

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2017AP002130
Green Lake County Circuit Court Case No. 2017CV000053

CITY OF BERLIN,

Plaintiff-Respondent,

v.

RICARDO A. ADAME,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGMENT OF CONVICTION
BEFORE THE HONORABLE MARK T. SLATE, JUDGE
GREEN LAKE COUNTY CIRCUIT COURT**

**THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT RICARDO J. ADAME**

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Wisconsin Court of Appeals

State v. Griep, 2014 WI App 25, 353 Wis.2d 252, 845
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ARGUMENT

Apparently, the City agrees that they have the obligation to present sufficient proof to show that the blood has not been “exchanged, contaminated or tampered with.” See Brief of Plaintiff-Respondent page 2.

However, the City argues that there was no evidence “suggesting any improbability that the blood sample in question was exchanged, contaminated or tampered with.” Brief of Plaintiff-Respondent page 1. Defense counsel attempted to introduce evidence regarding problems with the testing process, however, the court refused to allow the defense to present evidence that on the same date that Mr. Adame’s specimen was collected, there were failures in this specific analyst’s testing process. (R.28:104-114/ Reply App. 2-12).

Moreover, no witness testified as to the condition of the blood sample when it was received by the state lab, or as to the vial numbering, the names on the vial when received, or whether the names on the vials corresponded to the names on the paperwork received by the lab.

Furthermore, while William Johnson testified as to the procedures that are followed by the lab, and as to what information was written on the analysis form, he specifically testified that he could not attest to the accuracy of what was entered. (R.28:98/ Reply App 1). In support of its argument, the City cite *State v. Griep*, 2014 WI App 25, 353 Wis.2d 252, 845 N.W.2d 24 (while the City cites to the Court of Appeals opinion, the case was affirmed by the Wisconsin Supreme Court, *State v. Griep*, 2015 WI 40, 361 Wis.2d 657, 863 N.W.2d 567.) In *Griep*, the supervisor's testimony was significantly more detailed than the testimony of Mr. Johnson's herein. The analyst in *Griep* testified:

That all indications were that Kalscheur [the original analyst] followed the laboratory procedures and the instrument was working properly. Harding [the supervisor] testified that the machine's proper function was evident from the results of calibration checks run throughout the course of the tests. Harding said, "the calibration checks that are analyzed throughout the course of the analytical run read correctly, specifically and importantly, the two known samples that bracketed Mr. Griep's sample read within their acceptable range." Harding opined that correctly running the sample through the testing instrument resulted in a reliable blood alcohol reading. Harding also opined that after reviewing the data, he came to an independent opinion that Griep's BAC was 0.152. And finally, it was Harding's opinion that laboratory procedures required notation of any irregularities with the sample, and there had been no such notation by the analyst." *Griep*, 2015 WI 40 at ¶40.

Here, the testimony provided by William Johnson in terms of reviewing all the documentation regarding Mr. Adame's testing, was significantly less than the testimony provided by the analyst in *Griep*. Here, Johnson testified that he could not testify as to the accuracy of what was written, but simply that the document was filled in. (R.28:98/ Reply App.1). Also, on during *voir dire*, William Johnson, testified that he could not attest to the procedures followed by the analyst. (R.28:113/ Reply App.11). While *Griep*, as the City acknowledges, addressed confrontation rights, the evidence in *Griep* was significantly greater than that herein. Additionally, here, from the *voir dire* of Johnson, the evidence was clear that the analyst did not properly perform all testing processes.

The City failed to present sufficient proof establishing a proper chain of custody. Thus, the court erred in admitting the test result.

CONCLUSION

Because of the above, the Court erroneously admitted the blood test result into evidence. This Court should vacate the judgment of conviction and dismiss this matter.

Dated this 1st day of March, 2018.

Respectfully Submitted

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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 17 pages. The word count is 1492.

Dated this 1st day of March, 2018.

Respectfully Submitted

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**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 1st day of March, 2018

Respectfully submitted,

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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 1st day of March, 2018.

Respectfully submitted,

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APPENDIX