

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2018 AP 000951CR
Winnebago County Circuit Court Case Nos. 2017CT000846

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JESSE J. KAIN,

Defendant-Appellant.

AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND THE DECISION OF THE TRIAL
COURT DENYING THE DEFENDANT-APPELLANT
MOTION FOR SUPPRSSION OF EVIDENCE, IN
WINNEBAGO COUNTY, THE HONORABLE SCOTT C.
WOLDT, JUDGE, PRESIDING

THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT JESSE J. KAIN

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)

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ARGUMENT

The State's argues that the record at the motion hearing contains no evidence of an ignition interlock device installed in Mr. Kain's vehicle. This is wrong, while the officer testified he could not remember if he observed the device (R.39:20/ ReplyApp 2), the officer testified Mr. Kain claimed there was no alcohol in his system, inasmuch as Mr. Kain just blew into his IID to start his vehicle. (R.39:12/ ReplyApp 1). Officer Mulroy knew Mr. Kain had an IID in his vehicle. If Mr. Kain did not, he would have been cited for the violation.

Furthermore, the State contends even if the IID were in the car, there is nothing suggesting the threshold for a "no start", implying a no start could be higher than .02, and thus a "no start" would not necessarily mean Mr. Kain was under .02. Additionally, the State claims the record is silent as to "cheat" techniques which might be employed. First, Wis. Stat. §340.01(23v), defines an ignition interlock device as a device "installed on a vehicle in such a manner that the vehicle will not start if the sample shows the person has a prohibited alcohol concentration." A prohibited alcohol concentration is .02 when there is an IID in the vehicle. Wis. Stat. §340.01(46m)(c).

Finally, installation of the IID is authorized by statute, and the working method and process of the device should be presumed accurate. See *State v. Trailer Services, Inc*, 61 Wis.2d 400, 208, 212 N.W.2d 683 (1973). Any suggestion that the device was not working or operated properly is a matter of rebuttal. The State put forth no evidence to rebut the IID device was not functioning or operated properly on that date.

CONCLUSION

Because of the above, the trial court erred in denying the defendant's motion for the suppression of evidence. The Court should vacate the judgement of conviction and reverse the order denying Mr. Kain's motion.

Dated this 12th day of September, 2018.

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 9 pages. The word count is 1201.

Dated this 12th day of September, 2018.

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 12th day of September, 2018.

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 12th day of September, 2018.

Respectfully submitted,

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

APPENDIX