

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

State of Wisconsin
Plaintiff-Respondent

Appeal No. 2014AP002299

v.
Frank D. Roseti
Defendant-Appellant

ON APPEAL TO REVIEW AN ORDER DENYING THE
DEFENDANT'S MOTION FOR A NEW TRIAL ENTERED IN THE
CIRCUIT COURT FOR MANITOWOC COUNTY, THE HONORABLE
JEROME L. FOX PRESIDING

APPELLANT'S REPLY BRIEF

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Argument

The State argues there was no discovery violation as it did not plan to use the defendant's statement that he did not remember what happened during the incident in question. The State argues it was unreasonable to assume it should have known that the defendant would "take the stand in his own defense and offer a detailed account of what occurred when the information available to the district attorney up to that point had been that the defendant did not recall what took place." The undersigned disagrees and would reference the police report that *was* disclosed to trial counsel and attached to the criminal complaint [Record 1, pages 3-4]. In the last paragraph of that police report Mr. Roseti gives a description of what happened indicating that the bartender was rude to his girlfriend, that he became upset, but twice denied that he was the one to throw a beer bottle and break the mirror. The State was aware of Mr. Roseti's alleged conflicting accounts of the incident in question and a reasonable prosecutor would have planned to use Mr. Roseti's statements in the course of trial just as this prosecutor did to great effect.

The State also argues justice was not miscarried because Mr. Roseti testified that he denied telling the Officer that he did not recall the incident in question. This answer clearly speaks to the surprise element of the discovery violation. We don't know what Mr. Roseti's answer would be

were he afforded the opportunity to review his alleged statements with his attorney, at his leisure, with the benefit of reviewing the entire police report for context and to refresh his recollection. Just as importantly, because of the discovery violation any question relating to Mr. Roseti's alleged lack of recollection should have been stricken.

CONCLUSION

Because Mr. Roseti was denied the effective assistance of counsel and because justice has been miscarried, the convictions should be vacated in favor of a new trial.

CERTIFICATION OF FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a 13 point proportional serif font. The length of this brief is 325 words.

Dated this _____ day of March, 2015 at Milwaukee, Wisconsin.

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CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of the brief in case number 2014-AP-2299, excluding the appendix, 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 _____ day of March, 2015 at Milwaukee, Wisconsin.

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