

APPENDIX

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You Are Notified to Appear**Appearance Required:****YES**

LITTLE CHUTE VILLAGE MUNICIPAL COURT
108 W MAIN ST
LITTLE CHUTE, WI 54140

Date**JAN-11-2013****Time****08:00 AM****Form No. and Version CTL CITATION NO.**

MV4017 0901

R712302**3****Estimated Points DEPOSIT**

6

\$0.00

Cash - Card

Y

Y

Court UseDA
N**Defendant**(Last Name, First, Middle), Street Address, P.O. Box, City, State, Zip**Birth Date**

5/30/1951

Sex

M

Race

W

ROSIN, RONALD A

534 S TELULAH AVE

Telephone Number

(920) 213-0221 EXT.

HT

600

WT

160 lbs

Hair

BRO

Eyes

BRO

Driver License/Identification Card Number

R2507215119002

State

WI

Exp. Yr.

2017

OPERATING AS:

DRIVER

License Plate Number

780RAZ

Plate Type

AUT

State

WI

Exp. Yr.

2013

Vehicle Class

D

Vehicle Endorsements**Vehicle Identification Number**

2G1WT58K889216516

US DOT No.**Hazmat No.****Holds CDL**

Y

CDL Waiver**Vehicle Year**

2008

Make

CHEV

Type

4D

Color

SIL

Plaintiff

VILLAGE OF LITTLE CHUTE

Ordinance Violated**26-1****Adopting State Statute****346.63(1)(a)****Violation Description**

OPERATING WHILE UNDER THE INFLUENCE

BAC

Overweight

Agency Space

LFV12-011872

Week Day

FRIDAY

Date

NOV-16-2012

Time

12:37 AM

Actual Speed**Legal****Over****County**

OUTAGAMIE - 44

City/Village/Town

LITTLE CHUTE - 56, VILLAGE

ON Hwy No. and/or Street Name

LINCOLN AVE W

Estimate Distance**From/AT Hwy No. and/or Street Name**

MADISON ST S

GPS Coordinates**Minor Passenger**

N

Officer Name

OFCR MICHAEL GRUMANN

Zone: RR - Utility - School - Const

N

N

N

Accident Severity

N

Officer ID

622MG

Department

FOX VALLEY METROPOLITAN PD

Date Citation Served,

NOV-16-2012

Method

IN PERSON

POLICE RECORD**Police #** LFV12-011872**Lanes**

2

Road Condition

DRY

Traffic

L - LIGHT

Light Condition

DARK-LIGHTED

Highway

NOT-PHYSICALLY-DIVIDED- (2-WAY TRAFFIC)

Weather Condition

CLEAR

SEE TYPED REPORT

COPY

T331 9/2001 WDOT
s345.11 Wis. Stats**WISCONSIN UNIFORM CITATION**

FOX VALLEY METRO POLICE DEPARTMENT

INCIDENT REPORT #: LEV12-011872

REPORTING OFFICER: Michael Grumann, badge #622

ASSISTING OFFICER: Edmund Slinde, badge #619

INCIDENT TYPE: OMVWI, First Offense, State Statute
346.63(1)(a)

LOCATION: W. Lincoln Avenue and Madison Street
Village of Little Chute
Outagamie County, WI

DATE/TIME: 11/16/2012 at 0037 Hours

ADULT ARREST: Ronald A. Rosin
534 S. Telulah Avenue
Appleton, WI 54915
(920)213-0221
DOB: 05/30/1951, M/W

OTHER: Wayne D. Appleton
525 E. Maes Avenue
Kimberly, WI 54136
(920)788-5887
DOB: 11/10/1960, M/W

VEHICLE INFORMATION: License Plate #780RAZ
Plate Type: Auto
Plate State: WI
Vehicle Year: 2008
Vehicle Make: Chevrolet
Vehicle Model: Impala
Vehicle Color: Silver
Vehicle Style: Four Door

INVESTIGATION:

On Friday, 11/16/2012 at approximately 0037 hours, I, Officer Grumann, was parked in the Walgreen's parking lot in a fully marked FVMPD squad car #87. I was parked facing a south westerly direction monitoring traffic in the area of W. Lincoln Avenue and Madison Street. I observed a silver four door Chevrolet Impala driving west on W. Lincoln Avenue.

As the vehicle came to the intersection of W. Lincoln Avenue and Madison Street it came to a stop for the stop sign. The vehicle proceeded to make a left turn to go south over the community bridge. As the vehicle made the left turned it turned extremely wide into the right hand lane of traffic for southbound traffic on Madison Street to go south over the community bridge. As the vehicle made the wide left turn it turned into the bicycle lane and almost struck the curb. The vehicle proceeded to go south on Madison Street over the Community Bridge into the Village of Kimberly.

I began to follow the vehicle. While I was following the vehicle I observed it drift to the right. The vehicle's passenger side tires crossed over the white line for the bicycle lane on the Community Bridge. The vehicle drifted back to the left into its lane of traffic. This occurred on N. Washington Street to the north of E. Maes Avenue.

At this point I felt due to the time of day, location of where I saw the vehicle, the vehicle turning with a wide radius and the vehicle drifting to the right over the bicycle lane, I felt there was sufficient probable cause to believe the driver was possibly intoxicated. I also believed there was sufficient probable cause to believe the operator of the vehicle had committed traffic violations of making an improper left turn and driving in a bicycle lane. In the area of E. Maes Avenue and N. Lincoln Street I activated my red and blue emergency lights and initiated a traffic stop. The vehicle stopped on E. Maes Avenue at N. Wilson Street. The vehicle displayed a WI License Plate of 780RZA which was registered on a 2008 Chevrolet Impala to Ronald Rosin.

Exit Vehicle
I approached the vehicle on the driver's side and made contact with the driver who was identified by a valid WI Photo Driver's License as Ronald Rosin. I explained to Rosin the reason I was stopping him was for making an improper left turn and for driving on the bicycle lane. Rosin said the reason he made the wide turn was because he has a CDL and is used to driving a semi-truck. I asked Rosin where he was coming from tonight. Rosin said he was at work and then he stopped at Up the Hill Bar. I asked Rosin if he had been drinking at all tonight and he told me he had one beer.

While I was speaking with Rosin I could detect a slight odor of alcoholic beverages coming from the vehicle. That odor was strongly masked by the smell of cigarette smoke. ✓

I noticed that Rosin's eyes were watery and slightly bloodshot. ✓
I also noted that Rosin's speech was normal.

I returned to my squad car and did a WI DOT check on Rosin's driving status. The WI DOT records indicated Rosin's has a valid driver's license and one prior conviction for OMVWI with the conviction date being on 07/10/1995. I turned off my vehicle's spot light; take down lights and the front half of my red and blue LED light bar.

I reapproached the vehicle and asked Rosin to exit the vehicle. Once Rosin was outside of his vehicle and in the fresh air I could detect a strong odor of alcoholic beverages coming from his person. [I continued to note that Rosin's eyes were watery and slightly bloodshot and his speech was normal]. I explained to Rosin I would like to run him through field sobriety tests and he said that was fine. Rosin was wearing a Green Bay Packers baseball hat and eyeglasses. I asked Rosin to remove his hat and glasses. I asked Rosin if he needed his glasses for everyday use or if they were just for reading or driving. Rosin said he needed his glasses all of the time. ✓

I instructed Rosin to stand with his feet together and to keep his arms down at his sides. Using the tip of my right index finger as a stimulus, I asked Rosin if he could see the tip of my finger okay and he said that he could. I instructed Rosin to focus on the tip of my finger and to follow it with his eyes and his eyes only, keeping his head perfectly still. I asked Rosin if he understood the instructions and he said that he did. I asked Rosin if he had any questions and he said he did not. I began the test with the following results; both eyes had equal pupil size and resting nystagmus was not present. I began checking for equal tracking but Rosin was moving his head. I stopped the test and explained to Rosin to follow the tip of my finger with just his eyes and to keep his head still.

I started the test over from the beginning. Both eyes had equal pupil size and resting nystagmus was not present. Both eyes tracked properly however both eyes lacked smooth pursuit. When I checked for distinct and sustained nystagmus at maximum deviation Rosin again moved his head. I again stopped the test and explained to Rosin to follow the tip of my finger with just his eyes and to keep his head still. I started the test over from the beginning. Both eyes had equal pupil size and resting nystagmus was not present. Both eyes tracked properly however both eyes lacked smooth pursuit. Both eyes had distinct and sustained nystagmus at maximum deviation.

The onset of nystagmus in both eyes was prior to 45 degrees with an angle of onset being at approximately 35 degrees. Vertical gaze nystagmus was not present. I asked Rosin if he was normally able to cross his eyes. Rosin said he has not crossed his eyes in a long time. I checked for lack of convergence which was present. I informed Rosin he could put his hat and glasses back on.

The next test I asked Rosin to perform was the walk and turn test. I asked Rosin if he had any physical defects. Rosin told me that his right leg was shorter than his left leg by about one half of an inch. Rosin said his right leg had been fused. I asked Rosin if he is able to walk okay normally and he said depending on the weather. I asked Rosin if he needed a cane or any type of walking assistance device to get around and he said no. I explained to Rosin that I was going to explain and demonstrate the test to him and if he felt he could not perform the test to let me know and I would not ask him to do it. I had Rosin step up onto the sidewalk to perform the field sobriety tests. I asked Rosin if the sidewalk was dry, flat and level enough for him and he said yes. Rosin was wearing athletic shoes. I asked Rosin if he could walk okay in the shoes he had on and he said yes.

I instructed Rosin to follow my instructions and not to do anything until he was instructed to do so. As I was explaining and demonstrating the walk and turn test to Rosin he said due to his physical defects he would not be able to perform the test. Therefore I did not ask Rosin to do it.

The next test I asked Rosin to perform was the one leg stand. I told Rosin I was going to explain and demonstrate the test to him and if he did not feel he could perform the test to let me know and I would not ask him to do it. I instructed Rosin to stand with his feet together and to keep his arms down at his sides while I explained the test to him. After I explained and demonstrated the test to Rosin I asked him if he had any questions and he said he did not. I asked Rosin if he understood everything and he told me he did. Rosin began the test with the following results; Rosin lifted his right foot and stood on his left foot. Rosin only had his foot approximately three inches off of the ground and not the six as he was instructed to do. During the test Rosin put his foot down four times throughout the test and he swayed while balancing. While Rosin was counting aloud he counted 1008, 1008 again and then picked up at 1009. At Rosin's count of 1013 26 seconds had gone by.

At this point I stopped the test due to Rosin putting his foot down for a fourth time.

The next test I asked Rosin to perform was the Romberg Balance test. I instructed Rosin to stand with his feet together and to keep his arms down at his sides while I explain the test to him. After I explained and demonstrated the test to Rosin I asked him if he had any questions and he said he did not. I asked Rosin if he understood everything and he told me he did. Rosin began the test with the following results; he swayed to the front by approximately one inch. At the 40 second mark Rosin opened up his eyes and said stop. I asked Rosin how much time had gone by and he said 35 seconds and not the 30 seconds that I told him to estimate. I asked Rosin how he came to believe that. Rosin said he just estimated that.

I returned to my squad car and retrieved a preliminary breath test (PBT). At approximately 0057 hours Rosin submitted to a PBT with the reported value of 0.164 BrAC. I was using an Alco-Sensor FST, PBT with a serial number of 039441. I questioned Rosin further as to how many drinks he had tonight. Rosin said he had his last drink at approximately 0030 hours. Rosin said he had one 16 ounce glass of beer. I asked Rosin if he had any shots or mixed drinks tonight. Rosin said he had two mixed drinks at 1800 hours at his home. I asked Rosin what those two mixed drinks were. Rosin said he had two brandy manhattans and they were between four to five ounces. I asked Rosin if he felt he was intoxicated right now and he said no.

At 0100 hours I informed Rosin at this point I would be placing him under arrest for OMVWI. Rosin was placed into handcuffs which were checked for tightness and safety locked. I performed a search of Rosin's person and found nothing illegal on him. Rosin was placed in the backseat of my squad car and seat belted in.

It was explained to Rosin due to department policy his vehicle would need to be towed. Rosin said he did not have a preference as to who would tow his vehicle. Rick's Towing was dispatched as the next wrecker up.

I issued Rosin a written warning for making an improper left turn and for driving on a bicycle lane. I issued Rosin a State of WI Traffic Citation for OMVWI, first offense.

I read Rosin the Informing the Accused form verbatim.

When I asked Rosin if he would submit to an evidentiary chemical test of his blood he was not giving me an answer. I asked Rosin if he would like me to read the form to him again and he said yes. I read Rosin the Informing the Accused form a second time verbatim. When I asked Rosin if he would submit to an evidentiary chemical test of his blood he said yes.

Officer Slinde performed an inventory search of Rosin's vehicle and found nothing illegal or of significant value inside of it. I transported Rosin to St. Elizabeth Hospital.

Upon my arrival at St. Elizabeth Hospital, I escorted Rosin into the draw room. I removed the handcuffs from Rosin's wrists. I handed Rosin his copy of the Informing the Accused form and his copy of the citation for OMVWI, first offense and explained it to him. I handed Rosin his copy of the written warning and explained that to him.

At approximately 0152 hours I observed the phlebotomist draw two vials of blood from Rosin's arm and secure them in the blood kit provided by the WI State Lab of Hygiene. The phlebotomist secured the blood kit and turned it over to me.

At approximately 0156 hours I read Rosin his Pre-Interrogation Warning on the Alcohol/Drug Influence Report. Rosin said he would answer questions as indicated by his signature. On the question of if Rosin had been drinking at all tonight he said yes. Rosin told me he had two manhattans at his home which were approximately four ounces between 1600 to 1730 hours. Rosin said he had one to two beers at Up the Hill Bar which were approximately six to eight ounces. Rosin said he started drinking at 2230 hours and he stopped drinking at 0015 hours. I completed the rest of the Alcohol/Drug Influence Report with Rosin. A copy of which is included with this report.

At approximately 0207 hours Rosin was released to Wayne Appleton as indicated by Appleton's signature on the Agreement to Undertake Responsibility for Care of a Person Arrested for Operating a Motor Vehicle While Intoxicated.

The field sobriety tests were conducted on a dry, flat level surface. The sky was clear and the outside temperature was approximately 36 degrees.

During this incident Rosin was wearing a Green Bay Packers winter jacket, a gray and black polo shirt, blue jeans and athletic shoes.

At approximately 0225 hours I placed the blood kit in the blue mailbox directly in front of the Little Chute Post Office.

HOSPITAL: St. Elizabeth Hospital

AUDIO/VIDEO: During this incident my Muvi PVR was recording. My squad cars dash camera was used as well.

ARREST/CUSTODY INFORMATION: Ronald Rosin was arrested for OMVWI, first offense, state statute 346.63(1)(a).

CASE STATUS/DISPOSITION: Closed by arrest.

END OF REPORT

GRUMANN/11/19/2012/smh
JAS 11/26/2012

VILLAGE OF LITTLE CHUTE :: CIRCUIT COURT :: OUTAGAMIE COUNTY

VILLAGE OF LITTLE CHUTE,

Plaintiff,

v.

Case Nos. 2013-CV-429

RONALD A. ROSIN,

Defendant.

NOTICE OF MOTION AND MOTION TO SUPPRESS EVIDENCE

TO: Honorable Nancy Krueger
Outagamie Co. Circuit Court Judge
320 S. Walnut Street
Appleton, WI 54911

Village Attorney Andy Rossmeissl
Village of Little Chute
800 N. Lynndale
Appleton, WI 54914

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Defendant, Ronald A. Rosin, by his attorney, John Miller Carroll, of John Miller Carroll Law Office, reserving the right to challenge the court's jurisdiction, will move the Honorable Nancy Krueger, of the Outagamie County Circuit Court, at the Outagamie County Justice Center, 320 S. Walnut Street, Appleton, Wisconsin, on a date and time to be determined by the Court, or as soon thereafter as counsel may be heard, for an Order suppressing evidence obtained in violation of the Defendant's constitutional rights on or about November 16, 2012, which specifically includes any evidence gained following an unlawful search, detention and arrest of the Defendant. More specifically, the Defendant asserts that the suppressible evidence, at a minimum, consists of: 1) results of any field sobriety tests; 2) the Defendant's blood sample and results of any chemical testing related thereto; and 3) the Defendant's statements, if any.

MOTION

THIS MOTION is brought on the grounds that the evidence was obtained in violation of the Defendant's constitutional rights guaranteed to the Defendant under the 4th, 5th, and 14th Amendments to the United States Constitution; Article I, sections 1, 2, 9, and 11 of the Wisconsin Constitution; Ch. 968, Wis. Stats.; and Terry v. Ohio, 392 U.S. 1 (1968), Beck v. Ohio, 379 U.S. 89, 96 (1964), Mapp v. Ohio, 367 U.S. 643 (1961), Trupiano v. United States, 334 U.S. 699 (1948), and Weeks v. United States, 232 U.S. 383 (1914).

FURTHER, the Defendant moves for exclusion from use as evidence all derivative evidence, including but limited to any statements made by the Defendant to police officers. Taylor v. Alabama, 457 U.S. 687 (1982); Dunaway v. New York, 442 U.S. 200 (1979); Brown v. Illinois, 422 U.S. 590 (1975); Davis v. Mississippi, 394 U.S. 721 (1969); Wong Sun v. United States, 371 U.S. 471 (1963).

IN SUPPORT OF THIS MOTION, the Defendant asserts,

1. That on November 16, 2012, the Defendant, Ronald A. Rosin ("Rosin"), was the subject of a traffic stop in the Village of Little Chute performed by Fox Valley Metro Police Officer Michael Grumann ("Officer Grumann"). The reason for the traffic stop, according to Officer Grumann's reports, was the a wide left hand turn.
2. Upon making contact with Rosin in the driver's seat, Officer Grumann reports that he "could smell a slight odor of an intoxicating beverage." Upon being asked by Officer Grumann, Rosin acknowledged that he had consumed one beer earlier in the night. Officer Grumann then requested Rosin perform field sobriety tests.
3. After Rosin exited his vehicle, UFMS forms required that he perform the Horizontal Gaze Nystagmus test, the Walk-and-Turn test, and the One-Leg Stand test. According to UFMS forms, Rosin's performance on the field sobriety test (collectively, FSTs) was unsatisfactory and he was ultimately arrested for Operating while Intoxicated, (1st Offense).

4. The standard for a valid investigatory stop is less than that for an arrest; an investigatory stop requires only “reasonable suspicion.” See State v. Allen, 226 Wis.2d 66, 70–71, 593 N.W.2d 504 (Ct.App.1999). The reasonable suspicion standard requires the officer to have “‘a particularized and objective basis’ for suspecting the person stopped of criminal activity.” Ornelas v. United States, 517 U.S. 690, 696, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996) (citation omitted). Reasonable suspicion cannot be based merely on an “inchoate and unparticularized suspicion or ‘hunch.’” Terry v. Ohio, 392 U.S. 1, 27, 88 S.Ct. 1868 (1968).¹ When determining if the standard of reasonable suspicion was met, those facts known to the officer at the time of the stop must be taken together with any rational inferences, and considered under the totality of the circumstances. State v. Richardson, 156 Wis.2d 128, 139–40, 456 N.W.2d 830 (1990).
5. Police officers are not permitted to make Fourth Amendment seizures, including investigative stops pursuant to Terry, based upon hunches or an unparticularized suspicion. Similarly, police are not permitted to detain, or to continue to detain, people simply to satisfy their curiosity, even if it may be considered an official curiosity. A “hunch” or an unparticularized suspicion is *not* reasonable suspicion, and it does not authorize *any* level of police seizure whatsoever – not even a Terry stop. See e.g., State v. Washington, 2005 WI App 123, ¶16, 284 Wis.2d 456, 470, 700 N.W.2d 305, 312.
6. When analyzing a stop of a person, courts employ a two-step two-part inquiry to determine whether they pass constitutional muster. Terry, 392 U.S. at 19–20; State v. Griffith, 2000 WI 72, ¶26, 236 Wis. 2d 48, 60, 613 N.W.2d 72, 78. First, courts determine whether the seizure was justified at its inception. Terry, 392 U.S. at 19–20. Second, courts determine whether an officer’s action “was reasonably related in scope to the circumstances which justified the interference in the first place.” *Id.* at 20.
7. Assuming arguendo that Officer Grumann lawfully seized Rosin at the seizure’s inception for a lane deviation, the focus of the inquiry shifts to

¹ Terry was codified by the legislature: ss. 968.24; 968.25, Wis. Stats.

whether Officer Grumann's actions were reasonably related in scope to the circumstances which justified the interference in the first place. Thus, the "incremental intrusion" must be scrutinized to be determined if the seizure was reasonable. *State v. Griffith*, 2000 WI 72, ¶38, 236 Wis. 2d 48, 64 613 N.W.2d 72, 80.

8. Consumption of alcoholic beverages and driving an automobile are not *per se* unlawful. Not only is this reality evinced by the plain language of the statute itself (Wis. Stat. § 346.63), but is also made clear by the pattern jury instructions: "not every person who has consumed an alcoholic beverage is 'under the influence' as that term is used here." (WIS JI-CRIMINAL 2663). Put another way, Wisconsin has not prohibited driving after consuming alcohol.
9. It should be held that the odor of intoxicants in the instant case simply cannot justify a suspicion, reasonably grounded on specific and articulable objective facts, that a person is committing an OWI. That is, no rationale inference that the individual's ability to operate a motor vehicle is impaired as a consequence of consuming alcohol can be drawn absent other factors further establishing impairment. Consequently, an extension of a traffic stop under such circumstances is not constitutionally permissible.
10. To hold that the mere odor of intoxicants is evidence sufficient to warrant an involuntary detention, without more, is to hold that entirely lawful conduct adds up to reasonable suspicion. Were that the law in Wisconsin, any individual driving a vehicle after consuming intoxicants could be required to perform field sobriety tests, *even* if their alcohol consumption was limited to only a bottle of beer or a few sips of a glass of wine. Such intrusive police tactics, however, can *only* be constitutionally allowable if the State Legislature replaces our current OWI law with a universal blanket "not a drop" law.
11. In addition, Rosin contends that a field sobriety test (FST) is a "search" within the meaning of the Fourth Amendment. The instant contention is an issue of first impression in Wisconsin. Thus, Rosin turns to extra-jurisdictional caselaw. See *e.g.*, *Berg v. Schultz*, 190 Wis.2d 170, 177, 526 N.W.2d 781 (Ct.

App. 1994) (“Because this is a case of first impression, we look to other jurisdictions for guidance.”). Essentially, all jurisdictions having addressed the issue have concluded that FSTs are a “search” within the meaning of the Fourth Amendment. For example, in People v. Carlson, 677 P.2d 310 (Colo. 1984), the Colorado Supreme Court held that FST “constitutes a full ‘search’ in the constitutional sense of that term[.]” *Id.* at 317. See also United States v. Hopp, 943 F. Supp. 1313 (D. Colo. 1996) (holding FST are searches within the meaning of the Fourth Amendment); State v. Lamme, 19 Conn. App. 594, 563 A.2d 1372 (Conn. App. 1989), affirmed, 216 Conn. 172, 579 A.2d 484 (Conn. 1990); State v. Little, 468 A.2d 615 (Me. 1983); State v. Superior Court, 149 Ariz. 269, 718 P.2d 171 (Ariz. 1986); State v. Wyatt, 67 Haw. 293, 687 P.2d 544 (Haw. 1984); Blasi v. State, 167 Md. App. 483, 893 A.2d 1152 (Md. Ct. App. 2006).

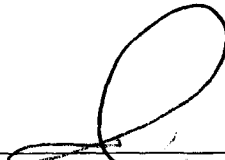
12. Rosin submits that FST searches require probable cause. See Carlson, 677 P.2d at 316-17. From there, Rosin further contends that Officer Grumann lacked probable cause to administer all FSTs.
13. However, even if, and only if, it is held that FST searches merely require reasonable suspicion, Rosin nonetheless contends that Officer Grumann lacked a reasonable suspicion to administer any FSTs, Similar to the grounds above, (¶¶ 8-12, herein) the mere odor of intoxicants does not supply reasonable suspicion that a person is operating while intoxicated.
14. The FSTs, a search, performed Officer Grumann, was administered in contravention of the Defendant’s right to be free from unreasonable searches and seizures under the Fourth Amendment. Thus, the FSTs, the ultimate arrest of Rosin and the blood test results must be suppressed pursuant to the “fruits of the poisonous tree” doctrine. See Wong Sun v. United States, 371 U.S. 471, 484, 83 S. Ct. 407 (1963) (all evidence obtained, directly or indirectly, based on an illegality must be suppressed).

WHEREFORE, based on the foregoing, the Defendant, Rosin, by counsel, respectfully requests the court to make constitutional findings not inconsistent with the grounds above and accordingly grant this motion.

DATED at Appleton, Wisconsin this 12th day of November, 2013.

Respectfully Submitted,
JOHN MILLER CARROLL
LAW OFFICE

By:


John Miller Carroll
State Bar #1010478

PREPARED BY:
John Miller Carroll Law Office
226 S. State Street
Appleton, WI 54911
(920) 734-4878

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

VILLAGE OF LITTLE CUTE, Case No.: **13-CV-429**

Plaintiff, **TRIAL TO THE COURT**

-vs- (Motion to Suppress)

RONALD A. ROSIN,

Defendant.

Transcript of proceedings had in the above-entitled action, before the HONORABLE NANCY J. KRUEGER, Judge presiding over Branch II of the Circuit Court for Outagamie County, Appleton, Wisconsin, commencing on the **13th** day of **November, 2013**.

APPEARANCES:

MR. ANDREW ROSSMEISSEL, Attorney-at-Law, 800 North Lynndale Drive, Appleton, Wisconsin, 54914, appeared on behalf of the Village of Little Chute.

MR. JOHN MILLER CARROLL, Attorney-at-Law, 226 South State Street, Appleton, Wisconsin, 54911, appeared on behalf of the defendant Ronald Rosin.

DONNA UTSCHIG, RPR/CSR

Official Reporter

1 THE COURT: Village of Little Chute versus
2 Ronald Rosin, case 13-CV-429. This is before the Court
3 on a motion to suppress and then a court trial. We'll
4 see what happens regarding the motion first, and then
5 also there was a motion to stay sentence pending appeal
6 that was also filed by the defense in this matter.

7 Appearances for the record.

8 MR. ROSSMEISSEL: Village appears by Attorney
9 Andy Rossmeissl.

10 MR. CAROLL: The defendant appears along with
11 John Carroll, Your Honor.

12 THE COURT: Okay. There's a motion to suppress
13 evidence arguing that there was not a reasonable basis
14 for conducting the field sobriety tests in this matter.

15 And is the Village ready to proceed?

16 MR. ROSSMEISSEL: We are, Your Honor.

17 THE COURT: Go ahead.

18 MR. ROSSMEISSEL: Village calls Officer Michael
19 Grumann.

20 THE COURT: Officer Grumann, remain standing
21 and raise your right hand so you could be sworn.

22 OFFICER MICHAEL GRUMANN

23 Called as a witness on his own behalf, having
24 been first duly sworn, testified as follows:

25 THE CLERK: State your name and spell it for

1 the record, please.

2 THE WITNESS: Michael Grumann, M-I-C-H-A-E-L
3 G-R-U-M-A-N-N.

4 THE COURT: Go ahead.

5 **DIRECT EXAMINATION BY MR. ROSSMEISSL:**

6 Q Officer Grumann, by whom are you employed?

7 A Fox Valley Metro Police Department.

8 Q What capacity are you employed in?

9 A Police officer.

10 Q How long have you been so employed?

11 A Ten years.

12 Q Where did you undergo -- undertake your training to
13 become a police officer with the Village of Little
14 Chute Police Department?

15 A Lake Shore Technical College.

16 Q Did you an obtain degree from Lake Shore Technical
17 College?

18 A Yes, sir.

19 Q And when did you obtain that degree?

20 A 2001.

21 Q What was the degree in?

22 A Police Science.

23 Q Did you undertake any training after you obtained your
24 degree of the nature of identifying or recognizing
25 intoxicated drivers?

1 A Yes, sir.

2 Q Can you please describe the location and nature of that
3 training?

4 A In 2003 I completed the standardized field sobriety
5 training course at Fox Valley Technical College. In
6 2005 I completed drugs that impair driving course also
7 at Fox Valley Technical College. And in 2010 I
8 completed the advanced roadside impaired driving course
9 at Northeast Wisconsin Technical College, and I also
10 completed the drugs that impair -- let me back up, the
11 Drug Evaluation and Classification Program. That's the
12 drug recognition expert course, that was at the
13 Wisconsin State Patrol Academy for the classroom
14 portion and the City of Minneapolis at the Minneapolis
15 Police Department for the Field Certification Program.

16 MR. CAROLL: I think it's in his résumé. I
17 have seen it before. I have actually been to training
18 with him before.

19 MR. ROSSMEISSEL:

20 Q Officer, I placed in front of you an exhibit marked
21 one. Is that a true and accurate copy of your résumé?

22 A Yes, sir.

23 Q As you look at it, is the information contained in
24 Exhibit 1 true, accurate and complete?

25 A Yes, sir.

1 Q Thank you. Were you on duty on November 16th, 2012, at
2 approximately 12:37 AM?

3 A Yes, sir.

4 Q What was the nature of your assignment at that point
5 and time?

6 A Patrol duties.

7 Q Where were you stationed or located?

8 A I was in the Walgreens' parking lot. It's near the
9 intersection of Madison Street and West Lincoln Avenue,
10 and that's in the Village of Little Chute.

11 Q And were you located within your vehicle?

12 A Yes, sir.

13 Q What were you doing at that point and time?

14 A I was monitoring traffic in the area of West Lincoln
15 Avenue and Madison Street.

16 Q Was your vehicle stationary?

17 A Yes, sir.

18 Q In what direction were you facing?

19 A In a southwesterly direction.

20 Q What is the -- what is the intersection of streets at
21 that location?

22 A It's West Lincoln Avenue and Madison Street. It's kind
23 of like a T-intersection. Madison Street runs north
24 and south. It goes from Little Chute into Kimberly
25 over the Community Bridge, and then West Lincoln Avenue

1 runs east and west between Grand Avenue and Madison
2 Street.

3 Q At or about 12:37 AM did you notice anything out of the
4 ordinary?

5 A Yes, sir.

6 Q What was that?

7 A I saw a silver Chevy Impala driving west on West
8 Lincoln Avenue, looking for a stop at the stop sign and
9 then proceeded to make a left turn to go south over the
10 Community Bridge. When the vehicle made a left turn it
11 turned wide into the -- Madison Street, it's broken up
12 for two lanes of traffic. There's a double-yellow
13 centerline and there's two lanes divided by a white
14 broken line for southbound traffic, and two lanes
15 divided by a white broken line for northbound traffic.

16 When the vehicle made the turn, it made the
17 left turn and turned wide into the right lane of
18 traffic, and there's a white-line bicycle lane and when
19 the vehicle turned it went into the bicycle lane and
20 almost struck the curb.

21 Q When you say it almost strike the curb, did it almost
22 strike the curb on the Community Bridge or was it still
23 in the area of Madison Street before it would have
24 reached the Community Bridge?

25 A It would have been on Madison Street and West Lincoln

1 just before the bridge starts.

2 Q So to clarify, is this -- is Madison Street at this
3 location a four-lane road or a two-lane road?

4 A A four-lane road.

5 Q Two lanes in each direction?

6 A Yes, sir.

7 Q When the vehicle turned left, it did or did not turn
8 into the closest lane of traffic?

9 A It did not.

10 Q It did or did not turn into the farthest lane of
11 traffic?

12 A It did.

13 Q And then did it stay within the farthest lane of
14 traffic, or did it veer outside of that lane?

15 A The vehicle stayed in the far lane or the right-hand
16 lane of traffic and went south over the bridge. I
17 began to follow the car at this point. At this point
18 we were kind of into the Village of Kimberly at this
19 point. We were at what at this point it's called North
20 Washington Street and Maes Avenue it becomes what gets
21 into Kimberly, and saw the vehicle drift over to the
22 right and its passenger-side tires were crossing over
23 the white bicycle-lane line.

24 Q Did you initiate a traffic stop at that point and time?

25 A Yes, sir.

1 Q And did Mr. Rosin pull over?

2 A Yes, sir.

3 Q When you approached his vehicle, were you able to
4 identify him?

5 A Yes, sir.

6 Q How so?

7 A By a Wisconsin photo driver's license.

8 Q As you were talking to Mr. Rosin, did you notice
9 anything about his appearance that caught your
10 attention?

11 A Yes, sir.

12 Q What was that?

13 A I smelled a slight odor of alcoholic beverages coming
14 from the vehicle, that odor was masked by a strong odor
15 of cigarette smoke and also noticed his eyes were
16 watery and bloodshot.

17 Q Why was the odor of cigarette smoke alarming or
18 noticeable to you?

19 A People will sometimes try to disguise the odor of
20 alcohol with cigarette smoke.

21 Q And at that point and time, what did you do next?

22 A I asked Mr. Rosin where he was coming from. He said he
23 was coming from Up the Hill Bar. I asked him if he was
24 drinking at all. He said he had one beer at the bar.

25 Q Did you notice anything about and -- maybe you said

1 this, forgive me if you already mentioned this, did you
2 notice anything about his eyes?

3 A They were watery and bloodshot.

4 Q At that point and time what did you do next?

5 A Then I went back to my car and did my normal checks,
6 make sure he had a valid driver's license, no warrants,
7 stuff of that sort, and then I turned off the front
8 half of my squad car, the red and blue light bar, spot
9 light, take down lights. I re-approached the car and
10 asked Rosin to exit his vehicle.

11 MR. ROSSMEISSEL: Okay. At this point, Your
12 Honor, it may be appropriate to discuss Attorney
13 Carroll's motion. I believe he is challenging whether
14 reasonable suspicion existed so as to allow Officer
15 Grumann to request that Mr. Rosin perform field
16 sobriety tests.

17 MR. CAROLL: That's correct, Your Honor. I
18 guess -- I had planned to just stipulate to use the
19 report, but because the officer was going to be here
20 anyway, we just decided to call him.

21 THE COURT: Sure.

22 MR. CAROLL: At this point, yeah, if he wants
23 to -- I just wanted to ask him a couple of questions
24 about what he noticed after he asked him to exit the
25 vehicle.

1 THE COURT: Sure.

2 MR. CAROLL: We don't need to go into all the
3 field sobriety tests.

4 THE COURT: Okay. Attorney Rossmeissl, any
5 questions you want to ask up until he began the field
6 sobriety testing portion, you can ask those and then
7 we'll assume that that covers the scope of the motion
8 in this case.

9 MR. ROSSMEISSEL: Okay.

10 Q After you exited your vehicle and returned to Mr.
11 Rosin's vehicle, did you ask him to exit the vehicle?

12 A Yes, sir.

13 Q And did you notice or make any additional observations
14 once he had exited the vehicle?

15 A Yes, sir.

16 Q What additional observations did you make at that point
17 and time?

18 A Once he was outside of his car and in the fresh air,
19 the cigarette smoke started to dissipate and I could
20 smell a strong odor of alcoholic beverages coming from
21 his person, and I continued to observe the watery and
22 bloodshot eyes.

23 Q Any other observations before you asked Mr. Rosin to
24 perform field sobriety tests?

25 A No, sir.

1 MR. ROSSMEISSEL: Nothing further at this point.

2 THE COURT: Okay. Go ahead Mr. Carroll.

3 **CROSS-EXAMINATION BY MR. CARROLL:**

4 Q Just a few questions, officer. So you are sitting in
5 the Walgreens' parking lot facing sort of the
6 community -- front of your car is facing southwest
7 toward the Community Bridge?

8 A Yes, sir.

9 Q And so there's a stop sign on Lincoln and Mae Avenue
10 for cars that are approaching Lincoln Avenue?

11 A For?

12 Q I'm sorry, or Maes Avenue?

13 A Madison Street.

14 Q Madison Street?

15 A Yes, sir.

16 Q People stopping presumably at that stop sign don't know
17 you are there?

18 A They would probably see me, and I'm not doing anything
19 to hide. Basically, they would be going past me and
20 parallel to me at some point.

21 Q The vehicle stopped fully at the stop sign before
22 approaching the bridge?

23 A Yes, sir.

24 Q Okay. Now, as the vehicle made a left turn, it turned
25 into the right-hand lane for southbound traffic,

1 correct?

2 A Yes, sir.

3 Q And it made a wide left turn?

4 A Yes, sir.

5 Q And it turned into the bicycle lane and almost struck

6 the curb?

7 A Yes, sir.

8 Q And this was before the bridge?

9 A Yes, sir.

10 Q Okay. So you began -- at that point you didn't feel

11 you had enough to pull him over?

12 A At that point I felt I did have enough to pull him

13 over.

14 Q But you began to follow the vehicle anyway?

15 A Yes, sir.

16 Q And as you were following the vehicle, you observed it

17 drift to the right?

18 A Yes, sir.

19 Q And the passenger side tires crossed over the white

20 line for the bicycle lane on the bridge?

21 A Yes, sir.

22 Q And then the vehicle I believe you said -- you didn't

23 testify earlier, but you said in your report you

24 indicated the vehicle drifted back into the left --

25 into its lane of traffic?

1 A Yes, sir.

2 Q Okay. So at this point you felt and based on your
3 training you felt you had probable cause to believe
4 that the driver was intoxicated?

5 A No, sir.

6 Q Just reasonable suspicion?

7 A I felt there was reasonable suspicion to believe that
8 the driver was possibly intoxicated. I was basing that
9 off the time of day being 12:37 at night and the
10 location by coming from the bar area. I also felt that
11 there was probable cause to believe it made an improper
12 left turn violating a traffic statute and also
13 violating the new statute of driving in a bike lane.

14 Q So you believed you had reasonable suspicion at that
15 point?

16 A Yes, sir.

17 Q As you are seated in your squad car, did you run the
18 license plate while you were seated there?

19 A No. I read the license plate after it was pulled over.

20 Q You approached the vehicle on the driver's side and
21 made contact with him, correct?

22 A Yes, sir.

23 Q And he pulled out his driver's license and was able to
24 give it to you in an appropriate manner?

25 A Yes, sir.

1 Q And you explained the reason why you were stopping him?

2 A Yes, sir.

3 Q And he told you that the reason he made a wide turn was
4 because he has a CDL and he's use to driving a semi
5 truck?

6 A Yes, sir.

7 Q So, did you think that was a good answer?

8 A I felt it was an honest answer.

9 Q Yeah. Okay. And at that point he told you he was
10 coming from a bar. Was it one of the bars in the area?

11 A Yes.

12 Q That's called Up the Hill?

13 A Yes, sir.

14 Q And you asked him if he had been drinking at all
15 tonight and he told you he had one beer?

16 A Yes, sir.

17 Q While you were speaking with him, he was still seated
18 in the car, correct?

19 A Yes, sir.

20 Q You could detect a slight odor of alcohol coming from
21 the vehicle and the odor was masked possibly by the
22 smell of cigarette smoke?

23 A Yes, sir.

24 Q Is it common for people that consume alcohol to smoke
25 cigarettes?

1 A I suppose so, yes.

2 Q And you have been trained that the odor of alcohol and
3 the smell of cigarettes doesn't necessarily mean that
4 someone is intoxicated?

5 A That in and of itself alone, that's correct, yes.

6 Q At that point while he's still seated in the car, you
7 noticed that his eyes were watery and slightly
8 bloodshot?

9 A Yes, sir.

10 Q And you noted that his speech was normal?

11 A Yes, sir.

12 Q So at that point you returned to your squad car and did
13 a DOT to check on him?

14 A Yes, sir.

15 Q He has a valid license and you at that point found out
16 he had a prior conviction from 1995?

17 A Yes, sir.

18 Q Okay. So at that point you turned off your vehicle's
19 spotlights and re-approached the vehicle?

20 A Yes, sir.

21 Q All right. Now, when he was outside of the vehicle, at
22 that point, based on your training and experience,
23 how -- what have you been trained -- do you need
24 reasonable suspicion or probable cause to ask someone
25 to perform field sobriety tests?

1 MR. ROSSMEISSL: I'm going to object. The
2 officer's test an objective standard not subjective,
3 the question is what a reasonable officer would think
4 under these circumstances, not necessarily what this
5 officer, Officer Grumann, thought.

6 MR. CAROLL: I always thought this officer was
7 reasonable. That's the heart of the issue.

8 THE COURT: Well, I think what is the heart of
9 issue is whether or not he has specific articulable
10 objective facts to lead to a conclusion that it is
11 appropriate to inquire further regarding potential
12 intoxication and do field sobriety testing, and whether
13 or not he -- I don't think it is appropriate to ask
14 this witness to testify essentially as a lawyer; so,
15 I'm going to sustain the objection to the question.

16 MR. CAROLL: Okay. Thank you.

17 Q So at that point you told him that you were going to
18 run him through field sobriety tests and he said that
19 was fine?

20 A Yes, sir.

21 MR. CARROLL: All right. That's all the
22 questions I have, Your Honor.

23 THE COURT: Anything further, Mr. Rossmeissl?

24 MR. ROSSMEISSL: No, Your Honor.

25 THE COURT: You may step down.

1 Anything further from the Village?

2 MR. ROSSMEISSEL: Not at this point. As I
3 suggested, I think we'll be stipulating to additional
4 facts and additional documentation being entered into
5 the record after the Court makes its ruling on Attorney
6 Carroll's motion.

7 MR. CARROLL: That's correct.

8 THE COURT: Mr. Carroll.

9 MR. CARROLL: Your Honor, I guess at this point
10 I'm not really challenging the issue of the stop. I
11 want to move to the point where I think there was
12 sufficient evidence that if you believe the officer's
13 testimony to detain the defendant for a traffic
14 violation. At that point, Your Honor, the only
15 evidence of intoxication, we have the time of the
16 evening, and it's not particularly late. It is before
17 bar time, an hour and a half before bar time.

18 We have him in a downtown area. He's near a
19 bar area, but there are a lot of other areas that he's
20 near at that time, as well as a shopping mall area.

21 We have a slight odor of intoxicants, and we
22 have watery and bloodshot eyes observed from the
23 vehicle and an odor of cigarette smoke.

24 I don't know that his eyes look that much
25 different today than as described by the officer on

1 that evening.

2 We have the admission that he had one beer.

3 At that point, I guess, Your Honor, what I'm
4 asking the Court, I know the Court has ruled on this
5 previous, I think the law should require probable cause
6 at this point, because I believe having someone to
7 perform a field sobriety test is a search, and it
8 should be subject to the requirements of the Fourth
9 Amendment. And at that point I think there -- if there
10 was probable cause, it was pretty thin. It was a
11 reasonable suspicion only.

12 So at this point I'm asking the Court to find
13 that there was not probable cause to ask him to submit
14 to field sobriety testing.

15 THE COURT: Okay. And Attorney Rossmeissl.

16 MR. ROSSMEISSL: Well, number one, I guess I
17 agree that probable cause is necessary at this point
18 and time. Probable cause must be found or there must
19 be sufficient evidence to establish probable cause
20 prior to an arrest, but at this point in time and
21 through the conduct of field sobriety tests, the courts
22 have held that that simply constitutes an investigative
23 detention or a Terry stop.

24 What do we have? We have bad driving; in fact,
25 we have illegal driving. We have the odor of

1 intoxicants -- some odor of intoxicants, masked,
2 potentially, by cigarette smoke.

3 The time of day does play into the factor of
4 this. It may not be the rush hour for intoxicating
5 driving so to speak, but it's pretty darn close.

6 We have an admission that the defendant is
7 coming from the Up the Hill Bar and an admission that
8 the defendant had been drinking.

9 Once outside of the vehicle, once the cigarette
10 smoke began to dissipate, all of sudden there's a
11 strong odor of intoxicants, and the officer again for a
12 second time noticed the defendant's glassy and watery
13 eyes.

14 So, number one, I disagree that at this point
15 to ask the defendant if he would voluntarily submit to
16 field sobriety tests requires probable cause.

17 Number two, I think that the Village has
18 established that Officer Grumann had reasonable
19 suspicion so as to continue the Terry stop.

20 For those reasons and in the totality of the
21 circumstances, I request that the Court deny Attorney
22 Carroll's motion.

23 MR. CAROLL: Your Honor, could I say one thing,
24 a comment?

25 THE COURT: Sure.

1 MR. CAROLL: The officer didn't notice the
2 strong odor until he had already asked him to exit the
3 vehicle.

4 THE COURT: Okay. I have read through the
5 motion that was submitted by Attorney Carroll.
6 Essentially, one of the arguments in that motion is
7 that there was just an odor of alcohol, a slight odor,
8 and not enough other elements to -- for a reasonable
9 suspicion that Mr. Rosin had been consuming intoxicants
10 and was operating while under the influence.

11 The Court notes that the officer here did
12 detail specific and what this Court finds to be
13 articulable objective facts concerning his observations
14 on November 16th, 2012.

15 First of all, I'll note it was about 1 o'clock
16 in the morning. While it is not bar time, it is
17 certainly also a time that is connected with more
18 potentially intoxicated drivers being on the road.

19 Mr. Rosin was driving near the downtown bar
20 area in the Village of Little Chute.

21 The Court notes that's I'm familiar with Little
22 Chute. The officer also testified to that.

23 The officer indicated that he was on patrol
24 duty. He was near the intersection -- stationary near
25 the intersection of Madison and West Lincoln Avenue;

1 that he observed the defendant's vehicle turn and make
2 a wide turn into the -- a left turn into the right lane
3 of traffic; and, also, go and cross over the line and
4 almost strike the curb. So he was turning into the --
5 into the farthest lane of traffic, not the nearest lane
6 of traffic; and that the officer then followed the car
7 over the bridge into the Village of Kimberly. He saw
8 the vehicle drift to the right and the passenger side
9 tires would go over the white marking for the bike
10 lane, which was another indication there were problems
11 driving and another violation. He stopped the vehicle.

12 When he spoke with Mr. Rosin he smelled a
13 slight odor of alcohol coming from the vehicle, but
14 also noted that there was a strong odor of cigarette
15 smoke, and that indicated that drivers often try to
16 mask the odor of alcohol with cigarette smoke and the
17 smell of cigarettes.

18 He saw that Mr. Rosin's eyes were watery and
19 bloodshot, and he had some conversation with Mr. Rosin
20 where Mr. Rosin acknowledged that he had had one beer.

21 Then he asked Mr. Rosin to leave the vehicle,
22 and when Mr. Rosin got out of the vehicle, the officer
23 testified that he smelled a strong odor of alcohol when
24 it was no longer masked by the odor of cigarettes
25 inside the vehicle.

1 The Court finds that all of those factors are
2 certainly specific and articulable and indicate by the
3 totality of the circumstances that there was a
4 reasonable suspicion to believe that Mr. Rosin was
5 operating a motor vehicle while under the influence of
6 an intoxicant.

7 And the Court also notes that I know that the
8 defense's argument here is just because an officer
9 detects an odor of alcohol, that that's not grounds to
10 do field sobriety tests, and field sobriety testing is
11 essentially an infringement on people's rights. And
12 the Court notes and I'll take judicial notice,
13 frequently officers conduct field sobriety tests and do
14 not arrest people for operating under the influence.
15 The fact that those tests are being conducted does not
16 draw the conclusion that that will be the ultimate
17 result, but that clearly here there was a reasonable
18 suspicion to believe that this individual was under the
19 influence, and then it ultimately led to the arrest
20 after those tests.

21 Everything that led up to those tests was
22 certainly just for conducting those tests.

23 The Court will also note, I have reviewed the
24 résumé of Officer Grumann and he appears to be well
25 qualified both by experience and training as an officer

1 and, in particular, related to training concerning
2 field sobriety and impaired driving.

3 All right. So, I deny the defense motion to
4 suppress.

5 MR. CAROLL: Thank you, Your Honor.

6 MR. ROSSMEISSEL: Okay. At this point I'm going
7 to articulate what I believe are the stipulations of
8 the parties. If Attorney Carroll disagrees with
9 anything, I'd ask him to interrupt me or correct me.

10 I believe Attorney Carroll, the defense will
11 admit and stipulate that given the Court's finding that
12 there was reasonable suspicion to conduct field
13 sobriety tests, that the defendant's performance on
14 said field sobriety tests would lead to a -- lead to a
15 finding that Officer Grumann had probable cause to
16 arrest Mr. Rosin for operating while under the
17 influence of an intoxicant.

18 MR. CAROLL: Correct.

19 MR. ROSSMEISSEL: Okay.

20 MR. CAROLL: We should just say that he did and
21 he failed the field sobriety tests in the officer's
22 opinion. I'm willing to stipulate to that as well.

23 MR. ROSSMEISSEL: I don't know that the
24 officer's opinion matters here. We're dealing with an
25 objective standard. We either need to get the

1 officer's testimony on the record or we need some sort
2 of stipulation that there was probable cause for an
3 arrest given the Court's previous finding that there
4 was reasonable suspicion.

5 MR. CAROLL: We're willing to stipulate there
6 was probable cause for the arrest, Your Honor.

7 THE COURT: Okay.

8 MR. ROSSMEISSEL: And then I'll introduce and
9 ask that the Court take judicial notice that Officer
10 Grumann read the Informing the Accused form verbatim to
11 the defendant in accordance with guidelines and
12 statutes.

13 That Officer Grumann observed a withdrawal -- a
14 qualified withdrawal nurse acting under the care of a
15 physician withdraw blood and completed the mandatory
16 Blood/Urine Analysis form. That said kit and blood
17 sample was mailed in accordance with guidelines to the
18 Wisconsin State Laboratory of Hygiene.

19 That the appropriate tests were conducted and
20 that a result of .164 grams per 100 milliliters of
21 ethanol was found in the defendant's blood stream, and
22 that the Court take judicial notice of that test and
23 those test results.

24 And finally, that Officer Grumann completed an
25 Alcohol Influence Report, and that his recorded -- that

1 his -- the recorded answers on said Alcohol/Drug
2 Influence Report matched or accurately depicted the
3 defendant's responses to the questions that he was
4 asked.

5 I can submit those as exhibits if the defense
6 agrees.

7 MR. CAROLL: That's fine. The only
8 qualification, Your Honor, I believe Jessica Dappler
9 (ph) is a medical technician so she's authorized to
10 draw blood without the direction of a physician, and
11 Amy Miles was the technician at the crime lab that drew
12 the blood result and tested the result.

13 THE COURT: So, you stipulate that there was
14 probable cause for the arrest; that the officer did
15 comply with the Informing the Accused, read that to the
16 defendant; that a medical technician appropriately
17 withdrew the blood and appropriately placed it in a
18 container that was sent to the State Lab of Hygiene.
19 Chain of custody is stipulated to, and that the blood
20 alcohol level was detected at .164 and that is also
21 stipulated to.

22 MR. CAROLL: Right.

23 THE COURT: And that the officer complied --
24 recorded appropriate answers on the Alcohol and Drug
25 Influence Report.

1 MR. CAROLL: Right. And that the blood was
2 drawn within three hours of the driving.

3 THE COURT: All right. So, you stipulate to
4 the admission of the blood alcohol?

5 MR. CAROLL: Yes.

6 THE COURT: And the Court accepts all of those
7 stipulations.

8 MR. ROSSMEISSEL: Thank you.

9 MR. CAROLL: And can you tell me what the
10 numbers are for each exhibit?

11 THE CLERK: I'm working on them.

12 THE COURT: I'll let her just read them off.

13 THE CLERK: Exhibit 2 is the Informing the
14 Accused exhibit. Exhibit 3 is the Blood/Urine Analysis
15 Report. Exhibit 4 is the laboratory report. And
16 Exhibit 5 is the Alcohol/Drug Influence Report.

17 MR. CAROLL: Thank you.

18 THE COURT: Okay. So the exhibits, and if I
19 haven't already received one, Exhibits 1 through 5 are
20 all received into evidence.

21 MR. ROSSMEISSEL: Thank you.

22 THE COURT: Okay.

23 MR. CAROLL: Your Honor, I just wanted to
24 confirm on the record then, your ruling is reasonable
25 suspicion is all that is required for him to in

1 Wisconsin law.

2 THE COURT: Reasonable suspicion under the
3 totality of the circumstances.

4 MR. CAROLL: Thank you.

5 MR. ROSSMEISSL: Judge, with that, the
6 prosecution would request a finding of guilt on both
7 counts, the count of operating while under the
8 influence of an intoxicant and operating with a
9 prohibited alcohol concentration.

10 The test for operating a motor vehicle while
11 under the influence of an intoxicant also involves the
12 totality of the circumstances. I won't read all of the
13 circumstances again, but ask the Court to incorporate
14 my prior arguments by reference. But, of course, to
15 the -- in addition to the factors articulated before,
16 now we have in the record evidence that Mr. Rosin's
17 blood alcohol level was .164 grams per 100 milliliters,
18 which is just additional evidence that Mr. Rosin was
19 operating under the influence of intoxicants.

20 With respect to the PAC charge, the analysis
21 speaks for itself. The result was .164 grams per 100
22 milliliters and the legal limit in Wisconsin it's .08.

23 We would also request a specific finding that
24 Mr. Rosin's blood alcohol level was above .15 grams per
25 100 milliliters.

1 MR. CAROLL: I have submitted an order that is
2 appropriate given the testimony.

3 THE COURT: Okay.

4 MR. CAROLL: I think Mr. Rossmeissl objected to
5 some of the language in paragraph three because
6 technically this is not a finding of the Village of
7 Little Chute, because it is a de novo appeal, so if the
8 Court wants to, I can redraft that order, removing that
9 language or however the Court wants to proceed.

10 MR. ROSSMEISSL: Judge, to be honest, I don't
11 believe in a case that initiates with a municipal
12 court, once it gets to circuit court, my understanding
13 is that no written order is required. The Court's
14 order on the record and the clerk's docket notes are a
15 sufficient order to start the appeal time running.

16 THE COURT: But are you objecting to a written
17 order?

18 MR. ROSSMEISSL: Only objection I have, the
19 Court is not affirming the finding of the Village of
20 Little Chute municipal court because this is a trial de
21 novo and the Court is making its own independent
22 findings here.

23 MR. CAROLL: Right. I guess it gets sent back
24 to Little Chute, right?

25 THE COURT: Well, I'm going to revise paragraph

1 three in the order based on the attached reports and
2 testimony. I find -- I make a finding of guilt as to
3 the defendant. It's not that I do an affirmation of
4 the Village of Little Chute. It's a de novo.

5 MR. CAROLL: Okay.

6 THE COURT: So, the Court does make a finding
7 of guilt as to both citations here, the operating while
8 under the influence, and also operating with a
9 prohibited alcohol concentration or blood alcohol
10 concentration above the legal limit. And the Court
11 will make a specific finding, also, that the blood
12 alcohol concentration was greater than .15 grams per
13 100 milliliters, specifically, because the analysis by
14 the state lab of hygiene found .164.

15 MR. ROSSMEISL: Your Honor, the most recent
16 guidelines I have for the 8th District are dated July
17 1st, 2010. Assuming those are still the guidelines
18 that apply, the appropriate forfeiture given the date
19 of this offense would be \$200, plus costs, totaling
20 \$804.50. To that a blood draw fee of \$59.50 must also
21 be added, but the total does include the \$50 IID
22 surcharge.

23 An eight-month revocation would be appropriate.

24 Mandatory installation of an ignition interlock
25 device in any vehicle owned by the defendant would be

1 appropriate and required.

2 As would a one-year restriction that the
3 defendant could only drive any vehicle with an ignition
4 interlock device installed.

5 A mandatory AODA assessment and followup
6 treatment as required.

7 THE COURT: Okay. And I believe that is --
8 those are the standard guidelines.

9 Mr. Carroll.

10 MR. CAROLL: That's fine, Little Chute ordered
11 seven seventy-six, which I believe he posted there.

12 MR. ROSSMEISSEL: The costs in municipal courts
13 are slightly less than costs in circuit court.

14 THE COURT: Yeah, the guidelines are \$804.50
15 for the forfeiture, plus costs.

16 The additional surcharge?

17 MR. ROSSMEISSEL: \$59.50 for a blood draw fee.

18 MR. CAROLL: No objection to it. That's
19 correct. I believe it's authorized by statute, Your
20 Honor.

21 THE COURT: Right. Okay. The Court will
22 find -- will impose a forfeiture in the plus costs in
23 the amount of \$804.50, plus a blood draw fee in the
24 amount of \$59.50, for a total of \$864. And also eight
25 months revocation of defendant's driving privileges,

1 AODA assessment and any required followup, and a
2 one-year ignition interlock requirement.

3 THE CLERK: The amount that he paid at the Town
4 of Grand Chute, is that going to be forwarded to the
5 clerk's office?

6 MR. ROSSMEISSL: Village of Little Chute. I'm
7 sure the clerk would handle that in any way that this
8 Court wants it to. I can contact the clerk tomorrow.
9 They should forward it to this court.

10 THE CLERK: It will show due on this case.

11 MR. ROSSMEISSL: Okay.

12 MR. CAROLL: Are you sure it doesn't go back
13 there? He may just owe the additional amount to the
14 county.

15 THE CLERK: I'll have to check into it. I
16 honestly don't know.

17 MR. CAROLL: Your Honor, we have also filed a
18 Notice of Appeal on this case, and we're asking that
19 the Court stay this entire sentence while we appeal
20 this issue.

21 THE COURT: Mr. Rossmeissl.

22 MR. ROSSMEISSL: May I suggest the Court stay
23 the sentence for a short period of time, a week,
24 through this time next week, and then if an appeal is
25 filed, of course, the penalties would be stayed at that

1 point.

2 MR. CAROLL: I filed the Notice of Appeal
3 today.

4 THE COURT: He's got the Notice of Appeal
5 already filed.

6 MR. ROSSMEISSEL: I didn't see that.

7 MR. CARROLL: Your Honor, he does have a CDL,
8 and this is important to him.

9 THE COURT: How long does it take an appeal of
10 this nature to get through the system generally?

11 MR. CAROLL: Well, it is usually about 90 to
12 120 days, I would say.

13 THE COURT: I'll grant the request for a stay
14 based upon the appeal here considering the timeframe
15 and that this gentleman does have a commercial driver's
16 license.

17 MR. ROSSMEISSEL: No objection.

18 THE COURT: I'll stay imposition of the
19 sentence pending appeal.

20 MR. CAROLL: Thank you, Your Honor.

21 THE COURT: All right. Anything further?

22 MR. ROSSMEISSEL: No, thank you.

23 THE COURT: I don't know, Mr. Carroll, I have
24 revised the written order, so if you want something
25 different than what is going to be reflective in the

1 clerk's notes or on the record, I'll give you this back
2 and you can have it retyped.

3 MR. CAROLL: I'll get it retyped.

4 THE COURT: Anything further?

5 MR. ROSSMEISSEL: No, thank you.

6 THE COURT: We're adjourned.

7 (WHEREUPON proceedings ended.)
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Ex 3 (Blood/Urine Analysis)	26	26
Ex 4 (Lab Report)	26	26
Ex 5 (Alcohol/Drug Report)	26	26

1 STATE OF WISCONSIN)

2) ss.

3 OUTAGAMIE COUNTY)

4
5 REPORTER'S CERTIFICATE

6
7 I, DONNA UTSCHIG, RPR/CSR, certify that I was
8 the Court Reporter for the foregoing proceedings; that as
9 such Court Reporter, I made full and correct stenographic
10 notes of the foregoing proceedings; that the same was later
11 reduced to typewritten form; that the foregoing is a true,
12 full and correct transcript of my stenographic notes so
13 taken.

14 Dated at Appleton, Wisconsin, this 18th day of
15 November, 2013, AD.

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VILLAGE OF LITTLE CHUTE :: CIRCUIT COURT :: OUTAGAMIE COUNTY

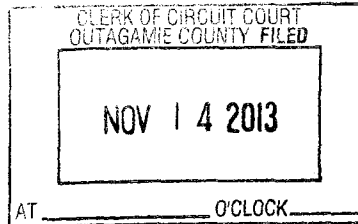
VILLAGE OF LITTLE CHUTE,

Plaintiff,

v.

RONALD A. ROSIN,

Defendant.



Case Nos. 2013-CV-429

ORDER


This matter having come before the Honorable Nancy Krueger in the Outagamie County Circuit Court on the 13th day of November 2013:

IT IS HEREBY ORDERED:

1. The quantum of evidence required to request a person perform the standardized field sobriety tests is reasonable suspicion based on the totality of the circumstances and not probable cause.
2. Based upon the testimony of the officer, I make a finding that the officer in this case possessed the requisite quantum of evidence necessary to request Ronald A. Rosin to perform the standardized field sobriety tests.
3. Based upon the attached reports, and I find the defendant, Ronald Rosin, guilty and impose Forfeiture in the amount of \$864.00, 8 months revocation of the defendant's driving privileges, an AODA assessment and any required follow-up and a one year ignition interlock requirement.

DATED at Appleton this ____ day of November 2013.

BY THE COURT:



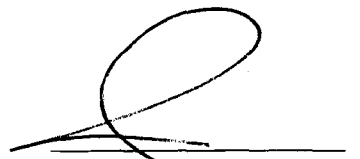
The Honorable Nancy Krueger
Outagamie County Circuit Court~Branch 2
Outagamie County, Wisconsin

CERTIFICATION OF APPENDIX CONTENTS REQUIREMENTS

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 Wis. Stat. § 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 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.



John Miller Carroll
State Bar No. 1010478