

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 9, 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. 2025AP2284-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 2023CT236

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**BAILEY REED VANDE SLUNT,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Fond du Lac County: ANDREW J. CHRISTENSON, Judge. *Affirmed.*

¶1 GROGAN, J.<sup>1</sup> Bailey Reed Vande Slunt appeals from a judgment entered after he pled no contest to the charge of operating a motor vehicle while intoxicated (OWI), second offense, contrary to WIS. STAT. § 346.63(1)(a).

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

Vande Slunt contends that the circuit court erred when it denied his motion to suppress.<sup>2</sup> He asserts the police violated the Fourth Amendment when they seized his blood because he believes the consent he gave was not voluntary.<sup>3</sup> Because the Record shows Vande Slunt voluntarily consented to the seizure, this court affirms.

## I. BACKGROUND

¶2 In the early morning hours of May 12, 2023, a deputy from the Fond du Lac County Sheriff's Office responded to a cell phone crash alert on County Road TC. Once on scene, the deputy observed a severely damaged vehicle in a ditch with a slumped over and unconscious man in the driver's seat, later identified as Vande Slunt. The deputy attempted to speak with Vande Slunt and jostled him to a point where he briefly came to, at which point the deputy spoke with him, but he closed his eyes again. Worried about the vehicle catching on fire, the deputy and a responding deputy were able to rouse Vande Slunt and safely free him by having him crawl over to the passenger side, and exit through the passenger door because the driver's side door would not open. Vande Slunt was placed in the deputy's squad car for safety.

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<sup>2</sup> Vande Slunt filed five separate suppression motions in the circuit court, which were heard together. The court granted some of his suppression motions and denied some. The court granted his motion seeking to suppress statements Vande Slunt made at the crash scene based on a failure to give *Miranda* warnings, see *Miranda v. Arizona*, 384 U.S. 436 (1966), and it granted the first of his two motions seeking to suppress the horizontal gaze nystagmus field sobriety test and denied the second as moot. The court denied Vande Slunt's motion seeking to suppress the blood draw done pursuant to his consent. It also denied his suppression motion asserting WIS. STAT. § 343.305 is unconstitutional under the unconstitutional conditions doctrine. On appeal, Vande Slunt only challenges the court's order denying his request to suppress the consensual blood draw.

<sup>3</sup> U.S. CONST. amend. IV.

¶3 According to the deputy, Vande Slunt appeared to be highly intoxicated due to the odor of alcohol coming from his person, his unsteadiness, and his glassy, bloodshot eyes. The deputy noticed Vande Slunt became “a lot more alert” after moving to the squad car and that “he was conscious ... the entire time at th[is] point.”

¶4 Due to concerns about injuries from the accident, Vande Slunt went by ambulance to the hospital, with the deputy following behind the ambulance. At the hospital, the deputy sought to continue the OWI investigation and asked Vande Slunt to do a horizontal gaze nystagmus (HGN) field sobriety test.<sup>4</sup> The deputy also asked Vande Slunt to submit to a preliminary breath test (PBT), which he did. The PBT showed Vande Slunt’s breath contained an alcohol concentration of .16.

¶5 While at the hospital, the deputy arrested Vande Slunt for OWI and read him the Informing the Accused form while he was lying in his hospital bed.<sup>5</sup> The deputy also asked Vande Slunt if he would consent to a chemical test of his blood via a blood draw, and Vande Slunt consented. Vande Slunt confirmed he understood what the deputy said, waived a re-reading of the form, and reaffirmed his consent to the blood draw. The deputy testified (at a suppression hearing held later) that Vande Slunt appeared coherent during both the reading of the Informing the Accused form and when the deputy asked for his consent. The deputy said Vande Slunt appeared to understand his questions and only briefly closed his eyes.

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<sup>4</sup> The HGN field sobriety test was the subject of other suppression motions, one of which the circuit court granted, and which therefore will not be discussed or relied on here.

<sup>5</sup> See WIS. STAT. § 343.305(4).

¶6 The State charged Vande Slunt with OWI, second offense, contrary to WIS. STAT. § 346.63(1)(a), and operating with a prohibited alcohol concentration (PAC), second offense, contrary to § 346.63(1)(b).<sup>6</sup> Vande Slunt filed the suppression motion at issue here, alleging that he did not freely and voluntarily consent to the seizure of his blood. Relying on *United States v. Grap*, 403 F.3d 439 (7th Cir. 2005), he argued his mental state to *voluntarily* consent was compromised because of his injuries and/or the treatment he was undergoing. As a result, he contends the deputy was required to ask Vande Slunt's treating physician whether Vande Slunt was capable of voluntarily submitting to a blood test.

¶7 The circuit court held an evidentiary hearing at which only the deputy testified. During the hearing, the deputy's body camera video from the crash scene and the hospital was introduced into evidence. The video showed the full interaction between the deputy and Vande Slunt, both at the scene and at the hospital. After the hearing and after the court reviewed the body camera video, the court denied the suppression motion. It made a series of factual findings, including that: (1) Vande Slunt was not asleep when he closed his eyes during the reading of the Informing the Accused form, and (2) he was in an adequate state of mind to voluntarily consent to the blood draw. Specifically, the court found:

Mr. Vande Slunt is lying on a bed at the hospital, he's got a neck brace and an IV on him. [The d]eputy ... is reading the Informing the Accused form. During this time, Mr. Vande Slunt certainly blinks, he also slowly shuts and opens his eyes for about a second on two or three occasions, and on one occasion it's for a little bit longer, maybe three or four seconds. Mr. Vande Slunt is not

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<sup>6</sup> The second charge, operating with a PAC, was added later via an amended criminal complaint.

asleep, he is answering the deputy's questions coherently right before the reading of the Informing the Accused form, and Mr. Vande Slunt answers the question on the Informing the Accused form coherently.

Mr. Vande Slunt does appear to be in an adequate state to be able to understand the form and submit to a blood test. Mr. Vande Slunt is cooperative with [the d]eputy ... . [The d]eputy ... asks Mr. Vande Slunt if he understood what was read in the form, Mr. Vande Slunt says yes. [The d]eputy ... offers to reread the form, Mr. Vande Slunt indicates that's not necessary.

The court also found that Vande Slunt's condition did not compromise his ability to voluntarily choose to consent to the blood test.

¶8 After the circuit court denied this suppression motion, Vande Slunt agreed to plead no contest to the OWI-second charge, and the court dismissed the PAC charge. The court accepted the plea and adjudicated him guilty. He now appeals.<sup>7</sup>

## II. DISCUSSION

### A. *Standard of Review*

¶9 When reviewing a circuit court's decision on a suppression motion, this court will uphold its factual findings unless they are clearly erroneous. ***State v. Scull***, 2015 WI 22, ¶16, 361 Wis. 2d 288, 862 N.W.2d 562. The application of constitutional principles to those facts, however, is a question of law that this court reviews de novo. ***Id.***; see also ***State v. Blackman***, 2017 WI 77, ¶25, 377 Wis. 2d 339, 898 N.W.2d 774.

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<sup>7</sup> The circuit court stayed Vande Slunt's sentence pending this appeal.

¶10 The dispositive issue in this case is whether Vande Slunt’s consent to the chemical test (blood draw) was given voluntarily. “The State bears the burden of proving that consent was given freely and voluntarily” with “clear and convincing evidence[.]” *State v. Artic*, 2010 WI 83, ¶32, 327 Wis. 2d 392, 786 N.W.2d 430. “The determination of ‘voluntariness’ is a mixed question of fact and law based on an evaluation of ‘the totality of all the surrounding circumstances.’” *Id.* (citations omitted). “Consent is not voluntary if the state proves ‘no more than acquiescence to a claim of lawful authority.’” *Id.* (citation omitted).

#### *B. Applicable Law*

¶11 Taking a sample of a person’s blood is a seizure under the Fourth Amendment, see *Schmerber v. California*, 384 U.S. 757, 767-68 (1966), and must conform to the requisite constitutional protections. Both the Fourth Amendment and article I, section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures, see U.S. CONST. amend. IV and WIS. CONST. art. I, § 11, and are generally construed synonymously and “coextensively.” *Artic*, 327 Wis. 2d 392, ¶28. Accordingly, Wisconsin’s search and seizure law parallels the search and seizure law of the Supreme Court. *State v. Secrist*, 224 Wis. 2d 201, 208-09, 589 N.W.2d 387 (1999).

¶12 A warrantless search is “per se unreasonable.” *Artic*, 327 Wis. 2d 392, ¶29. But, “a search conducted pursuant to consent” is a “well-established exception to the warrant requirement[.]” *Id.* In analyzing whether the consent exception was satisfied, this court first reviews “whether consent was given in fact by words, gestures, or conduct; and, second, whether the consent given was

voluntary.” *Id.*, ¶30; see also *State v. Phillips*, 218 Wis. 2d 180, 196-97, 577 N.W.2d 794 (1998).

¶13 This court next reviews whether consent was provided voluntarily. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973). There is no “talismanic definition” for voluntary consent as it reflects “the complex of values implicated in police questioning of a suspect.” *Id.* at 224-25. It should, however, be “the product of an essentially free and unconstrained choice[,]” *id.* at 225 (citation omitted), and not a result of “duress or coercion,” *id.* at 248.

¶14 In assessing whether Vande Slunt’s consent to the blood draw was voluntary, this court looks at the totality of the circumstances to determine whether the consent was voluntary. *Artic*, 327 Wis. 2d 392, ¶33. This court generally considers six “non-exclusive factors” examining the actions of the police, the response of the defendant, and other considerations to determine whether voluntary consent was given. *Id.* The factors are:

(1) whether the police used deception, trickery, or misrepresentation in their dialogue with the defendant to persuade him to consent; (2) whether the police threatened or physically intimidated the defendant or “punished” him by the deprivation of something like food or sleep; (3) whether the conditions attending the request to search were congenial, non-threatening, and cooperative, or the opposite; (4) how the defendant responded to the request to search; (5) what characteristics the defendant had as to age, intelligence, education, physical and emotional condition, and prior experience with the police; and (6) whether the police informed the defendant that he could refuse consent.

*Id.* (citing *Phillips*, 218 Wis. 2d at 198-203). A single factor will not control, but all the factors will be considered together. See *Artic*, 327 Wis. 2d 392, ¶33.

### *C. Analysis*

#### 1. Consent in Fact

¶15 The first part of the analysis requires this court to determine whether Vande Slunt did in fact consent to the chemical test of his blood. Vande Slunt appears to concede that he did verbally consent to the blood draw when the deputy asked if he would submit to a chemical test. It would be hard to argue otherwise as the body camera video unequivocally confirms this.<sup>8</sup> It shows Vande Slunt verbally responding “sure” and “yes” after the deputy read the Informing the Accused form to him and asked whether he would submit to a chemical test of his blood. It also shows the deputy asking Vande Slunt a second time whether he would consent to the test and Vande Slunt repeatedly responding with clear affirmative verbal answers each time, i.e., “yes sir.” Thus, this court concludes he did in fact consent.

#### 2. Voluntariness

¶16 The second part of the analysis looks at whether the consent was voluntary. This is the focus of Vande Slunt’s argument. He contends the consent

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<sup>8</sup> Further, Vande Slunt impliedly consented to the blood test by driving on a Wisconsin roadway. See WIS. STAT. § 343.305(2). This statute provides that:

Any person who is on duty time with respect to a commercial motor vehicle or drives or operates a motor vehicle upon the public highways of this state, or in those areas enumerated in [WIS. STAT. §] 346.61, is deemed to have given consent to one or more tests of his or her breath, blood or urine, for the purpose of determining the presence or quantity in his or her blood or breath, of alcohol, controlled substances, controlled substance analogs or other drugs, or any combination of alcohol, controlled substances, controlled substance analogs and other drugs, when requested to do so by a law enforcement officer[.]



he gave was not given voluntarily because he was in such a compromised mental state due to his injuries/treatment from the accident. Relying on **Grap**, he says the deputy should have consulted Vande Slunt’s physician for an opinion as to whether Vande Slunt was even capable of making a voluntary choice. He contends that the circuit court’s findings of fact were clearly erroneous because the court did not consider that Vande Slunt had been unconscious and likely suffered a head injury. He says the court “brushed ... off” the testimony during the defense cross-examination where the deputy agreed that Vande Slunt “was falling asleep repeatedly[.]” This court rejects Vande Slunt’s argument.

¶17 First, this court is bound by Wisconsin law, not the **Grap** case.<sup>9</sup> See **State v. Mechtel**, 176 Wis.2d 87, 94, 499 N.W.2d 662 (1993) (“[D]eterminations on federal questions by either the federal circuit courts of appeal or the federal district courts are not binding upon state courts.”). As noted, Wisconsin law has adopted a totality of the circumstances test to assess whether consent is voluntary. **Artic**, 327 Wis. 2d 392, ¶33. Courts look to see whether the consent was freely and voluntarily given. **Schneckloth**, 412 U.S. at 248-49. As set forth earlier, our supreme court has provided a list of factors to assist in making the determination. **Artic**, 327 Wis. 2d 392, ¶33.

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<sup>9</sup> Further, the Seventh Circuit in **United States v. Grap**, 403 F.3d 439, 445 (7th Cir. 2005), analyzed whether the consenting person’s mental condition impeded her ability to voluntarily consent to a search. **Id.** at 443-45. It noted that the mental condition of the consenter was only one factor to consider, and what was determinative was whether the objective facts present at the time would lead the officer to reasonably believe the person was capable of consenting. **Id.** at 445. **Grap** ultimately concluded that the elderly person’s mental health did not render her consent involuntary. **Id.** at 443. So, even if this court were to apply the principles set forth in **Grap**, this court would conclude that Vande Slunt voluntarily consented.

¶18 In examining those factors, this court concludes Vande Slunt voluntarily consented to the blood draw despite the fact that he was in a hospital bed suffering from motor vehicle accident injuries and receiving medical treatment at the time. First, there is no evidence the deputy used deception, trickery, or misrepresentation when asking Vande Slunt if he would consent to a blood draw. Rather, the Record reflects the deputy properly recited the Informing the Accused form, asked if Vande Slunt understood it, believed that Vande Slunt did understand what was read, and asked if he would submit to a chemical test. Second, there is nothing to suggest the deputy threatened Vande Slunt to obtain his consent. Third, the request came in a cooperative and congenial manner. Fourth, in response to the blood draw request, Vande Slunt did seem to take a few seconds to think about the deputy's request and awkwardly stared at him. However, Vande Slunt did not deny the request in the moment and rather seemed to actively consider the request, which suggests active use of cognitive function.

¶19 As to the fifth factor regarding his physical characteristics, physical/mental condition, and experience with the police, this court is not convinced these rendered the consent involuntary. Vande Slunt primarily focuses on his assertion that his cognitive abilities at the time of consent were distorted by the accident and the medical treatment he was receiving, and that he was in a semi-conscious state and thus not capable of giving constitutional consent. Although it is true Vande Slunt was initially found unconscious when the deputy arrived at the crash scene, he did not remain unconscious. He was able to crawl over to the passenger side and exit through the passenger door, answer questions coherently, sit in the squad car, and walk to the ambulance. At the hospital, he remained conscious and appropriately answered questions. Most importantly, at the time the deputy explained and read Vande Slunt the Informing the Accused

form, Vande Slunt was awake, responded to the deputy clearly, and told the deputy he understood the form. It was during this time period that Vande Slunt consented to the chemical test of his blood.

¶20 The circuit court, which heard the deputy's testimony and watched the body camera video, specifically found that Vande Slunt was not falling asleep during the request for consent. The court was aware of the serious nature of the car accident, that Vande Slunt was in a hospital bed with a neck brace on, and of Vande Slunt's suggestion that he suffered a concussion. None of these facts automatically render a person incapable of voluntary consent. This court, having watched the body camera video and reviewed the deputy's testimony, cannot say the circuit court's finding that Vande Slunt was awake at the pertinent times was clearly erroneous.

¶21 Sixth and lastly, although the deputy did not say verbatim that Vande Slunt could refuse consent to the draw, he read him the Informing the Accused form in its entirety, which includes a section that states the individual is allowed to decline but will face steep penalties as a result. See WIS. STAT. § 343.305(4) ("If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties.").

¶22 Based on this court's review of the totality of the circumstances, it agrees with the circuit court that Vande Slunt's consent to the chemical test (blood draw) was freely and voluntarily given. Although he was in the hospital at the time, receiving medical treatment for injuries suffered as a result of the motor vehicle accident when he consented, those facts do not prevent a person from being capable of consenting to a chemical test. As noted, this court has reviewed the body camera video and concludes the deputy's assessment regarding

Vande Slunt's consent was reasonable. Vande Slunt appropriately and freely answered questions and appeared capable of consenting to the chemical test. Accordingly, this court concludes the State proved by clear and convincing evidence that the consent obtained by the deputy was voluntary.

¶23 Based on the foregoing, the seizure of Vande Slunt's blood did not violate the Fourth Amendment or the Wisconsin Constitution's corollary provision. The Record demonstrates that the circuit court's findings were not clearly erroneous, and based on the totality of the circumstances, this court agrees Vande Slunt's consent was voluntary. Accordingly, the circuit court did not err in denying Vande Slunt's suppression motion.<sup>10</sup>

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)(4).

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<sup>10</sup> This court notes that Vande Slunt's table of contents in his first brief contains error messages that say, "Error! Bookmark not defined." after the page numbers. Although this was likely unintentional, this court points out these error messages in case counsel was not aware of them so that such errors may be removed before submitting future briefs to the court.

