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

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**Appellate Case No. (2025AP000483)**  
**Circuit Court Case No. (2024TR004327)**

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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.

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**BRIEF OF PLAINTIFF-RESPONDENT**

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**ON APPEAL FROM THE CIRCUIT COURT FOR DODGE  
COUNTY, BRANCH 2, THE HONORABLE  
MARTIN J. DEVRIES PRESIDING**

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### **STATEMENT OF THE ISSUES**

Whether law enforcement established probable cause to believe that Jason Daniel Hull was operating a motor vehicle while under the influence of an intoxicant pursuant to Wis. Stat. § 346.63(3)(a)?

This Court should answer: Yes.

Whether Jason Daniel Hull refused to submit to an evidentiary chemical testing pursuant to Wis. Stat. § 343.305(9)(a)?

This Court should answer: Yes.

### **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

The Plaintiff-Respondent (“State”) submits that oral argument is unnecessary because the issues can be set forth fully in the briefs. Publication is unnecessary as the issues presented relate solely to the application of existing law to the facts of the record.

### **STATEMENT OF THE CASE**

On December 14, 2024, Sergeant Matthew Mayer of the Dodge County Sheriff’s Office, along with two other deputies from the same agency, responded to a domestic-type disturbance at a residence located

on Blackhawk Trail, in the Town of Fox Lake, Dodge County, Wisconsin. (R.20:6-7). Sergeant Mayer responded to the residence, and initiated contact with Jason Hull (hereinafter referred to as “defendant”). (R.20:7-8). During Sergeant Mayer’s contact with the defendant, Sergeant Mayer observed the defendant had bloodshot, glassy eyes, a moderate odor of intoxicants emitting from the defendant’s person, and that at times the defendant’s speech was delayed and slurred. (R.20:8). Sergeant Mayer never observed the defendant operating a motor vehicle. (R.20:15). The defendant indicated to Sergeant Mayer that the female party had broke items in his truck, which Sergeant Mayer was able to observe. (R.20:9). While Sergeant Mayer was observing the truck with the defendant, the defendant pointed to the driver seat to indicate that he would not have been able to fit in the driver seat.

Sergeant Mayer was unable to recollect the exact time he arrived at the residence, but estimated he arrived shortly before midnight on December 14, 2024. (R.20:14). Sergeant Mayer was the second officer to arrive at the residence on Blackhawk Trail. (R.20:15). Sergeant Mayer stated that the defendant had been at his residence for approximately a half-hour prior to law enforcement responding to the residence. (R.20:16) Neither Deputy Mayer, nor the other officers on scene, observed the defendant consuming any alcohol. *Id.*

Sergeant Mayer spoke with Deputy Burns, who was also on scene at the residence. (R.20:10). Sergeant Mayer learned Deputy Burns spoke with the female who made the 911 call. *Id.* Deputy Burns relayed that the defendant and the female left a tavern in Fox Lake, the defendant was driving, and that the domestic disturbance started while the vehicle was driving on Blackhawk Lane. *Id.* The female further informed Deputy Burns after the disturbance between the parties started in the vehicle, the defendant exited the vehicle, walked to the residence and then drove back to the truck on an ATV. *Id.* The female party indicated that she drove the truck back to the residence. *Id.*

Sergeant Mayer attempted to question the defendant on his operation of the motor vehicle, however the defendant repeatedly told Sergeant Mayer that he does not answer questions. *Id.* Furthermore, Sergeant Mayer conducted a Department of Transportation check on the defendant, and learned the defendant had one prior OWI conviction and was subject to a .02 BAC restriction. (R.20:10-11). Sergeant Mayer requested the defendant to submit to Standardized Field Sobriety Tests and a Preliminary Breath Test, which the defendant declined. (R.20:12). The defendant was subsequently arrested for operating while intoxicated. *Id.*

Following the defendant being placed under arrest, Sergeant Mayer read the Informing the Accused Form to the defendant, and read that form verbatim. (R.20:13). Following the recitation of the Informing the Accused Form, the defendant responded with something to the effect that he does not answer questions. *Id.* Sergeant Mayer interpreted the defendant's response as a no. *Id.*

### STANDARD OF REVIEW

When reviewing the circuit court's finding of a refusal, appellate courts will uphold the lower courts finding of facts unless they are clearly erroneous, but independently review 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

According to Wis. Stat. §343.305(9)(a)5, there are three issues a circuit court is to consider 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...and whether the person was lawfully placed under arrest for a violation of s. 346.63(1). Second,



whether the officer complied with the Informing the Accused Form. Third, “whether the person refused to permit the test.”

The State contends it has met its burden on all three issues, and that the circuit court ruled appropriately in finding the refusal improper.

**1. THE COURT WAS CORRECT IN FINDING THAT SERGEANT MAYER HAD PROBABLE CAUSE TO BELIEVE THE DEFENDANT OPERATED A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL**

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause...” U.S. Const. amend. IV. “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 (quoting *State v. Fry*, 131 Wis.2d 153, 169, 388 N.W.2d 565 (1986)).

With respect to 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). “The trial court, in terms of the probable cause inquiry, simply must ascertain the plausibility of a police officer’s



account.” *Id.* at 36. (citing *Vigil v. State*, 76 Wis.2d 133, 144, 250 N.W.2d 378 (1977)).

The circuit court was correct in its finding that Sergeant Mayer had probable cause to believe the defendant had operated a motor vehicle while under the influence of an intoxicant. Sergeant Mayer was dispatched to the residence on Blackhawk Lane due to a report of a domestic disturbance occurring. (R.20:6-7). Upon making contact with the defendant, Sergeant Mayer observed that the defendant had bloodshot, glassy eyes, had delayed and slurred speech, as well as an odor of intoxicants coming from the defendant’s person. (R.20:8). The only substantive information the defendant provided to Sergeant Mayer was when the defendant pointed out the position of the driver seat on the truck. (R.20:9). The defendant was pointing out the position of the driver seat indicating he would not have been able to fit in its current position. However, the female party had informed Deputy Burns after the disturbance between the parties started in the vehicle, the defendant exited the vehicle, walked to the residence and then drove back to the truck on an ATV. (R.20:10). The female party indicated that she drove the truck back to the residence. *Id.* The position of the seat supports the female party’s version of events.

Given the indicators of impairment the defendant displayed, his refusal to submit to field sobriety tests or a preliminary breath test, his blood alcohol content being restricted to .02, and the female party's version of events, it is clear Sergeant Mayer had probable cause to believe the defendant had operated a motor vehicle while under the influence of an intoxicant. All of the information Sergeant Mayer had at the time he placed the defendant under arrest would lead any reasonable police officer to believe the defendant operated a motor vehicle under the influence of an intoxicant.

## **2. THE COURT WAS CORRECT IN FINDING THE DEFENDANT REFUSED CHEMICAL TESTING**

Wisconsin's implied consent law provides that every person who operates a motor vehicle on a Wisconsin public highway is presumed to have given their consent to providing a sample of their blood, breath, or urine when an officer has probable cause to believe the driver of the vehicle has violated an operating while intoxicated law. Wis. Stat. § 343.305(2) (2025-26). "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." *State v. Padley*, 2014 WI App 65, ¶38, 354 Wis.2d 545, 849 N.W.2d 867.

“Where a person is arrested and issued a citation because there was probable cause to believe he was driving under the influence of intoxicants, the custodial authorities have the duty under the implied consent statute to immediately warn him of his obligations under the statute and the possible consequences of his refusal to take the chemical tests.” *State v. Neitzel*, 95 Wis.2d 191, 204-205, 289 N.W.2d 828 (1980). “The obligation of the accused is to take the test promptly or to refuse it promptly.” *Id.* “The implied consent law does not require a verbal refusal. Rather, the conduct of the defendant may constitute an unlawful refusal.” *State v. Reitter*, 227 Wis.2d 213, 234, 595 N.W.2d 646 (1999). (citing *State v. Rydeski*, 214 Wis.2d 101, 106, 571 N.W.2d 417 (1997)).

In the present case, the defendant had an obligation under the implied consent law to either promptly provide actual consent to submit to chemical testing or to promptly refuse chemical testing. Sergeant Mayer fulfilled his obligation to inform the defendant of his obligations under the implied consent law. (R.20:13). The defendant stated that he does not answer questions, and Sergeant Mayer marked that as a refusal. (R.20:13-14). The fact that the defendant did not outright deny consent to chemical testing of his blood does not change the fact that Sergeant Mayer properly indicated the defendant refused chemical testing. The law does not require the defendant to make a verbal refusal.

*Reitter*, 227 Wis.2d 213, 234. A refusal can be construed from a defendant's actions. *Id.* The defendant's conduct in this present case clearly indicated he was refusing to comply with his obligations under the implied consent law.

The State concedes this investigation initially started as a domestic disturbance. However, that has no bearing on Sergeant Mayer's ability to shift focus of the investigation. Often times in impaired driving enforcement, operators of motor vehicles are pulled over due equipment violations, which then evolves into an impaired driving investigation. The facts of this case are similar in that the reason for the initial contact with the accused was not due to any bad driving or moving violations. The information Sergeant Mayer learned and the observations he made during the night of this incident evolved from a domestic disturbance to an impaired driving investigation, and that fact should have no bearing on the quality of his impaired driving investigation.

### CONCLUSION

The State has clearly established that Sergeant Mayer had probable cause to believe the defendant operated a motor vehicle while under the influence of an intoxicant and that the defendant did in fact refuse to submit to chemical testing of his blood. This Court should uphold the circuit court's ruling.

Dated this 1<sup>st</sup> day of August, 2025.

Respectfully submitted,



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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 1785 words.

Dated this 1st day of August, 2025.

A handwritten signature in black ink, appearing to read "Alex C. Orozco", is written over a horizontal line.

Alex C. Orozco  
Assistant District Attorney