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

**Appeal No. 2022AP2138
Dodge County Circuit Court Case Nos. 2022TR004523**

In the Matter of the Refusal of Matthew E. Sullivan:

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MATTHEW E. SULLIVAN,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND THE DECISION OF THE TRIAL
COURT DENYING MR. SULLIVAN'S REQUEST FOR
AN ADJOURNMENT OF THE PROCEEDING, AND
FINDING MR. SULLIVAN REFUSED CHEMICAL
TESTING IN DODGE COUNTY, THE HONORABLE
BRIAN A. PFITZINGER, JUDGE, PRESIDING**

**THE REPLY BRIEF OF THE DEFENDANT-APPELLANT
MATTHEW E. SULLIVAN**

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ARGUMENT

The State suggests the Court properly exercised its discretion in denying Mr. Sullivan's request for an adjournment. Brief of Plaintiff-Respondent at Page 6. Citing to the six factors relied upon by the Court in *State v. Wollman*, 86 Wis.2d 459, 273 N.W.2d 225 (1979), the State contends the Court properly exercised its discretion. However, the State, without pointing to any portion of the record, claims the "court's decision [denying the defendant's adjournment request] was based on the clear inconvenience to the State and to the Court which would occur if an adjournment was granted." Brief of Plaintiff-Respondent page 7. Contrary, to the State's contention, the record does not support a finding that the Court's decision was based on the "clear inconvenience to the State and to the Court".

What is clear from the record is the defendant had requested the matter be adjourned prior to the scheduled hearing. (R.5:1-2). Further, there is nothing in the record suggesting the State objected to said request. More importantly, the Court specifically did not consider any of the factors set forth in *Wollman*. There is nothing in the record suggesting the Court considered the length of delay requested. First, the defendant

simply asked for an adjournment so that the attorney he wished to hire could be present. Apparently, said attorney's mother was having heart surgery, and that precluded the attorney from appearing on the hearing date. The Court failed to even inquire of the defendant as to how long of a delay he was requesting.

The second factor, whether there were other associates who could cover the case, is not relevant here inasmuch as Mr. Sullivan was appearing *pro se* and wanting to hire counsel.

The third factor – whether other continuances were requested by the defendant, was not considered. Mr. Sullivan received notice of the hearing about 3 weeks prior to the date, he tried to hire counsel, was unsuccessful and requested (in writing) an adjournment. This was the only request that had been made in the case for an adjournment.

Similarly, and contrary to the State's contention, the Court failed to address the inconvenience to the parties, witnesses and the Court. The record is silent as to this factor.

Likewise, the Court did not consider the fifth factor. The delay was most certainly for legitimate reasons. It was not being used as a dilatory tactic, but rather because the defendant felt he needed the assistance of counsel for the proceeding.

Finally, in terms of the sixth factor, based on the record, the Court did not consider any additional factors which might support or be contrary to granting the continuance.

The State's argument suggesting the Court considered the appropriate factors in reaching its decision to deny Mr. Sullivan's request for an adjournment is not supported by the record. While the Court denied Mr. Sullivan's request, it was not based on a proper exercise of its discretion.

Because of this, the refusal order should be vacated and this matter should be remanded for a Refusal Hearing.

Finally, the State claims Mr. Sullivan refused to permit testing. The defense disagrees. The argument in the Brief of the Defendant-Appellant adequately addresses this argument, and no further argument is necessary.

CONCLUSION

Because the Court failed to address the stated factors in denying Mr. Sullivan's request for an adjournment, the trial court erroneously exercised its discretion, and the refusal should be vacated and remanded for further proceedings. Further, even if this Court finds the circuit court properly exercised its discretion, because the State failed to establish the third prong under Wis. Stat. §343.305(9)(a)5, the finding that Mr. Sullivan refused to permit chemical testing was erroneous. The Court should reverse the Judgment of Conviction and vacate the Refusal.

Dated this 18th day of July, 2023.

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 8 pages. The word count is 1230.

Dated this 18th day of July, 2023.

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 18th day of July, 2023.

Respectfully submitted,

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