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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II**

Appeal No. 2020AP00888
Washington County Circuit Court Case No. 2019TR004106

**IN THE MATTER OF THE REFUSAL OF JAMES
MICHAEL CONIGLIARO:**

WASHINGTON COUNTY,

Plaintiff-Respondent,

v.

JAMES MICHAEL CONIGLIARO,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGMENT OF CONVICTION
BEFORE THE HONORABLE ANDREW T. GONRING
AND SANDRA J. GIERNOTH, JUDGE WASHINGTON
COUNTY CIRCUIT COURT**

**THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT JAMES MICHAEL
CONIGLIARO**

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TABLE OF AUTHORITIES**Page No.****CASES****Wisconsin Supreme Court**

State v. Reitter, 227 Wis.2d 213, 595 N.W.2d 646
(1999).

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ARGUMENT

The State concedes there is a “burden on law enforcement to inform a driver that repeated requests for an attorney can amount to a refusal.” Brief of Plaintiff-Respondent page 11. The State also concedes Deputy Lagosh did not warn Mr. Conigliaro that his repeated request for an attorney could amount to a refusal. *Id.* However, the State splitting hairs, argues the deputy did not construe the repeated request to speak to an attorney as the refusal, but rather Mr. Conigliaro’s comment that he would not submit to chemical testing as he believed he needed to consult with an attorney, as the refusal. (Reply App .1).

The State attempts to view this in a vacuum. There was a significant conversation had before Mr. Conigliaro said no I want to consult with counsel. This conversation included Deputy Lagosh assuring Mr. Conigliaro he had the right to speak to an attorney. Which, while true, was not necessarily true at the chemical test decision point in the process. Based on Lagosh’s extraneous statements, Mr. Conigliaro indicated a desire to speak with counsel prior to making the decision about chemical testing. Where Deputy Lagosh failed is at no point did Lagosh

tell Mr. Conigliaro that he did not have the right to speak with an attorney prior to making the decision about chemical testing. Another failure is Lagosh did not advise Mr. Conigliaro that if he continued to request an attorney, Deputy Lagosh would consider it a refusal. This is the burden the State concedes falls upon law enforcement. Based on his conversation with Mr. Conigliaro, Deputy Lagosh was required to dispel Mr. Conigliaro's belief about counsel. Deputy Lagosh did not do so, and thus the refusal must be dismissed.

The State also claims the three-prong test employed in *Reitter* has not been met. As argued in the initial Brief of Defendant-Appellant, the three-prong test has been met. The brief-in-chief adequately addressed these issues, and no further argument will be made herein.

CONCLUSION

Because the facts herein fall within the narrow exception to the *Reitter* case, the trial court erred in finding that Mr. Conigliaro refused chemical testing. The court should vacate the judgment of conviction and dismiss the refusal.

Dated this 27th day of August, 2020.

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 10 pages. The word count is 1220.

Dated this 27th day of August, 2020.

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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 27th day of August, 2020.

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 27th day of August, 2020.

Respectfully submitted,

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APPENDIX