while any one fact, in isolation, may be insufficient to form reasonable suspicion, the relevant inquiry is the effect of the totality of the facts and inferences from those facts. *Waldner*, 206 Wis. 2d at 58. The officer did not need enough evidence to arrest Lang, or even meet a preponderance of the evidence standard—only enough facts to articulate why a reasonable officer might believe Lang was driving under the influence. *Arvizu*, 534 U.S. at 274, *Waldner*, 206 Wis. 2d at 55-56.

The *combination* of all of the foregoing facts would lead a reasonable officer to suspect Lang may have been operating while under the influence. Therefore, it was reasonable for the officer to extend the traffic stop to investigate that suspicion by administering field sobriety tests. This court should affirm the circuit court’s decision and the resulting PAC conviction.

## CONCLUSION

This Court should affirm the circuit court’s denial of Lang’s motion to suppress, and the resulting conviction for operating with a prohibited alcohol concentration.

Respectfully submitted April 9, 2025.

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**CERTIFICATION  
AS TO FORM AND LENGTH OF THE BRIEF  
AND SUPPLEMENTAL APPENDIX  
Wis. Stat. § 809.19(8g)(a)**

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 2,206 words.

I further certify that if the record is required by law to be confidential, the portions of the record included in the supplemental appendix are reproduced using one or more initials or other appropriate pseudonym or designation 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.

Dated April 9, 2025.

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