

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**MARCH 17, 1999**

**Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin**

**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 § 808.10 and RULE 809.62, STATS.

**No. 98-2798**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICHARD T. HAHN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Fond du Lac County: STEVEN W. WEINKE, Judge. *Reversed.*

ANDERSON, J.<sup>1</sup> This is an appeal from a judgment convicting Richard T. Hahn of his sixth operating a motor vehicle while intoxicated offense in violation of § 346.63(1)(a), STATS. Following the trial court's order denying his motion to suppress, Hahn was found guilty after a jury trial. There are two issues presented in this appeal. First, whether there was

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

reasonable suspicion to justify an investigatory stop of Hahn. Second, whether the evidence was sufficient to support the jury's verdict. The State confesses error. We agree.

In its responsive brief, the State concedes that it failed to present sufficient evidence, in the form of the testimony of the officer who conducted the investigatory stop, to permit the trial court to conclude that reasonable suspicion existed to justify the stop of Hahn's vehicle. The State further concedes that because Hahn's motion to suppress should have been granted, it is not necessary for this court to reach the issue of the sufficiency of the evidence.

Based upon the State's confession of error and our own independent review of the record, *see Rudolph v. State*, 78 Wis.2d 435, 447, 254 N.W.2d 471, 476 (1977), we conclude that the evidence adduced at the suppression hearing was inadequate to establish the requisite reasonable suspicion required to justify the investigatory stop of Hahn's vehicle. Because the trial court should have granted the motion to suppress, it is not necessary for this court to reach the question of the sufficiency of the evidence.

*By the Court.*—Judgment reversed.

This opinion will not be published.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

