

RECEIVED

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

06-29-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2015AP51CR

STATE OF WISCONSIN,

Plaintiff-Respondent

vs.

SUSAN P RESCH,

Defendant-Appellant.

PLAINTIFF-RESPONDENT'S BRIEF

ON APPEAL FROM THE CIRCUIT COURT OF DANE COUNTY,
BRANCH 7, THE HONORABLE JUDGE WILLIAM HANRAHAN, PRESIDING

Thomas J Fallon
Deputy District Attorney
Dane County, Wisconsin
Attorney for Plaintiff-Respondent
State Bar No. 1007736

215 South Hamilton Street
Dane County Courthouse, Room 3000
Madison, WI 53703
Telephone: (608)266-4211

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT ON PUBLICATION AND ORAL ARGUMENT . . .	iii
STATEMENT OF THE CASE AND FACTS	iii
ARGUMENT	1-8
CONCLUSION	9
CERTIFICATION	10
CERTIFICATE OF COMPLIANCE.	11

TABLE OF AUTHORITIES

<u>CASES CITED</u>	<u>PAGE(S)</u>
State v. Bentley	4, 5
State v. Jackson	6, 7
State v. Pettit	5
Waushara County v. Graf	6, 7

STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The State requests neither oral argument nor publication. The parties' briefs will fully develop the issues presented, which can be resolved by applying well-established legal principles.

STATEMENT OF THE CASE AND FACTS

As Respondent, the State exercises its option not to include separate statements of the case and facts. See Wis. Stat. (Rule) § 809.19(3)(a)2. The relevant facts and procedural history will be discussed in the argument section of this brief.

ARGUMENT

I. THIS COURT SHOULD DECLINE TO ADDRESS THE MERITS OF RESCH'S CLAIM(S) OR, IN THE ALTERNATIVE, UPHOLD THE TRIAL COURTS RULING

On April 3, 2015, the State filed a motion to strike Defendant's brief-in-chief due to non-compliance with numerous rules set forth in Wis. Stat. 809.19. (State's Mot. to Strike). The Court granted the motion, finding that "the appellant appears to agree that the brief should be improved..." (Ct. of App. Order 4/23/15). Despite the additional time provided to Defendant, the resubmitted brief is largely the same.

Numerous errors noted in the State's motion to strike have been left unchanged, still forcing the State to carry much of Defendant's burden if she is to articulate a clear factual basis, rooted in law, for her appeal. Based on these material and substantial errors, the Court should dismiss Defendant's appeal. Alternatively to dismissal, the State moves this Court to uphold the trial court's ruling because Resch's first claim is unsupported by the record, and her second claim erroneously applies the rule against hearsay to criminal investigations.

1. RESH VIOLATED NUMEROUS MATERIAL AND SUBSTANTIAL RULES OF APPELLATE PROCEDURE.

As stated in the State's motion to strike, Resch's brief-in-chief violates numerous Rules of Appellate Procedure, including the following:

A. *Table of contents.* Wis. Stat. § 809.19(1) (a)

states that each brief should be accompanied by a table of contents, including "...headings of each section of the argument, and a table of cases arranged alphabetically, statutes and other authorities cited with reference to the pages of the brief on which they are cited." Resch fails to include such headings and legal authorities with page numbers in her table of contents, in significant violation of Wis. Stat. § 809.19(1) (a).

B. *Statement of issues.* Wis. Stat. § 809.19(1) (b)

states that appellants are expected to provide a statement of issues, including "how the trial court decided" them. Resch fails to mention how the trial court ruled on either issue presented in her brief-in-chief, in violation of Wis.

Stat. § 809.19(1)(b). The violation regarding the second issue is most substantial, because Resch fails to indicate if the issue was even considered at trial.

C. *Statement of publication and oral argument.* Wis. Stat. § 809.19(1)(c) provides that each brief shall provide "A statement with reasons as to whether oral argument is necessary and a statement as to whether the opinion should be published and, if so, the reasons thereof." This section is completely lacking in Resch's brief-in-chief.

D. *Statement of the Case.* Wis. Stat. § 809.19(1)(d) provides that a statement of the case must be included with "...the procedural status of the case leading up to the appeal; the disposition in the trial court..." and relevant facts with appropriate citations to the record. Resch's brief-in-chief includes none of this, substantially violating Wis. Stat. § 809.19(1)(d). Instead, Resch's statement of the case is rife with unsubstantiated assertions such as the statement that "this was a gross

injustice, especially because Jamila who gave false testimony showed complete contempt of court by not bothering to show up..." (Def.'s Mot. to Dismiss p. 4). In addition, inappropriate argumentative language remains in Resch's statement of the case. (Def.'s Mot. to Dismiss p. 7).

E. *Argument.* Wis. Stat. § 809.19(1)(e) requires appellants to arrange their argument by issue, with each issue including a single sentence summary of their respective argument. Additionally, arguments are required to provide appropriate citations to legal and record authority. Wis. Stat. § 809.19(1)(e). Again, Resch fails to include a summary argument for either issue in her brief-in-chief and fails to provide relevant authority. Instead, Resch makes numerous conclusory allegations, leaving her second argument utterly devoid of legal or record authority. (Def.'s Mot. to Dismiss p. 7).

This an egregious violation of the rules set forth in Wis. Stat. § 809.19(1)(e). State

v. Bentley, 201 Wis. 2d 303, 313-14, 548 N.W.2d 50 (1996) ("Wisconsin courts have long held that conclusory allegations without factual support are insufficient... a defendant should provide facts that allow the reviewing court to meaningfully assess his or her claim."). The unsupported assertions in Resch's brief unreasonably force the State to develop much of her own argument before it can even determine what the basis for her appeal is. See State v. Pettit, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

F. *Appendix*. As stated in the State's motion to strike, Resch's appendix section of her brief-in-chief does not follow the rules set forth under Wis. Stat. § 809.19(2)(a). (State's Mot. to Strike p. 4). The appendix does not contain any relevant portions of the record, nor does it contain any court opinions such as the Judgment of Conviction.

While the State recognizes the difficulties faced by many *pro se* defendant's in criminal

proceedings, Resch has put almost no effort in addressing the gross errors in her previous brief-in-chief. See Waushara County v. Graf, 166 Wis.2d 442, 452, 480 N.W.2d 16 (1992) (“*Pro se* appellants must satisfy all procedural requirements... they are bound by the same rules that apply to attorneys on appeal.”). The vast majority of errors Resch acknowledged still exist, and the State is still tasked with the undue burden of developing her argument. Doing so requires the State to sort through the record in order to identify court rulings and possible errors, and research case law which can be applied to this case. Surely, this is neither the State nor the Court’s responsibility. State v. Jackson, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999) (“A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories.”).

Resch's status as a *pro se* defendant does not absolve her of her duty to provide relevant legal and record authority, nor does it remove her burden of following the rules of appellate procedure. Wausara, 166 Wis.2d at 452. While courts often make allowances for *pro se* litigants, there are limits. Resch's continued refusal to abide by the rules described in detail in the State's motion to strike erode her already tenuous argument that neither the State nor the Court should "get caught up in semantics or technicalities." (Def.'s Response to Mot. to Strike).

2. RESCH FAILED TO PROVIDE ADEQUATE FACTUAL SUPPORT FOR THE ALLEGED CONFRONTATION CLAUSE VIOLATION

In her argument for a dismissal based on an alleged confrontation clause violation, Resch fails to provide any citation to the trial transcript which is essential to the determination of that claim. Resch provides no outcome to the situation and makes conclusory statements, unsupported by the record. As stated, it is neither the prosecution nor the Court's responsibility to create a viable claim for Resch. Jackson, 299 Wis. 2d 337. Even after being granted a

second opportunity to amend her complaint, Resch fails to provide even a single citation to the record in support of her allegation.

3. RESCH WRONGFULLY APPLIED HEARSY RULES TO OUT OF COURT INVESTIGATIONS

Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Wis. Stat. § 908.01(3). Resch erroneously applies the hearsay rule to out-of-court investigations; hearsay can only exist in courtroom situations. Therefore, the Court should uphold the trial court's ruling on this issue (Def.'s Mot. to Dismiss p. 7).

CONCLUSION

For the aforementioned reasons, the State moves the Court to dismiss Defendant's appeal, and, in the alternative, uphold the trial court's decision for both issues presented.

Thomas J Fallon
Deputy District Attorney
Dane County, Wisconsin
Attorney for Plaintiff-Respondent
State Bar No. 1007736

215 South Hamilton Street
Dane County Courthouse, Room 3000
Madison, WI 53703
Telephone: (608)266-4211

CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8) (b) and (c) for a brief produced using the following font:

Monospaced font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides. The length of this brief is 9 pages.

Dated: June 29, 2015.

Signed,

Attorney

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 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 29th day of June, 2015.

Thomas J Fallon
Assistant District Attorney
Dane County, Wisconsin