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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
CASE NO. 2025AP000141

STATE OF WISCONSIN,
Plaintiff-Respondent,

Case No. 2025 AP 141 CR

v.

MICHAEL R. METON,
Defendant-Appellant.

BRIEF & APPENDIX OF PLAINTIFF-RESPONDENT

ON NOTICE OF APPEAL FROM THE JUDGMENT OF CONVICTION
ENTERED JANUARY 13, 2025 IN THE WINNEBAGO COUNTY
CIRCUIT COURT BRANCH ONE

The Honorable Michael D. Rust, Presiding

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the circuit court correctly concluded that even though the PBT was obtained improperly, the officer still had independent probable cause to arrest the defendant, and whether the independent source doctrine saved the evidentiary blood test.

The trial court decided that Deputy Erickson had probable cause to arrest Mr. Meton for operating while under the influence, regardless of the results of the PBT and denied the request for the exclusionary rule.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State is requesting neither publication nor oral argument as this matter involves application of well-settled law to the facts of this case.

STATEMENT OF THE CASE

The State finds Mr. Meton's recitation of the case facts to be sufficient, and pursuant to Wis. Stat. § 809.19(3)(a)(2), omits a repetitive statement of the case.

ARGUMENT

I. The Circuit Court Correctly Concluded That the Deputy Had Independent Probable Cause to Arrest Defendant, Regardless of the PBT.

Deputy Erickson had probable cause that Mr. Meton had committed the crime of operating while under the influence of an intoxicant, independent of Mr. Meton's PBT results. As such, Deputy Erickson's arrest of Mr. Meton was lawful and the evidentiary chemical test of his blood is not subject to the exclusionary rule.

Probable cause for arrest exists when the totality of the circumstances within the arresting officer's knowledge would lead a reasonable police officer to believe that the defendant probably committed a crime. *State v. Koch*, 175 Wis.2d 684, 701, 499 N.W.2d 152 (1993). When investigating OWIs, an officer may conduct an investigative stop if the officer "reasonably suspects" that a person has committed or is about to a crime, or reasonably suspects that a person is violating the non-criminal traffic laws. *State v. Griffin*, 183 Wis. 2d 327, 333–34, 515 N.W.2d 535 (Ct. App. 1994).

When an officer makes contact with a driver, the officer's observations of the driver may cause the officer to suspect the driver of

operating the vehicle while intoxicated. *County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999).

Officers can request the driver to perform various field sobriety tests. *Id.* After a driver has completed fields sobriety tests, an officer may find probable cause to arrest the driver for an OWI-related offense. *Id.* However, the driver's performance on these tests may not produce enough evidence to establish probable cause for arrest and the legislature has authorized the use of a preliminary breath test (PBT) to assist an officer in such circumstances. *Id.* However, a PBT is not required for officers to find probable cause for an OWI. *Id.* While a PBT can be a useful tool for officers in determining probable cause for an OWI arrest, it is not a mandatory requirement. *Id.* at 313.

Wisconsin Statute § 343.303 states that the result of a PBT may be used to decide whether to arrest a person for an OWI, but the statute does not imply that a PBT is required to establish probable cause for an OWI arrest. The Supreme Court of Wisconsin confirmed that the legislature intended the PBT to function as preliminary screening tool, not as a mandatory step in establishing probable cause. *Id.* at 307.

Probable cause to arrest for an OWI can be established through various indicators of intoxication observed by the officer, independent of PBT results. These indicators can be categorized into physical signs, behavioral signs, and contextual factors. Officers often rely on physical signs to establish probable cause for an OWI arrest, these signs including the odor of intoxicants on a person's breath, slurred speech, and bloodshot or glassy eyes. *State v. Wille*, 185 Wis 2d 673, 683, 518 N.W.2d 325 (Ct. App. 1994). Officers also look to a person's behavioral signs, such as actions or reactions of the person that may suggest intoxication. *State v. Blatterman*, 2015 WI 46, ¶37, 362 Wis. 2d 138, 864 N.W.2d 26. These behavioral signs can include erratic driving, failure to follow commands, and unusual behavior. *Id.* Lastly, officers also look for contextual factors surrounding an OWI investigation that may indicate intoxication. *State v. Kasian*, 207 Wis. 2d 611, 622, 558 N.W.2d 687, 692 (Ct. App. 1996). These contextual factors can include the time of the incident, the location, and any relevant background information about the person. *Id.*

In this case, Deputy Erickson had probable cause that a crime had occurred, specifically, operating while under the influence of an intoxicant.

Specifically, Wisconsin Stat. § 346.63 states:

No person may drive or operate a motor vehicle while:
Under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, a controlled substance and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving.

The facts are not in dispute. At 3:10 a.m., Deputy Erickson was dispatched to a reckless driver complaint. (R. 69 (record): 4 (page.) When Deputy Erickson located the vehicle in question, he observed the vehicle was idle in a parking spot, the vehicle was still running and the brake lights were active, indicating the vehicle was still in drive. (R. 69:4.) Mr. Meton was located in the driver seat, slouched forward and appeared to be passed out. (R.69:4.) Deputy Erickson attempted to wake Mr. Meton by knocking on the vehicle's windows, however, he was unsuccessful. (R. 69:4.) Eventually, Mr. Meton did wake up and when Mr. Meton opened his vehicle door, Deputy Erickson immediately smelled an odor of intoxicants emitting from Mr. Meton's vehicle. (R. 69:4.) Further, Mr. Meton had

glassy and bloodshot eyes, and his speech was slurred. (R. 11:2.) Mr. Meton then admitted he had a couple of drinks and had been running back and forth plowing snow and running foundry loads. (R. 11:3.) When Mr. Meton was asked if he was almost involved in a head-on-crash, Mr. Meton stated “possibly.” (R. 11:3.) Mr. Meton then consented to standardized field sobriety tests and Deputy Erickson observed four clues on the Horizontal Gaze Nystagmus Test, five clues on the Walk and Turn Test, and three clues on the One Leg Stand Test. (R. 11:4-5.) After the field sobriety tests were administered, Mr. Meton provided a PBT. (R. 69:3.)

In this case, prior to the administration of the PBT, Deputy Erickson had ample probable cause to arrest Mr. Meton for operating while intoxicated. This evidence included Mr. Meton’s physical signs of impairment such as Mr. Meton’s slurred speech, glassy and bloodshot eyes, and odor of intoxicants. Mr. Meton also exhibited behavioral signs of impairment, including the reckless driving complaint, Mr. Meton’s passed out state when Deputy Erickson located his vehicle, and Mr. Meton’s performance on the standardized field sobriety tests. Lastly, there was also contextual clues present, such as Mr. Meton’s admission to drinking and

the time of the incident occurring at around 3:00 a.m. Thus, independent probable cause existed without the results of the PBT.

Therefore, Deputy Erickson had probable cause to arrest Mr. Meton for operating while intoxicated independent of the PBT results. Because sufficient probable cause existed prior to the administration of the PBT, both the administration and results of the PBT are irrelevant. A PBT is not required for an officer to establish probable cause for an OWI arrest. Even if Mr. Meton had refused the PBT, Deputy Erickson still had ample probable cause to arrest him on the totality of the circumstances.

II. The Fruit of the Poisonous Tree Doctrine Does Not Apply Because the Independent Source Doctrine Saves the Blood Evidence

The Fourth Amendment serves as a safeguard against “unreasonable searches and seizures” U.S. Const. amend. IV. When the government obtains evidence in violation of this protection, that evidence may be suppressed under the exclusionary rule. *State v. Prado*, 2021 WI 64, ¶56, 397 Wis. 2d 719, 960 N.W.2d 869. This rule applies not only to evidence directly obtained through unlawful conduct but also to derivative evidence discovered only because of what the police learned

from the unlawful activity, also referred to as the “fruit of the poisonous tree.” *State v. Knapp*, 2005 WI 127, ¶24, 285 Wis. 2d 86, 700 N.W.2d 899.

However, exclusion is not automatic. Whenever the exclusionary rule applies, the scope of the remedy is limited to prevent 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 v. United States*, 487 U.S. at 533, 542 (1988); *State v. Carroll*, 2010 WI 8, ¶44, 322 Wis. 2d 229, 778 N.W.2d 1. 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 Co v. United States*, 251 U.S. 385, 392, (1920). Thus, the fruit of the poisonous tree doctrine is not without limits.

One critical limitation is the independent source doctrine, which allows the admission of evidence initially tainted by illegality if the evidence is later obtained through lawful, independent means. *Murray*, 487 U.S. at 537-538, 541-42. Wisconsin courts recognize warrants, subpoenas, and other lawful investigatory techniques as valid independent sources. *Nix v. Williams*, 467 U.S. 431, 443 (1984). While the use of the independent

source doctrine is commonly applied in the context of warrants or subpoenas, it is not limited to those scenarios.

In the context of OWI investigations, the doctrine may also apply to a properly administered Informing the Accused process under Wisconsin Statute § 343.305(4), so long as it is not the product of the earlier illegality. The central question hinges on whether the evidence was obtained by means sufficiently distinguishable from the initial illegality so as to be purged of the taint. *Murray*, 487 U.S. at 538. If the State would have independently obtained the evidence lawfully, the doctrine may preserve its admissibility.

While the exclusionary rule extends to evidence derived from unlawful conduct, that doctrine does not apply in this case because no evidence was discovered as a result of what Deputy Erickson learned from the PBT. The PBT did not cause Deputy Erickson to arrest Mr. Meton nor did it taint Mr. Meton's consent to a blood draw.

Even assuming that the PBT administered to Mr. Meton was obtained in violation of his rights, suppression of the blood evidence is not warranted because the blood draw was the product of a separate and lawful course of events. Deputy Erickson had sufficient probable cause to arrest

Mr. Meton for an OWI based on observations independent of the PBT. These observations included a citizen complaint of reckless driving, Mr. Meton being located unconscious behind the wheel of a running vehicle at 3:10 a.m., an odor of intoxicants, glassy and bloodshot eyes, slurred speech, admission to drinking, and poor performance on standardized field sobriety tests. None of these indicators were derived from the PBT.

Because Deputy Erickson had independent probable cause to arrest Mr. Meton, the decision to proceed with the Informing the Accused process and request a blood sample did not rely on the result from the PBT. In fact, the PBT neither triggered the arrest nor supplied an investigatory lead or essential fact used to justify the subsequent blood draw. If Mr. Meton had refused the PBT altogether, the arrest and blood draw would have occurred just the same; he would have been arrested, read the Informing the Accused, and been given the opportunity to consent or refuse an evidentiary chemical test of his blood. There is no connection between the PBT results and Mr. Meton's consent to the blood draw.

Further, the blood draw was the product of a separate, lawful decision supported by independent probable cause. The purpose of the Informing the Accused process under Wisconsin's implied consent law,

under Wis Stat. § 343.305(4), is to ensure that drivers are adequately informed of their rights and the consequences of refusing or consenting to chemical testing. In this case, after lawfully arresting Mr. Meton for an OWI – based on numerous indicators of impairment entirely independent of the PBT – Deputy Erickson read him the Informing the Accused and Mr. Menton voluntarily consented to a blood draw. There is no causal connection between Mr. Meton’s PBT results and Deputy Erickson’s decision to arrest him, nor is there any link between the PBT and Mr. Meton’s subsequent decision to consent to evidentiary chemical test of his blood. Mr. Meton was properly read the Informing the Accused, was advised of his rights, and was presented with a clear choice: to consent or refuse the blood draw. Mr. Meton’s decision to consent to the blood draw was independent of the PBT and was informed by the statutory warnings provided to him.

Suppressing the blood draw due to procedural misstep during the PBT would contradict the main purpose of the exclusionary rule. The court stated in *State v. Van Linn*, that exclusion is inappropriate where it would place the State in a worse position than it occupied absent the alleged misconduct. *State v. Van Linn*, 2022 WI 16, ¶9, 401 Wis. 2d 1, 8 , 971

N.W.2d 478, 482. In this case, suppressing the subsequent evidentiary blood test would do exactly that, put the State in a worse position, because Deputy Erickson already had ample probable cause to arrest Mr. Meton prior to administering the PBT. The evidence supporting probable cause including the reckless driving complaint, Mr. Meton being located passed out in a running vehicle, the odor of intoxicants, slurred speech, admission of drinking, and results on field sobriety tests was overwhelming and independent of any PBT result. In fact, even if Mr. Meton declined to submit a PBT, he would have still been arrested given the ample probable cause already established.

The subsequent blood draw was based on this independently established probable cause and Mr. Meton's voluntarily consent after being properly advised of his rights under the Informing the Accused. Suppressing that evidence would deprive the State of lawfully obtained evidence. Like in *Van Linn*, the evidence in question was not tainted by improper conduct and would have been obtained regardless. Therefore, exclusion is not warranted where there alleged violation had no bearing on the discovery of the evidence in question.

Mr. Meton argues that the independent source doctrine applies only to situations involving warrants. While it is true that the doctrine is often applied in that context, courts have not limited the doctrine's application solely to warrants. The core principle is whether the evidence was obtained through a process "wholly independent" of the earlier illegality. *Murray*, 487 U.S. at 533. Wisconsin courts have extended the doctrine to include other lawful investigatory methods such as subpoenas and voluntarily statements, when they are not derived from prior illegal conduct. *Id.* at 542. Similarly, a properly administered Informing the Accused warning followed by voluntary consent could trigger an independent legal basis for obtaining evidence even where earlier investigative missteps may have occurred.

Mr. Meton also contends that the Mr. Meton's PBT result directly impacted the type of evidentiary sample sought, suggesting that breath tests are used for alcohol while blood tests are pursued if drug impairment is suspected. However, this argument was never made on through testimony at the motion hearing, therefore this argument is irrelevant and should be treated as such.

CONCLUSION

For the reasons set forth above, Deputy Erickson had probable cause to arrest Mr. Meton for an OWI regardless of the results of the PBT and any evidence gathered subsequent to the PBT results should not be subject to the exclusionary rule.

Dated at Oshkosh, Wisconsin, this 30th day of June, 2025.

Electronically Signed by:
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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 2,512 words.

I further certify pursuant to Wis. Stat. § 809.19(b)(12)(f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief, *other than the appendix material is not included in the electronic version.*

I further 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; and (3) portions of the record essential to an understanding of the issues raised, including oral or written findings or decision showing the circuit court's reasoning regarding these issues.

I further certify that if this appeal is taken from a circuit court order of 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 person, 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.

I further certify that on the date of signature I routed this brief to our office station for first class US Mail Postage to be affixed and mailed to:

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