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COURT OF APPEALS
DISTRICT IV

Appeal No. 2021AP1119 CR
Circuit Court Case No. 2020CT78

State of Wisconsin,
Plaintiff-Respondent,

v.

Evan J. Schnoll,
Defendant-Appellant.

DEFENDANT'S REBUTTAL BRIEF

ON APPEAL FROM THE CIRCUIT COURT
FOR DODGE COUNTY, BRANCH 1,
THE HONORABLE BRIAN A. PFITZINGER PRESIDING

Respectfully submitted,

Elbert & Wolter, Ltd.
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What is clear from the various documents in this case, is that the defendant was arrested in California for a drunk driving offense on either November 17, 2010 or November 18, 2010. The court record indicates November 17, 2010 (R. 45, A.Ap. 135) and the driving record and criminal history indicate November 18, 2010 (R. 40, A.Ap. 124; R. 40, A.Ap. 125). What is also clear, is that the defendant was convicted on February 2, 2011 of a wet reckless offense. The court record and the criminal history reflect said date (R. 45, A.Ap. 136; R. 40, A.Ap. 125; R. 45, A.Ap. 111). The court record is arguably the most accurate of all the documents as it was contemporaneously generated. The State does not actually allege the court record is inaccurate; the State simply states that it is not certified. Even if this Court does not rely on the court record, the defendant's criminal record reflects a conviction date of February 2, 2011 (R. 40, A.Ap. 125; R. 45, A.Ap. 111). The State tendered the criminal history as one of its original exhibits (R. 40) and referred to the conviction date of February 2, 2011, in its own "Statement of the Case".

The driving record is the only document reflecting a "conviction date" of December 18, 2010. This fact is significant because the driving record is incorrect. The defendant was not convicted of any offense prior to February

2, 2011. The State points to no other document, other than the driving record, to assert a conviction date of December 18, 2010.

The defendant proffers, the driving record is also incorrect as to the violation that was reported. As stated in his brief, the defendant asserts a wet reckless offense is not a "BAC Blood Alcohol Content" violation.

The likely explanation for the date discrepancy is that California is akin to Wisconsin in that once a person is arrested for a drunk driving offense, their license is administratively suspended. In Wisconsin, a person's license is administratively suspended thirty days after an arrest for an operating with a prohibited alcohol concentration (among other offenses). In the instant case, the defendant was arrested on November 18, 2010 and "convicted" on December 18, 2010 according to the driving record, thirty days after his arrest. Administrative suspensions are not "convictions" falling within the purview of Wis. Stat. §343.307.

Next, the State cites to the California case People vs. Claire, 229 Cal. App. 3d 647 (1991) to support the position that "drunk driving charges reduced to 'wet reckless' driving charges may be counted as a prior convictions to increase a sentence for drunk driving" in Wisconsin.

However, three pages later in its brief, the State asks this Court to ignore the fact that in California, the defendant's wet reckless conviction no longer appears on his driving record. The arguments are mutually exclusive.

For the reasons stated in the defendant's brief and this rebuttal brief, the defendant requests that his prior conviction for a wet reckless, on February 2, 2011, not be counted as a prior offense under Wis. Stat. §343.307(1)(d).

Dated this 9th day of February, 2022.

Signed,

ELBERT & WOLTER, LTD.

By: electronically signed by Jacquelyn L. Wolter
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §809.19(8)(b), (bm), & (c) (2019-2020) for a rebuttal brief (in that it is Desktop Publishing or Other Means monospaced font, 10 characters per inch, double-spaced, a 1.25 inch left and right margins, and top and bottom margins 1 inch). The length of the rebuttal brief is 4 pages.

Dated this 9th day of February, 2022.

Signed,

ELBERT & WOLTER, LTD.

By: electronically signed by Jacquelyn L. Wolter

Jacquelyn L. Wolter, SBN: 1052322

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CERTIFICATE OF COMPLIANCE WITH WIS. STAT.
§809.19(12) (comment) - ELECTRONIC BRIEF CERTIFICATION.

I hereby certify that I have submitted an electronic copy of the Defendant-Appellant's Rebuttal Brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §809.19(12).

Dated this 9th day of February, 2022.

Signed,

ELBERT & WOLTER, LTD.

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