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**COURT OF APPEALS**

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

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**Appellate Case No. 2025AP000483**

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**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**

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**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**

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**BRIEF OF DEFENDANT-APPELLANT**

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### STATEMENT OF THE ISSUES

WHETHER MR. HULL WAS OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF AN INTOXICANT PURSUANT TO WIS. STAT. § 346.63(3)(a)?

Trial Court Answered: YES. The court concluded that Mr. Hull was likely operating a motor vehicle and law enforcement had established probable cause to believe Mr. Hull was under the influence of an intoxicant at the time of driving or operation (R.20:22-24).

WHETHER MR. HULL REVOKED CONSENT TO SUBMIT TO EVIDENTIARY CHEMICAL TESTING PURSUANT TO WIS.STAT. §343.305(9)(a)5c?

Trial Court Answered: Yes. The court concluded that Mr. Hull refusing to answer questions constituted a refusal to submit to evidentiary testing (R.20:22-24).

### STATEMENT ON ORAL ARGUMENT

The Defendant-Appellant will NOT REQUEST oral argument as this appeal presents questions of law that can be addressed through the application of established law, the briefs in this matter should adequately address the arguments; oral argument will not be necessary.

### STATEMENT ON PUBLICATION

Mr. Hull will NOT REQUEST publication of this Court's decision as the authority regarding the issues raised is well-settled. Further, as a one-judge appeal,

this does not qualify under this Court's operating procedures for publication, because of which, publication is not sought.

### **STATEMENT OF THE CASE/FACTS**

On December 14, 2024, Mr. Hull was cited for Refusal to Take Test for Intoxication After Arrest in violation of Wis. Stat. §343.305(9) by Sergeant Matthew Mayer of the Dodge County Sheriff's Office. The defendant, by counsel, timely filed a written request for a refusal hearing on December 18, 2024. A refusal hearing was held on February 21, 2025, the Honorable Martin J. DeVries, Judge, Dodge County Circuit Court presiding. On that date, the court found that Mr. Hull's refusal to submit to an evidentiary chemical test of his blood was unjustified, finding that Dodge County Sheriff's Office Sergeant Matthew Mayer has the requisite level of probable cause to believe that Mr. Hull had operated a motor vehicle while under the influence of an intoxicant, and that Mr. Hull refused chemical testing. A Judgment of Conviction was entered on February 21, 2025. (R. 9).

On March 10, 2025, the defendant, by counsel, filed a timely Notice of Appeal.

Pertinent facts in support of this appeal come from the refusal hearing on February 21, 2025. Those facts were introduced through the testimony of Sergeant Matthew Mayer of the Dodge County Sheriff's Office. Sergeant Mayer testified that on December 14, 2024, he was on duty and dispatched to a domestic disturbance between Mr. Hull and a female on Blackhawk Trail, Fox Lake, WI. After receiving a second call plotted to Mr. Hull's residence, Sergeant Mayer responded to the residence and made contact with Mr. Hull (R.20:6-7). Sergeant Mayer made contact with Mr. Hull in the entryway to the residence (R.20:8). Sergeant Mayer never observed Mr. Hull driving (R.20:15).

While speaking with Mr. Hull, Sergeant Mayer testified he noticed Mr. Hull had bloodshot, glassy eyes and a delayed and slurred speech (R.20:8)). Further, Sergeant Mayer noticed a moderate odor of intoxicants coming from Mr. Hull. *Id.* When asked about drinking that day, Mr. Hull declined to answer Sergeant Mayer's questions (R.20 at 9/A. App.). Mr. Hull further declined to perform Standardized Field Sobriety Tests, including a preliminary breath test (R.20 at 12/A. App.).

Sergeant Mayer was one of three law enforcement officers who responded to the domestic disturbance, and Sergeant Mayer was not the first officer on scene (R.20:15-16). Sergeant Mayer was unsure of when he responded to the residence but believed it to be before midnight on December 14, 2024 (R.20:14). Sergeant Mayer believed that Mr. Hull was home for approximately half an hour at the time law enforcement responded to the residence (R.20:16).

Upon conferring with Deputy Burns, Sergeant Mayer learned the other party's version of events (R.20:10). Sergeant Mayer was told that the parties were leaving a tavern in Fox Lake, Mr. Hull was driving, and that a disturbance occurred during the drive wherein the female called 911 (R.20:10). Per the other party and what was relayed to Sergeant Mayer, the other involved party drove the truck back to the residence and Mr. Hull walked back to the residence and returned on his UTV. *Id.* When Sergeant Mayer asked Mr. Hull about driving that night, Mr. Hull declined to answer questions. *Id.* Sergeant Mayer observed both the UTV and truck in the driveway of Mr. Hull's residence. (R.20:20).

While continuing to investigate the domestic disturbance, Sergeant Mayer and Mr. Hull walked to Mr. Hull's truck, so that Mr. Hull could show what was broken inside of his truck (R.20:9). Sergeant Mayer observed a broken rear-view mirror. *Id.* After Mr. Hull opened the truck door, Mr. Hull pointed out how the driver's seat of the truck was positioned, and stated, per Sergeant Mayer's

testimony, “Look at the driver seat location, I wouldn’t be able to fit there.” *Id.* After speaking to Mr. Hull, Sergeant Mayer performed a Department of Transportation records check on Mr. Hull (R.20:10). Sergeant Mayer learned through that check that Mr. Hull was subject to a 0.02 blood alcohol concentration driving restriction and had one prior conviction for operating while under the influence of alcohol (R.20:11).

Based on Sergeant Mayer’s observations of Mr. Hull, the story from the other involved party who had called 911, and the time and location of the plots related to the calls, Sergeant Mayer arrested Mr. Hull for Operating While Under the Influence of an Intoxicant (R.20:12-13). Sergeant Mayer believed, based on the totality of these circumstances rising to the level of probable cause, that Mr. Hull had operated a motor vehicle on that night, saying that an “important piece” of his analysis was the statements made by the other involved party related to Mr. Hull having driven that night (R.20:15-16). After placing Mr. Hull under arrest, Sergeant Mayer read, verbatim, the Informing the Accused form (“ITAF”) to Mr. Hull (R.20:13). After reading the form, when asked to submit to an evidentiary chemical test of his blood, Sergeant Mayer recalls Mr. Hull saying something to the effect of, “I don’t answer questions.” *Id.* Sergeant Mayer took that response to mean Mr. Hull was refusing to submit to the chemical test, and Sergeant Mayer did not reread the form to Mr. Hull, nor did he offer to reread the form (R.20:19).

The court found that Sergeant Mayer had probable cause to ask Mr. Hull to submit to an evidentiary chemical test. The court pointed to Sergeant Mayer’s observations of Mr. Hull, the location of the plots from the 911 calls, the other involved party’s words about leaving a tavern, and Mr. Hull’s declination to perform field sobriety tests (R.20:22-24). Further, the court stated that, “...so there’s clear evidence that he was driving.” *Id.*

## STANDARD OF REVIEW

When reviewing the circuit court's finding of a refusal, appellate court will uphold the lower courts finding of facts unless they are clearly erroneous, but independently reviews application of those facts to constitutional principles, as questions of law. See *State v. Blatterman*, 2015 WI 46, 362 Wis.2d 138, 864 N.W.2d 26, *In re Smith*, 2008 WI 23, ¶16, 308 Wis.2d 65, 746 N.W.2d 243.

## ARGUMENT

Pursuant to Wis. Stat. §343.305(9)(a)5, a court considers three issues at a refusal hearing. First, “whether the officer had probable cause to believe the person was driving or operating a motor vehicle while under the influence of alcohol...and whether the person was lawfully placed under arrest for a violation of s. 346.63(1).” Second, whether the officer provided the implied consent warning as required under Wis. Stat. §343.305(4). Third, “whether the person refused to permit the test.”

Mr. Hull contends that the first and third issue at the refusal hearing have not been met, and thus argues that the court erred in finding the refusal justified and entering judgment accordingly.

### **1. BASED ON THE FACTS ADDUCED AT THE REFUSAL HEARING, THE COURT ERRED IN FINDING THAT SERGEANT MAYER HAD THE REQUISITE LEVEL OF PROBABLE CAUSE TO BELIEVE MR. HULL WAS OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL**

The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution, protects individuals against unreasonable seizures. “A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment...” *State v. Sykes*, 2005 WI 48, ¶14, 279 Wis.2d 742, 695 N.W.2d 277 citing to *State v. Fry*, 131 Wis.2d 153, 169, 388



N.W.2d 565 (1986). In the context of a refusal hearing, probable cause “exists where the totality of the circumstances within the arresting officer’s knowledge at the time of the arrest would lead a reasonable police officer to believe ...that the defendant was operating a motor vehicle while under the influence of an intoxicant.” *State v. Nordness*, 128 Wis.2d 15, 35, 381 N.W.2d 300 (1986) see also *In re Smith*, 2008 WI 23, ¶15, 308 Wis.2d 65, 746 N.W.2d 243. Probable cause requires that at the moment of arrest, an officer knew of facts and circumstances that were sufficient to warrant a prudent person to believe that the person arrested had committed or was committing an offense. *Village of Elkhart Lake v. Borzyskowski*, 123 Wis.2d 185, 189, 366 N.W. 2d 506 (Ct. App 1985). A reasonable police officer need only believe that guilt is more than a possibility. *County of Dane v. Sharpee*, 154 Wis.2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990). The State has the burden to show the evidence known to the arresting officer at the time of the arrest would lead a reasonable officer to believe that the defendant was probably guilty of operating a motor vehicle while impaired. *State v. Lange*, 2009 WI 49, ¶38, 317 Wis.2d383, 766 N.W.2d 551, see also *In re Smith*, 2008 WI 23 at ¶15. Probable cause is determined on a case-by-case basis using the totality of the circumstances. *State v. Kasian*, 207 Wis.2d 611, 621-22, 558 N.W.2d 687 (Ct.App. 1996).

Based on the record in the instant case, the court erred in finding that Sergeant Mayer had the requisite level of probable cause to believe Mr. Hull was operating while under the influence of an intoxicant. Law enforcement was dispatched to the area of the residence, and then later the residence itself, due to a domestic disturbance that had occurred (R.20:6-7). The facts in this record show that upon making contact with Mr. Hull at his residence, Sergeant Mayer observed signs that Mr. Hull had been consuming intoxicants (R.20:8).

The State’s burden here is to not simply establish that Mr. Hull was impaired when they made contact, but to also establish probable cause that Mr.

Hull was impaired at the time he operated a motor vehicle. *State v. Lange*, 2009 WI 49, ¶38. It is clear, based on this record, that both vehicles mentioned were parked in the driveway of the residence (R.20:20). This was not a case where Mr. Hull was stopped while driving, but instead contacted by law enforcement at his home *after* Mr. Hull was alleged to have been driving (R.20:6-7). Mr. Hull was at home for at least approximately thirty minutes before law enforcement arrived (R.20:16). Sergeant Mayer was unsure of the time he was dispatched to the area of Blackhawk Trail in Fox Lake, WI, but believed it to be before midnight on December 14, 2024 (R.20:14).

The record made at the refusal hearing further establishes that Mr. Hull and the other individual were leaving a tavern, a fact the court relied on in finding that Sergeant Mayer had probable cause to believe Mr. Hull was operating a motor vehicle (R.20:10, 23). The court found that Mr. Hull was probably operating a vehicle, but the record is absent of any information that shows Mr. Hull had consumed any intoxicants while at the tavern or prior to operation. If Mr. Hull operated a motor vehicle, there is nothing to support that Mr. Hull was under the influence of any intoxicants when doing so.

## **2. THE COURT ERRED IN FINDING MR. HULL REFUSED CHEMICAL TESTING.**

The Fifth Amendment to the United States Constitution and Article I, Section 8 of the Wisconsin Constitution protect individuals against self-incrimination. "Any time an individual is questioned by the police, that individual is compelled to do one of two things--either speak or remain silent. If both a person's prearrest speech and silence may be used against that person, as the state suggests, that person has no choice that will prevent self-incrimination. This is a veritable 'Catch-22.' ... We hold that a person is entitled to the protection of the Fifth Amendment even prior to arrest or a custodial interrogation." *State v. Brecht*, at

311, 143 Wis.2d 297, 421 N.W.2d 96 (Wis. 1988), citing *State v. Fencel*, 109 Wis.2d 224, 325 N.W.2d 703 (1982) at 237, 325 N.W.2d 703. Once an accused is properly read the warning under the implied consent law, the “obligation of the accused is to take the test promptly or to refuse it promptly.” *State v. Neitzel*, 95 Wis.2d 191, 289 N.W.2d 828 (1980).

Under Wisconsin’s Implied Consent Law, every person who operates a motor vehicle on a public highway within this state is presumed to have given their implied consent to providing a blood, breath, or urine sample for the purpose of determining the presence of alcohol and/or controlled substances when requested to do so by a law enforcement officer who has probable cause to believe the individual is operating a motor vehicle while impaired. *Wis. Stat. § 343.305(2)* (2025-26). Section 343.305(2) provides that “[a]ny person who . . . drives or operates a motor vehicle upon the public highways of this state, . . . is deemed to have given consent to one or more tests of his or her breath, blood or urine, . . . .” *Id.* (emphasis added). Since consent has been “deemed given,” the question is whether the suspect has revoked that consent.

The statutory “deeming of consent” is akin to a contract between the State of Wisconsin and those individuals who operate motor vehicles on state roads. The Wisconsin Supreme Court acknowledged the implied contractual relationship between the State and a driver when it observed in *State v. Crandall*, 133 Wis. 2d 251, 394 N.W.2d 905 (1986), that, “[T]he accused intoxicated driver has no choice in respect to granting his consent. He has, by his application for a license, waived whatever right he may otherwise have had to refuse to submit to chemical testing. It is assumed that, at the time a driver made application for his license, he was fully cognizant of his rights and was deemed to know that, in the event he was later arrested for drunken driving, he had consented, by his operator’s application, to chemical testing under the circumstances envisaged by the statute.” *Crandall*, 133 Wis. 2d at 257 (emphasis added), quoting *State v. Neitzel*, 95 Wis. 2d 191,

201, 289 N.W.2d 828 (1980); see also, *Scales v. State*, 64 Wis. 2d 485, 494, 219 N.W.2d 286 (1974); *County of Milwaukee v. Proegler*, 95 Wis. 2d 614, 623, 291 N.W.2d 608 (Ct. App. 1980). The *Crandall* court’s characterized the relationship between a driver and the state essentially as a contract, whereby promise, acceptance, and consideration are all considered. *See Runzheimer Int’l, Ltd. v. Friedlen*, 2015 WI 45, ¶ 20, 362 Wis. 2d 100, 862 N.W.2d 879; *Rosecky v. Schissel*, 2013 WI 66, ¶ 57, 349 Wis. 2d 84, 833 N.W.2d 634; *Goossen v. Estate of Standaert*, 189 Wis. 2d 237, 247, 525 N.W.2d 314 (Ct. App. 1994). The “promise” is the state’s allowance of a vehicle operator that they may drive a motor vehicle on state roadways. The “acceptance” is the individual’s application for an operator’s license who is “fully cognizant of his rights.” Finally, “consideration” is the driver’s consent to an implied consent test. All of the elements of a contract are present.

The Wisconsin Supreme Court said in *Scales* that the purpose of the implied consent statute “was to impose a condition on the right to obtain a license to drive on a Wisconsin highway. The condition requires that a licensed driver, by applying for and receiving a license, consent to submit to chemical tests for intoxication under statutorily determined circumstances”—again, the elements of what constitute a contract are present. *Id.* at 494 (emphasis added). Since Mr. Hull applied for and received an operating privilege in the State of Wisconsin, his “consent to submit to chemical tests for intoxication” was already given as the consideration for that privilege under both the Law of Contract and in accordance with *Crandall* and *Scales*. See also, *State v. Reitter*, 227 Wis. 2d 213, 224, 595 N.W.2d 646 (1999) (“Wisconsin drivers are deemed to have given implied consent to chemical testing as a condition of receiving the operating privilege”).

In the present case, Mr. Hull refused to answer questions, and the court found that Mr. Hull refusing to answer questions meant he refused to submit to the chemical test (R.20:24). It is clear on this record that law enforcement was

investigating a domestic disturbance, and it is well established that a person being interrogated by law enforcement has the right to not self-incriminate. Although Sergeant Mayer eventually found his way to the path of an impaired driving offense, law enforcement was responding to and investigating a domestic incident that could have been criminal in nature (R.20:6-7). Mr. Hull's obligation as the accused was to promptly take the test or to refuse the test. *State v. Neitzel*, 95 Wis.2d 191. The record shows that Mr. Hull's silence to the question contained at the end of the ITAF was an assertion of his right to not self-incriminate, not a refusal to submit to the requested test. Further, having a commercial driver's license, Mr. Hull has taken further steps than others whose license only allows for operation of Class D vehicles. It is assumed that by obtaining a commercial driver's license, a person consents to chemical testing, and a heightened knowledge exists based on further operation certifications. Mr. Hull's refusal to answer the question was not a revocation of his implied consent.

### CONCLUSION

Because the State failed to establish the first and third issue under Wis. Stat. §343.305(9)(a)5, the trial court erred in finding Sergeant Mayer had probable cause to believe Mr. Hull operated his motor vehicle while under the influence of an intoxicant and refused to submit to chemical testing. The Court should reverse the judgment of conviction and vacate the refusal.

Dated this 19<sup>th</sup> day of June, 2025.

Respectfully submitted,

**AVENA LAW OFFICE, LLC**

Electronically Signed by Glenn E. Avena

Glenn E. Avena

State Bar No. 1100891

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### **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 3,646 words.

I also certify that filed as a separate document is an appendix that complies with Wis. Stat. § 809.19(2)(a).

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 19<sup>th</sup> day of June, 2025.

Respectfully submitted,

**AVENA LAW OFFICE, LLC**

Electronically Signed by Glenn E. Avena

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