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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appellate Case No. 2024AP2629-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

TIMOTHY J. PETRIE,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN
CALUMET COUNTY CIRCUIT COURT, BRANCH 1,
THE HONORABLE JEFFREY S. FROEHLICH, PRESIDING
TRIAL COURT CASE NO. 2023CT69

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent believes that the written briefs presented will adequately present the relative positions of the parties, and therefore, oral argument is not requested. The Plaintiff-Respondent believes that publication is not necessary because there are sufficient published cases that directly address the issue presented.

STATEMENT OF THE CASE

The Statement of the Case included in defendant-appellant's brief is insufficient to frame the issues presented for review. Defendant-appellant's brief excluded any reference to the April 23, 2024, motion hearing. The State has attached to the appendix the transcript from the April 23, 2024, motion hearing. The State will include additional relevant facts in the Argument section, especially as to the record from the April 23, 2024, motion hearing.

ARGUMENT

I. THE INDEPENDENT SOURCE DOCTRINE EXCEPTION TO THE EXCLUSIONARY RULE

A. Independent source doctrine.

The Wisconsin Supreme Court in *State v. Van Linn*, 2022 WI 16, 401 Wis.2d 1, 971 N.W.2d 478 (Wis. 2022) addressed the admissibility of a blood test for alcohol under the independent-source doctrine as an exception to the exclusionary rule. In *Van Linn*, at ¶11 and ¶12, the Court stated:

¶11 The Fourth Amendment protects against "unreasonable searches and seizures." U.S. Const. amend. IV. When the State obtains evidence in violation of the Fourth Amendment, that evidence typically must be suppressed under the exclusionary rule. See *State v. Prado*, 2021 WI 64, ¶56, 397 Wis. 2d 719, 960 N.W.2d 869. The exclusionary rule can apply to both evidence discovered during an unlawful search or seizure and evidence discovered only because of what the police learned from the unlawful activity, also referred to as "fruit of the poisonous tree." *State v. Knapp*, 2005 WI 127, ¶24, 285 Wis. 2d 86, 700 N.W.2d 899. Not all Fourth Amendment violations, however, justify applying the exclusionary rule. Rather, the rule applies when excluding the unlawfully obtained evidence will "meaningfully deter" police misconduct such that interfering with the criminal justice system's truth-seeking objective is justified. *Prado*, 397 Wis. 2d 719, ¶¶57–58, 960 N.W.2d 869 (quoting *Herring v. United States*, 555 U.S. 135, 144, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009)). Whenever the exclusionary rule applies, the scope of the remedy is limited to preventing the State from "profit[ing] from its illegal activity" without placing the State "in a worse position than it would otherwise have occupied" absent its illegal conduct. *Murray*, 487 U.S. at 542, 108 S.Ct. 2529 ; *Carroll*, 322 Wis. 2d 299, ¶44, 778 N.W.2d 1. It follows that excluding illegally obtained evidence "does not mean that the facts thus obtained become sacred and inaccessible," provided the State's knowledge of them is gained from a source unrelated to the State's illegal conduct. *Silverthorne Lumber*, 251 U.S. at 392, 40 S.Ct. 182.

¶12 That idea is the foundation of the independent-source doctrine. E.g., *Murray*, 487 U.S. at 537, 108 S.Ct. 2529. The doctrine is an exception to the exclusionary rule in that it allows for the admissibility of evidence or information tainted by an illegal evidence-gathering activity when the State otherwise acquires the same information—or "rediscover[s]" it—by lawful means "in a fashion untainted" by that illegal activity. See *id.* at 537–38, 541–42, 108 S.Ct. 2529 ; *Silverthorne Lumber*, 251 U.S. at 392, 40 S.Ct. 182.....

B. Application of Independent Source Doctrine

At the motion hearing on April 23, 2024, the State conceded that the State could not establish probable cause for the preliminary breath test. (04/23/24 Transcript @ 3:20-21) The State's position at the both the April 23, 2024, motion hearing and the September 19, 2024 motion hearing was that there was a reasonable articulable suspicion for asking Mr. Petrie to perform field sobriety tests and probable cause to arrest without the preliminary breath test. (04/23/24 Transcript @ 3:22 – 4:1) (09/19/24 Transcript @ 5: 23 – 4:15) It remains the position of the State that there was an independent source for requesting field sobriety tests and an independent basis for probable cause to arrest.

At the motion hearing on April 23, 2024, Attorney Singh stated:

Sure, Judge. It's a fairly narrow issue. It's limited to whether there was probable cause to administer the preliminary breath test in this case. I did obviously reference all the facts in the motion, but as this Court may know after reading it that the preliminary breath test

was administered prior to the field sobriety tests, and that's the challenge today, Judge. (04/23/24 Transcript @ 2:13-21)

After a short break at the April 23, 2025 motion hearing , Assistant District Attorney Jones stated: “There isn't a standard probable cause motion, and if I understand from Mr. Singh, it's not his intent to challenge the probable cause. (04/23/24 Transcript @ 4:2-4) Attorney Singh acknowledged that the State’s understanding was “Correct” (04/23/24 Transcript @4:8)

I. THE DEFENDANT WAS NOT DENIED HIS RIGHT TO CONFRONT HIS ACCUSER

At the motion hearing on April 23, 2024, Attorney Singh stated “It's a fairly narrow issue. It's limited to whether there was probable cause to administer the preliminary breath test in this case.” (04/23/24 Transcript @ 2:14-16) The State conceded this issue and did not put forth testimony or other evidence related to reasonable suspicion to request field sobriety test or probable cause to arrest because of defendant’s decision to pursue a singular “fairly narrow issue”. The trial court did not limit inquiry or deny the right to a meaningful hearing because the defendant chose to only litigate the “narrow issue” of probable cause to request a preliminary breath test.


CONCLUSION

The record at the April 23, 2024 and September 19, 2024 motion hearings makes clear that the only issue raised in the trial court was probable cause to request a preliminary breath test. The defendant did not challenge reasonable suspicion to request field sobriety tests or probable cause to arrest.

The ruling of the trial court was consistent with the holding of the Wisconsin Supreme Court in *State v. Van Linn*. The trial court recognized and appropriately applied the concept of the independent source doctrine.

For the reasons stated in the trial court record and stated above, the State asks this court to affirm the decision of the trial court.

Respectfully submitted this 9th day of April, 2025




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CERTIFICATION

I hereby certify that this brief 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 1031 words.

Dated this 9th day of April, 2025.




Douglass K. Jones
Assistant District Attorney
State Bar #1001559**CERTIFICATION OF COMPLIANCE WITH RULE 809.19(3)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies the requirements of Rule 809.19(3).

Dated this 9th day of April, 2025.



Douglass K. Jones
Assistant District Attorney
State Bar #1001559


APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 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.

Dated this 9th day of April, 2025.

A handwritten signature in dark ink, appearing to read "DK Jones", is written over a horizontal line.

Douglass K. Jones
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