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OF WISCONSIN**

WISCONSIN COURT OF APPEALS
DISTRICT IV

Appeal No. 2017AP002536CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RONNIE CECIL PEEBLES
N1414 COUNTY ROAD E
RED GRANIT, WI 54970

Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT RONNIE CECIL PEEBLES

An Appeal from a Judgment of the Circuit Court of Waushara County,
Wisconsin, the Honorable Guy Dutcher Presiding

Circuit Court Case No. 2016CM477

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STATE OF WISCONSIN

PLAINTIFF-RESPONDENT,

VS.

Appeal No. 2017AP002536CR

Circuit court case no. 2016CM00477

APPELLANT'S BRIEF

RONNIE CECIL PEEBLES

N1414 County Road E

Red Granit, WI 54970

DEFENDANT-APPELLANT,

I. STATEMENT OF ISSUE PRESENTED.

1. Whether the trial court erred in denying the Defendant's motion for an adjournment of the jury trial on the grounds of the Defendant's health/illness prior to the commencement of the jury trial?

Answered by the Appellant: Yes.

**II. STATEMENT REGARDING ORAL ARGUMENT
AND PUBLICATION.**

The arguments presented in the brief sufficiently address the matters before the appellate court. Defendant-Appellant does not request that this case be scheduled for oral argument. Further, Wisconsin law governing a defendant's right to an adjournment on the grounds of illness is somewhat unclear and the case law and judicial bench books provide little guidance. It would be beneficial to have a written opinion regarding a court's proper exercise of discretion in deciding whether to adjourn a jury trial on the grounds of a Defendant's illness.

III. STATEMENT OF THE CASE.

A. PROCEDURAL POSTURE.

The State of Wisconsin initiated the current criminal case via filing a summons and complaint in Waushara County, Wisconsin against the Defendant, alleging two criminal misdemeanor violations: battery in violation of s.940.19(1), and Disorderly Conduct in violation of s.947.01(1), on November 9, 2016. The Defendant appeared pro se' before the Waushara Circuit Court on December 20, 2016, was advised of his right to counsel by the court, and entered not guilty pleas to the respective charges. The trial court set bond at 500.00 cash on December 20, 2016, which was duly posted.

The trial court scheduled a status conference on January 19, 2017, where the District Attorney discussed a possible resolution with the Defendant that was rejected. The Defendant notified the court that he intended to retain his own attorney in the matter, and the court scheduled another status conference for February 21, 2017.

At the February 21, 2017 status conference, the Defendant appeared with Attorney John B. Selsing and requested that the matter be scheduled for a pretrial conference with the Waushara District Attorney. A Pretrial conference was scheduled as well as a return to court for status conference on March 22, 2017.

On March 22, 2017, the trial court conducted a status conference and was notified that the matter remained unresolved. The trial court again scheduled

another pretrial conference for April 18, 2017, with the understanding that the matter would be scheduled for jury trial if there was no resolution by the April 18, 2017 pretrial conference. The Defendant filed both jury instructions and *Motions in Limine* on March 27, 2017.

A final pretrial conference occurred on April 18, 2017, where the Defendant appeared with Attorney John B. Selsing and rejected the State's plea offer. The trial court scheduled a jury trial for August 24, 2017.

CCAP records indicate that the District Attorney requested an adjournment of the jury trial on July 13, 2017, and the court adjourned the jury trial pursuant to state's request. On August 1, 2017, the trial court held a telephone status conference with attorneys and established a new jury trial date for September 29, 2017, due to the substitution of legal defense counsel. At the telephone status conference, Attorney Larry J. Lloyd appeared on behalf of the Defendant.

The trial court conducted a jury trial on September 29, 2017. Jury found Defendant guilty of battery in count 1; and not guilty of disorderly conduct in count 2. The trial court scheduled sentencing for November 2, 2017.

The trial court adjourned the sentencing on November 2, 2017 as a result of receipt of a letter from Theda Care Emergency Department regarding Defendant's medical condition. Trial court rescheduled sentencing for December 5, 2017.

The trial court sentenced the Defendant on December 5, 2017 to one year of probation and to 120 days jail imposed and stayed. Further, the trial court imposed 15 days jail as a condition of probation along with other related conditions.

The Defendant filed a timely notice of appeal on December 26, 2017, along with other related appellate paperwork. The Defendant filed a motion with the trial court seeking a stay of the jail time pending appeal on December 27, 2017. The trial court denied Defense request for a stay pending appeal on January 4, 2018.

This brief is authored in support of the Defendant's appeal and duly filed with the Wisconsin Court of Appeals pursuant to statute.

B. FACTS.

The Waushara County Circuit Court called the case of State of Wisconsin v. Ronnie Peebles, Case No. 16CM477 for jury trial on September 29, 2017.

Transcript at 1. Assistant District Attorney Steven Anderson appeared for the State of Wisconsin. Attorney Larry Lloyd appeared for Ronnie Peebles (hereafter referred to as "Peebles"). Transcript at 3. Trial court notes that at the time case called, Peebles was within vicinity of courtroom and proclaimed that his illness was precluding him from participating in the jury trial process. Transcript at 3. The trial court invited Attorney Lloyd to advise the court regarding Peebles' status. Transcript at 3.

Attorney Lloyd advised that he spoke with Peebles and that his client had called the sheriff's office earlier in the morning and Peebles advised he was very ill with a stomach virus or something similar. Transcript at 3. Attorney Lloyd advised the trial court that Peebles did not appear well enough to be placed on the witness stand and go forward with the jury trial that day. Transcript at 3.

After inquiry into the State's position concerning moving forward with the jury trial, Assistant District Attorney Anderson indicates that the State was sympathetic to Attorney Lloyd's predicament. Transcript at 3. Assistant District Attorney Anderson informed trial court that the State had its witnesses subpoenaed and had the sheriff's deputies present. Transcript at 3. Attorney Anderson indicated that the county had to fill two road officer's spots with other officers to arrange for testimony. Transcript at 3. Attorney Anderson indicated that the victim had taken a day off of work to testify, and therefore, while sympathetic to the defense position, requested the trial court proceed with a jury trial. Transcript at 3-4.

The trial court indicates that it was respectful of Attorney Lloyd's predicament. Transcript at 4. The trial court indicates that the court was dealing with a circumstance that had been dragged out nearly a year. Transcript at 4. The trial court indicates that at approximately 7:30am that morning, that Peebles contacted the Waushara County Sheriff's Department to report that he was ill and unavailable. Transcript at 4. The Waushara County Sheriff's Department communicated that message to the Clerk of Courts. Transcript at 4.

The trial court states that much effort and resources invested in making court operable for a jury trial that day. Transcript at 4. The trial court indicates the jury was ready. Transcript at 4. Witnesses were ready. Transcript at 4. Legal counsel was present. Transcript at 4. The trial court indicates it is operational, and

that Peebles was professing that he was too ill to go ahead with trial without any type of objective affirmation of his condition. Transcript at 4.

The trial court ruled that the jury trial was going to move forward as scheduled. Transcript at 4. The trial court indicated that the matter had been drawn out and that it had been dragged out with multiple status conferences. Transcript at 4. The trial court noted the lack of progress as of the date of jury trial and concluded that the matter needed to be concluded on the day scheduled for jury trial. Transcript at 4.

The trial court concluded that there was a reticence on the part of the Defendant to proceed to ultimate determination in the matter. Transcript at 5. The trial court indicated that the jury trial would proceed whether Peebles wished to actually appear and participate or not. Transcript at 5.

Trial court indicated that Peebles was onsite, and that his absence from the courtroom was voluntary and that Peebles had elected to remove himself from the proceedings. Transcript at 5. Peebles entered courtroom at some point relatively early in proceedings prior to jury entry. Transcript at 8-9.

IV. ARGUMENTS.

A. Trial Court Abused Discretion In Denying Jury Trial Adjournment.

The decision regarding whether to grant an adjournment is within the discretion of the trial court. State v. Davis, 66 Wis.2d 636(1975). The denial of a continuance potentially implicates the Sixth Amendment right to counsel and the

Fourteenth Amendment right to due process of law. Phifer v. State, 64 Wis.2d 24(1974); Ungar v. Sarafite, 376 U.S. 575(1964); State v. Reppin, 35 Wis.2d 377(1967); State v. Wollman, 88 Wis.2d 459(1979).

In determining whether a court abused its discretion in denying a request for a continuance, a single inquiry is made. This inquiry involves the balancing of a defendant's constitutional right to adequate representation by counsel against the public interest in the prompt and efficient administration of justice. This balancing is completed in light of the circumstances that appear of record. Phifer, *supra* at 31; Ungar, *supra* at 575; Avery v. Alabama, 308 U.S. 444(1940); United States ex rel. Williams v. Twomey, 510 F.2d 634(7th Cir. 1975); United States v. Miller, 508 F.2d 544(7th Cir. 1974); United States v. Knight, 443 F.2d 174(6th Cir. 1971).

The constitutional right to legal counsel includes the right to consultation between client and attorney. Avery, *supra* at 469. Nevertheless, the determination whether to grant a continuance lies within the discretion of the trial court, however, opportunity to confer, to consult, and to prepare for trial must be given. Avery, *supra* at 446.

An abuse of discretion may be found where the adjudicator has failed to exercise sound, reasonable, and legal decision-making skills. Wilton v. Seven Falls Co., 515 U.S. 277(1995). In all cases, a judge must exercise discretion that is discreet, circumspect, and prudent. Further, while not capable of exact definition, it is recognized that discretion is not absolutely without elements, conditions, or limitations.

The term implies the absence of a hard and fast rule, yet it should not be interpreted as a word for arbitrariness or unstable caprice. State v. Ferranto, 112 Ohio ST. 667 (Ohio 1925). “Abuse of discretion” does not imply willful abuse or intentional wrong; rather, it is such that a court’s decision-making may exceed the bounds of a reasonable decision based upon all the appropriately considered circumstances. Sharon v. Sharon, 75 Cal.1(Cal. 1888). An abuse of discretion is really a discretion exercised to promote an end or purpose which is not justified by, or clearly against, reason and evidence. Murray v. Buell, 74 Wis. 14(1889).

As applied to the current case, Peebles was ill the day of his trial. Peebles contacted the Waushara Sheriff’s Department the morning prior to trial to report his illness. Peebles contacted his attorney to inform him of his illness. When the trial commenced, Peebles was not able to be in the courtroom due to illness. The trial court acknowledged receipt of information from the sheriff’s department and the clerk of court’s office regarding Peebles’ illness. Attorney Lloyd represented to the court that Peebles was suffering from a stomach condition and indicated that his condition, at that time, precluded him from testifying and participating in the proceedings.

The trial court recognized Attorney Lloyd’s predicament. The Assistant District Attorney recognized Attorney Lloyd’s predicament. The trial court made absolutely no inquiry into the nature of Peebles ailment at the time of the jury trial. Rather, the trial court determined that proceeding with the jury trial was justified

due to the fact that witnesses, attorneys, and the court were available the day of the jury trial.

No determination was made regarding the nature of Peebles' illness or how that illness may impact his ability to participate in the proceedings. The whole purpose of the jury trial was to allow for the fair and orderly administration of justice. How can an ill defendant present a plausible defense? How might illness impact communications with defense counsel? How might illness impact a defendant's right to participate in the proceedings? These are substantive questions bearing upon a defendant's due process trial rights. No answers to these questions were determined.

Both the prosecution and the defense must be allowed to present their cases to the jury. This presentation includes a defendant's right to consult with a defense attorney during a trial. How might an ill defendant be impacted where he/she is forced to go forward with a jury trial while ill? What is the nature of the illness? These are the questions that the trial court failed to answer the morning of the jury trial when it decided to proceed despite Defendant's claim of illness.

In this case, the trial court should have inquired of the Defendant regarding the nature of his ailment and determined how such an ailment might impact his ability to put forward a defense. Rather, the trial court weighed the factors of judicial efficiency and convenience as the overwhelming factors requiring the trial

to proceed.¹ As a result of the court's absence of an inquiry into the Defendant's ailment, the court could not effectively weigh the appropriate factors in the proper exercise of discretion in determining Defense's request for an adjournment.

The trial court was required to balance all factors and apply reasoned judgment to its decision to proceed with the jury trial. Rather, the trial court made a decision without inquiry into relevant and material facts requiring determination before reasoned judgment could be applied to the question regarding whether to adjourn the jury trial on the grounds of the Defendant's illness.² Just as the importance of having a competent jury evaluate evidence, a defendant must also be afforded similar consideration. In a nutshell, the problem in the current case involved the trial court's exercise of discretion in a manner that did not consider appropriate factors regarding the physical health condition of the Defendant. In this case, the trial court's exercise of discretion without full information represented an abuse of the court's discretion and should be reversed on appeal.

V. CONCLUSION.

This is a case where a Defendant has appealed a trial court jury trial determination after he has completed the imposed jail sentence. Peebles could have simply moved on, saved the expense and aggravation associated with an appeal and further legal challenge. However, Peebles genuinely feels aggrieved by

¹ Trial court indicated that matter had been drawn out and dragged out at page 4 of transcript. However, review of procedural posture does not support this conclusion.

the trial court's requirement that he defend his misdemeanor criminal case at a time when he was physically ill.

Peebles illness impacted his ability to participate in the jury trial process and consult with his defense attorney. Possibly, this explains why the jury verdict was inconsistent, i.e., not guilty of a disorderly conduct while guilty of a battery. The trial court's failure to make inquiry into the nature of the Defendant's illness establishes a rush to judgment on the part of the trial court and an erroneous exercise of discretion requiring reversal.

Dated this 25th day of April, 2018.

Respectfully submitted,

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² Interestingly, the trial court recognized the importance of health when it inquired of jurors whether they were feeling ok or if they had worked third shift and could not make it through the day as a result of a physical condition at pages 17-18 of transcript.

APPENDIX.

EXHIBIT A: Applicable portions of September 29, 2017 jury trial transcript.

FORM AND LENGTH CERTIFICATION.

I hereby certify that this brief conforms to the rules contained in section 809.19(8)(b) and (c) for a brief and appendix produced with monospaced font. The length of the brief is 14 pages.

By: _____
Matthew L. Goldin
State Bar No. 1000654

CERTIFICATION OF APPENDIX PURSUANT TO S. 809.19(2)(b):

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinions of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portion of the record essential to an understanding of the issues raised, including oral or written rulings of decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with notation that the portions of the record have been so reproduced to preserve confidentiality and appropriate references to the record.

Signed: _____
Matthew L. Goldin
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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12).

I hereby certify I have submitted an electronic copy of this brief, excluding appendix, if any, 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.

Signed: _____
Matthew L. Goldin
State Bar No. 1000654

CERTIFICATE OF MAILING.

I hereby certify that I have deposited in the U.S. Mail or via a 3rd party carrier, this 25th day of April, 2018, ten (10) copies of this brief addressed to the Wisconsin Court of Appeals at 110 E. Main Street, Suite 215, Madison, WI 53701, postage or transit fees all prepaid.

Signed: _____
Matthew L. Goldin
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