STATE OF WISCONSIN	CIRCUIT COURT	MILWAUKEE COUNTY

STATE OF WISCONSIN,
Plaintiff,

vs.

Case No. 20 CT 000032
20 TR 020971

GAIGE P. GROSSKREUTZ,
Defendant.

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

The defendant, Gaige P. Grosskreutz, by his attorney, Leah R. Thomas, will appear specially before the Honorable Jack L. Davila, on June 4, 2021 at 3:00pm, and will move the Court for an order on this motion pursuant to Wis. Stat. § 971.31.

THE DEFENSE MOVES this Court for an order suppressing from use as evidence in this case all test results, all statements, and all physical items obtained from Mr. Grosskreutz during his contact with West Allis Police Department officers on October 6, 2020. As grounds for this motion, the defense states that Officer Lazaris unlawfully stopped Mr. Grosskreutz's vehicle in violation of the rights guaranteed all persons under the 4th, 5th and 14th Amendments to the United States Constitution; Article I, Sections 1, 9, and 11 of the Wisconsin Constitution; Wis. Stat. §§ 968.24; *Terry v. Ohio*, 392 U.S. 1 (1968); *Delaware v. Prouse*, 440 U.S. 648 (1979); *Whren v. United States*, 517 U.S. 806 (1996); *State v. Post,* 2007 WI 60, 301 Wis. 2d 1; *State v. Guzy,* 139 Wis. 2d 663 (1987); and *State v. Johnston,* 21 Wis. 2d 411 (1963). As a result of the unlawful stop, officers obtained observations, statements, and a blood sample from Mr. Grosskreutz, all of which he requests be suppressed from use at trial as the product of the unlawful stop. *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Knapp*, 2005 WI 127, 285 Wis. 2d 86.

IN FURTHER SUPPORT, and upon information and belief, the defense states the following:

1) On October 6, 2020, at 2:23 am, West Allis Police Department Officer Lazaris was traveling northbound on South 60th Street at West Greenfield Avenue. While at that intersection, Officer Lazaris saw Mr. Grosskreutz's vehicle eastbound on West Greenfield Avenue, to his left. He then saw Mr. Grosskreutz make a *right turn* onto South 60th Street without using a turn signal. There is a designated turn lane for vehicles turning right on to S. 60th Street, as depicted in the Google satellite image in *Figure 1*.

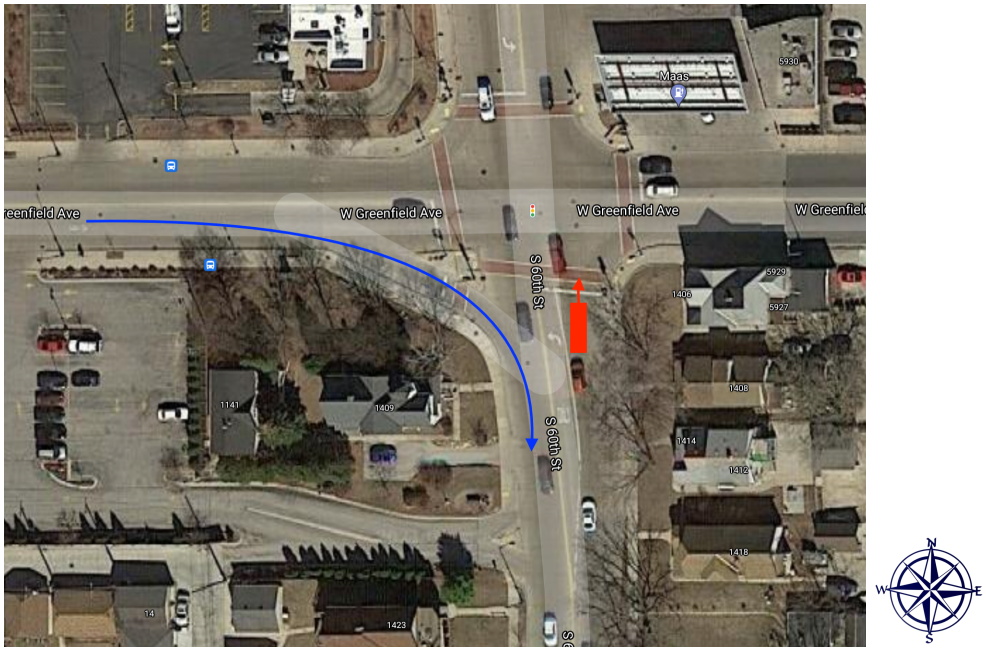

Figure 1: *The red rectangle represents Officer Lazaris' position with the arrow indicating his direction of travel. The blue arrow indicates Mr. Grosskreutz's path and direction of travel.*

2) Officer Lazaris reported that, while Mr. Grosskreutz made the right turn, he saw "an unknown object suspended from the rear view [sic] mirror obstructing the driver's view through the front windshield." The object was a tree shaped air freshener hung tightly to the rearview mirror, as depicted in the body camera video from his initial approach to the vehicle in *Figure 2*.

Figure 2: *Officer Lazaris' body camera video from his initial approach to the vehicle, depicting a tree shaped air freshener hung tightly to the rearview mirror.*

3) Based on the right turn without a signal and the object hanging from the rearview mirror, Officer Lazaris decided to make a traffic stop. He made a U-turn at the intersection of 60th and Greenfield to follow Mr. Grosskreutz's vehicle, and executed the traffic stop on South 61st Street, after observing Mr. Grosskreutz make a right turn onto Lapham Street, and then a left turn onto 61st Street. Officer Lazaris did not observe any additional law violations to support the stop, such as speeding, lane deviation, or failure to signal either subsequent turn. He also did not report any suspicion of impaired driving prior to the stop. The defense asserts that Officer Lazaris unlawfully stopped Mr. Grosskreutz.
4) Each time law enforcement conducts a traffic stop, it is a seizure implicating the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979); *Whren v. United States*, 517 U.S. 806, 809-10 (1996); *State v. Guzy,* 139 Wis. 2d 663, 675 (1987) (*citing Prouse*, 440 US at 653). An investigative traffic stop is a "major interference in the lives of the [vehicle's] occupants." *State v.* Post, 2007 WI 60, ¶43, 301 Wis. 2d 1 (Abrahamson, C.J. *concurring in part and dissenting in part*) (*citing Coolidge v. New Hampshire*, 403 U.S. 443, 479 (1971)).
5) The United States Supreme Court established that law enforcement must have reasonable suspicion to conduct an investigative stop. *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *State v. Post*, 2007 WI 60, ¶11, 301 Wis. 2d 1. The officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" a seizure. *Terry*, 392 U.S. at 21; *Post*, 2007 WI 60 at ¶10. The inquiry is focused on the facts and circumstances present at the time of the stop, and those known to the officer at the time of the seizure. *Guzy,* 139 Wis. 2d at 679; *State v. Waldner*, 206 Wis.2d 51, 55 (1996). An officer's "inchoate and unparticularized suspicion or hunch," is not enough to meet this standard. *Terry*, 392 U.S. at 22; *Post*, 2007 WI 60 at ¶10. Neither is good faith on the part of the officer. *Terry*, 392 U.S. at 22. Reasonableness is a common sense test that balances the State's interest in the seizure – detecting, preventing, and investigating crime – against the invasion of the individual's constitutional right to be free from unreasonable government intrusions. *Terry*, 392 U.S. at 20-21; *Post*, 2007 WI 60 at ¶13. "The crucial question is whether the facts of the case would warrant a reasonable

police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime." *Post*, 2007 WI 60 at ¶13.

6) In evaluating this case, the Court employs an objective standard in assessing the specific facts, which are viewed from the perspective of a reasonable officer, and not the subjective opinion of the law enforcement officer involved in the case. *Terry*, 392 U.S. at 21-22; *Guzy,* 139 Wis. at 675. The State bears the burden of establishing that an investigative traffic stop is objectively reasonable. *Post*, 2007 WI 60 at ¶12.

7) Mr. Grosskreutz was not required to use his turn signal while making a right turn from Greenfield Avenue onto South 60th Street because there was no other traffic affected by the turn. The use of a turn signal is only required "[i]n the event [that] any other traffic may be affected by the movement." Wis. Stat. § 346.34(1)(b); *State v. Johnston,* 21 Wis. 2d 411 (1963). Officer Lazaris' squad video from this incident clearly depicts that there was no other traffic in the vicinity of the intersection at the time that Mr. Grosskreutz conducted his right turn. To the extent that Officer Lazaris' squad car was at the intersection of 60th and Greenfield, the squad was not in a position to have been affected by the turn in any way. *See Figure 1.* Therefore, no signal was required for the turn, there was no law violation, and there was no reasonable suspicion of same.

8) The tree shaped air freshener hanging from the rearview mirror did not materially obstruct Mr. Grosskreutz's view out of the windshield; therefore, Officer Lazaris also lacked reasonable suspicion to conduct a stop for this reason. Wisconsin Statute sec. 346.88(3)(b) states that, "No person shall drive any motor vehicle upon a highway with any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear view through the front windshield." The Wisconsin Supreme Court addressed what constitutes an obstruction of view under this statute in *State v. Houghton*, 2015 WI 79, ¶65, 364 Wis. 2d 234. The officer in that case stopped Houghton's car for not having a front license plate,[1] and for having a GPS device and a tree shaped air freshener hanging from the rearview mirror, which were both visible through the windshield. *Id.* at ¶7. The Court interpreted when objects in the windshield constitute an obstruction of view rising to a violation of law:

[1] Houghton's vehicle did not have a front license plate; however, it had plates from Michigan where no front plate is required. *Id.* at ¶¶72-74. This was a mistake of fact, and was not objectively reasonable. *Id.*

> [W]e conclude that Wis. Stat. § 346.88(3)(b)—which requires that an object 'obstruct' a driver's clear view to be a violation—does not mean that *every* object in a driver's clear view is a violation. Rather, we interpret subsection (3)(b) as requiring a *material* obstruction—even if minor—in order to be considered a violation of the statute.

In reaching that decision, the Court defined "obstruct" to mean that "an object must have more than a de minimus effect of the driver's vision to be considered an 'obstruction' of the driver's clear view." *Id.* at ¶62. While the *Houghton* Court did not make a finding on whether the GPS and air freshener in the front windshield constituted a material obstruction, it upheld the stop. *Id.* at ¶¶70-71. The Court found that the officer's erroneous interpretation of the statute - that any object in the windshield was prohibited - was objectively reasonable, relying on the fact that this specific statute had never been interpreted before and that the statutory interpretation above was a close call. *Id.* at ¶70. It ultimately held that the officer's "mistake of law was objectively reasonable" because a reasonable judge could agree with his view of the statute. *Id.* at ¶ 71.

9) No mistake of law argument is available in this case, as Officer Lazaris had a clear understanding of this law. First, the language that Officer Lazaris used in his report demonstrates his understanding that the object must make it more difficult for the driver to see: "Additionally, I observed an unknown object suspended from the rear view [sic] mirror *obstructing the driver's view* through the front windshield." However, he offered no specific facts to support that conclusion. No reasonable officer would see a single tree shaped air freshener hanging tightly from the rearview mirror and believe that the driver's view was materially obstructed. The *Houghton* Court noted the ubiquitous nature of these tree shaped air fresheners in cars in finding that there was no blanket prohibition against anything in the windshield. *Id.* at ¶58 n.8. Second, the *Houghton* decision clarifying this same statute was issued more than five years before Officer Lazaris stopped Mr. Grosskreutz in 2015; it is reasonable to conclude that Officer Lazaris was aware of this clarification in the law. Finally, objectively reasonable mistakes of law are "exceedingly rare." *Id.* at ¶67 (*citing Heien v. North Carolina*, 135 S.Ct. 530, 541 (2014) (Kagen, J. concurring; joined by Ginsberg, J.)). There is no factual basis to support reasonable

suspicion that the tree shaped air freshener materially obstructed Mr. Grosskreutz's view through the windshield.

10) When Officer Lazaris executed the traffic stop of Mr. Grosskreutz's vehicle, he did so in violation of Mr. Grosskreutz's constitutional right to be free from unreasonable seizure by the government. At that moment – which is the lens through which we analyze this interaction – Officer Lazaris was aware that the vehicle had a small object in the upper portion of the windshield and that the vehicle did not use its turn signal in making a right turn from a designated turn lane where no other traffic was affected. These two observations were of lawful conduct, and failed to contribute to a finding of reasonable suspicion of any law violation, including of impaired driving.

11) Every time police stop a car the government invades an individual's privacy, and provides an opportunity for further intrusion. *Post*, 2007 WI 60 at ¶43 (Abrahamson, C.J. *concurring in part and dissenting in part*). Although it may be argued that individuals in vehicles have a diminished right to privacy, "people are not shorn of all Fourth Amendment protection when they step … into their automobiles." *Prouse*, 440 U.S. at 663 (White, J.). "Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed." *Id.* Objective judicial review of these traffic stops is the constitutional check on unfettered governmental intrusion warned against by Justice White.

12) Wisconsin Supreme Court Justice Shirley Abrahamson recognized that "it is difficult for a court to declare a stop unconstitutional when the stop revealed that the driver was, in fact, operating a motor vehicle while under the influence." *Post*, 2007 WI 60 at ¶61 (Abrahamson, C.J. *concurring in part and dissenting in part*). She acknowledged that it is made more difficult where there are multiple prior convictions for the same conduct. *Id.* However, Chief Justice Abrahamson concludes that,

> [A]s United States Supreme Court Justice Antonin Scalia has wisely explained: '[T]here is nothing new in the realization that the Constitution sometimes insulates the criminality of a few in order to protect the privacy of us all.'

Id. (*citing Arizona v. Hicks*, 480 U.S. 321, 329 (1987). The courts cannot be deterred from upholding constitutional safeguards by a post-hoc view of the case. An objective review of the foregoing facts, circumstances, and reasonable inferences that can be drawn therefrom establish that this traffic stop was unlawful.

13) Based upon the unlawful traffic stop, Officer Lazaris did not have any lawful basis upon which to have contact with Mr. Grosskreutz, which produced evidence that the State seeks to admit into evidence at trial. Therefore, any and all evidence of impairment – the officer's observations, Mr. Grosskreutz's statements, and the blood test – that was derived from the unlawful traffic stop must be suppressed as the fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471 (1963); *State v. Knapp*, 2005 WI 127, 285 Wis. 2d 86.

BASED UPON THE FOREGOING, and additional argument reserved for hearing, the defense respectfully requests that an evidentiary hearing be conducted in this matter, and that this motion be granted and the requested evidence be suppressed.

Dated this 30th day of April, 2021.

Respectfully Submitted,

MASTANTUONO & COFFEE S.C.

By: *Electronically Signed by Leah R. Thomas*
Leah R. Thomas
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