

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

RECEIVED

11-07-2016

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

**Appeal No. 2016AP001534
Door County Circuit Court Case No. 2015TR002449**

In the matter of the refusal of Nicholas W. Stern

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

NICHOLAS W. STERN,

Defendant-Appellant.

**AN APPEAL FROM THE ORDER OF THE COURT
FINDING THE DEFENDANT REFUSED TO SUBMIT TO
CHEMICAL TESTING BEFORE THE HONORABLE
ROBERT HAWLEY, RESERVE JUDGE DOOR COUNTY
CIRCUIT COURT**

**THE REPLY BRIEF OF THE DEFENDANT-APPELLANT
NICHOLAS W. STERN**

**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.....	1
TABLE OF AUTHORITIES	2
ARGUMENT	3
CONCLUSION	4
FORM AND LENGTH CERTIFICATION	6
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12).....	7
APPENDIX CERTIFICATION	8
APPENDIX.....	10
Excerpts from Motion Hrg on 6/28/16.	ReplyApp.1

TABLE OF AUTHORITIES

Page No.

CASES

<i>State v. Wille</i> , 185 Wis.2d 673, 518 N.W.2d 325 (Ct.App. 1994).	4
-----------------------------------------------------------------------------------	---

ARGUMENT

The State's response to Mr. Stern's brief argues that because Officer Albertson testified on nine different occasions on direct examination and seven different occasions on cross-examination that Mr. Stern drove down the center of the bridge, that it must be true that Mr. Stern crossed the center line. The State fails to address Mr. Stern's central argument—that the video evidence offered into evidence by the defense directly contradicts Officer Albertson's testimony.

The State seems to make an issue with defense counsel's argument that the evidence adduced was insufficient to justify the stop. As counsel indicated prior to the start of the hearing, the only issue was whether Officer Albertson possessed sufficient reason for the stop. The argument advanced by Mr. Stern was concise and appropriate.

Finally, the State contends the defense "offered no evidence whatsoever." (Brief of Plaintiff-Respondent page 3). There are two problems with this argument. First, the burden of proof at a refusal hearing falls squarely on the state to establish that the officer possessed the requisite suspicion for the stop.

State v. Wille, 185 Wis.2d 673, 518 N.W.2d 325 (Ct.App. 1994)

(At refusal hearing State must establish that officer's account is plausible). Second, contrary to the State's contention, Mr. Stern did introduce evidence that directly put into question the plausibility of Officer Albertson's testimony. Mr. Stern offered into evidence the squad car video recording that captured the entire contact.

The video did not support the officer's assertion that Mr. Stern was "driving down basically the middle of the bridge." (R.18:6/ Reply App. 1). Albertson testified that Mr. Stern's vehicle was driving down the center of the road, "mostly in [Albertson's] lane." (R.18:7/ Reply App. 2).

The State disregards the video evidence in this case. Officer Albertson's testimony is inconsistent with the proffered video evidence. Mr. Stern did not travel down the center of the bridge, thus, contrary to the State's assertion there was no justification for the stop.

CONCLUSION

Because Mr. Stern did not violate a traffic law, the trial court's factual findings were clearly erroneous, and the trial court erred in finding that Mr. Stern unlawfully refused chemical

testing. The Court should reverse and vacate the trial court's order.

Dated this 7th day of November, 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 10 pages. The word count is 1226.

Dated this 7th day of November, 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 7th day of November, 2016.

Respectfully submitted,

Piel Law Office

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

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a table of contents; (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 this appeal is taken from a circuit court order or a judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, 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.

Dated this 7th day of November, 2016.

Respectfully submitted,

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

APPENDIX