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**CLERK OF COURT OF APPEALS
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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

COUNTY OF EAU CLAIRE,

Plaintiff- Respondent,

v.

Appeal No. 2015AP612 &
2015AP613

SUSAN M. SANDAS,

Defendant- Appellant,

APPELLANT’S REPLY BRIEF

ON APPEAL FROM A DECISION MADE BY THE
HONORABLE JUDGE KRISTINA BOURGET OF
EAU CLAIRE COUNTY CIRCUIT COURT
CASE NO’s 2013TR6817; 2013TR6816

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TABLE OF AUTHORITY

Alabama v. White, 496 U.S. 325 (1990)

STATEMENT OF THE CASE

This is a reply to a brief submitted by the Eau Claire County District Attorney in an appeal of a conviction for operating left of center and operating under the influence of a drug to a degree which rendered Appellant incapable of safely driving. It was and is Appellant's position that no proof or competent evidence was entered by the State to sustain these convictions.

STATEMENT OF ARGUMENT AND ORAL PUBLICATION

The Appellant reiterates the request for oral argument and publication as Appellant believes this case is of statewide importance.

ARGUMENT IN REPLY TO STATE'S BRIEF

I.) The State has identified no credible evidence and produced not a single witness that says clearly, convincingly and satisfactorily that Susan Sandas committed either offense.

a) **Witness Gerk-** claimed he observed bad driving.

Witness Officer Porn saw no bad driving at all when he observed Appellant on a main highway making several turns and driving through a very busy business at rush hour.(*See Tr. 95. 6-17*). No law enforcement officer corroborated Gerk's claim with collective knowledge. There was no bad driving in the presence of an officer. While Gerk's story might be the basis for a stop it cannot and should not be the basis for a citation. *See, Alabama v. White*, 496 U.S. 325(1990).

What credible evidence was received in this trial that shows Appellant, Ms. Sandas was under the influence of a drug to the point of inability to safely drive.

b) **Witness Porn and Walters-** Neither arresting officer is a trained Drug Recognition Expert. One officer ignored National Highway Traffic Administration standards by giving Ms. Sandas certain lower body balance tests

after she had had recent knee surgery. It should be noted that on this critical issue the officer was untruthful at a Pre-trial Motion hearing and later admitted to changing his story. (*See, Tr. 138. 2-6*). It is important to at trial also that neither of these officers are qualified to testify about any level of impairment from drugs. (*See, Tr. 138. 20-25; 139. 1-2*). It should be noted that the facts show Ms. Sandas suffered from sleep deprivation of up to three days before her arrest.

- c) **Witness Johnson** – It is abundantly clear that the State’s expert could not say that Appellant was impaired to any level let alone the level that she would be incapable of driving. (*See, Tr.179. 22-25*). The question arises then who placed “any” clear, convincing and satisfactory evidence in the record to uphold this verdict.

d) Defense Witness, Thomas Burr , Forensic Scientist-

A nationally recognized Forensic Scientist with 47 years of experience testified that the field sobriety tests were unworthy because they were done incorrectly ; i.e. not valid. (*See, Tr.186. 1-25*).Further it was stated that Ms. Sandas' sleep deprivation is very similar to the common signs of intoxication. (*See, Tr.187.1-12*). Most importantly however is the statement that:

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

This testimony plus that of Dr. Alfuth of the Mayo Clinic (*See, Tr. 148. 10-13*) it should be absolutely clear that she (Appellant)was not impaired by drugs while driving her car.

CONCLUSION

The State of Wisconsin obviously to this writer wanted to win this case at any cost and got what they wanted by poisoning the jury with irrelevant and at times prejudiced remarks and question that were intended to make Appellant look like a crazy woman on drugs. A look at the transcript and the facts show otherwise. The State knew because of Mr. Johnson, the State's Chemist, that they couldn't prove impairment. Instead they embarked on a legal smear campaign and achieved the deserved result. Ms. Sandas, a Registered Nurse had suffered from three days of lack of sleep. She followed her physician's instructions and took her medicine for pain. While perhaps driving badly she was not and was never impaired by drugs to the point of unsafe operation. The prosecution was a persecution and a detached review of the facts and testimony will undoubtedly show Appellant's innocence.

Dated this ____ day of _____, 2015.

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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 **1,190** 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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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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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,
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_____ day of _____, 2015.

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APPENDIX

Jury Trial Transcript portions

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