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WISCONSIN COURT OF APPEALS

DISTRICT III

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Case No. 2019AP81-CR

COREY STAUNER

Defendant-Appellant.

Reply Brief Of Defendant-Appellant

Appeal from the circuit court for Marathon County,

Honorable Greg Huber, Judge of Marathon County, Order

dated December 7, 2015.

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ARGUMENT

I. THE STATE’S ARGUMENT RELIES ON EVIDENCE THAT A JURY COULD NOT REASONABLY FIND SUPPORTS THE CONCLUSION THAT APPELLANT RESISTED LAW ENFORCEMENT

The State references repeatedly that Appellant called law enforcement names. The State again relies on Officer Chittum’s testimony that Appellant tensed up as body as if he were about to flee. This alleged pre-fleeing along with the name calling, according to the State’s brief at p. 15, could have constituted resisting. However that is not acting “to oppose by direct, active, and quasi forcible means that *State v. Welch*, 37 Wis. 196, 201 (1875) requires. The State’s brief references threats as constituting resisting on p. 14, although none were made by defendant. Defendant called law enforcement names, was rigid, and walked the wrong direction briefly, twice, until redirected.

The State's Brief argues that Appellant made two attempts to pull away. However, regarding the first incident Officer Carr said that he just had to redirect Appellant. Walking the wrong direction until redirected or ordered by enforcement is not resisting, it is just walking the wrong direction.

The State argues that the second pulling away event occurred later and was allegedly more than just Appellant walking the wrong way. But there again the evidence suggested that defendant simply had to be redirected, there was no pushing, no hitting, no dragging on the floor. The case cited in the State's brief, *State v. Wenger*, 2018 WI APP 45, found that using "his body to generate a force in direct and active opposition to their efforts to place him in their squad vehicle." could constitute resisting. However, in the case at hand the testimony is not that he was pulling and pushing to avoid getting into the squad car, he was just walking the wrong direction until he was redirected.

II. THE STATE COULD NOT HAVE SATISFIED
ELEMENT FOUR, SUBJECTIVE
KNOWLEDGE OF THE LAWFUL
AUTHORITY, AS IT WAS INDICATED
FROM THE OFFICER'S TESTIMONY
THAT APPELLANT DID NOT BELIEVE
THERE WAS A WARRANT OUT FOR
HIM

While the State argues that Appellant was aware of the lawful authority for the arrest, his confusion and his reaction to the police suggested otherwise. Just because law enforcement told him a reason that they were arresting him does not mean that the reason was correct, or that Appellant knew or believed it to be correct.

Respectfully Submitted,

Joel Larimore

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Certification of Form and Length

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The text is 13 point type and the length of the brief is 3 pages (689 words).

Respectfully Submitted,

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Certification of Electronic Filing

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of section 809.19(12), Stats.

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.

Respectfully Submitted,

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