



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

October 16, 2025

To:

Hon. Troy L. Nielsen
Circuit Court Judge
Electronic Notice

Katena Roberts Turner
Electronic Notice

Yviette Kienert
Clerk of Circuit Court
Waupaca County Courthouse
Electronic Notice

Amy E. Gunderson
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2025AP205-CR

State of Wisconsin v. Maxwell A. Alswager (L.C. # 2021CT130)

Before Taylor, 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).

Maxwell Alswager appeals a judgment convicting him of operating a motor vehicle with a detectable amount of a restricted controlled substance in his blood pursuant to WIS. STAT. § 346.63(1)(am) along with the orders denying his pretrial and postconviction motions to suppress blood test evidence. Based on my review of the appellant's brief and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. The orders denying Alswager's suppression motions are summarily reversed as a sanction against the State

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

for its failure to file an appellate response brief, *see* WIS. STAT. RULE 809.83(2), and the cause is remanded for further proceedings consistent with this opinion.

The State charged Alswager with operating a motor vehicle with a detectable amount of Delta 9 Tetrahydrocannabinols (THC), a restricted controlled substance, in his blood. Alswager's vehicle had been found in a ditch, and he had been located walking nearby. A responding officer stopped Alswager for questioning and would later report that Alswager was "very fidgety." There were no reports of bad driving, the officer reported no odor of intoxicants or drugs, and no illegal drugs or paraphernalia were found on Alswager. The officer asked Alswager to perform field sobriety tests, and the officer would later report that he noted six out of a possible six clues on the horizontal gaze nystagmus test, but only one clue each on the walk and turn and one-leg stand tests. Alswager was arrested and consented to a blood test, which revealed the presence of THC in his blood.

Alswager moved to suppress the blood test evidence, arguing that the officer lacked either the reasonable suspicion necessary to continue to detain him and request field sobriety tests or the probable cause necessary to arrest him. After an evidentiary hearing at which the officer was the sole witness, the circuit court denied the suppression motion. The case was tried to a jury, and Alswager was convicted as charged.

Alswager filed a postconviction motion and, after he was appointed new counsel, an amended postconviction motion to suppress the blood test evidence. Both versions of the postconviction motion cited information that Alswager had obtained after the suppression hearing concerning an internal investigation of the officer who had testified at the suppression hearing. The investigation resulted in the officer's termination from employment, and later the officer's conviction for false swearing. In Alswager's amended postconviction motion, he

argued that this new information gravely damaged the officer's credibility. Because the officer's testimony had been critical to the circuit court's denial of Alswager's suppression motion, Alswager argued that the information constituted newly discovered evidence and that the court should reverse its earlier decision and grant his motion to suppress. The court held a hearing on Alswager's amended postconviction motion and denied it.

Alswager appealed and filed his appellant's brief on June 10, 2025. In his brief, Alswager renewed his arguments that the blood test evidence should be suppressed for the reasons already discussed. *See State v. Vodnik*, 35 Wis. 2d 741, 746, 151 N.W.2d 721 (1967) (laying out the requirements for newly discovered evidence); WIS. STAT. § 805.15(3) (same).

The State's appellate response brief was due on July 10, 2025. On July 31, 2025, I entered an order noting that no response brief had been filed, and providing that if no brief or extension request was filed within five days, the circuit court's denial of Alswager's postconviction motion could be summarily reversed under WIS. STAT. RULE 809.14. On August 25, 2025, I entered a second order cautioning that the "[f]ailure to file a respondent's brief tacitly concedes that the trial court erred," *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993), and submitting the case to the court to determine whether summary reversal was warranted. On August 28, 2025, I entered an order advising the State that, having reviewed Alswager's brief, I would summarily reverse the circuit court unless the State filed a response brief within five days.

The State has not filed an appellate response brief and has not responded to this court's previous orders in any other manner. I conclude that summary reversal is appropriate. As noted above, I notified the State in my August 28, 2025, order that a summary reversal would result if

the State did not file a brief. ***Raz v. Brown***, 2003 WI 29, ¶36, 260 Wis. 2d 614, 660 N.W.2d 647. I conclude that the State, not having filed a response brief, has abandoned the appeal. ***Id.***, ¶18.

Therefore,

IT IS ORDERED that the judgment and suppression orders appealed from are summarily reversed as a sanction for the State's failure to file an appellate response brief, *see* WIS. STAT. RULE 809.83(2). The matter is remanded to the circuit court for further proceedings consistent with this opinion.

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

Samuel A. Christensen
Clerk of Court of Appeals