

FILED
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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2019AP2339-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
vs.
SAMUEL POLHAMUS,
Defendant-Appellant.

ON APPEAL FROM A JURY VERDICT IN THE
MONROE COUNTY CIRCUIT COURT, THE
HONORABLE RICHARD A. RADCLIFFE PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State anticipates the issue(s) raised in this appeal can be addressed by the briefs. Accordingly, the State is not requesting oral argument. Further, publication is not warranted under Wis. Stat. § 809.23.

STATEMENT OF THE CASE

The defendant-appellant, Samuel Polhamus, acting pro se, both in the trial court and now on appeal, was found guilty of disorderly conduct and acquitted of misdemeanor bail jumping following a jury trial. (33, 34; 49.) The incident leading to this conviction occurred in the downtown bars in Sparta, Wisconsin while the defendant was intoxicated. (2; 37; 40.) The incident began with the defendant verbally harassing and sparring with bar patrons and ended with a physical confrontation during which the defendant jumped over the bar. (2; 39; 40.) Following his conviction, Polhamus filed a post-conviction motion requesting a new trial. (73; 76; 78.) Polhamus' post-conviction motion was denied.¹ (83.) The defendant now appeals and he requests to have his conviction vacated.

ARGUMENT

A. Polhamus' brief fails to comply with Wis. Stat. § (Rule) 809.19.

1. Applicable legal principles.

Wis. Stat. § (Rule) 809.19 specifies the form and content of briefs filed in the Wisconsin Court of Appeals.

¹ The post-conviction motion raised issues that are not referenced here. (83.)

Subsection (1)(d) requires the appellant's brief to contain "[a] statement of the case, which must include: a description of the nature of the case; the procedural status of the case leading up to the appeal; the disposition in the trial court; and a statement of facts relevant to the issues presented for review, with appropriate references to the record." Subsection (1)(e) requires the brief to contain "[a]n argument, arranged in the order of the statement of issues presented. The argument on each issue must be preceded by a one sentence summary of the argument and is to contain the contention of the appellant, the reasons therefore, with citations to the authorities, statutes and parts of the record relied on as set forth in the Uniform System of Citation and SCR 80.02."

Succinctly, parties have the obligation to present and support their arguments. *See State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999) ("A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories.").

A party's pro se status does not relieve him or her of the obligation to comply with the relevant rules of procedure. That is, pro se litigants must normally meet the same standards as attorneys. *See Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16, 20 (1992) ("While pro se litigants in some circumstances deserve some leniency . . . (citation omitted), the rule applies only to *pro se* prisoners." Even pro se parties "must expect to file a legal argument and some supporting authority. *United States ex rel. Verdone v. Circuit Court for Taylor County*, 73 F.3d 669, 673 (7th Cir. 1995) (per curiam). It is not the court's obligation to research and construct legal arguments for the parties. *Sanchez v. Miller*, 792 F.2d 694, 703 (7th Cir. 1986).

A party's failure to comply with the rules of appellate procedure ". . . is grounds for dismissal of the appeal, summary reversal, striking of a paper, imposition of a penalty or costs on

a party or counsel, or other action as the court considers appropriate.” Wis. Stat. § (Rule) 809.83(2). That is, the court may decline to review issues that are inadequately briefed. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (“Pettit’s arguments are not developed themes reflecting any legal reasoning. Instead, the arguments are supported by only general statements. We may decline to review issues inadequately briefed. . . . Arguments unsupported by references to legal authority will not be considered. . . . Pettit’s brief is so lacking in organization and substance that for us to decide his issues, we would first have to develop them. We cannot serve as both advocate and judge”) [footnote omitted.]

2. Polhamus’ inadequately briefed issues should not be given consideration.

Polhamus’ presentation of his issues and the support for his issues are insufficiently developed such that they do not merit the court’s review.

Polhamus frames the issues as “whether videotaping can be considered a threat and whether that conduct would be intention to do harm.” (App.’s Br. 1, 12-16.) In support of these issues, Polhamus included a portion of the jury instruction conference at trial when the parties and trial court discussed the jury instruction on disorderly conduct. The portion of the transcript references the trial court finding the defendant’s videotaping was not a threat of intention to do harm and therefore that part was removed from the jury instruction (Wis. JI-Criminal 1900) and not read to the jury. The court’s finding was exactly the argument Polhamus is attempting to advance in this appeal. Therefore, the State is unclear on what the issues are Polhamus is attempting to advance in this appeal. By raising these claims and then failing to develop the argument, the State has spent much time and effort attempting to guess at the essential nature of the controversy.

Beyond failing to develop his arguments, Polhamus provides almost no citation to legal authority, much less record citations to the “facts” that he interspersed into his argument. The defendant failed to sketch an argument about why.

The State’s ability to address Polhamus’ claims is significantly hindered by Polhamus’ lack of developed arguments, lack of record citations, and lack of citations to relevant legal authority in his brief. In order for the State to address Polhamus’ undeveloped claims, the State would need to identify all possible issues his brief may be attempting to convey, research all possible issues, develop all possible arguments, and then brief them.

In light of Polhamus’ inadequate briefing, the court should decline to consider Polhamus’ argument.

B. The evidence presented at trial was sufficient to support Polhamus’ conviction of disorderly conduct.

Should the court nonetheless exercise its discretion and elect to attempt to review Polhamus’ claims, this court should conclude his claims are without merit

To the extent the State can distill what his central argument may be, the State interprets Polhamus’ claim as a challenge to the sufficiency of the evidence.

1. Applicable legal principles

When an appellate court reviews a challenge to the sufficiency of the evidence, the court must affirm the conviction if any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence at trial to find guilt. *State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752, 758 (1990). If more than one inference can be drawn from the evidence, the reviewing court must accept the inference drawn by the jury. *State v. Czarnecki*, 2000 WI App 155, ¶5, 237 Wis. 2d 794, 800, 615 N.W.2d 672.

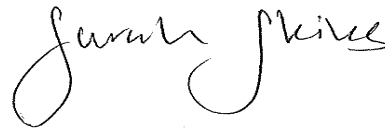
2. There was sufficient evidence to support the jury's verdict of guilty.

As the trial court acknowledged in ruling on Polhamus' post-conviction motion, the most relevant evidence was the videos shown during trial that showed the bar fights and Polhamus' conduct with officers on a public street. (83: 3-4.) While the videotaping may have played a part in the jury's deliberations, he overemphasizes the importance of it. The State called seven witnesses at trial. These witnesses included the bartender, bar patrons, and police officers who all detailed Polhamus' conduct. From the totality of the witness testimony, in conjunction with the videos, a reasonable factfinder could have drawn inferences from it to find Polhamus guilty.

CONCLUSION

Polhamus has failed to state a clear, identifiable legal theory under which he is entitled to relief, nor has he supported such theory with facts and legal support. Therefore, the State asks this Court to affirm the judgment of conviction.

Dated this 19th day of November, 2020.



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CERTIFICATION AS TO FORM AND LENGTH

I certify 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 points for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The length of the brief is 1,288 words.

Dated this 19th day of November, 2020.



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CERTIFICATION 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 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 19th day of November, 2020.



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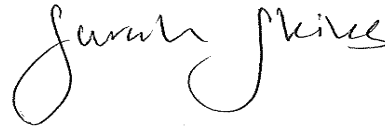
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CERTIFICATION OF MAILING

I certify that this brief was mailed via the United States Postal Service to the Wisconsin Court of Appeals, District IV and to all parties associated with this action on November 19, 2020.

Dated this 19th day of November, 2020.

A handwritten signature in black ink, appearing to read "Sarah Skiles", written in a cursive style.

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