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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2023AP001534 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MARIA A. LARSON,

Defendant-Appellant.

APPEAL FROM NONFINAL ORDER DENYING
SUBSTITUTION OF JUDGE IN KENOSHA COUNTY
CIRCUIT COURT WITH THE HONORABLE ANGELINA
GABRIELE PRESIDING

REPLY BRIEF OF DEFENDANT APPELANT

MARK D. RICHARDS
State Bar No. 1006324

RICHARDS & ASSOCIATES, S.C.
209 Eighth Street
Racine, WI 53403
262-632-2200 (P)
262-632-3888 (F)
mdr@richardslawracine.com

ARGUMENT

I. THE STATE RELIES ON AN IRRELEVANT CASE RELATED TO APPELATE PROCEDURE IN *ROHL*.

The State's response to Defendant's brief relies on a twisted reading of *Rohl v. State*, 97 Wis. 2d 514, 292 N.W.2d 922 (1980). (Brief of Respondent page 6). *Rohl* was about appellate procedure and the timing of a request for substitution upon remand. The Wisconsin Supreme Court, in a two page ruling, stated that Defendant misinterpreted the timing surrounding the 20 day limit to substitute after appeal remand and the 31 days it takes for the record to be submitted to the circuit court upon appeal remand. *Rohl* filed his substitution request improperly in the Supreme Court rather than the circuit court, and filed it before the record was received by the circuit court. *Rohl* was corrected about his procedural errors.

The case does not even mention the statute at hand 971.20(4), and bears no relevance to the procedure at the preliminary hearing/arraignment level of criminal proceedings. The application of *Rohl* to the statute at hand would result in the kind of absurdity that this court is instructed to avoid. It does not warrant any further discussion.

What the state does not dispute in its brief is that Defendant Larson in fact filed her request before making any motions to the trial court and before arraignment. Which satisfies the requirements of Wis. Stat. §971.20(4).

II. THE COA CAN RULE ON THIS CASE IN A LIMITED FASHION OR IN A MORE BROAD DECISION.

Defendant Larson asks the Court of Appeals to rule in a broad fashion to clarify an important area of judicial procedure for all future defendants. We ask that the court recognize that in modern practice, the judge assigned to the trial is known in

advance of the preliminary hearing in most counties. As in this case, the assigned trial judge was known through reference to CCAP as well as to the stamp on the Criminal Complaint and Information. As long as there are no motions to the trial court and a request is filed before arraignment, all such substitutions of the trial judge should be valid.

Alternatively the Court of Appeals may rule in a limited fashion that because Defendant's attorney brought up the substitution request on the record at the hearing after preliminary hearing and before arraignment, that the acknowledgment on the record serves to save the timing related to the advanced filing of the request for substitution of judge. This type of ruling, which would save the request in this case, is reasonable, but absolutely will result in additional litigation to the court of appeals through mistakes and inexperience.

This court should also recognize that the circuit court absolutely assigned Judge Gabriele to this case. Judge Gabriele is the one who reviewed and mistakenly denied the substitution request as a codefendant case, as is her duty as the originally assigned judge for the case. If Defendant had made a mistake about who was to be substituted, this would have been an improper substitution request. Ms. Larson knew the correct judge and issued the correct substitution request.

As a final note, we ask this court to recognize that many if not most attorneys use paralegals to execute their filings with the court. Indeed there is an entire generation of currently practicing attorneys who have never used the e-filing system themselves and likely will not throughout the remaining years of their practice. Requiring attorneys to e-file a request for substitution of judge after the preliminary hearing and before arraignment is nitpicking to the point of absurdity, but also will result in additional litigation to the courts of appeals and additional burdens on the circuit courts and intake courts.

CONCLUSION

For the reasons stated above, Ms. Larson asks the court of appeals to overturn the trial court's order denying her request for substitution of judge, and remand this matter for further proceedings consistent therewith.

Dated this 8th day of January, 2024.

Respectfully submitted,

Electronically Signed by:
MARK D. RICHARDS
State Bar No. 1006324
Richards & Associates, S.C.
209 Eighth Street
Racine, WI 53403
262-632-2200 (P)
262-632-3888 (F)
mdr@richardslawracine.com

CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of the brief is 570 words.

Dated this 8th day of January, 2024.

Electronically Signed by:

MARK D. RICHARDS

State Bar No. 1006324

Richards & Associates, S.C.

209 Eighth Street

Racine, WI 53403

262-632-2200 (P)

262-632-3888 (F)

mdr@richardslawracine.com

CERTIFICATE 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 § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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 8th day of January, 2024.

Electronically Signed by:

MARK D. RICHARDS

State Bar No. 1006324

Richards & Associates, S.C.

209 Eighth Street

Racine, WI 53403

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262-632-3888 (F)

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