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10-17-2019

The Wisconsin Court of Appeals District IV

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

2019AP001138 CR

State of Wisconsin,
Plaintiff-Respondent

v.

Scott A. Walker
Defendant-Appellant

Appeal from The Circuit Court of Grant
The Honorable Robert P. VanDeHey, presiding

Reply Brief of Appellant Scott A. Walker

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Table of Contents

Argument	2
A The State's Argument Dr. Walker was not Prejudiced is not Supported Factually or Legally	2
1. <u>The Threat to Dr. Walker's Property was Imminent</u>	2
2. <u>The State's Interpretation of Wis. Stat. §939.49(1) is not Supported by the Plain Language of the Statute</u>	2
B The Issue of Defense of Property is not Meritless; As such, Counsel was Deficient	3
Conclusion	3
Certifications	4

Table of Authorities

<i>State v. Dundon</i> , 226 Wis. 2d 654, 657, 594 N.W. 2d 780 (1999)	2
<i>State v. Stietz</i> , 2017 WI 58, 375 Wis. 572(2017)	3
Sec. 939.41(1), Wis. Stats	2, 3

Argument

A. The State's Argument Dr. Walker was not Prejudiced is not Supported Factually or legally

1. The Threat to Dr. Walker's Property was Imminent.

The State claims the threat to Dr. Walker's property was not imminent; she was only in his driveway and had not attempted to force her way into Dr. Walker's home, garage, shed, or vehicle. (State Br. 5). The State cites no legal authority to support this proposition Ms. Alm needed to enter a building to create an imminent threat. Instead, the State simply relies upon *State v. Dundon* for the proposition defense of property is only available when the threat to property is imminent. (State Br. 4).

In *Dundon*, John Dundon was taking approximately \$22,000 to the bank from the gas station he managed. *State v. Dundon*, 226 Wis. 2d 654, 657, 594 N.W. 2d 780 (1999). Dundon had placed a loaded handgun in the passenger seat of his vehicle; when he arrived at the bank, he placed the handgun into the waistband of his jeans. *Id.* at 657-658. Dundon was subsequently convicted of carrying a concealed weapon. *Id.* at 659. Notably, there was no particular person, act, or place which made Dundon concerned; he went armed simply because of the generalized concerns over carrying such a large sum of money.

The facts in Dr. Walker's case could not be more different than in *Dundon*. Ms. Alm had been ordered by a federal court not to attempt to collect any owed debts from Dr. Walker. (R 28:29-30). Ms. Alm ignored the court's order and went to Dr. Walker's house to confront him about this debt. (28:30-31). Ms. Alm suggested Dr. Walker give him personal property rather than money. (Exhibit 1, Interview with Dianne Alm, 6:42-6:56). When Dr. Walker told her to leave she did not. (R 28:26). The threat to Dr. Walker's property was specific and imminent. The State's position the threat was not imminent is simply baseless.

2. The State's interpretation of Wis. Stat. §939.49(1) is not Supported by the Plain Language of the Statute

The State next argues "The defense of property statute at §939.49(1), specifically prohibits the introduction of such unreasonable force [insertion of a firearm] for a defense of

property claim.” (State Br. 6). This is patently false. The statute states, “It is not reasonable to intentionally *use* force intended or likely to cause death or great bodily harm for the sole purpose of defense of one’s property.” *Wis. Stat.* §939.49(1)(Emphasis added. Every other sentence of the statute references *both* the use of force, and the threat of force. The only logical conclusion is the statute implicitly authorizes the threat of force which would rise to the level of great bodily harm or deadly force.

The State makes the claim Dr. Walker used a degree of force like to cause great bodily harm. (State Br. 6). Yet, the state does not cite to any fact in the record to support this, and fails to cite to any legal authority which would suggest pointing a firearm at someone constitutes an actual use of force. Dr. Walker merely threatened force as authorized by statute. Whether this threat was reasonable is a question for a jury to answer. *State v. Stietz*, 2017 WI 58, 375 Wis. 572(2017).

B. The Issue of Defense of Property is not Meritless; As Such, Counsel was Deficient

The State’s conclusion there was no deficiency from Dr. Walker’s trial counsel is based upon defense of property being a meritless issue. (State Br. 6). As noted above and in Dr. Walker’s initial brief, this is not a meritless claim. Thus, as argued in the initial brief, Dr. Walker’s trial counsel performed deficiently.

Conclusion

For the reasons stated above and previously, Dr. Walker respectfully requests this court reverse the Circuit Court’s ruling and order the Circuit Court to set a new trial in this case.

Dated: Friday, October 11, 2019
Respectfully submitted,

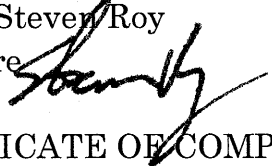


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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (8)

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 654 words.

Signed: Steven Roy

Signature 

CERTIFICATE OF COMPLIANCE WITH 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 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 Steven Roy

Signature 