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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
APPEAL NUMBER: 2014AP001696

INTHE MATTER INTHE REFUSAL OF SCOTT S. MAHLER:

COUNTY OF EAU CLAIRE,

Plaintiff, Respondent

v.

SCOTT S. MAHLER,

Defendant, Appellant

AN APPEAL FROM A DECISION MADE BY
THE HONORABLE JUDGE JON THEISEN OF EAU CLAIRE COUNTY

MEMORANDUM BRIEF AND APPENDIX OF APPELLANT

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By: Michael M. Rajek
State Bar Number: 1015231

I.STATEMENT OF ISSUES

Should a Law Enforcement Officer who has placed an OWI suspect under arrest for OWI1st make sure that a citizen suspected of such an offense fully understand and be clearly informed of the contents of the “Informing the Accused” form as a procedural safeguard to ensure the suspect is fully aware of the consequences should they decline to take a chemical test in actions involving alleged refusals.

II. STATEMENT OF THE CASE

On February 22, 2014 the Eau Claire County Sheriff’s Department stopped Defendant-Appellant, Scott Mahler for a traffic violation. The Deputy suspected alcohol use and subsequently placed the Appellant under arrest for DWI. The Deputy allegedly read a standardized form “Informing the Accused” to the suspect, Mr. Mahler. The Deputy made no effort to explain the form or its contents to Mr. Mahler nor did the Deputy ever enquire whether or not the Defendant understood it or its contents and the potential consequences of the Defendant-Appellant’s choice as to consent or not to a chemical test. The Defendant-Appellant appeals from a finding the he refused to consent to a chemical test of his blood.

III.ARGUMENT

- 1) **THE OFFICER FAILED TO COMPLY WITH THE FIRST PRONG OF COUNTY OF OZAUKEE V. NANCY QUELLE, 542 N.W.2D 196, 198 WIS. 2D 269, BY NOT MEETING HIS DUTY UNDER 343.305(4).**

This is evidenced by the officer's failure to both sign the form and have the Defendant-Appellant sign the form. Without these endorsements at the time of arrest there is no way to objectively say that the officer fully complied with the statutory requirements.

Page 30 of Refusal hearing transcript reads (APP 1):

Q: "And you're indicating in your report and your testimony that Mr. Mahler fully understood everything on that form; is that right?"

A: "I did not ask him if he understood everything."

Q: "You didn't ask him if he understood it?"

A: "Correct."

2) BY NOT COMPLYING WITH THESE REQUIREMENTS THE SECOND PRONG OF QUELLE COMES INTO QUESTION BECAUSE THERE IS NO WAY TO KNOW WHAT OTHER STATUTORY REQUIREMENTS WERE NOT FULFILLED.

3) SINCE IT IS CLEAR THAT THE STATUTORY REQUIREMENTS WERE NOT COMPLIED WITH IT IS REASONABLE TO ASSUME THAT THE INCORRECT PROCEDURE DID IN FACT AFFECT THE DEFENDANT-APPELLANT'S ABILITY TO MAKE THE CHOICE ABOUT CHEMICAL TESTING.

IV. CONCLUSION

By failing to ascertain whether the Appellant understood the "Informing the Accused" it cannot be asserted by the State that the officer accurately delivered the information to the driver. While it has been held that the officer's need not explain all of the choices where, as

Miranda v. Arizona, 384 U.S. 436, 467 (1966), cases there need to be an acknowledgement by an accused driver. It is no burden, inconvenience or trouble for the State to take adequate preventative measures to insure procedural safeguards by establishing that an arrestee understands the information provided.

V.CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8) (b) and (c) for a brief produced with proportional serif font. The length of the brief is 721 words. This brief was prepared using *Microsoft Office* word processing software. The length of the brief was obtained by the use of Word Count Function of the software.

Dated this _____ day of _____, 2015.

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VI. ELECTRONIC FILING CERTIFICATION

I hereby certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief. Dated in Eau Claire, Wisconsin the _____ day of _____, 2015.

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VII. CERTIFICATION OF MAILING

I certify that this brief was deposited in the United States mail for delivery to the Clerk of Court of Appeals by first-class mail, or other class of mail that is at least expeditious, on the _____ day of _____, 2015.

Dated: _____

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VIII. APPENDIX

Refusal hearing Transcript (Pg. 30)	APP.1
Refusal hearing Transcript (Pg. 31)	APP. 2
Order of the Circuit Court	APP. 3