COURT OF APPEALS
DECISION
DATED AND FILED

October 29, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2025AP2528 **Cir. Ct. No. 2025TR106**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

FREDERICK RONALD SCHWENCK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Portage County: PATRICIA BAKER, Judge. *Affirmed*.

¶1 BLANCHARD, J.[1] Frederick Schwenck appeals a judgment revoking his motor vehicle operating privileges for 12 months based on a circuit court ruling that he unlawfully refused to submit to a chemical test under

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

Wisconsin's implied consent law, WIS. STAT. § 343.305. This refusal case arose after a state trooper pursued a report to authorities called in by a citizen that a pickup truck was being driven dangerously. The trooper promptly found the pickup identified by the citizen. Schwenck was in the driver's seat, slumped over the center console of the pickup. The trooper roused Schwenck, spoke with him briefly, and then had him step out of the pickup for a brief interview and field sobriety testing. Based in part on the results of the field sobriety testing, the trooper placed Schwenck under arrest for operating a motor vehicle while under the influence of an intoxicant (OWI), and requested that he submit to a test of his blood, which he refused.

¶2 Schwenck argues that the judgment of refusal must be reversed because there was not reasonable suspicion of impaired driving sufficient to justify the trooper having him step out of the pickup and submit to the field sobriety testing. Reasonable suspicion for the field sobriety tests had to be established to support the refusal, because the State partly relies on the field sobriety tests to satisfy some requirements for a refusal, namely, that there was "probable cause to believe [that Schwenck] was driving or operating a motor vehicle while under the influence of alcohol … and whether the person was lawfully placed under arrest for violation of [WIS. STAT. §] 346.63(1)." *See* WIS. STAT. § 343.305(9)(a)5.a. (defining the first of three issues to be determined at a refusal hearing); *see also* ***State v. Anagnos***, 2012 WI 64, ¶4, 341 Wis. 2d 576, 815 N.W.2d 675 (stating that, under § 343.305(9)(a)5.a., a person facing possible revocation may challenge, as part of a refusal hearing, the lawfulness of the person's arrest based on the alleged unlawfulness of the traffic stop that led to the OWI arrest). I reject Schwenck's argument and accordingly affirm the revocation judgment.

BACKGROUND

¶3 On January 10, 2025, the Wisconsin State Patrol filed a notice of intent to revoke Schwenck's operating privilege. This was based on the allegation that, the day before, Schwenck had refused a request to submit to a blood test under WIS. STAT. § 343.305. Schwenck requested a hearing to challenge the refusal, which the circuit court held in October 2025.

¶4 The only witness at the hearing was a state trooper, who gave the following testimony.[2] He had worked as a trooper since September 2019. He received training, and also had experience, in investigating suspected impaired drivers. This included learning and using techniques for recognizing signs that an individual may be under the influence of an intoxicant, such as by conducting standardized field sobriety tests.[3]

¶5 The trooper was on duty, operating a squad car, on January 9, 2025, when, at about 4:50 p.m., he learned through Portage County dispatch that a citizen had called to report the following. The citizen had witnessed a black Ford pickup truck with a particular license plate number traveling southbound on Interstate 39. The driver of the truck failed to properly keep the pickup in its lane of travel, swerving back and forth, and had near-misses with other vehicles. The

[2] The trooper testified that there would not be any relevant body camera evidence because troopers do not wear this equipment, and neither side in this case offered dashboard camera evidence.

[3] Field sobriety tests are "observational tools that law enforcement officers commonly use to assist them in discerning various indicia of intoxication," which involve "visual cues" regarding a person's "coordination, balance, concentration, speech, ability to follow instructions, mood[,] and general physical condition." ***City of West Bend v. Wilkens***, 2005 WI App 36, ¶¶1, 20, 278 Wis. 2d 643, 693 N.W.2d 324 (internal quotation marks and quoted source omitted).

citizen reported that the citizen had followed the pickup south on Interstate 39, and then briefly east on U.S. Highway 10, where the driver pulled into the parking lot of a Stevens Point restaurant.

¶6 The trooper drove to the restaurant parking lot identified by the citizen. At around 5:00 p.m., the trooper spotted the pickup for the first time, parked where the citizen had seen it. The trooper inspected the pickup and confirmed that it matched the details provided by the citizen, including the license plate given by the citizen. Between the time when the citizen reported seeing the pickup enter the Stevens Point parking lot and when the trooper arrived, there was "only a matter of a couple minutes." The trooper observed someone in the driver's seat of the stationary pickup, and as the trooper drove closer, he observed that the person was "slumped over the center console of the truck."

¶7 The trooper parked his squad vehicle nearby, walked to the closed driver's side window of the pickup, and knocked on the window. The only occupant, sitting in the driver's seat, was Schwenck. Schwenck "sat up, appeared to wake up from sleeping," and lowered the window.

¶8 The trooper obtained Schwenck's driver's license and used it to identify him. Schwenck told the trooper that he had just come from a "work party" in Wausau, that his destination was Stevens Point, and that he was "taking a break from driving." But Schwenck "did not know where in Wausau" he had come from; he "could not give" the trooper "the specific location" of the "work party." During this interaction, Schwenck "slurred" when speaking. The trooper had not met Schwenck before and was not familiar with his speech patterns before the two spoke that day. The trooper did not observe Schwenck's eyes to be bloodshot or glassy.

¶9 The trooper walked back to his squad car to conduct a check of records against Schwenck's identifiers. The trooper also requested that a second police unit respond to the scene. The trooper then approached the pickup again and asked Schwenck to step out of it so that they could talk further and for purposes of field sobriety testing.

¶10 After the trooper asked Schwenck to step out of the pickup, but before he conducted field sobriety tests, the trooper smelled an odor of intoxicants emanating from Schwenck, although the trooper had not detected this odor before Schwenck got out of the pickup.

¶11 The trooper conducted the field sobriety tests in a parking space near the pickup. Details regarding that testing are not relevant to the issue raised on appeal. It is sufficient to note that the State relied in part on results of the tests to justify the fact that the trooper then placed Schwenck under arrest for OWI.[4] The trooper read to Schwenck from the Informing the Accused form, requesting that he submit to a blood draw. *See* WIS. STAT. § 343.305(4); ***State v. Reitter***, 227 Wis. 2d 213, 225, 595 N.W.2d 646 (1999). Schwenck refused to submit to the requested blood test and did not request an alternative chemical test.

¶12 After these facts were adduced at the evidentiary hearing on the refusal, Schwenck filed a brief arguing that his detention was not supported by "suspicious factors which would give rise to an articulable suspicion" that he had

[4] This appeal solely addresses the refusal case that is assigned Portage County Case No. 2025TR106. It is separate from the two other cases for traffic charges that arose from the same incident, which are both currently pending in the circuit court: OWI-1st (Portage County Case No. 2025TR105) and prohibited alcohol concentration-1st (Portage County Case No. 2025TR426).

operated a vehicle while intoxicated, and therefore "the extension of the stop to include field sobriety testing was invalid and, ultimately, there was a lack of probable cause on which to base an arrest."

¶13 In a responsive filing, the State took the position that Schwenck's challenge to the refusal had improperly morphed from one topic to another. What had started out as solely an argument that the trooper lacked probable cause to arrest him for OWI following the field sobriety tests, the State maintained, had improperly morphed into an argument that the trooper violated his Fourth Amendment rights by illegally continuing to detain him as of the moment when the trooper asked him to step out of the pickup. In order to provide additional facts that could be relevant to the Fourth Amendment issue, the State submitted an affidavit by the trooper, in which he averred that, on the day of the arrest, he never activated the emergency lights on his squad car and never used the squad car to obstruct Schwenck's ability to drive away from the trooper.

¶14 At a subsequent hearing, the circuit court explained that it had overlooked the State's filing in preparing for the hearing, but that the court would not take time during the hearing to read it. Having made that point, and based on the evidence adduced at the refusal hearing, the court moved on to rule in pertinent part as follows. Based on "the totality of the facts," "a reasonable officer" in the position of the trooper, taking into account the trooper's training and experience, "would have reasonably suspected" that temporary detention of Schwenck through the period in which the field sobriety tests occurred was supported by "specific and articulable facts, which[,] taken together with rational interferences from those facts[,] warrant[ed] a reasonable belief that" Schwenck had driven while impaired. In reaching this conclusion, the court credited the testimony of the trooper, making the following relevant findings or implied findings:

- In responding to the citizen's report, the trooper operated from the reasonable premise that the citizen had in fact just observed Schwenck operating the pickup "inappropriately" on Interstate 39, including being "unable to stay in [his] lane";

- The trooper was promptly able to locate "the exact" pickup that the citizen had reported in the Stevens Point parking lot;

- The trooper roused Schwenck from his position of being slumped over the center console of the pickup, and this occurred at around 5:00 in the afternoon;

- When the two men first interacted, while Schwenck was still sitting in the pickup, the trooper "immediately hear[d] slurred speech" from Schwenck; and

- The trooper extended the temporary detention for only "a few moments" in order to conduct the field sobriety tests.

¶15 Schwenck appeals.

DISCUSSION

¶16 Schwenck limits his argument on appeal to the following question: Was there reasonable suspicion sufficient to justify the trooper extending the temporary detention of Schwenck in order to administer field sobriety tests?[5] If there was not reasonable suspicion, then the circuit court was obligated to "order that no action be taken on the operating privilege" based on the refusal. *See* WIS.

[5] Potentially generating confusion, Schwenck uses the word "stop" to refer to the trooper's temporary detention of Schwenck. But, as reflected in the background above, the trooper did not stop the pickup. Instead, the trooper temporarily detained Schwenck after approaching the pickup when it was stationary. Further, Schwenck does not challenge the legality of any of the trooper's conduct before the trooper asked Schwenck to step out of the pickup or after the trooper returned to the pickup from his squad vehicle, nor does he challenge the legality of any aspect of the field sobriety testing.

STAT. § 343.305(9)(d); ***Anagnos***, 341 Wis. 2d 576, ¶25. I conclude that there was ample evidence to support reasonable suspicion.

¶17 The issue that Schwenck raises on appeal is one of mixed law and fact. *See* ***Anagnos***, 341 Wis. 2d 576, ¶21. This court reviews the circuit court's findings of fact under the clearly erroneous standard, and independently applies those facts to relevant constitutional principles. *See* ***id.***; *see also* ***State v. Wilson***, 2022 WI 77, ¶18, 404 Wis. 2d 623, 982 N.W.2d 67 ("A finding of fact is clearly erroneous if it is against the great weight and clear preponderance of the evidence.").

¶18 I conclude that the extension of the temporary detention here was easily supported by facts that, in the aggregate, amounted to reasonable suspicion that Schwenck "committed a crime[,] the investigation of which would be furthered by [Schwenck's] performance of field sobriety tests." *See* ***State v. Hogan***, 2015 WI 76, ¶37, 364 Wis. 2d 167, 868 N.W.2d 124. The totality of the facts as they unfolded established reasonable suspicion to investigate the offense of operating while impaired or with a prohibited alcohol concentration, and the trooper lawfully administered field sobriety tests in furtherance of that investigation because those tests would be likely to support or dispel the suspicion.

¶19 First, the trooper had pertinent training and experience, summarized above, that helps inform each of the following additional points. *See* ***Hogan***, 364 Wis. 2d 167, ¶47 (experience of officer is "a plus"); ***State v. Allen***, 226 Wis. 2d 66, 74, 593 N.W.2d 504 (Ct. App. 1999) (training and experience of an officer is a factor to be considered in the totality of the circumstances analysis).

¶20 Second, the trooper was aware of the citizen report that the pickup that Schwenck was found sitting in, alone in the driver's seat, had just been

consistently driven in a dangerous manner. What was reported was not mere excessive speed, but dangerous driving suggestive of a lack of control over the pickup. *Cf*. ***State v. Adell***, 2021 WI App 72, ¶25, 399 Wis. 2d 399, 966 N.W.2d 115 ("speeding alone may count more weakly than other factors"). "Erratic driving is one possible sign of intoxicated use of a motor vehicle." ***State v. Rutzinski***, 2001 WI 22, ¶34, 241 Wis. 2d 729, 623 N.W.2d 516.

¶21 As for the nature of the citizen's report, it was facially credible and "exhibit[ed] reasonable indicia of reliability." *See* ***id.***, ¶18. The citizen purported to be following the pickup in real time, and the trooper was able to confirm that the identified pickup was precisely where the citizen said it would be. Further, when allegations contain a tip to authorities which suggest an imminent threat to public safety, as they did here, it may be reasonable for an officer to conclude that the potential for danger caused by a delay in immediate action justifies a temporary detention. ***Id.***, ¶26 (stating that "exigency can in some circumstances supplement the reliability of an informant's tip in order to form the basis for" a temporary detention). Under these circumstances, and applying the reasoning in ***Rutzinski***, I conclude that the circuit court properly relied on this aspect of the trooper's testimony.

¶22 Third, also highly significant was the fact that the trooper found Schwenck not merely resting, but slumped over the center console of the pickup, at 5:00 in the afternoon, within minutes after he had been driving on an interstate highway. The trooper could reasonably suspect that one likely explanation was that Schwenck had collapsed or passed out in this manner while under the influence of significant alcohol consumption.

¶23 Fourth, the trooper heard Schwenck slur words when they first spoke, which is also a relevant factor. *See* ***State v. Tullberg***, 2014 WI 134, ¶34, 359 Wis. 2d 421, 857 N.W.2d 120 (identifying slurred speech as a factor pointing toward the possible influence of an intoxicant).

¶24 Fifth, the trooper smelled the odor of intoxicants before performing the field sobriety tests. *See* ***County of Jefferson v. Renz***, 231 Wis. 2d 293, 316, 603 N.W.2d 541 (1999) (noting that an odor of intoxicants in a car can support probable cause to administer a preliminary breath test). The trooper made this observation after requesting that Schwenck step out of the pickup, but this, in itself, is "of no constitutional moment." *See* ***State v. Brown***, 2020 WI 63, ¶20, 392 Wis. 2d 454, 945 N.W.2d 584 (quoted authority omitted); *see also* ***id.*** (calling it a "per se rule" that, when "a motorist is 'lawfully detained for a traffic violation,' 'officers may order the driver to get out of the vehicle without violating the Fourth Amendment'" (quoting ***Pennsylvania v. Mimms***, 434 U.S. 106, 111 n.6 (1977))).

¶25 Schwenck argues that "[s]leeping is both neutral and lawful conduct." This generic assertion ignores all of the details and the context recited to this point in this opinion. It is true that a sober driver could be tired enough to fall asleep at this time of day, and it is also possible for a sober person to slump over a vehicle's center console after falling asleep in a seated position. But under the circumstances summarized above, the trooper was not required to draw innocent inferences to explain what he observed when he approached and interacted with Schwenck.

¶26 Schwenck also may intend to suggest that it was clearly erroneous for the circuit court to find that Schwenck's speech was slurred, because the

trooper did not testify in "any detail" about the slurring. Schwenck would prefer that the trooper had testified to the specific nature of the slurring, such as that it was "thick" or "mumbled," or that he used "unusually slow or drawn-out pronunciation." But there was an adequate basis for the court to make a finding of at least some degree of slurring, even if the slurring was not necessarily extreme or severe. To the extent that Schwenck suggests that "corroboration" of the trooper's testimony about slurred speech was needed, he fails to support that proposition and I cannot imagine the existence of authority to this effect.

¶27 Still on the slurring topic, Schwenck suggests an alternative argument that, if he did slur his speech, the only reasonable inference was that this should be attributed to the fact that he had just woken up, as opposed to attributing it to impairment. But here again, the trooper was not obligated to assume the innocent explanation, particularly in light of all the other evidence suggesting impairment.

¶28 Schwenck argues that he "did not exhibit any impairment of his mentation," apparently meaning that there was no evidence that his ability to process or recover information was limited. But the trooper testified that Schwenck was not able to say where he had come from in Wausau, which could point to a reduced ability to recover or to relate information.

¶29 Schwenck also relies on the absence of facts here that are sometimes present when impairment is suspected. One weakness in this argument is that some of these involve the time period after the field sobriety tests were underway, even though his challenge is to the trooper's decision to prolong the temporary detention to initiate the tests. Further, more generally, I am not persuaded that any

of Schwenck's individual "missing facts" or the aggregate of "missing facts" could tip the scales against a determination of reasonable suspicion.

¶30 Schwenck points out that, standing alone, the fact that a driver "may have been driving recklessly does not automatically provide … reasonable suspicion" of impaired driving. This general point is fair as far as it goes, but it has no solving power here. It focuses too narrowly on one piece of evidence and ignores the rest. The strong reasonable inference that Schwenck had just driven recklessly adds to a complete picture that supports reasonable suspicion. Put differently, the evidence of recent reckless driving was but one "building block" among several, and together they contributed to reasonable suspicion of impaired driving. *See* ***State v. Waldner***, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996) (explaining that "building blocks of fact" can "accumulate" to support reasonable suspicion, based on "the totality of the facts taken together").

By the Court.—Judgment affirmed.

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