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COURT OF APPEALS
DISTRICT IV

09-23-2019

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2019AP000432-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

AMANUEL A AYELE,

Defendant-Appellant.

PLAINTIFF-RESPONDENT'S BRIEF

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

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CASES CITED

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STATUTES CITED

Wis. Stat. 940.19(1)

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Wis. Stat. 943.01(1).

1

Wis. Stat. 973.055

1-4

STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The State does not request oral argument or publication.

STATEMENT OF THE ISSUE

Does a Circuit Court have the authority to redact the words "domestic abuse" from a judgement of conviction when the State charged the crime using the enhancer and the facts at issue indicate the crime was, in fact, a crime of domestic abuse?

ARGUMENT

The appellant, Mr. Ayele, battered his father with whom he lived with. The police were called and arrested Mr. Ayele. The Dane County District Attorney's Office charged Ayele with battery, Wis. Stat. 940.19(1), and criminal damage to property, Wis. Stat. 943.01(1). Because the victim and the defendant had resided together and met the other factors necessary to establish a domestic relationship, the charging language in the complaint invoked the provisions of 973.055(1), which states:

973.055 Domestic abuse surcharges.

(1) If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse surcharge under ch. [814](#) of \$100 for each offense if:

(a)

1. The court convicts the person of a violation of a crime specified in s. 940.19, 943.01(1)(STATUTES OMITTED OTHER THAN RELEVANT STATUTES TO THIS APPEAL)

2. The court finds that the conduct constituting the violation under subd. [1.](#) involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child...

As part of the plea agreement, the parties agreed to request the Court dismiss the domestic abuse enhancer. The Circuit Court conducted some colloquy with the parties and interpreted the request as a request to waive the surcharge. *See Transcript* pp. 6-7. The Circuit Court did remove the surcharge, however, the judgement of conviction continued to contain the "domestic abuse assessment" language.

The defendant has appealed and has advanced the argument that if the domestic abuse surcharge is waived, there contains no basis for the "domestic abuse" language to continue to appear on the judgment of conviction.

The defendant's argument seems to center on *State v. Koll*, 2009 WI APP 74. In *Knoll*, the parties took it upon themselves to label the crime as "non-domestic" likely in an effort to allow the defendant to continue to possess firearms. *Id.* ¶ 2. The *Koll* Court ruled that the parties cannot label the crime as "non-domestic" and avoid an undesired collateral consequence. The Court ruled that the

denial of Koll's firearm permit was allowed because the facts at issue, not the labeling of the crime, satisfied the criteria for denial under federal law.

Koll is not relevant to the present matter. *Koll* involves the denial of a firearms permit for a crime that did not contain the domestic abuse assessments. The present case involves simply the question of whether a circuit court must strike the words "domestic abuse assessment" when the actual monetary assessment is waived.

There is no support for what the appellant is asking the Court to do. The appellant's brief accuses the Circuit Court of creating a crime of domestic violence by including the language. The Circuit Court did no such thing. In fact, the Circuit Court stated at the plea hearing "In Wisconsin we don't have a crime of domestic abuse. That's clear" (Trans. Pp. 6).

Words appearing on a judgment of conviction do not, themselves, carry any consequences. As *Koll* shows, even when the words "domestic abuse" do not appear, the collateral gun consequences may still apply. Words on the judgment of conviction simply indicate the findings of the Court.

CONCLUSION

Reading the court transcript in conjunction to the complaint and the judgment of conviction, it is clear that the Circuit Court made a finding that the facts necessary to include the "domestic abuse" language on the judgment of conviction was satisfied. The court waived the surcharge. The defense is asking that the Court strike the public record to remove the "domestic abuse" language simply because the surcharge was waived. There is no support for this request and the State requests the Court affirm the Circuit Court.

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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 7 pages.

Dated: _____.

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 23 day of September, 2019.

William L. Brown
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