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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

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Appellate Case No. 2025AP134-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

ROBERT W. BERGHUIS,

Defendant-Appellant.

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**BRIEF OF PLAINTIFF-RESPONDENT**

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APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN  
CALUMET COUNTY CIRCUIT COURT, BRANCH 2,  
THE HONORABLE CAREY J. REED, PRESIDING  
TRIAL COURT CASE NO. 2023CT72

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**ARGUMENT**

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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 sufficient to frame the issues presented for review. The State will include additional relevant facts in the Argument section.

### **STANDARD OF REVIEW**

The appellate standard of review for a challenge to the sufficiency of the evidence was articulated by the Wisconsin Supreme Court in *State v. Hanson*, 2012 WI 4, 338 Wis.2d 242, 808 N.W.2d 390. The appellate court is to review the evidence independently while viewing the evidence most favorably to sustaining the conviction. *Hanson*, at ¶ 15.

## ARGUMENT

### I. THE EVIDENCE SUFFICIENTLY ESTABLISHED BEYOND A REASONABLE DOUBT THE OPERATION OF A MOTOR VEHICLE ON A HIGHWAY

#### A. Legal standard

The Wisconsin Supreme Court in *State v. Beamon*, 2013 WI 47, ¶ 21, 347 Wis.2d 559, 830 N.W.2d 681 (Wis. 2013) addressed the standard for reviewing a challenge to the sufficiency of the evidence to support a jury verdict of guilty.

¶ 21 The standard for reviewing the sufficiency of the evidence is highly deferential to a jury's verdict, and provides that an appellate court may not overturn a jury's verdict unless the evidence, viewed most favorably to sustaining the conviction, “is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *Poellinger*, 153 Wis.2d at 501, 451 N.W.2d 752. Accordingly, a defendant challenging the sufficiency of the evidence bears a heavy burden to show the evidence could not reasonably have supported a finding of guilt. *State v. Hanson*, 2012 WI 4, ¶ 31, 338 Wis.2d 243, 808 N.W.2d 390.

#### B. Application of legal standard to evidence at trial

Officer George Beattie testified at trial that upon arriving on scene he observed a pickup truck.

Yes, it was a white Ram pick-up truck. I had seen that the rear of the truck was in the ditch line, so the right of way within the boundary line, and then the front of the truck was either right at the edge of the field or in it. (Trial transcript @ 25: 21-25)

Officer Beattie testified that there was one person, Robert W. Berghuis, in the vehicle and the vehicle was turned on. (Trial transcript @ 28: 3-17) Officer Beattie testified that Mr. Berghuis said the roads were slick but that per Officer Beattie's observations the roads were not slick. (Trial transcript @ 29: 1--16)

Officer Beattie testified that Mr. Berghuis upon initial questioning "admitted to drinking" and indicated he was coming from Shawano. (Trial transcript @ 30: 6-12) Officer Beattie further testified that "Later on in the investigation he had stated he had beer to drink, but that was all." (Trial transcript @ 39: 7-8)

Based upon the testimony of Officer Beattie the State established a factual basis for finding that the defendant was drinking beer and drove from Shawano to Calumet County. That the defendant made a fictitious reason, slippery roads, for leaving the travelled portion of the roadway. That upon Officer Beattie's arrival the truck was partially within the highway right of way and turned on.

The State acknowledges that at trial the defendant presented an alternative theory about why his truck was located where Officer Beattie observed the truck and presented a drinking history not articulated to the officer during the investigation process.

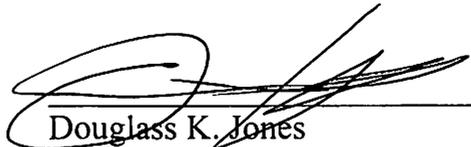
It is the position of the State that based upon the totality of the facts presented to the jury it was reasonable for the jury to find that the State proved intoxicated operation upon a highway beyond a reasonable doubt. From the testimony the jury could have found the defendant was intoxicated when he drove from Shawano

or could have based its finding of guilt upon being intoxicated while within the highway right of way in the ditch.

### CONCLUSION

Based upon the trial court record and argument articulated above, the State asks this court to affirm the jury's guilty verdict and the judgment of conviction by the trial court.

Respectfully submitted this 20<sup>th</sup> day of May, 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 745 words.

Dated this 20<sup>th</sup> day of May, 2025.



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**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 20<sup>th</sup> day of May, 2025.



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## 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 20<sup>th</sup> day of May, 2025.

  
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