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**WISCONSIN COURT OF APPEALS
DISTRICT I**

Appeal No. 2023AP000503

VILLAGE OF GREENDALE,
Plaintiff-Respondent,

v.

STACEY KING
Defendant-Appellant,

Appeal from a Judgment Entered in the Circuit Court of
Milwaukee County, the Honorable J.D. Watts Presiding,
Circuit Court Case No. 2022TR008338

**BRIEF OF PLAINTIFF-RESPONDENT,
VILLAGE OF GREENDALE**

LUKE A. MARTELL
State Bar No. 1103301
Municipal Law & Litigation
Group, S.C.
730 N Grand Avenue
Waukesha, WI 53186
Phone. (262) 548-1340

Attorneys for Plaintiff-Respondent

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STATEMENT OF THE ISSUES

Should this Court summarily affirm the judgment of conviction because (a) the brief filed by Defendant-Appellant Stacey King does not comply with the rules of appellate procedure, and (b) her claims are unsupported by the record?

This Court should affirm.

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

Oral Argument and Publication. This case does not merit oral argument nor publication. It merits only summary affirmance. Wis. Stat. § 809.21.

INTRODUCTION

This Court should summarily affirm because King's pro se brief does not comply with the rules of appellate procedure and her claims are not supported by the record. The Village of Greendale ("Village") proved to a reasonable certainty based upon clear and satisfactory evidence that Stacey King operated a vehicle while under the influence of an intoxicant. King represented herself at trial.

King is representing herself on this appeal. In her confusing and seemingly incomplete brief, King presents what appears to be three defenses to her convictions. This Court should summarily affirm on either procedural or substantive grounds because: (1) King's pro se brief fails to comply with all of the rules of appellate procedure; and (2) even if this Court were to overlook the procedural defects in her brief, King's substantive claims must be rejected on the merits because they are unsupported by the record. As the appellant, King is responsible for the appellate record. Although her claims concern alleged errors that occurred both before and during trial, King has not included the trial transcript in the record. This Court must, therefore, assume the trial court's rulings were correct because nothing in the record calls them into question. This Court may not cure the procedural and substantive defects in King's brief. Her pro se status is no excuse, and she must follow the rules of appellate procedure.

STATEMENT OF THE CASE

On March 15, 2020, King was driving her white 2016 chrysler 200 sedan headed westbound on Southway, exiting Sendiks grocery store at 4:43am. *R. 14, R. 46, Exh. 1.* This is located in the Village of Greendale and Sendiks was not open at that time. *Id.* Village of Greendale Police Officer Marcus Hudson saw King's vehicle exit Sendiks and proceed to make an illegal u-turn to go eastbound on Southway. *Id.* King's vehicle then drove outside of its lane crossing the fog line and the center line. *Id.* Officer Hudson continued following the vehicle where he saw it come to a stop in the middle of the highway twice for no reason. *Id.* There wasn't any other traffic on the road and there weren't any obstructions in the road. *Id.* Officer Hudson then ran his radar detector which returned a result of 28 mph in a 45 mph zone, at which point King's vehicle crossed the fog line again. *Id.*

After approaching the vehicle Officer Hudson made contact with King who had a strong odor of alcohol coming from her breath. *R. 14, R. 46, Exh. 2.* He also observed that she had red, glassy, bloodshot eyes and slurred speech. *Id.*

During the conversation, King stated she was coming from Elsa's, a bar/restaurant in Milwaukee. *Id.* When asked where she lived, King got her home address wrong and had to be corrected by the person she was on the phone with at the time. *Id.* King was also traveling in the opposite direction of her home. *Id.* Officer Hudson asked King where she was, but she he did not know what city she was in, at one point stating she was in brookfield or menomonee falls. *Id.* King also did not know what time of day it was, guessing it was 2 am, when it was 4:45am. *Id.*

King was then asked to step out the vehicle, where she used the b pillar of her vehicle to support herself for balance. *Id.* King was put through a series of field sobriety tests, which are specific tests designed to test whether a person is intoxicated and whether they could safely operate a vehicle. *Id.* Officer Hudson observed of 6 out of 6 clues on horizontal gaze nystagmus test, 6 out of 8 clues on the walk and turn test, and 3 out of 4 clues on the one leg stand test. *Id.*

Based on King's poor performance on those tests and the totality of the rest of the evidence, she was arrested and taken back to the Village of Greendale Police Department. King was read the informing the accused form, ensuring that she understood what her options were. *R. 14, R. 46, Exh. 3.* She initially refused to take the intoximeter breath test. *Id.* She then backtracked and decided to agree to take the test. *Id.* The officer's provided her an opportunity to take the test. *Id.* After being explained how the test worked and being given the complete instructions, King provided insufficient breath samples six times. *R. 14, R. 46, Exh. 4.* Over the course of the interaction, King became increasingly argumentative, profane and insulting to the officers, she was volatile, uneasy on her feet and soiled herself. *Id.* Ultimately, King was issued four citations, including operating a motor vehicle while intoxicated. *R. 2.*

On March 20, 2023, a jury trial was held involving municipal citations for operating a motor vehicle while under the influence, making an illegal u-turn, stopping on the highway, and deviation from lane. On March 21, 2023, the jury return unanimous verdicts of guilty for all four citations after deliberating for less than ten minutes. King only appeals the operating a motor vehicle while under the influence conviction.

STANDARD OF REVIEW

On appeal, the Court of Appeals views the evidence in the light most favorable to the jury's verdict, and will sustain the jury's verdict if there is any credible evidence under any reasonable view, that leads to an inference supporting the jury's finding. *See Reuben v. Koppen*, 2010 WI App 63, ¶ 19, 324 Wis. 2d 758, 773–74, 784 N.W.2d 703, 711 (“On appeal, we view the evidence in the light most favorable to the jury's verdict, and we will sustain the jury’s verdict if there is any credible evidence “under any reasonable view, that leads to an inference supporting the jury’s finding.” *Morden v. Continental AG*, 2000 WI 51, ¶¶ 38–39, 235 Wis.2d 325, 611 N.W.2d 659.”)

ARGUMENT

King chose to represent herself at trial and again on appeal. King’s decision to eschew counsel and represent herself both at trial and on appeal was foolhardy, but her exercise of the constitutional right to self-representation must be respected by the courts. *See Imani v. Pollard*, 826 F.3d 939, 944 (7th Cir. 2016) (“Defending pro se will almost always be foolish, but the defendant has the right to make that choice.”). King’s pro se brief on appeal does not comply with the rules of appellate

procedure and its arguments are unsupported by the record. This Court should, therefore, summarily affirm.

I. King's Brief Fails to Comply with the Rules of Appellate Procedure.

King is not excused from complying with the rules of appellate procedure just because she is proceeding pro se. *Townsend v. Massey*, 2011 WI App 160, ¶ 27 n.5, 338 Wis. 2d 114, 808 N.W.2d 155; *Larson v. Burmaster*, 2006 WI App 142, ¶ 47, 295 Wis. 2d 333, 720 N.W.2d 134; *Waushara Cty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). King's ignorance of the law and of the rules of appellate procedure is no excuse. *Douglas Cty. Child Support Enf't Unit for Niemi v. Fisher*, 185 Wis. 2d 662, 670, 517 N.W.2d 700 (Ct. App. 1994). *See also State v. Neumann*, 2013 WI 58, ¶ 50 n.29, 348 Wis. 2d 455, 832 N.W.2d 560 (ignorance of the law is no defense).

King's brief fails to comply with virtually all of the rules of appellate procedure. There is no "Statement of the Case" in King's brief, nor a "statement of facts relevant to the issues presented for review, with appropriate references to the record." Wis. Stat. § 809.19(1)(d). It does not adequately discuss "the procedural status of the case leading up to the appeal" and "the disposition in the trial court." *Id.* There are no citations to the record or any authority in the "Argument" section or, for that matter, anywhere else in the brief, beyond King's citations to her own failed pretrial motions. Wis. Stat. § 809.19(1)(e). King does not cite to points in

the pretrial proceedings or the trial where errors allegedly occurred because she did not include the trial transcript in the record. Her “Argument” is fully undeveloped, unsupported by facts in the record, confusing, and hopelessly conclusory. (Brief of App, 1.) There is no appendix to King’s brief as required by Wis. Stat. § 809.19(2) nor any of the required certification pages. Wis. Stat. § 809.19(8g). This Court should, therefore, affirm because King’s brief is procedurally defective.

II. King’s Claims are Unsupported by the Record.

While unclear, King appears to present three challenges to her conviction: (1) She was not given a fair jury selection; (2) the statute of limitations had run on her case; and (3) her diabetes contributed to her OWI.

a) King’s Jury Selection Defense

King does not state any standard for which a jury should be selected, nor what was in error in this case. Instead, the docket states the following:

Jury panel in court. Voir dire proceeded at the hour of 3:11 pm. Jury panel out of box at 4:12 pm. Court reviews strikes for cause with parties. Jury panel back in box at 4:24 pm. Jury panel out of box at 4:29 pm. Court instructs defendant on jury selection process. Jury panel back in box at 4:35 pm.

Six (6) good and lawful citizens of the County of Milwaukee, WI qualified to serve as jurors in the above entitled cause were duly impaneled. Jury list received and filed.

R. 21.

b) King's Statute of Limitations Defense

King cites an incorrect statute governing the statute of limitations for an OWI (first offense). Even if she had cited the correct statute, Wis. Stat. § 893.93(2) (b), in municipal court, ordinance violation cases are commenced when the complaint or citation is filed with or transmitted to the court, not when the trial ends. Wis. Stat. § 800.01(1). The citations were initially issued in March of 2020, then re-issued on January 10, 2022¹. R. 2. Additionally, King made this motion in circuit court and it was denied. R. 21.

c) King's Diabetes Defense

King had the ability to raise this defense during pre-trial motions and the trial, which she did unsuccessfully. King has again failed to cite to either the record or any authority which would support her position.

The appellate record is bare because King has chosen not to include any transcripts in the record. All of King's claims, however, concern what happened at the trial or involve pretrial motion hearings. Those claims simply cannot be resolved without transcripts.

As the appellant, it was King's responsibility to make sure that the record is complete and sufficient to support her claims. *State Bank of Hartland v. Arndt*, 129

¹ A trial took place in Municipal Court where King was found guilty, she appealed to Circuit Court where the citations were dismissed without prejudice before being re-filed on January 10, 2022. All of which took place within the 2-year statute of limitations.

Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). When an appeal is brought on an incomplete record, this Court must assume that every fact essential to sustain the trial court's decision is supported by the record. *Suburban State Bank v. Squires*, 145 Wis. 2d 445, 451, 427 N.W.2d 393 (Ct. App. 1988). This Court must, therefore, assume that the trial court rulings of which King complains were either not erroneous or harmless.

That assumption is bolstered by items that are included in the record: (1) the Alcohol/Drug Influence Report filled out by Officer Hudson and witnessed by Sgt. Zins and Officer Borkowski. *R. 29*. This document states that King's breath had a strong odor of alcohol, her attitude was uncooperative, her speech was slurred, her driving first led Officer Hudson to suspect she was under the influence of alcohol and his opinion on the night of the incident was that King was under the influence of intoxicants and her ability to operate a motor vehicle was impaired. *Id.* (2) the intoximeter maintenance test and intoximeter tests showing King's insufficient breath samples. (3) the squad and body cam footage of Officer Hudson and the body cam footage of Sgt. Zins clearly show King's intoxicated status.

It is not possible to address the merits of any of the issues King raises without the trial or hearing transcripts. However, the alcohol influence report, the intoximeter report, the body and squad cam footage, the testimony from the Village of Greendale police officers, and the circumstantial evidence, would in all reasonable probability have rendered any alleged trial error harmless. *E.g., State v.*

Harvey, 2002 WI 93, ¶ 49, 254 Wis. 2d 442, 647 N.W.2d 189. King's brief is, therefore, fatally deficient in both form and substance. This Court may not endeavor to cure those procedural and substantive defects for her. *E.g.*, *State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994); *State v. Pettit*, 171 Wis. 2d 627, 646–47, 492 N.W.2d 633 (Ct. App. 1992).

CONCLUSION

For the reasons stated above, the Court should summarily affirm the circuit court judgment of conviction.

Electronically Signed by Luke A. Martell

LUKE A. MARTELL

State Bar No. 1103301

Municipal Law & Litigation Group, S.C.

730 N Grand Avenue

Waukesha, WI 53186

Phone. (262) 548-1340

Fax. (262) 548-9211

Attorneys for Village of Greendale

Plaintiff-Respondent

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19 (8) (b), (bm) and (c) for a brief produced with proportional serif font. The length of this brief is 2,165 words.

Dated this 20th day of May 2024.

Electronically Signed by Luke A. Martell

CERTIFICATION OF ELECTRONIC SERVICE

I hereby certify that on May 20, 2024, I personally caused copies of the Brief of Plaintiff-Appellant to be electronically filed with the Court of Appeals and mailed to:

Stacey King
5180 N. Lovers Lane Road, #3
Milwaukee, WI 53223

Dated this 20th day of May 2024.

Electronically Signed by Luke A. Martell