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STATE OF WISCONSIN  
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DISTRICT III  
2015AP000612 & 2015AP000613

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COUNTY OF EAU CLAIRE,

Plaintiff-Respondent,

V.

SUSAN M. SANDAS,

Defendant-Appellant,

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ON APPEAL FROM A DECISION MADE BY THE  
HONORABLE JUDGE KRISTINA BOURGET OF  
EAU CLAIRE COUNTY CIRCUIT COURT

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BRIEF AND APPENDIX OF APPELLANT

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**I. TABLE OF AUTHORITIES**

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## **II. STATEMENT OF ISSUES**

- 1) **Was there any competent and relevant evidence received at this trial that proved by clear, convincing, and satisfactory evidence that Appellant, Susan Sandas was so impaired by therapeutic levels of prescription medication that she could not safely operate a motor vehicle.**
- 2) **There was no substantiated or supported evidence to show Appellant drove left of center as alleged.**

## **III. STATEMENT OF CASE**

Defendant-Appellant was convicted by a jury of Operating Under the Influence of a Controlled Substance. Appellant Appeals her conviction because there was a complete lack of competent evidence of her guilt and the trial

court erred in failing to grant pre-trial and post-trial motions for a Judgment Notwithstanding the Jury Verdict and Motion to Dismiss. Further error occurred when unrelated and prejudicial evidence was allowed in over objection concerning non- involved medications.

#### **IV. STATEMENT OF FACTS**

On June 5, 2013 Susan M. Sandas was arrested and charged with Operating a Motor Vehicle while Under the Influence of Drugs to a degree that rendered her incapable of driving her vehicle safely. Her arrest followed a complaint by a motorist of erratic driving. Ms. Sandas was returning home from work as a registered nurse and was being followed by the individual who had called 911. A short while later Ms. Sandas was intercepted by an Eau Claire Policeman who followed her for several blocks and observed her drive through a busy parking lot at a local Kwik Trip store. This officer noticed no bad driving. Ms. Sandas was stopped and

field tested by an Eau Claire County Deputy and subsequently arrested for Operating a Motor Vehicle while Under the Influence of Drugs. It should be noted that Ms. Sandas advised the arresting officer that she had recent knee surgery that would affect her ability to perform, and that she was extremely fatigued. Despite this she was given field sobriety tests that involved her surgically repaired knee, and later arrested. It should be noted that the arresting officer was not DRE certified and changed his story concerning the knee surgery at trial, a blow to the credibility of anything he testified to.

At trial the evidence showed that Ms. Sandas had taken her prescribed medications as directed. There was no testimony from any witness that the prescription medications taken at therapeutic levels caused impairment in Ms. Sandas' driving; the evidence was that she was not impaired. The court denied her Motion for Judgment Notwithstanding the

Jury Verdict on February 6, 2015; she appeals therefrom. It should be noted that the court also denied a pre-trial motion to dismiss containing a letter from her Mayo Clinic doctor (*See App.*, p. 27), indicating that her prescriptions of oxycodone “has caused no significant impairment for your job, driving, or in your personal life.”

**V. STATEMENT OF NECESSITY OF ORAL ARGUMENT**

Yes, this matter involves substantial legal issues of statewide importance and needs to be brought up to the higher courts and legislature. An oral argument would give the Defendant-Appellant a chance to verbally clarify any issues the court may have.

**VI. PUBLICATION STATEMENT**

Yes, this matter is of statewide importance and involves significant legal issues.



## **VII. ARGUMENT**

### **1) LEFT OF CENTER CHARGE**

The evidence introduced at trial was that Appellant was driving erratically and crossed the centerline. The Appellant when called adversely denied this (*See App.*, p.19). There was no corroborating evidence by any other person or law enforcement officer to substantiate the citation for left of center. No violations of the traffic code were committed in the presence of law enforcement. There is no way a conviction should be upheld without some sort of corroboration that a violation in fact occurred. The fact that the complainant called 911 to report and subsequently wrote a statement, gives no more credence to the charge. Complainant says she did, Appellant denied it. The charge should fail; to hold otherwise would open potential for a floodgate of potentially false allegations.

## 2) IMPAIRED DRIVING CHARGE

a) Field Sobriety Tests were improperly performed and of no use whatsoever. No competent evidence by police officers showing impairment by Appellant [Susan Sandas].

b) Neither police officer who encountered Ms. Sandas was a Drug Recognition Expert. The facts are that Ms. Sandas was inappropriately field tested on a recently surgically repaired knee and had reported extreme fatigue/sleep deprivation. Nystagmus was not caused by the drugs; she was prescribed (*See App.*, p.18, *testimony of Forensic Scientist, Thomas Burr*). It remains open to conjecture what if anything was done correctly in administering field tests to Ms. Sandas. On *Page 137 (App., p. 20)* of the transcript it becomes obvious that the officer was untruthful when he testified in July of 2013 at a Motion hearing that

Ms.Sandas never said there were problems with her lower extremities, when in fact the video dash cam clearly showed that several times this was mentioned by Ms. Sandas. The officer admitted to changing his story for trial (*See App.*, p. 20-21). It should also be noted that at *Tr. p. 194, lines 2-4*(*App.*, p. 26) the field sobriety tests were compromised and not valid due to a failure of the officer to follow proper protocol. It should also be pointed out that no law enforcement officer observed any bad driving. Thus, the field tests as evidence of impairment were compromised and are therefore useless in value.

### **3) THREE EXPERT WITNESSES TESTIFIED**

#### **a) State Lab Supervisor Johnson**

Mr. Johnson testified that a comprehensive drug screen was done on a blood sample taken from Ms. Sandas; the tests

results showed prescription medications were at the proper prescribed therapeutic levels. He testified that it was possible that someone taking medication at a therapeutic level to be impaired, *but* he could not infer impairment here (*See App.*, p. 24, lines 22-25). The key testimony however, came when Mr. Johnson answered a question on Cross Examination:

Q. “Mr. Johnson , it’s fair to say that your lab can’t say “yes” or “no” whether or not Ms. Sandas was impaired from Oxycodone on the day she was stopped, can you?”

A. “That’s fair.”

The State’s own witness could not and would not say the prescription medications taken by Ms. Sandas at the proper therapeutic levels would cause her to be impaired at all, let alone impairment preventing safe driving.

**b) Dr. Richard Alfuth of the Mayo Clinic**

This licensed Mayo Clinic Doctor was and is Ms. Sandas’ treating physician; Dr. Alfuth testified that:

“Ms. Sandas is a truthful patient who suffered from two to three days of sleep deprivation” (*See App.*, p. 22, lines 10-22).

He testified that for approximately five years Ms. Sandas has been taking oxycodone at his direction (*See App.*, p.23). Dr. Alfuth clearly states that there would be no impairment to her daily life, or her driving (*See App.*, p. 23).

c) **Forensic Scientist, Thomas Burr**

Mr. Burr testified on Ms. Sandas’ behalf. Mr. Burr is a nationally recognized expert in the field of toxicology and forensic science with over 40 years’ experience. Mr. Burr testified that not only were the field sobriety tests not valid (*See. App.*, p. 26, 2-4), but also that there is no evidence of impairment due to prescription medications in this case (*See App.*, p. 25, 10-12).

Q. “Based on what you read in the police reports, what you’ve heard in the testimony here today from her treating physician, her health care provider, I should say, and from your observations of Ms. Sandas on the

she was impaired by the drugs that were in her system, tested at the Lab of Hygiene?”

A. “I don’t think there’s any evidence that would allow one to make that conclusion that she was impaired by those drugs.”

## **VIII. CONCLUSION**

### **BURDEN OF PROOF NOT MET**

The jury instructions on the law call for clear, satisfactory and convincing evidence that the defendant-appellant was under the influence of a drug to a degree that rendered her incapable of driving her vehicle safely. The County’s case fails and the court should have granted the motion filed by the defendant before trial not to even give this case to the jury because of the following:

a) No evidence of impairment of her [Susan Sandas'] driving was caused by the therapeutic levels of prescription medications in her system. This was proven by the treating

physicians' testimony, backed up by testimony of Forensic Scientist, Thomas Burr, and the expert witness from the Wisconsin Lab of Hygiene. It should be noted that the trial court completely mischaracterized Mr. Johnson's testimony and totally ignored Forensic Scientist, Thomas Burr's testimony in her written decision. Clearly error.

As a result, there was, because of incompetent law enforcement opinion testimony a Neverland of opinions versus alternative explanation and truth. The burden of proving to the jury every fact providing concrete evidence of degraded mental and physical faculties rests with the County and here there is no connection to the prescribed levels of medicine in Ms. Sandas' system and impaired driving.

No law enforcement officer involved here was a trained Drug Recognition Expert. They are trained only in the basis of standardized field sobriety testing which is for alcohol not drugs. Stringent evidentiary prerequisites such as proper DRE

protocol were allowed without foundation, without scientific basis and labelled relevant. All of these conclusions by the police were not corroborated by any scientific evidence concerning the drugs she [Susan Sandas] took according to her physician's directions. Thus, the jury fell prey to the authority and authenticity of the police testimony as "experts" when in fact they were far from it and totally mistaken is their interpretation, for example finding HGN from medications that don't cause HGN and totally discounting and ignoring Defendant-Appellant's explanation that she was extremely fatigued. The probative value of this testimony was far outweighed by the danger of unfair prejudice, confusion of issues, and misleading the jury. Furthermore, the continued misleading of the jury by the prosecution allowed over repeated objection concerning drugs unrelated to this case not in Ms. Sandas' system, poisoned the jury. The prosecution was allowed to portray Ms. Sandas as a pill popping freak



when the truth is that Ms. Sandas , a registered nurse took only her medication as her Dr. prescribed at the doses her Dr. prescribed. Her daily life , her occupation as a registered nurse and her driving were not affected by her medication.

Thus, the Appellant respectfully requests that the verdict be set aside on its merits and that a judgment of acquittal be entered.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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## **IX. 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: minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of a minimum of 2 points , maximum of 60 characters per full line of body text. The length of the brief is **2,295** 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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**X. 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 this \_\_\_\_\_day of \_\_\_\_\_, 2015

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**XI. 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 this \_\_\_\_\_ day of \_\_\_\_\_, 2015

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## **XII.APPENDIX**

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