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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV**

Appellate Case No. 2025AP000483

In the Matter of the Refusal of Jason Daniel Hull:

State of Wisconsin,
Plaintiff-Respondent,

v.

Jason Daniel Hull,
Defendant-Appellant.

District: 4

Appeal No: 2025AP000483

Circuit Court Case No. 2024TR004327

**APPEAL FROM AN ORDER OF JUDGMENT ENTERED IN THE
CIRCUIT COURT FOR DODGE COUNTY, BRANCH 2, THE
HONORABLE MARTIN J. DEVRIES PRESIDING,
TRIAL COURT CASE NO. 2024-TR-4327**

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

I. IT IS THE “TOTALITY” OF THE CIRCUMSTANCES WHICH IS RELEVANT IN THIS CASE

The legal standard to be applied when assessing whether “probable cause” exists to arrest an individual is referred to as the “totality of the circumstances” test. *State v. Nordness*, 128 Wis. 2d 15, 35, 381 N.W.2d 300 (1986). Under this test, *all* of the facts, that is, the “totality,” of the information must be examined and weighed in deciding to put someone through an impaired driving investigation. The record in this matter shows that parts of stories from other parties were pieced together, and the true statements made by Mr. Hull were not considered in the totality of the circumstances.

In the State’s Response Brief (hereinafter “SRB”), the State asserts that all the information Sergeant Mayer had available to him would have led any reasonable police officer to believe Mr. Hull had operated a motor vehicle under the influence of an intoxicant. SRB at 10. Further, the State asserts that the only substantive information Mr. Hull provided to Sergeant Mayer had been when Mr. Hull pointed out the position of the driver’s seat. SRB at 9. The State also acknowledges that Sergeant Mayer was told by Mr. Hull that some pieces of his vehicle were broken by the other party, which Sergeant Mayer observed (R.20:9). Mr. Hull’s statement regarding the broken items was true, and Sergeant Mayer noted that what Mr. Hull told him was consistent with what he observed. However, when Mr. Hull pointed out the position of the seat, Sergeant Mayer seemingly disregarded that and thought Mr. Hull was trying to divert his attention from any possible driving Mr. Hull engaged in on that night (R.20:11). Sergeant Mayer did not even observe Mr. Hull driving on that night (R.20:15). While Mr. Hull may not have given much information to any law

enforcement officer that responded, Sergeant Mayer had no reason to disregard the few tidbits of information provided by Mr. Hull. In the record before us, Sergeant Mayer had no contact with the other party involved. Sergeant Mayer had only spoken to Mr. Hull and other law enforcement officers on scene (R.20:10). Sergeant Mayer was present and certainly had an opportunity to interview the other party, but instead took another deputy's recantation of what transpired, and decided to ignore the truthfulness of what Mr. Hull directly relayed to him. It is clear from this record that Mr. Hull had no intention of self-incriminating or offering any statements against his own interests. *Id.* The most pertinent information Mr. Hull provided to Sergeant Mayer was observed to be true.

Further, in their brief, the State only briefly mentions the approximate time this event happened. SRB at 5. In his testimony, Sergeant Mayer believes Mr. Hull was at his residence approximately thirty minutes before law enforcement arrived (R.20:16). Sergeant Mayer also testified that no other deputies reported Mr. Hull consuming intoxicants, nor did he observe Mr. Hull drinking. *Id.* However, Sergeant Mayer never asked Mr. Hull if he were drinking after it was being alleged he drove. *Id.* This is an important fact to the totality of the circumstances test that the State fails to address in their argument. Even if Sergeant Mayer's approximation of when Mr. Hull arrived home is true, the fact he exhibited symptoms of impairment cannot be assumed to mean Mr. Hull drove or operated a motor vehicle after consuming intoxicants.

The only other information before us is that Sergeant Mayer knew Mr. Hull was subject to a 0.02 blood alcohol concentration restriction when driving or operating a motor vehicle, and that in Sergeant Mayer's experience, it does not require a large amount of intoxicants to cross that threshold (R.20:10-12). Sergeant Mayer otherwise relied on words from other deputies and made the assumption that because Mr. Hull seemed to be under the influence of

intoxicants at this exact moment, he must have been under the influence of intoxicants, and he must have driven. Sergeant Mayer did not properly rely on the totality of the information he had been given, and as such, his investigation cannot support the finding of probable cause that Mr. Hull had been driving or operating a motor vehicle under the influence of an intoxicant. As such, Sergeant Mayer had no reason to ask Mr. Hull to submit to an evidentiary chemical test, and Mr. Hull's refusal to submit to that test was justified.

II. MR. HULL INVOKING HIS RIGHT TO REMAIN SILENT DID NOT CONSTITUTE A REFUSAL

In their response brief, the State improperly contends that Mr. Hull invoking his right to remain silent and not answer any questions constituted a refusal to submit to an evidentiary chemical test of his blood. SRB at 11-12. The State also concedes that the reason law enforcement made contact with Mr. Hull was for a domestic disturbance. SRB at 12.

Mr. Hull refused to answer questions as law enforcement was investigating a domestic disturbance (R.20:12). It is undisputed Mr. Hull has the right to remain silent. The State cites the following from *State v. Padley*, 2014 WI App 65, ¶38, 354 Wis.2d 545, 849 N.W.2d 867:

"If a driver consents under that circumstance, that consent is actual consent, not implied consent. If the driver refused to consent, he or she thereby withdraws 'implied consent' and accepts the consequences of that choice."

In the present matter, Mr. Hull's silence was not a refusal. Sergeant Mayer deemed his question refused and moved on to apply for a search warrant (R.20:13-14). Sergeant Mayer did offer to not reread the form (R.20:19).

Further, the State contends Mr. Hull's refusal to answer questions amounts to conduct which would lead a reasonable officer to deem a refusal. SRB at 12. The State, citing *State v. Reitter*, 227 Wis.2d 213, 234, correctly states that the revocation of consent need not be verbal and can be construed from a defendant's actions. *Id.* That is distinguishable from the present case. Mr. Hull's actions were merely verbal, and nothing in the record before us shows that he was unwilling to consent to the test. Mr. Hull was refusing to answer questions, as Sergeant Mayer was investigating a domestic disturbance. As outlined in his brief, Mr. Hull holds his contention that by applying for a commercial driver's license, he impliedly consents to the requested chemical testing.

The State also improperly contends that the reason for this encounter is of no significance, because law enforcement regularly shifts their investigations based on new information learned during their investigation. SRB at 12. What the State offers as an analogy is a common scenario – operators of motor vehicles being pulled over for equipment violations, which then turn into drunk driving investigations. SRB at 12. What we have before us is not a common scenario, where no driving nor operating of a motor vehicle was observed (R.20:15). Mr. Hull was home, for an approximate time, based on assumptions and incomplete information (R.20:16). Every case on this issue that the State cites in their response was a case that involved observed driving by law enforcement. It is wholly logical that a person stopped while driving could be investigated for impairment upon their presentation to the responding officer. In the present matter, the record lacks verifiable detail to say if Mr. Hull were indeed driving, when the driving occurred and what Mr. Hull's condition would have been at the time.

CONCLUSION

Because the totality of the circumstances in the present matter do not rise to the level of objectively establishing probable cause to arrest Mr. Hull, he respectfully requests that this Court reverse the decision of the circuit court, finding that no probable cause existed to believe Mr. Hull was driving or operating a motor vehicle while under the influence of an intoxicant, and thus, his refusal to submit to an evidentiary chemical test was justified.

Dated this 18th day of August, 2025.

Respectfully submitted,

AVENA LAW OFFICE, LLC

Electronically Signed by Glenn E. Avena

Glenn E. Avena

State Bar No. 1100891

Attorneys for Jason Daniel Hull

CERTIFICATION OF FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 1,525 words.

Finally, I hereby certify that I have submitted an electronic copy of this brief which complies with the requirements of Wis. Stat. § 809.19(12).

Dated this 18th day of August, 2025.

Respectfully submitted,

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