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DISTRICT IV

October 29, 2026

To:

Hon. Nicholas J. McNamara
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Timothy J. Casper
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Jacqueline Lee Frank
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David Olson
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You are hereby notified that the Court has entered the following opinion and order:

2025AP1717 Dane County v. Morgan J. Hack (L.C. # 2024TR5701)
2025AP1718 Dane County v. Morgan J. Hack (L.C. # 2024TR5702)

Before Graham, P.J.[1]

Summary disposition orders 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).

Dane County cited Morgan Hack for operating a motor vehicle with a detectable amount of a restricted controlled substance, first offense ("the strict-liability-THC citation"), and also for operating under the influence of a controlled substance, first offense ("the impaired-by-THC citation"). The citations were joined for trial. *See* WIS. STAT. § 346.63(1)(c). Following the bench trial, the circuit court found Hack guilty of both violations, and it granted judgment with

[1] These appeals, which are decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2023-24), were consolidated for briefing and disposition by an order dated September 17, 2025. *See* WIS. STAT. RULE 809.10(3). All references to the Wisconsin Statutes are to the 2023-24 version.

respect to the strict-liability-THC citation.[2] On appeal, Hack challenges the court's denial of her motion to suppress the result of a blood test, the sufficiency of the evidence to prove the strict-liability-THC citation, and the court's denial of her attorney's request to make an offer of proof. I reject Hack's arguments and affirm.

By way of background, one day at approximately 11:30 a.m., Hack was driving her dog to a veterinarian appointment and rear ended another vehicle. Police arrived at the scene, and Hack told the responding officer that she had fallen asleep at the wheel. Hack said that she had been out with friends the night before and had been consuming alcohol and marijuana until about 1:00 a.m. She said that she had slept in her vehicle because she was concerned that she was impaired, that she only got about an hour of sleep, and that the cause of the crash was that she had fallen asleep while she was driving. The officer searched Hack's vehicle and found a leafy substance that appeared to the officer to be marijuana.[3]

The officer followed Hack to the hospital, where the officer asked her to take a preliminary breath test. After the test came back negative for the presence of alcohol, the officer arrested Hack and asked her whether she would consent to a blood test. Hack consented, and the results from the state forensic laboratory of hygiene showed the presence of that delta-9-tetrahydrocannabinol (delta-9 THC) in her blood at a concentration of 1.8 nanograms per

[2] *See* WIS. STAT. § 346.63(1)(c) (providing that when a person is found guilty of two or more OWI-related offenses arising out of the same incident, "there shall be a single conviction for purposes of sentencing and for purposes of counting convictions" under Wisconsin's OWI laws); ***State v. McAdory***, 2021 WI App 89, ¶1, 400 Wis. 2d 215, 968 N.W.2d 770 ("Under the statutory dual prosecution scheme [for OWI-related offenses], in this situation there can be only one conviction, not two."). To the extent necessary, we grant leave to appeal the order finding Hack guilty of the impaired-by-THC violation

[3] The County did not charge Hack with possession of marijuana, and Hack did not challenge the constitutionality of the search.

milliliter. *See* WIS. STAT. § 340.01(50m)(e) (defining "restricted controlled substance" to include delta-9 THC, "excluding its precursors or metabolites, at a concentration of one or more nanograms per milliliter of a person's blood").

After the County issued the strict-liability-THC and impaired-by-THC citations, Hack filed a motion to suppress evidence, which the circuit court denied after an evidentiary hearing. The case proceeded to trial, during which the County presented testimony from the responding officer and a forensic toxicologist from the state hygiene lab, among others. As noted, the court found Hack guilty of both offenses and granted judgment as to the strict-liability-THC offense.

On appeal, Hack argues that the circuit court should have suppressed the blood test results because, she contends, the officer did not have probable cause to arrest her for an OWI-related offense. *See* WIS. STAT. § 343.305(3)(a) (providing that an officer may ask a person to provide a sample of their blood "[u]pon arrest of [the] person for violation of" specified OWI-related statutes, including those prohibiting operating a motor vehicle under the influence of a controlled substance or with a detectable amount of a restricted controlled substance in their blood); ***State v. Blatterman***, 2015 WI 46, 362 Wis. 2d 138, ¶¶29, 34-36, 864 N.W.2d 26 (requiring probable cause to arrest).

To determine whether an arrest was supported by probable cause, a court examines the totality of the circumstances and considers whether the facts and circumstances within the officer's knowledge were sufficient to warrant a reasonable conclusion that the defendant had committed or was in the process of committing an offense. ***Blatterman***, 362 Wis. 2d 138, ¶35. "The probable cause requirement 'deals with probabilities' and must be sufficient 'to lead a reasonable officer to believe that guilt is more than a possibility.'" ***Id.*** (citation omitted). "The

quantum of information which constitutes probable cause to arrest must be measured by the facts of the particular case." ***Id.*** (citation omitted).

Here, the most salient facts that the officer testified about during the suppression hearing were that Hack admitted to smoking marijuana the night before, and that she also admitted that she had fallen asleep while driving. Considering the totality of circumstances, I conclude that these facts were sufficient to constitute probable cause to arrest Hack for operating her vehicle under the influence of a controlled substance or with a detectable amount of a restricted controlled substance in her blood.

Hack argues that probable cause was lacking because the arresting officer had not received specific training on how to recognize impairment from THC. But that argument is not persuasive here, given that Hack told the officer that she smoked marijuana the night before—this is not a case in which the officer had to piece together clues that might suggest recent drug use. Hack also points to the fact that the arresting officer had not received specific training on how long THC would be expected to stay in a person's system. The argument seems to be that Hack's admitted drug use was not "recent[] enough" that the officer could reasonably believe that Hack was impaired or that delta-9 THC would be detected in her blood at a prohibited concentration. *See* ***State v. Hogan***, 2015 WI 76, ¶45, 364 Wis. 2d 167, 868 N.W.2d 124. But the officer did not have to know for sure how long it would take THC to metabolize in Hack's system, nor did the officer have to take Hack's assertion that she stopped smoking marijuana at 1:00 a.m. at face value. Indeed, here, the officer was aware of objective facts that would lead an officer to reasonably believe that there was a probability that Hack was impaired or that there was THC in her system at the time of the accident, namely that Hack had fallen asleep behind the wheel.

I now turn to Hack's remaining arguments, which are about the trial proceedings.

Hack argues that the evidence was insufficient to support a finding of guilt for the strict-liability-THC violation. This is so, she argues, because THC is considered a "restricted controlled substance" under Wisconsin law if it is delta-9 THC, "excluding its precursors or metabolites, at a concentration of one or more nanograms per milliliter of a person's blood." WIS. STAT. § 340.01(50m)(e). Hack argues that "no evidence was adduced by the prosecution" that the result reported by the hygiene lab "excluded precursors or metabolites."

I disagree. Here, there was extensive trial testimony from the forensic toxicologist who tested Hack's blood sample. The toxicologist testified as follows. She used a screening test that detected the presence of THC in the blood sample. She then performed a confirmatory test, known as a supported liquid extraction; and she placed the sample into a liquid chromatograph with a tandem mass spectrometer, which separates out the different components of THC and gives numeric values for each component. The test separated out the delta-9 THC from its metabolites, 11 hydroxy THC and carboxy THC. The equipment at the state hygiene lab is sophisticated enough to distinguish between delta-9 THC and variants including delta-8 THC, and it fully separates out those components. The lab report and testimony showed 1.8 nanograms per milliliter of delta-9 THC in Hack's blood, and the circuit court reasonably determined that the toxicologist had excluded the precursors and metabolites of delta-9 THC.

Hack does not engage with the trial evidence or the circuit court's findings on appeal. At best, she argues that the toxicologist did not mention any precursors during her testimony, but the court considered and rejected that argument. As I understand it, the term "precursor" refers

to a nonpsychoactive compound found in cannabis plants,[4] and here, the toxicologist testified that "[d]elta-9 THC is the primary psychoactive component in cannabis." As the court explained, the testimony was "completely unambiguous that the [d]elta-9 THC was extracted from all other elements," and the toxicologist's testimony was "completely solid and absolutely convincing."

Hack also makes an argument about the circuit court's refusal to allow her attorney to make an offer of proof. When a court excludes evidence that a party seeks to introduce at trial, the party should generally be permitted to make an offer of proof; however, a court should not allow offers of proof "as to matters that are," among other things, "clearly immaterial" or "irrelevant." ***State ex rel. Schlehlein v. Duris***, 54 Wis. 2d 34, 39, 194 N.W.2d 613 (1972).

Here, Hack's trial counsel questioned the forensic toxicologist about several scientific articles regarding different methods to test for the presence and concentration of delta-9 THC in blood. The toxicologist testified that her laboratory used a different method than the ones described in the articles. Counsel then asked whether the toxicologist was "aware that most states in the United States have a four nanogram per milliliter threshold for charging people for driving under the influence." After the circuit court cut off this line of questioning, counsel apparently sought to give an offer of proof that "1.0 ng/ml is an extremely low threshold for the legislature to proscribe that concentration in the blood while driving a motor vehicle." When the court asked how that would be relevant, counsel explained his theory of relevance as follows:

[4] *See, e.g.*, Jessica Aycock, *Hemp and Marijuana: The Necessity of Lab Testing for Fair Prosecutions*, 45 PACE L. REV. 231, 235 n.20 (2024); Eliza Muse & Richard Holdman, *Public health policy considerations—Cannabis products*, CANNABIS LAW DESKBOOK § 9:9 (Cole White ed., 2026-2027), Westlaw CANNABISDB.

"[A]lmost everywhere in the world has a much higher threshold [for THC prosecutions] and I think it's because of these testing problems." The court determined that evidence regarding "testing problems" in "other places" "is not relevant to issues for this lab." The court directed counsel to move on to other topics.

Hack does not address the circuit court's analysis of the testing-problems-based theory of relevancy that was addressed at trial. Rather, she appears to be pivoting to a different theory. To that end, Hack points to the toxicologist's testimony (which was solicited by Hack's counsel, not by the prosecution) that a concentration of 1.8 nanograms per milliliter of delta-9 THC can cause impairment in some individuals. She argues that counsel should have been able to cross-examine the forensic toxicologist about this testimony "by utilizing standards of intoxication by THC from other jurisdictions." That is, she appears to be arguing that this evidence could have been relevant to the court's finding of guilt or innocence with respect to the impaired-by-THC citation.

There are many problems with this argument. One significant problem is that Hack never explained this theory of relevancy to the circuit court, and never told the court that she wanted to introduce evidence about prohibited concentrations in other states for this purpose. I reject Hack's challenge to the court's ruling on that basis.

Hack also argues that she could have used the evidence as part of a challenge to Wisconsin's prohibited concentration of delta-9 THC as not "rationally related to the legitimate government interest in preventing drugged driving." As best I understand it, this would be an argument that the Wisconsin statute is unconstitutional. Such a challenge is foreclosed because,

among other things, Hack did not squarely develop and pursue it during the circuit court proceedings.

For all of these reasons,

IT IS ORDERED that the order in Appeal No. 2025AP1717 and the judgment in Appeal No. 2025AP1718 are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals