

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 25, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2025AP1544-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2021CF888

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GREGG NEIL WILCOXSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

Before Stark, P.J., Hruz, and Gill, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Gregg Neil Wilcoxson appeals a judgment of conviction, entered following a jury trial, for one count of operating a motor

vehicle with a restricted controlled substance in his blood, as an eighth offense. On appeal, Wilcoxson challenges the circuit court's denial of his suppression motion, arguing that the officer who stopped his vehicle lacked reasonable suspicion to extend the stop in order to perform field sobriety tests. We reject this argument and affirm.

BACKGROUND

¶2 Following a traffic stop, the State charged Wilcoxson with operating a motor vehicle while intoxicated (OWI) and operating with a restricted controlled substance in his blood, each as an eighth offense. Prior to trial, Wilcoxson moved to suppress the results of an evidentiary chemical test of his blood. Specifically, Wilcoxson asserted that suppression was required “because law enforcement lacked probable cause to arrest [him] and require an evidentiary blood test.”

¶3 The circuit court held a hearing on Wilcoxson's suppression motion, at which Officer Luke Radke of the Hudson Police Department was the sole witness. Radke testified that he was on patrol in the City of Hudson at around 1:12 a.m. on November 28, 2021, when a vehicle with “an unusually loud exhaust system” drove past him. When Radke turned to look at the vehicle, he noticed “that the rear license plate lamp was not functioning.” He then caught up to the vehicle and initiated a traffic stop in a gas station parking lot.

¶4 Radke testified that after stopping the vehicle, he identified Wilcoxson as the driver. When asked what observations he made about Wilcoxson, Radke responded:

The first would have been the way he parked. Instead of pulling into a parking stall straight so he wasn't over the line, he pulled in diagonally so he was taking up two spots. And then before I could even get out of my squad car and

get up to his vehicle, he had already exited his vehicle and he was agitated that I had stopped him.

¶15 Radke further testified that after he “was able to get [Wilcoxson] back in the vehicle and speak to him and advise him of the reasons for the stop,” he noticed that Wilcoxson’s eyes were “very glossy” and “bloodshot.” Based on his training and experience, Radke believed that Wilcoxson’s glossy and bloodshot eyes were “a sign that he was under the influence of an intoxicant that evening.” Wilcoxson attributed his bloodshot eyes to the time of night and told Radke “that it wasn’t alcohol.”

¶16 Radke testified that after his initial conversation with Wilcoxson, he “walked to the passenger side of the vehicle to see what was in plain view” and noticed “a green, leafy substance” on the vehicle’s center console, which he believed may have been marijuana. Radke testified that when he pointed the substance out to Wilcoxson, Wilcoxson “grabbed it and crumpled it up and rolled it into little pieces with his finger, and I believe threw it on the floor, and I wasn’t able to identify what it was.” Radke also testified that he ran Wilcoxson’s information through his squad car computer and learned that Wilcoxson had seven prior OWI convictions and was on probation for “bail jumping, as well as methamphetamine.”

¶17 At that point, Radke had Wilcoxson step out of his vehicle to perform field sobriety tests. Radke testified that he asked Wilcoxson to perform those tests “based off the way he parked, his agitation, and his driving record, and as well as what he was on probation for, I suspected that he may have been under the influence of an intoxicant, specifically, a narcotic.” Following the tests, Radke placed Wilcoxson under arrest for eighth-offense OWI.

¶8 On cross-examination, Radke testified that there were other cars in the gas station parking lot at the time of the stop, but “it wasn’t bumper-to-bumper.” Radke also conceded that he did not smell anything on Wilcoxson. In addition, he agreed that being tired can cause a person to have bloodshot, glossy eyes.

¶9 Following Radke’s testimony, the circuit court denied Wilcoxson’s suppression motion. As an initial matter, the court stated it appreciated that Wilcoxson was not challenging the basis for the traffic stop, as the two observed equipment violations “clearly” provided reasonable suspicion for Radke to stop Wilcoxson’s vehicle. The court next concluded that “there was a basis then for the field sobriety [tests],” stating:

[A]s both sides have indicated, Officer Radke’s interactions with Mr. Wilcoxson raised, I believe, his radar, so to speak: The red, glossy eyes; being somewhat confrontational; the parking position; and then as we know, he ran his abstract, found out that he was currently on probation, but had seven priors, which, as we know, in Wisconsin lowers the bar, so to speak, in terms of what an officer can investigate as well as drill down into.

¶10 The circuit court then made various findings regarding Wilcoxson’s performance on the field sobriety tests. The court also stated:

Finally, and maybe most telling, is the officer pointed out what he thinks maybe is a controlled substance, a green, leafy material sitting on the center console. And when that’s pointed out to Mr. Wilcoxson, he takes it and crumbles it in his fingers in a fashion that apparently would obliterate its identification or possible testing or evidentiary value. But again, it’s potential consciousness of guilt when something is pointed out, rather than letting the officer see or investigate, picked up, crumbled between one’s fingers, and it loses, as I said, any evidentiary value.

The court explained that “all that packaged together do[es] lead this court to conclude that those facts and circumstances which were known to the officer would lead a person of reasonable caution to believe that an offense had been committed.”

¶11 Wilcoxson subsequently moved the circuit court to reconsider its suppression ruling based on newly discovered evidence—namely, body camera footage that was not provided to Wilcoxson until after the suppression hearing. The court held a hearing on Wilcoxson’s motion to reconsider, at which Radke testified and the body camera video was played for the court. Based on the video, Radke conceded that his suppression hearing testimony that Wilcoxson “had already exited his vehicle” when Radke approached and that Radke had to “get him back in the vehicle” was incorrect. Instead, Radke acknowledged that the video showed that Wilcoxson did not exit his vehicle.

¶12 Defense counsel also questioned Radke about his suppression hearing testimony that Wilcoxson was “agitated” during the traffic stop. In response, Radke stated, “I believe before I even got out there, he was yelling back to me about wanting to know why he was stopped, and he later on made a statement about police are always stretching or looking for things. I don’t know exactly what he said.” The video of the traffic stop does not show Wilcoxson yelling, however. Instead, the video shows that as Radke approached Wilcoxson’s vehicle, Wilcoxson opened his door and said, “Come on, man.” Later on during the traffic stop, Wilcoxson stated, “You guys—I’m sorry. I’ve got a chip on my shoulder about you guys. You guys are really stretching on everything you do.”

¶13 The video further shows that after Wilcoxson told Radke there was nothing illegal in the vehicle, Radke walked around to the passenger side of the

vehicle, looked in the window, and asked Wilcoxson, “Gregg, what’s that piece of green right there?” Wilcoxson then picked something up from the car’s center console, examined it, and said, “Not weed. I don’t know what that is,” before holding his hand out to show the substance to Radke. Contrary to Radke’s testimony at the suppression hearing, the body camera video does not show Wilcoxson crumpling the substance or throwing it on the floor. At the hearing on Wilcoxson’s motion for reconsideration, however, Radke testified that as he walked away from the vehicle, his body camera would have been pointed in the direction his body was facing, but he would still have been able to look over his shoulder to see what Wilcoxson was doing. Radke maintained that he remembered seeing Wilcoxson throw the plant material down, “even though [his] body cam[era] was turned away.”

¶14 Based on the body camera video, defense counsel also asked Radke several questions regarding his administration of field sobriety tests to Wilcoxson and factors that could have affected Wilcoxson’s performance on those tests. Radke testified that after rewatching the video of the field sobriety tests, he had no question as to whether he should have arrested Wilcoxson that day.

¶15 Following Radke’s testimony, defense counsel argued that the evidence did not support a determination that Radke had probable cause to arrest Wilcoxson. The circuit court disagreed, stating:

[T]here certainly were some differences in what was shown on the body camera as compared to Officer Radke’s testimony. However, I’m also mindful that this happened over two years ago. And body cameras have now become really the litmus test for oral testimony in terms of an officer’s recollections, based on potentially what they remember, what they wrote in their reports, but also then as evidenced by body cameras.

And in this case, however, I'm not satisfied that there's anything that would stand as a marked discrepancy from what the officer testified to. Rather, again, what the Court is asked to determine is whether the facts and circumstances that were in Officer Radke's base of knowledge together with the facts and circumstances, whether they were based on reasonably, trustworthy information, and whether again those facts and circumstances would be sufficient to warrant in this case probable cause for the arrest.

Again, I saw the video. There was certainly several areas of potential concern relative to Mr. Wilcoxson's stability, his overall performance of the test. Some are a little more challenging to see. But I agree with the State that I believe what we saw is fodder for cross-examination when this matter goes for trial.

As a result, Court will deny—continue and affirm it[]s denial of the [suppression] motion.

¶16 Wilcoxson's case proceeded to a jury trial, at which the jury convicted Wilcoxson of operating a motor vehicle with a restricted controlled substance in his blood but acquitted him of the OWI charge. Wilcoxson now appeals, arguing that the circuit court erred by denying his suppression motion.

DISCUSSION

¶17 On appeal, Wilcoxson argues that the circuit court should have granted his suppression motion because Radke lacked reasonable suspicion to extend the stop in order to perform field sobriety tests. In response, the State argues that Wilcoxson forfeited this argument by failing to raise it in the circuit court.

¶18 We agree with the State that Wilcoxson forfeited his current argument by failing to raise it below. In the circuit court, Wilcoxson's suppression motion raised a single issue: "that evidence gained as the result of the test of defendant's blood [should] be suppressed because law enforcement lacked

probable cause to arrest defendant and require an evidentiary blood test of defendant's blood." At the beginning of the suppression hearing, the court framed the issue as whether "the officer lacked probable cause, first, for the arrest and, secondly, for an evidentiary blood test," and Wilcoxson did not dispute that characterization. Following Radke's testimony at the suppression hearing, Wilcoxson's sole argument was that the court should "find that there was not probable cause." Wilcoxson never asserted—either in his suppression motion or during the suppression hearing—that the court should suppress evidence because Radke lacked reasonable suspicion to extend the traffic stop to perform field sobriety tests.

¶19 In his subsequent motion for reconsideration, Wilcoxson asked the circuit court "to reconsider defendant's previously filed Motion to Suppress" based on "body cam of the interactions with the Defendant as well as the Standardized Field Sobriety Tests." At the hearing on the motion for reconsideration, Wilcoxson again argued—as in his original suppression motion—that "there was no probable cause to make an arrest." Again, Wilcoxson did not argue—either in his motion for reconsideration or during the hearing on that motion—that suppression was warranted because Radke lacked reasonable suspicion to extend the traffic stop to perform field sobriety tests.

¶20 On this record, it is clear that Wilcoxson forfeited his current argument regarding reasonable suspicion to extend the traffic stop by failing to raise that argument in the circuit court. See *Tatera v. FMC Corp.*, 2010 WI 90, ¶19 n.16, 328 Wis. 2d 320, 786 N.W.2d 810 ("Arguments raised for the first time on appeal are generally deemed forfeited."). "As a general rule, this court will not address issues for the first time on appeal." *State v. Van Camp*, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997). We could affirm on this basis alone.

¶21 Nevertheless, we note that although Wilcoxson’s current argument was not raised in his suppression motion, the circuit court did conclude during its oral ruling on that motion that “there was a basis ... for the field sobriety [tests].” In support of that conclusion, the court specifically cited Wilcoxson’s “red, glossy eyes”; his “somewhat confrontational” demeanor; “the parking position”; the fact that Wilcoxson was on probation; and the fact that Wilcoxson had seven prior OWI convictions, which “lowers the bar, so to speak, in terms of what an officer can investigate.” Because the court addressed the reasonable suspicion issue that Wilcoxson now raises, at least to some extent, and because the parties have fully briefed the issue on appeal, we exercise our discretion to disregard Wilcoxson’s forfeiture and address the merits of Wilcoxson’s current claim. *See State v. Kaczmariski*, 2009 WI App 117, ¶7, 320 Wis.2d 811, 772 N.W.2d 702 (“Forfeiture is a rule of judicial administration, and whether we apply the rule is a matter addressed to our discretion.”).

¶22 “[A] police officer may stop a vehicle when he or she reasonably believes the driver is violating a traffic law.” *State v. Hogan*, 2015 WI 76, ¶34, 364 Wis. 2d 167, 868 N.W.2d 124 (citation omitted). “After a justifiable stop is made, the officer may expand the scope of the inquiry only to investigate ‘additional suspicious factors [that] come to the officer’s attention.’” *Id.*, ¶35 (alteration in original; citation omitted). “An expansion in the scope of the inquiry, when accompanied by an extension of time longer than would have been needed for the original stop, must be supported by reasonable suspicion.” *Id.*

¶23 The existence of reasonable suspicion presents a question of constitutional fact, to which we apply a two-step standard of review. *See State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. “We review the circuit court’s findings of historical fact under the clearly erroneous standard, and we

review independently the application of those facts to constitutional principles.”
Id.

¶24 Here, we conclude that the facts found by the circuit court—and those established by Radke’s body camera video—show that Radke had reasonable suspicion to extend the traffic stop to perform field sobriety tests. First, Radke testified—and the video confirms—that when Wilcoxson pulled into the gas station parking lot, he parked diagonally across two marked parking spots. We agree with the State that “[f]ailing to pull straight into a single parking stall is an example of unusual, irregular driving, and unusual, irregular driving can give rise to a reasonable inference that the suspect is driving under the influence, even if the behavior does not rise to the level of a traffic violation.”¹ See, e.g., ***State v. Waldner***, 206 Wis. 2d 51, 60-61, 556 N.W.2d 681 (1996) (listing examples of unusual driving behavior that, while not illegal, may contribute to reasonable suspicion that a driver is operating while intoxicated).

¶25 Second, Radke noted that Wilcoxson had bloodshot, glossy eyes, which he believed were “a sign that [Wilcoxson] was under the influence of an intoxicant that evening.” Although Wilcoxson attributed his bloodshot eyes to the time of night, our supreme court has “reaffirm[ed] that a law enforcement officer may consider bloodshot and glassy eyes to be one of several indicators of intoxication, even though such eye descriptors may have an innocent explanation.” See ***State v. Tullberg***, 2014 WI 134, ¶35, 359 Wis. 2d 421, 857 N.W.2d 120.

¹ Wilcoxson asserts that he was merely parked at a “slight diagonal,” and he emphasizes there were no other cars near his vehicle. Consistent with Radke’s testimony, however, the video clearly shows that Wilcoxson was parked at a diagonal, such that he was taking up two parking spots. Regardless of whether there were other cars nearby, we agree with the State that Wilcoxson’s “irregular parking job” still “contributes to reasonable suspicion.”

¶26 Third, Radke testified that Wilcoxson was “agitated” during the stop, and the circuit court similarly found that Wilcoxson was “somewhat confrontational.” As the State aptly notes, “a person’s agitation upon being stopped by an officer can be an indicator that the person knows he or she is doing something illegal, and it could also be an indicator of methamphetamine usage.”² See *Hogan*, 364 Wis. 2d 167, ¶50 (noting that “anxiety” is “consistent with methamphetamine use”).

¶27 Fourth, Radke was aware that Wilcoxson had seven prior OWI convictions and that he was on probation for bail jumping and a methamphetamine-related crime. Prior OWI convictions can contribute to reasonable suspicion that an individual was operating while intoxicated. See *State v. Lange*, 2009 WI 49, ¶33, 317 Wis. 2d 383, 766 N.W.2d 551 (stating that an officer may consider prior OWI convictions when determining whether there is probable cause to believe that an individual was operating while intoxicated); *State v. Goss*, 2011 WI 104, ¶22 n.19, 338 Wis. 2d 72, 806 N.W.2d 918 (clarifying that *Lange* applies outside the context of probable cause to arrest and that, “regardless of the quantum of evidence needed to satisfy a given standard, a prior [OWI] conviction may be taken into consideration”). In addition, the fact that Wilcoxson was on probation for a methamphetamine-related crime suggested that

² On appeal, Wilcoxson emphasizes that—contrary to Radke’s testimony—the squad car camera video shows that he did not exit his vehicle, that Radke did not have to get him back into the vehicle, and that he did not yell during the traffic stop. Despite these discrepancies, the video does support the circuit court’s finding that Radke was “somewhat confrontational.” Notably, the video shows that as Radke approached Wilcoxson’s vehicle, Wilcoxson opened his door and said, “Come on, man.” We agree with the State that this behavior “could be viewed as a sign of agitation, given that the normal, expected behavior during a traffic stop is to stay in one’s vehicle.” We also agree with the State that Wilcoxson’s subsequent comment about having a “chip on [his] shoulder” regarding the police “could very reasonably be viewed as confrontational.”

he had a recent history involving methamphetamine and therefore raised a reasonable inference that he could still be involved in the same behavior.

¶28 Fifth, Radke testified that he observed a green, leafy substance in Wilcoxson's vehicle, which he believed may have been marijuana. As the State notes, Wilcoxson does not appear to dispute "that there was a piece of leafy green substance in his car." Wilcoxson does dispute Radke's testimony about Wilcoxson "crumpl[ing]" the substance and "thr[owing] it on the floor." Even absent that testimony, however, the presence of a green, leafy substance in Wilcoxson's vehicle that Radke suspected to be marijuana contributes to a conclusion that Radke had reasonable suspicion to investigate Wilcoxson for operating while intoxicated.

¶29 Sixth, it is undisputed that the traffic stop occurred shortly after 1:00 a.m. In the OWI context, the time of night is relevant to the reasonable suspicion analysis, particularly when the driving takes place around "bar time." See *Post*, 301 Wis. 2d 1, ¶36.

¶30 Taken together, all of the facts outlined above gave rise to reasonable suspicion that Wilcoxson was operating a motor vehicle while intoxicated, which justified Radke's extension of the traffic stop to perform field sobriety tests. Although "[a]ny one of these facts, standing alone, might not add up to reasonable suspicion," they do so when considered in their totality. See *Waldner*, 206 Wis. 2d at 61. Although Wilcoxson cites various cases in support of his claim that Radke lacked reasonable suspicion to extend the stop, none of the cases that he cites are factually identical to this one, and none of those cases undermine our conclusion that the totality of the circumstances here gave rise to reasonable suspicion that Wilcoxson was operating while intoxicated. We

therefore reject Wilcoxson's argument that the circuit court erred by denying his suppression motion, and we affirm his judgment of conviction.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2023-24).

