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STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT III

Case No. 2016AP000096 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TRAVIS J. MANTEUFFEL,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
AND AN ORDER DENYING POSTCONVICTION
RELIEF ENTERED IN THE MARATHON COUNTY
CIRCUIT COURT, THE HONORABLE MICHAEL K.
MORAN PRESIDING

BRIEF AND SUPPLEMENTAL APPENDIX OF THE
PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Neither oral argument nor publication is appropriate because this is a one-judge appeal under Wis. Stat. § (Rule) 752.31(2)(f).

SUPPLEMENTAL STATEMENT OF THE CASE

The Defendant-Appellant, Travis J. Manteuffel (hereafter Manteuffel), was charged in Marathon County Circuit Court on July 21, 2014 for an incident occurring on July 20, 2014. On October 27, 2014, Manteuffel entered a plea to a charge of Disorderly Conduct for this incident. The Court imposed a \$200 fine plus court costs, as well as the \$200 DNA surcharge.

ARGUMENT

WISCONSIN STATUTE SECTION
973.046 IS NOT UNCONSTITUTIONAL
AS APPLIED TO THE DEFENDANT-
APPELLANT.

Manteuffel has the burden of proving beyond a reasonable doubt that the statute is unconstitutional as applied to him. *See State v. McGuire*, 2010 WI 91, ¶25, 328 Wis. 2d 289, 786 N.W.2d 227. This court's review of the circuit court's constitutional decision is *de novo*. *See id.*

A statute enjoys a presumption of constitutionality. *State v. Smith*, 2010 WI 16, ¶8, 323 Wis. 2d 377, 780 N.W.2d 90. To overcome that presumption, the party challenging a statute's constitutionality "bears a heavy burden." *Id.* "It is insufficient for the party challenging the statute to merely establish either that the statute's constitutionality is doubtful or that the statute is probably unconstitutional." *Id.* "Instead, the party challenging a statute's constitutionality must 'prove that the statute is

unconstitutional beyond a reasonable doubt.” *Id.* (quoted source omitted).

A. Manteuffel’s claim is not an ex post facto challenge.

Manteuffel cites to *State v. Radaj*, 2015 WI App 50, 633 Wis.3d 633, 866 N.W.2d 758 (2015) and its two part intent-effects test in support of his position. *Radaj* involves an ex post facto violation. An ex post facto law is a law “which punishes as a crime an act previously committed, which was innocent when done; which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with crime of any defense available according to law at the time when the act was committed.” *State v. Thiel*, 188 Wis. 2d 695, 703, 524 N.W.2d 641 (1994).

When challenging a law on ex post facto grounds, “the threshold question is whether the [law] is punitive.” *City of South Milwaukee v. Kester*, 2013 WI App 50, ¶21, 347 Wis. 2d 334, 830 N.W.2d 710. The court employs a two-part “intent-effects” test to answer whether a law applied retroactively is punitive. *See id.*, ¶22.

Radaj does not apply in this case, nor does the “intent-effects” test, as this is not an ex post facto violation. Wis. Stat. §973.046(1r)(b) made the DNA surcharge mandatory on January 1, 2014. *See* Wis. Stat. §973.046(1r)(b) (2013-2014); 2013 Wis. Act 20, §§ 2354, 2355 (amending Wis. Stat. §973.046(1r) and creating Wis. Stat. §973.046(1r)(b)); 2013 Wis. Act 20, § 9426(1)(am) (effective date of first day of the sixth month after July 1, 2013, publication date). Manteuffel committed the offense after the effective date of the changes in the DNA surcharge requirements.

B. Ordering Manteuffel to pay the DNA surcharge did not violate Manteuffel’s rights to substantial due process.

Wis. Stat. §973.046 (3) states, “All moneys collected from deoxyribonucleic acid analysis surcharges shall be deposited by the secretary of administration as specified in s. 20.455(2) (Lm) and utilized under s. 165.77.” Wis. Stat. §165.77 establishes the deoxyribonucleic acid analysis and data bank. Manteuffel argues that because he is not required to submit a DNA sample, there is no nexus between his surcharge and the use of those funds and therefore it violates Manteuffel’s right to substantial due process.

Manteuffel’s argument rests on the erroneous assumption that the surcharge is only used to fund the collection and analysis of the surcharge payer’s DNA. The State Crime Lab’s DNA related responsibilities under Wis. Stat. §165.77 are not limited to the initial DNA analysis of defendants’ samples and entry of the results into the data bank. In addition to those duties, Wis. Stat. §165.77 requires the crime lab to analyze DNA when requested by law enforcement agencies in relation to an investigation, *see* Wis. Stat. §165.77(2)(a)1.a., upon request by a defense attorney, pursuant to a court order, regarding his or her client’s specimen, *see* §165.77(2)(a)1.b., and, subject to Department of Justice rules, at the request of an individual regarding his or her own specimen, *see* Wis. Stat. §165.77(2)(a)1.c. The crime lab may compare the data obtained from a specimen with data obtained from other specimens and provide those results to prosecutors, defense attorneys, or the subject of the data. *See* Wis. Stat. §165.77 (2)(a)2. The crime lab is required to maintain a data bank based on data obtained from its DNA analyses. *See* §165.77 (3). The DNA surcharge funds all of those activities. *See State v. Scruggs*, 2015 WI App 88, ¶10-12, 365 Wis. 2d 568, 872 N.W.2d 146.

The DNA surcharge is a fee, not a fine. It relates to the cost for which it was intended to compensate, i.e. the DNA analysis and databank. It compensates the State for the expense of completing DNA analyses and maintaining the databank. The offenders are responsible for the

expense, so there is nothing punitive about making them pay for it, much in the same way sex offenders are responsible for the expense of maintaining the sex offender registry. *See Mueller v. Raemisch*, 740 F.3d 1128 (7th Circuit).

Raemisch demonstrates that a fee or surcharge is not punitive simply because it is imposed as a consequence of a criminal conviction.

Manteuffel has not carried his burden of proving beyond a reasonable doubt that the DNA surcharge is unconstitutional as applied to him.

CONCLUSION

For the reasons stated above, this Court should affirm the Judgment of Conviction requiring payment of the \$200 DNA surcharge.

Dated this 26th day of April, 2016.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 919 words.

Dated this 26th day of April, 2016.

LESLI PLUSTER
Assistant District 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 26th day of April, 2016.

LESLI PLUSTER
Assistant District Attorney