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

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INTHE MATTER INTHE REFUSAL OF SCOTT S. MAHLER:

COUNTY OF EAU CLAIRE,

Plaintiff, Respondent

v.

SCOTT S. MAHLER,

Defendant, Appellant

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

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MEMORANDUM REPLY BRIEF OF APPELLANT

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By: Michael M. Rajek  
State Bar Number: 1015231

## I.ARGUMENT

It is and has been the Appellant's position that the failure of the arresting officer to even bother to ask the Appellant whether he understood the Informing the Accused form violates the first prong of the Quelle test.

With police actions and policies coming under increased scrutiny and the current reliance on video, body cameras etc., it is very little to ask of a police officer to require an acknowledgment that the appropriate statutory language has been read and understood. It is clear that the consequences of a "refusal" are dire for a licensed driver. Procedural safeguards such as set forth in Miranda v. Arizona, 384 U.S. 436 (1966) and adopted in County of Ozaukee v. Nancy Quelle, 542 N.W.2D 196, 198 Wis. 2D 269 put a heavy burden on the government to demonstrate that the Appellant here knowingly and intelligently refused a chemical test. The law demands that a citizen arrested for an offense be clearly informed. In our case the Appellant was cooperative, not argumentative, combative, or belligerent. There is no way that proper compliance with the Informing the Accused law can be guaranteed unless there is some attempt to make sure the form was properly read and that the arrestee understood and acknowledged the same. It should be noted that in Quelle the officer attempted to explain the Informing the Accused form and answer the arrestees questions. In our case not even a base attempt was made to determine if the Appellant understood. To side with the prosecutions arguments will encourage sloppy and haphazard police work and serve only to erode more public's trust in police officers in the field. Again, Appellant's arguments create no burden on police and only creating an environment of delivering to citizen's thoroughness and procedural safeguards to which they are entitled.

## II.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 572 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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**III. 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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**IV. 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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