

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I**

RECEIVED

06-20-2016

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

**Appeal No. 2016 AP 000256
Milwaukee County Circuit Court Case Nos.
2015TR008383**

VILLAGE OF BAYSIDE,

Plaintiff-Respondent,

v.

AMBER E. SCHOELLER,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF
CONVICTION IN THE CIRCUIT COURT FOR
MILWAUKEE COUNTY, THE HONORABLE T.
CHRISTOPHER DEE, JUDGE, PRESIDING**

**THE REPLY BRIEF OF THE DEFENDANT-APPELLANT
AMBER E. SCHOELLER**

**By: Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997**

**Piel Law Office
500 W. Silver Spring Drive
Suite K-200
Milwaukee, WI 53217
(414) 617-0088
(920) 390-2088 (FAX)**

TABLE OF CONTENTS

	<u>Page No.</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
ARGUMENT	3
CONCLUSION	5
FORM AND LENGTH CERTIFICATION	6
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12).....	7

TABLE OF AUTHORITIES

Page No.

CASES

Court of Appeals (unpublished)

<i>City of Mequon v. Wilt</i> , No. 2011AP931, 2011 WL 5375126, (Ct. App. Nov. 9, 2011)	4
<i>State v. Sonneberg</i> , No. 2012AP1025, 2012 WL 4094148, (Ct. App. Sept. 19, 2012)	4

ARGUMENT

In support of its argument that the evidence is sufficient to support the verdict even without the refusal, the Village compares Ms. Schoeller's case to two unpublished cases, *City of Mequon v. Wilt*, No. 2011AP931, 2011 WL 5375126, (Ct. App. Nov. 9, 2011), and *State v. Sonneberg*, No. 2012AP1025, 2012 WL 4094148, (Ct. App. Sept. 19, 2012).

However, the facts in each case are significantly different than those herein. Unlike Ms. Schoeller's case, in *Wilt* there was a one vehicle accident. Furthermore, Mr. Wilt exhibited normal balance problems even before field sobriety testing, and was acting very confused. ¶4. The fact that there was a one car accident, Mr. Wilt was unsteady on his feet, and appeared to be very confused were all significant factors in the determination that the City established proof of impairment by clear, satisfactory and convincing evidence. *Wilt* at ¶23.

Similarly, in finding the evidence sufficient to justify the conviction in *Sonneberg*, the *Sonneberg* court relied in part on the facts that the defendant exhibited very slurred speech and slow and methodical movements. *Id.* at ¶4.

In Ms. Schoeller's case, there was no accident, no slurred speech, no suggestion that Ms. Schoeller was unsteady on her feet or had motor coordination problems, and no testimony that Ms. Schoeller was confused. The cases relied on by the Village have significantly more indicators of impairment than those herein.

Thus, without the refusal the City failed to establish proof of impairment by evidence that is clear, satisfactory and convincing. Ms. Schoeller's brief in chief adequately addresses this issue, and no further argument will be provided.

CONCLUSION

Because of the above, the evidence was insufficient to establish that Ms. Schoeller was guilty of operating a motor vehicle while under the influence of an intoxicant. The trial court erred in finding Ms. Schoeller guilty. The court should vacate the judgment of conviction and remand this matter to the circuit court.

Dated this 20th day of June, 2016.

Respectfully Submitted

Piel Law Office

Walter A Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

Mailing Address:

500 W. Silver Spring Drive
Suite K200
Milwaukee, WI 53217
(414) 617-0088
(920) 390-2088 (FAX)

FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 6 pages. The word count is 898.

Dated this 20th day of June, 2016.

Respectfully Submitted

Piel Law Office

Walter A Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

Mailing Address:

500 W. Silver Spring Drive
Suite K200
Milwaukee, WI 53217
(414) 617-0088
(920) 390-2088 (FAX)

**CERTIFICATION OF COMPLIANCE WITH 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 s. 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 this 20th day of June, 2016.

Respectfully submitted,

Piel Law Office

Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997