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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

VILLAGE OF DEFOREST,

Plaintiff-Respondent,

vs.

Appeal No. 14 AP 2398

MICHAEL BRAULT,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT ENTERED
BY JUDGE STEPHEN EHLKE
IN DANE COUNTY

**REPLY BRIEF OF
DEFENDANT-APPELLANT MICHAEL BRAULT**

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ARGUMENT

I. Brault's Position Is Not Frivolous

Brault bases his appeal on the “sufficiency of the evidence” standard which is not frivolous. This Court often is asked to review the sufficiency of the evidence, in doing so it “may not substitute [its] judgment for that of the trier of fact unless the evidence, viewed most favorably to the verdict, is so lacking in probative force and value that no trier of fact, acting reasonably, could have found guilt to a reasonable certainty based upon clear, satisfactory and convincing evidence. ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Certainly, the standard is a high one. But, merely because an Appellant challenges the sufficiency of the evidence does not make the appeal frivolous.

- a. Brault's Position is based on the Sufficiency of the Evidence, not the Credibility of Witnesses.

Counsel for the Village misstates Brault's argument as a question of credibility. (Respondent's Br. 9.) Yet, not one time in Appellant's brief is there any mention of credibility. Whether the Village has

put forth sufficient evidence to support a conviction is something that this Court reviews under a de novo standard. **State v. Booker**, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676. It is not frivolous for an Appellant to request a review of the evidence under a sufficiency standard.

Appellant contends that Judge Ehlke erred by placing emphasis on Officer Stage's training and experience. (TR 29:10-15) Particularly given that Officer Stage seemed to "jump the gun" a bit when he came to a conclusion Brault was intoxicated before performing any Field Sobriety Tests.

(TR 12:1-4) Certainly, Counsel concedes there are other portions of Trial which might support a conclusion to the contrary of Brault's position.

Appellant provided a full copy of the transcripts – necessary to a determination as to whether the sufficiency of the evidence standard has been met.

e.g. Lee v. LIRC, 202 Wis. 2d 558, 560, n.1, 550 N.W.2d 449 (Ct. App. 1996). Counsel has not hidden the transcript or any facts which might be pertinent to this Court's analysis. Should this Court find that appealing a verdict based on the

sufficiency of the evidence is frivolous because an Appellant questions one portion of the evidence provided then nearly all appeals so based become frivolous.

CONCLUSION

Brault's position challenging the sufficiency of the evidence is not frivolous.

Dated: March 4, 2015.

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CERTIFICATION

I certify that this reply brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 856 words.

/s/ Adam Walsh

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CERTIFICATION

I hereby certify that the following appendix complies with Wis. Stat. § 809.19(2)(a) and that it contains: (1) the table of contents above; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential (this one is not), the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

/s/ Adam Walsh

Adam Walsh

**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated at Madison, Wisconsin: March 4, 2015

/s/ Adam Walsh

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