

MADISON Police Department

PSIA Report

Incident Details

Date Received 11/07/2022
Entered By [IAPro entry - LT.
Angela Kamoske]
Date/Time of Occurrence —
Date/Time Entered 11/07/2022 10:56
Record ID Number 9734
Case # —
Tracking # 2022PSIA-0162
Madison PD [Pending
BlueTeam 6 Assigned assignment]
Investigator
IAPro Assigned LT: Angela
Investigator Kamoske

Incident Location

Location of Occurrence —

[None Entered]

Incident Summary

Lt Kamoske 11/07/22: PSIA received notice that PO Carriveau was arrested for 1st offense OWI by Columbia County Sheriff's office.

Sgt Loredo reported to PSIA that PO Carriveau did make notification to him of the arrest on November 5th at approximately 10:00am. The arrest had occurred at approximately 3:00 am that morning.

Involved Employees

Officer Richard Carriveau - [REDACTED]

Assignment at time of incident Officer East District [REDACTED]

Role —

Linked Allegations Code of Conduct - Unlawful Conduct (Sustained - 01/22/2024)
■ Suspension - 01/22/2024

Contact (Exonerated - 01/22/2024)

- None Needed - 01/22/2024



Role

Attachments

No Attachments

Assignment History

No assignment history

Chain of Command History

Assigned Investigator Signature Line

[Pending assignment]



CITY OF MADISON POLICE DEPARTMENT



INTRA-DEPARTMENTAL CORRESPONDENCE

DATE: January 4, 2024

TO: Shon Barnes, Chief of Police
FROM: Detective Sergeant David S. Gouran, PSIA
SUBJECT: **2022PSIA-0162 PO Richard Carriveau**

Complaint:

On 11/7/22, PSIA Lt. Angela Kamoske was notified that PO Richard Carriveau was arrested for OMVWI (1st offense) by the Columbia County Sheriff's Office over the weekend. Sgt. Javier Loreda reported to her that PO Carriveau did make notification to him of the arrest on November 5th at approximately 10:00am; the arrest had occurred at approximately 3:00 am that morning. PO Carriveau was served an administrative leave duty status notice on 11/7/22. Lt. Kamoske had oversight of this case pending the completion of the Columbia County court case, and it was transferred to me on 11/28/23.

Review of Materials from Columbia County Sheriff's Office:

Lt. Kamoske had obtained the official police report and attendant OMVWI paperwork, including citations, as well as officer body camera and squad car video recordings, from the Columbia County Sheriff's Office in November, 2022. I read and watched all available materials.

Police Report by Columbia County Sheriff's Deputy Travis Lange, 22-41868.

I reviewed Deputy Lange's incident/arrest report, which is summarized as follows:

VEHICLE OBSERVATION

On 11/5/22, at approximately 2:41AM, I was traveling southbound on HWY 51 approaching Richards Road in the Township of Arlington. I observed the suspect vehicle traveling northbound on HWY 51 approaching my location. I observed that the suspect vehicle had its bright headlights activated as it was approaching me. At no point while approaching me and passing by me did the suspect vehicle deactivate its bright headlights. I observed that the inner most lightbulbs of the headlights were the lights that were activated.

The suspect vehicle was identified with Wisconsin registration [REDACTED] on a 2009 Dodge Journey...as the suspect vehicle reached HWY 51 near Mopar Drive in the Village of Poynette I activated my emergency lights to initiate a traffic stop. The suspect vehicle pulled over without issue. As the suspect vehicle was pulling over I observed the brake lights activated and the passenger brake light was not working.

VEHICLE CONTACT

Dep. Lange identified himself and the reason for the traffic stop. When he told the driver, Richard Carriveau, that *he did not shut his bright headlights off he paused and then said oh. I asked Richard where he was coming from tonight and he simply stated downtown. I asked Richard what they were doing downtown and he said that they were celebrating. Richard then went on to say that he was at a guy's wedding. Richard then went on and corrected himself and stated it was his buddy's wedding. As Richard was speaking I noticed a slight slur in his speech. I also observed that he had blood shot/glossy eyes and an odor of intoxicants that appeared to be coming from his breath. It was a moderate odor of intoxicants.* When Carriveau removed an envelope from his glove box containing his proof of insurance, Dep. Lange told him it was expired *and he went to place the piece of paperwork back into the envelope and appeared to have slight difficulty doing so.* Carriveau then provided a valid proof of insurance. Carriveau and his lone passenger, [REDACTED] were both identified by their WI driver's licenses.

STANDARDIZED FIELD SOBRIETY TESTING

I confirmed with Richard again that he was coming from a wedding. I then asked Richard how much he had to drink. Richard paused then said ahh 2 drinks, as if he had to think about it. I asked Richard what he had to drink. Richard then asked "what did I have". I confirmed that's what I was asking. Richard said he had a Spotted Cow and a Jack and Diet. I asked Richard when his last drink was. Richard responded by asking when was my last drink? I said yes and he said ahh probably about 2 hours ago. I asked Richard if he felt impaired or buzzed and he said absolutely not sir. I then had Richard stand at the front of my squad car...the testing itself took place on the roadside which is a flat, spacious surface that was free of debris. While standing outside with Richard I still detected a moderate odor of intoxicants coming from his breath. Prior to beginning the Standardized Field Sobriety Testing Richard decided to inform me that he and [REDACTED] were both employed by Madison Police Department.

Dep. Lange explained and administered the **Horizontal Gaze Nystagmus Test** to Richard as I was trained. I observed that both of Richard's pupils were of equal size and tracked the stimulus equally. I did not observe any resting nystagmus. During the first test I observed that Richard's eyes showed the following clues. I did see lack of smooth pursuit in both his left and right eyes. I did see distinct and sustained jerkiness at maximum deviation in both his left and right eyes. I did see distinct jerkiness before the stimulus moved out of 45 degrees from center of both his left and right eyes. I did not observe any vertical nystagmus. The stimulus used for this test was the tip of my pen. I observed a total of 6 out of 6 clues of impairment for this test.

Dep. Lange reported he did not observe a lack of convergence when he administered the **Lack of Convergence Test**.

Prior to beginning the explanation and demonstration of the **Walk and Turn Test**, Richard entered into the instructional stance without me even needing to instruct him to do so. Carriveau said he had no questions prior to starting the test. On Richard's second step of his returning 9 steps he slightly lost his balance causing his foot to step off the line and his arms moved away from his sides but less than 6 inches. I observed a total of 1 clue of impairment during this test.

For the One Leg Stand Test, Dep. Lange reported he did not observe any clues of impairment during this test. I did take note that during this test was that Richard counted one thousand 14 twice in a row.

PRELIMINARY BREATH TEST

Carriveau agreed to provide a breath sample to Dep. Lange's PBT. His sample showed a result of .100% BAC. I then again asked Richard if he had only 2 drinks. Richard did not give a verbal response and slightly shook his head. I then showed Richard his PBT result of .1. Richard then said ".1" and slightly shook his head. Richard did this in a manner as if it did not matter that his PBT showed a result of .1. I advised Richard that with the time span of his drinking it did not seem realistic that he only had 2 drinks with his last drink being 2 hours prior. Richard then said "I had 2 drinks bro". Richard stated that he also did not eat anything during the day.

ARREST

Dep. Lange advised Carriveau he observed enough clues from the SFSTs to determine there was impairment and that he would be arrested for Operating While Intoxicated-1st Offense, at approximately 2:54 AM. He reported Carriveau complied with no issues. He was issued a citation {346.63(1)(A)} at the scene. Dep. Lange read him the Informing the Accused form and Carriveau state he would submit to an evidentiary chemical test of his blood. He then transported Carriveau to Aspirus Divine Savior Hospital in Portage, WI. Phlebotomist Nichole Meeker completed a blood draw at approximately 3:35 AM. Dep. Lange read Carriveau the Pre-Interrogation Warning and Waiver of Rights *verbatim off the Influence Report*. I asked Richard if he was willing to answer questions at this time and he said "no."

CONTACT WITH ██████████ RESPONSIBILITY AGREEMENT

██████████ told Dep. Lange that she would drive Carriveau's vehicle and take responsibility for him if needed. She also went to the hospital and after the blood draw, she signed the Responsibility Agreement Form. Carriveau was released from custody to her care at approximately 3:48 AM, at the hospital.

BLOOD RESULTS

On 1/12/23, Dep. Lange received the laboratory report from the WI State Lab of Hygiene showing the results of Carriveau's blood testing. The report indicated that Richard had 0.097 g/100 mL of ethanol in his blood at the time of the blood draw. Consequently, Dep. Lange issued via mail a citation for Operating with a Prohibited Alcohol Concentration-first offense, 346.63(1)(b), as well as the Notice of Intent to Suspend and Administrative Review forms to Carriveau.



Forensic Toxicology Laboratory
2601 Agriculture Drive P.O. Box 7996
Madison, WI 53707-7996
(608) 224-6241

Laboratory Report

Prof. James J. Schauer, Ph.D., Director
Erin C. Rider, Ph.D., D(ABMM),M(ASCP)CM,
Director of Clinical Laboratory Services

Submitted By: COLUMBIA CO SHERIFFS DEPARTMENT [403435]
ATTN: DEP TRAVIS LANGE

Report Date:
1/3/2023

COLUMBIA CO SHERIFFS DEPARTMENT
711 E COOK ST
PO BOX 132
PORTAGE WI 53901-0132

Subject: Carriveau, Richard W

Address: ██████████

DOB: ██████████ Sex: Male

Specimen Details

Collected	Type	Collector
22FX019456 11/5/2022 0335	Blood, Whole	MEEKER,NICHOLE

Date Received: 11/28/2022

Label/Seal: LABELED AND SEALED

Alcohol Analysis Date: 12/29/2022

Subject Number:

Case Number: 22-41868

Result	Units
0.097	g/100 mL

Ethanol

Comments:

Additional test results will be reported below when all laboratory analyses have been completed.

Lab Comments

Specimen(s) are retained for six months from the date that testing is reported unless otherwise requested by agency or subject.

ETHANOL ANALYST: Mikayla Bowen
Mikayla Bowen, M.S., #AP-586

As designee of the Director, I do hereby certify this document to be a true and correct report of the findings of the Wisconsin State Laboratory of Hygiene.

Thomas P. Neuser
Thomas P. Neuser, Forensic Scientist III, MLS(ASCP)

END OF REPORT

Review of Deputy Lange's Axon body-worn camera recording

I watched the entirety of the body-cam recording of the incident from traffic stop to release. The video and audio components were both of good quality. The sequence of events and statements match well with the police report. It does not depict the original alleged violation of bright headlights or show PO Carriveau's car until Deputy Lange steps out to approach. It clearly shows the weather was lightly raining at the time of the traffic stop and testing.

Dep. Lange initially told PO Carriveau, "You didn't turn your brights off when you came past me," to which he replied, "Oh." Asked, "Where are you coming from tonight," PO Carriveau stated, "Downtown." Dep. Lange then asked what he was doing there, to which he replied that he was celebrating a buddy's wedding. He said, "Poynette," when asked where he was heading. Dep. Lange then asked if he had insurance in the car and PO Carriveau promptly reached for and pulled out an envelope from the glove compartment, then removed the insurance document from within that. Told it was expired, PO Carriveau then reached in to get another envelope and handed the Deputy the current insurance card. I did not observe any fumbling or difficulty in handling or searching the paperwork.

Dep. Lange did an MDC check then returned, stating, "You said you were coming from a wedding?" PO Carriveau said yes, then was asked, "How much have you had to drink tonight?" PO Carriveau said, "Uh, two drinks." Asked when his last drink was, he looked at his watch and said, "Probably about two hours ago." Dep. Lange asked, "Do you feel like you're impaired, buzzed, anything like that?" He replied, "Absolutely not." Dep. Lange then said, "Just because you've been drinking, would you be willing to do field sobriety tests?" PO Carriveau said, "Absolutely."

As he got out of the car and walked over to the area for the tests, Dep. Lange remarked to him, "Were you doing some singing to music tonight? Your voice is kind of gone." PO Carriveau answered that he had tobacco in his mouth. He added, prior to getting into position, "We both work at Madison Police," referring to passenger [REDACTED]. Dep. Lange said, "So you know how this spiel works," and PO Carriveau said, "Absolutely."

Dep. Lange administered the sequence of standardized field sobriety tests to PO Carriveau, beginning with HGN. Due to the position of the body-cam, I could see PO Carriveau's face but not necessarily Dep. Lange's hand and stimulus (pen) for the test. He then did the Lack of Convergence and Walk and Turn tests. For the latter, Dep. Lange commented, "It's weird explaining to someone who kind of knows what it is already." He then gave verbal instructions in a noticeably rapid rate of speech, but did physically demonstrate the test. I observed PO Carriveau was wearing dress shoes or boots with a heel. Dep. Lange then explained the One Leg Stand test in a similar rapid speech manner. PO Carriveau repeated "one thousand-fourteen" during his audible counting while performing the test.

Dep. Lange then asked him if he would submit a breath sample and PO Carriveau assented. He asked if Dep. Lange wanted him to take his tobacco out of his mouth, and Dep. Lange said, "It shouldn't matter." I observed PO Carriveau remove something from within his lower lip and discard it on the ground.

After the PBT was administered, Dep. Lange said, "Two drinks?" PO Carriveau looked at the device, winced, and said, ".1?" Dep. Lange said, "You don't usually get to 1 by two drinks over a four hour span, so you obviously had more, right?" PO Carriveau shrugged and said, "I had two drinks. I didn't have anything to eat." Dep. Lange then said, "At this point, I do have enough clues from a field sobriety test for an arrest." PO Carriveau complied without hesitation or protest and was placed into custody.

Dep. Lange talked to [REDACTED] and asked if she had any drinks. She told him, "A long, long time ago. Hours ago. I've only been drinking water since at least 10:00. I truly feel sober." She also submitted to a PBT.

Dep. Lange read PO Carriveau the Informing the Accused form, and he consented to an evidentiary testing of his blood. Dep. Lange advised he would be taking him to a hospital in Portage, 20 minutes away, and that he would release him to [REDACTED] there when they were done. They arrived at Divine Savior at 3:26 am. In the hospital, Dep. Lange opened a sealed blood test kit and gave to the hospital tech/phlebotomist, who drew two vials of blood and turned them over to Dep. Lange, who sealed them in the box. He eventually returned PO Carriveau to his squad car and read him the Influence Report. Asked if he was willing to answer some questions, "PO Carriveau said, "No." He was issued his citation and paperwork, and released from custody to the care of [REDACTED] at 3:48 am.

Review of Deputy Lange’s Panasonic full HD in-car video camera

The quality of this recording was poor, in that the video images would frequently freeze and then catch up to the soundtrack portion. I was unable to clearly assess whether PO Carriveau’s high beam headlights were on or not, nor any driving behavior of concern prior to the traffic stop. The administration of the HGN test was partially visible from this camera perspective. A secondary in-car camera recording depicted the interior when PO Carriveau was placed in the rear seat. Otherwise, nothing from either video contradicted or added to what was documented on the officer body camera.

Columbia County Court Proceedings and Case Outcome

Case 2022TR7100, a Traffic Forfeiture for first offense Operating a Motor Vehicle While Intoxicated, statute 346.63(1)(a), was filed on 11/11/22 in Columbia County Court. On 1/13/23, the companion charge of first offense Operating with a Prohibited Alcohol Concentration of greater than .08, statute 346.63(1)(b), also a traffic forfeiture, was filed as case 2023TR0308. The cases were cross-referenced and prosecuted together. PO Carriveau entered a plea of not guilty in each case on 11/16/22 and 3/14/23 respectively, and chose to proceed with a jury trial, which was scheduled for 11/27/23. On 11/27/23, at a motion to suppress hearing addressed before the jury trial commenced, the court granted the suppression motion and as a result, the prosecutor’s office dismissed both citations, which was approved by the court.

11-27-2023 Motion hearing Hepler, Todd J. LaBarre, Kristin
Additional text:
 8:30 AM Court called 22TR7100 and 23TR308. Defendant Richard Wayne Carriveau in court. Attorney Erika L Bierma in court for Richard Wayne Carriveau. Prosecuting attorney Jeff M Ocwieja in court for Columbia County. Court was advised that a suppression issue needed to be addressed before the jury trial. County called Deputy Travis Lange; sworn. Direct exam by ADA Ocwieja. Exhibit #1 marked; offered by ADA Ocwieja, received. Cross exam by Atty Bierma. Re-direct by ADA Ocwieja. Re-cross by Atty Bierma. 9:05 AM Witness excused. Closing arguments. Court granted the suppression motion. ADA Ocwieja moved to dismiss both citations based on Court's decision. Court dismissed both citations. Adjourned at 9:14 AM.

Count	Statute cite	Description	Severity	Offense date	Plea
1	346.63(1)(a)	OWI (1st)	Forf. U	11-05-2022	Not guilty - written on 03-14-2023
On 11-27-2023 there was a finding of:					
	Action Dismissed on Prosecutor's Motion	Court official Hepler, Todd J.		Notes	
Count	Statute cite	Description	Severity	Offense date	Plea
1	346.63(1)(b)	Operating w/ PAC >=0.08, <0.15 (1st)	Forf. U	11-05-2022	Not guilty - written on 03-14-2023
On 11-27-2023 there was a finding of:					
	Action Dismissed on Prosecutor's Motion	Court official Hepler, Todd J.		Notes	

Screen shots from Wisconsin Circuit Court Access database

I requested from Columbia County Court Reporter Kristin Labarre, and received on 12/13/23, a transcript of the motion hearing which led to the dismissal of the cases against PO Carriveau. I observed the following excerpts which indicated Judge Todd Hepler’s critical evaluation of insufficiencies in the arrest procedure and report by Deputy Lange. The officer’s body camera video was played in court as evidence during Deputy Lange’s testimony.

Deputy Lange acknowledged he was not 100% certain that PO Carriveau was intoxicated from his observations during his initial contact with him, but believed further investigation was necessary. During cross-examination by defense attorney Erika Bierma challenging his administration of the Standardized Field Sobriety Tests, Deputy Lange acknowledged error (pg. 28).

Q. You're trained to perform the test in a standardized manner; correct?
 A. Correct.

Q. And that's to get consistent results; correct?

A. Correct.

Q. And you didn't perform the test consistent with those standardizations; correct?

A. Correct.

He stated that if the Horizontal Gaze Nystagmus test stimulus is too quick, it can cause nystagmus.

Prosecutor Jeffrey Ocwieja included in his closing argument the following statement:

There were not a ton of clues as a result of those field sobriety tests. The only test that had six out of the six is the horizontal gaze nystagmus. Now, **it seems somewhat uncontroverted that that test was not done completely perfectly**. On the one hand, he did move his head a little bit, which, while not ideal, based on the testimony that is based on the training and experience of Deputy Lange, the amount was not such that it would completely throw the test into the garbage. **There were some questions about how long he held the stylus at the edge of Mr. Carriveau's view to look for sustained nystagmus versus just regular nystagmus, I guess, but the point is is that the test was not perfect**; however, field sobriety tests are not a prerequisite to arrest. All that is needed for an officer is probable cause. Probable cause -- we're almost to the finish line with the observations that -- or that Deputy Lange saw at the get-go. He did these further tests. There weren't a ton of clues, but there were some, and **his testimony is is that while the principal test, the HGN, wasn't done according to 100 percent best practices**, it was enough to push him over that hump to get him to believe that there was at least probable cause for the arrest.

Judge Hepler in his ruling (pp 31-33) stated:

The Court has reviewed the video and listened to the testimony and arguments in this case. **There's no question in looking at the field sobriety tests that there were significant discrepancies and problems conducting that test**. Deputy Lange, I would suggest that in the future, you really slow down when you're giving instructions. I could barely hear -- I'm amazed that he followed the instructions because I could barely hear what you were saying on the video when you were giving the instructions. So enunciate. Speak louder and more slowly in the future, but that's really important. It doesn't appear that Mr. Carriveau had problems following those. Again, I could barely hear what was going on, and -- and he's significantly younger, so that may have been a factor too.

Was there testimony about what those clues were in the HGN? I heard a conclusory six of six clues, but I don't recall hearing what those clues are, and certainly, **there's really no question, given the lack of stopping at the stimulus point -- or at the -- the far area, that that was not -- that that was not conducted properly as far as that goes**.

So again, it does appear, looking at that -- this is a -- this is a totality of circumstances. The other -- I guess what really is questionable is the testimony is that Mr. -- and I think **Deputy Lange acknowledged that Mr. Carriveau was chewing tobacco at the time but did not smell the odor of tobacco, a wintergreen chew, which just generally is a very strong smell, much stronger most of the time than what the odor of intoxicants would be. He testified there was a slight odor of intoxicants but no -- did not smell that. So that's an issue**.

We didn't see any bad driving. It was a failure to dim bright headlights. I do not credit the difficulty putting the paperwork back. I watched that. The slur -- I did not detect a slur. There was nervousness. I could clearly see that on the video that there was some level of nervousness, but looking at his watch, I'm not sure what that has to do with anything. I think that's fairly normal.

I think we have a situation where there just wasn't enough to establish reasonable suspicion, I think, to do the field sobriety tests, but certainly looking -- even if there were reasonable suspicion to conduct the field sobriety tests, the manner they were conducted does not lead to enough

clues to establish probable cause for the arrest. So for all of those reasons, I'm going to have to grant the suppression motion under that basis.

Due to this judicial ruling, the prosecutor indicated the blood results would ultimately be inadmissible evidence, so he moved to dismiss both charges.

Interview with PO Richard Carriveau

On the morning of 12/7/23, I interviewed PO Carriveau in the PSIA office, with his representatives [REDACTED] (WPPA) and [REDACTED] (MPPOA) present. This interview was audio-recorded and transcribed.

PO Carriveau stipulated that he was pulled over by police while driving off-duty in his personal vehicle on a public highway in Columbia County on 11/5/22 at approximately 2:42 am. He answered that he was pulled over not for driving behavior indicative of impaired driving, but for having his high beam headlights on. I asked what transpired to lead the deputy to perceive possible impairment by alcohol. He told PO Carriveau that he smelled a "slight odor of intoxicants" and asked him if he had been drinking. PO Carriveau replied, "Yes, approximately 2 hours ago." I asked if he had tobacco chew in his mouth prior to the PBT being administered to him and he said, "Yes, wintergreen tobacco." He was told the result of the PBT by the deputy as .10 percent blood alcohol content.

After submitting to the SFST and PBT, he said he was arrested for first offense OMVWI, was issued a citation, and agreed to give a blood sample for chemical testing. However, he elected not to answer questions after being read his Pre-Interrogation Warning & Waiver of Rights by the arresting deputy. He was not issued any driving-related citations or otherwise at this time. He was later notified of the test results from his blood draw, which he stated was .097. I showed him my copy of the test results from the WI State Lab of Hygiene stating that exact result. He said he had seen that document and did not have any factual contention with the accuracy of that result. He later stated that he did not have a secondary test of his own initiative conducted. I asked if, at the time of the traffic stop, he had been aware of the WI law prohibiting driving with a blood alcohol concentration above .08% and he said yes.

We discussed his intake of intoxicants on that date. He said he had attended a wedding in downtown Madison, beginning at 5:00 pm and the reception afterward. He said he had approximately four alcoholic beverages during the reception and his last drink consumed was at approximately 10:30-11:00 pm. He said he had none prior to the wedding. He also said he had no drugs or medicines, nor was he sick that day. Further, he stated he had no fatigue or diminished sleep.

Q: At any point during the evening while you were drinking, even before you left, did you, would you have felt like you were intoxicated?

A: No.

Q: Okay. At the time were driving from Madison to Poynette, did you believe or have any thought process that your own blood alcohol content at that point might have been close to the prohibited level?

A: No.

I asked if the wedding reception had designated drivers available to any guest who should need one and he said yes.

Q: Okay. Is that anything that you felt you needed at that time? Did you feel buzzed enough where it was a thought that crossed your mind?

A: No.

I pointed out that his passenger, [REDACTED] was deemed to be fit to drive by the deputy at the scene.

Q: I'll ask it this way. Why did she not just drive in the first place? I know that she got asked and I believe was tested by PBT also about her ability, her level of intoxication or lack thereof, to drive. If, I'm phrasing it this way, if she was in a better..

A: Yeah.

Q: ...position than you, had that come up about having her drive or..?

A: Yeah. So, the reason why I drove is because I was not feeling intoxicated. And the designated driver, she felt more intoxicated that she felt she couldn't drive.

PO Carriveau said he has never been stopped for any suspicion of OWI before. He said that he had not been dealing with any kind of alcohol abuse issues or in need of any kind of help. I inquired about the disposition of his court case, which had recently been concluded with a dismissal of charges. He stated, "*The ultimate disposition was both tickets being dismissed due to the lack of reasonable suspicion for pulling me out of the car and probable cause for the arrest. Stated by the judge.*" I asked if there were other details about what happened in court he felt were important to this case. PO Carriveau said, "Yes. To begin with, the reason of the stop, the headlights, the high beam headlights. There was no driving behavior. I did not receive a ticket nor a warning for the reason for the stop which then led to the reasonable suspicion to investigate the OWI in the first place. The administration of the Standard Field Sobriety Tests were evaluated in court and ultimately instructions were not read standardly. Nor were they, the tests, administered standard. Therefore throwing out the probable cause for an arrest.

Additionally, PO Carriveau continued with the following:

A: Yeah. So the judge also indicated that looking at the video presented in court and the officer's report, that what was said in the report was not depicted on the video. And in doing that,

specifically the Standard Field Sobriety Tests as they were explained to me and demonstrated, the judge questioned how even I could understand what the deputy was saying because he was mumbled and he was speeding through the tests and that he was astonished that I could even follow the deputy to even perform Standard Field Sobriety Tests for how poor they were administered.

██████████ Relying on your own...

A: And I was relying on my own training and not the standard.

Q: So in effect, you were kind of testing yourself and assisting him implicitly?

A: Correct.

Q: Whereas...

A: Even in his report he says, the deputy states that I placed myself multiple times into demonstration stance 'cause I knew the test.

Q: But the average person without your training as an officer would have difficulty following those instructions and that might lead to an improper result...

A: Correct.

Q: ...of failure?

A: And that was the argument in court.

PO Carriveau stated that at no point did he have any intention of pleading guilty to these or modified charges.

He said he had personally read the police report authored by Deputy Lange and disputed his version of some of the facts.

A: Yeah. So he, his articulation of reasonable suspicion to pull me out of the vehicle including the, his observations of me at the vehicle. He stated that he heard a slight slurred speech and odor of intoxicants, bloodshot glassy eyes, and that I had slight difficulty putting my insurance papers back in my envelope. Those were all disputed in court where the judge negated that he did not see any of these on his, on the, on his body-worn camera.

Q: Okay. Other portions of the report that you don't find actual, accurate or true?

A: The deputy states that he explains the horizontal gaze nystagmus test to me, which he did not and which was shown on his body-worn camera. And the point at which he sees distinct and sustained jerkiness at maximum deviation in both my left and right eyes. What was shown on the body-worn camera is that he never held at maximum deviation. He continued to pass and actually admitted that he could probably have caused nystagmus due to his fast motions of his hand. And I believe that is it.

On the issue of notification, PO Carriveau confirmed that he called Sgt. Javier Loredo later in the morning a few hours after his release to inform him of the arrest.

Lastly, we discussed the personal impact this incident had on him.

Q: Okay. If you were to find yourself in a future similar situations, let's say a wedding reception where alcohol is consumed, will this experience be something that is present in your mind instruments of decision making for driving?

A: Absolutely.

Q: Okay. Is there anything that you would like to add or any questions that you have?

A: I think I'd like to add that through all of this, I made a poor decision and I know that. I made a mistake and I just want to get back.

The interview concluded at 9:35 am.

Relevant Department SOP and Guidelines

MPD Code of Conduct – Notification Required Regarding Law Enforcement Contacts

Members of the Department who are contacted by any law enforcement agency regarding their involvement, as a suspect, witness, victim, or contact in criminal conduct, first-time OMVWI or hit and run, shall report the incident to their commanding officer or the OIC. This includes when a member has law enforcement contact regarding a statutorily-defined domestic relationship (including those relationships which are covered under MPD SOP Domestic Abuse Investigations).

Supervisory contact must be in person or a telephone conversation within 24 hours of the incident or their return to duty, whichever comes first. The commanding officer receiving the report shall review the circumstances of the incident and determine whether any further investigation or action by the Madison Police Department is necessary. The fact that an employee has not been charged or convicted of an incident does not bar Departmental investigation and/or discipline under this policy.

MPD Code of Conduct – Unlawful Conduct

Members of the Department shall not engage in conduct which would constitute a violation of criminal law or an ordinance corresponding to a state statute which would be a crime in the jurisdiction where the conduct occurred. This includes first-time OMVWI or hit and run offenses.

Department personnel shall immediately notify a supervisor whenever investigating an incident where the suspect is a law enforcement officer (any criminal culpability or OMVWI). A supervisor should affect a timely response to the scene and coordinate the investigation.

Summary

Officer Richard Carriveau attended a wedding reception in Madison, where he consumed alcoholic beverages, on the evening of 11/5/22. He drove his personal vehicle, off-duty, into Columbia County, WI, to provide another guest a ride home from the event. At approximately 2:42 am, he was stopped by a deputy of the Columbia County Sheriff's Office for a traffic violation, for failing to dim his high beam headlights. This led to an investigation and eventual arrest of PO Carriveau for OMVWI, first offense. A PBT was administered at the scene and showed a result of .10% BAC. PO Carriveau was cooperative and submitted to a blood draw for testing of his BAC, which later returned results of .097%. He was released from the hospital to the care of a responsible party, his passenger, who passed a PBT without concern. PO Carriveau was cited and charged with two Traffic Forfeitures in Columbia County Court, for OMVWI and Operating with a Prohibited BAC greater than .08%, both first offenses.

PO Carriveau did make the required and timely notification of his arrest to a supervisor, Sgt. Javier Loredó.

PO Carriveau entered a plea of not guilty to his charges and intended to proceed with a jury trial. The court case extended to a trial date of 11/27/23, over a year after the incident. Employing the available

evidentiary body camera recordings of the incident and comparing to the police report and testimony, critical analysis of the administration of the Standardized Field Sobriety Tests, among other cited concerns, led to the trial judge's opinion in a suppression motion hearing that the arresting deputy lacked reasonable suspicion for the OMVWI investigation leading to PO Carriveau's arrest. Consequently, the prosecutor dismissed both charges and the case terminated.

While there was neither a conviction nor plea for a violation of any statute, criminal or otherwise, the fact pertaining to the blood alcohol concentration present in PO Carriveau's system at the time of his arrest is not contested. He submitted to chemical testing of his blood, a sample of which was drawn at approximately 3:35 am on 11/5/22. When I interviewed PO Carriveau, he estimated his last consumption of intoxicants (the last of a total of four drinks) was at approximately 10:30-11:00 pm, nearly four hours earlier. The WI State Laboratory of Hygiene testing of his blood sample yielded a result of .097% BAC. In the interview, PO Carriveau did not dispute this result, and also stated he was already aware before the date of the incident of the WI law prohibiting driving a motor vehicle with a BAC greater than .08%. He explained that he did not perceive himself to be legally intoxicated when he left the wedding reception, and therefore did not make alternative arrangements for driving. He has acknowledged that he was mistaken about this self-assessment.

While the case for impaired driving was not proven, the laboratory blood test result would tend to indicate incontrovertible evidence that PO Carriveau violated the WI statute 346.63(1)(b), and therefore violated the Madison Police Department's Unlawful Conduct policy.

Recommendation:

MPD Code of Conduct – Notification Required Regarding Law Enforcement Contacts: Exonerated.

MPD Code of Conduct – Unlawful Conduct: Sustained.