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State of Wisconsin Court of Appeals

State of Wisconsin, Plaintiff - Respondent
v.
Jacob T. Thornburg, Defendant - Appellant

Case Number on Appeal 2023AP000600

Brief of Appellant

Circuit Court Case Number 2023TR000156
Eau Claire County, District 3
Judge John F. Manydeeds

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Statement of Issues

1. Whether the circuit court erred in finding Thornburg guilty of violating state statute 346.57(2) by not examining the cause of the collision in question. The cause of the collision is relevant in determining whether or not a driver violated state statute 346.57(2) because the law indicates that collisions are the main criterion of determining violation.
2. Whether the circuit court failed to provide due process by:
 - A. Interrupting Thornburg's closing arguments;
 - B. Directing the prosecuting attorney to give closing arguments before Thornburg was allowed to present his case;
 - C. Prematurely ending Thornburg's witness statements while there was still truth to be ascertained;
 - D. Failing to recognize that Mr. Van Daalwyk misrepresented witness testimony in closing arguments;
 - E. Failing to recognize inconsistent witness testimony.

Statement of Oral Arguments and Publishing

It is the stance of the appellant, Jacob Thornburg, that this brief fully presents and meets the issues on appeal and fully develops the theories and legal authorities so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost to the litigant. It is also the stance of Jacob Thornburg, that the opinion on this case should be published to bolster case law for the sake of due process and clarity of judgment in the relevant statutes.

Statement of the Case

Nature of the Case

This case is an appeal from the Eau Claire County circuit court, district three, in the state of Wisconsin.

Procedural Status of the Case

This civil case was heard in the Eau Claire County Circuit Court of Wisconsin as *State of Wisconsin v. Jacob T. Thornburg*. Following the trial in circuit court, an appeal was filed by Jacob T. Thornburg.

Court Proceedings

The case was called at 1:33 PM on March 20, 2023, with all appearances via Zoom. Defendant Jacob T. Thornburg appeared by video.

Prosecuting attorney Jansen James Van Daalwyk appeared by video for the State of Wisconsin. When the parties were ready to proceed, the state called Trooper Alan Christian, who was sworn in and testified, identifying Thornburg. The State offered exhibit #1 and moved to show the squad video, which was granted. The squad video began showing at 3:54 minutes and stopped at 6:24 minutes.

Thornburg requested the video play of the statement of the other driver, and the State objected. The court allowed the playing of the squad video of the statement of the other driver. Thornburg requested to admit photos of the damage on his vehicle from the collision, and the State objected to the relevancy of the photos. The court instructed Thornburg to ask questions as to reasonable and imprudent speed. The State rested. Arguments were heard by both parties. Thornburg was sworn in and testified. New arguments were added by the State. Thornburg then attempted to provide his closing argument.

Disposition in the Circuit Court

The circuit court found that the State had met the burden and found Thornburg guilty with a fine of \$213.10 with 60 days to pay the fine.

Statement of Facts

On the evening of December 2, 2022, the appellant Jacob Thornburg was driving on I-94 eastbound in Eau Claire County (R14:4, 5 and 7). Thornburg had been driving down this two lane highway for multiple hours when they encountered dangerous amounts of ice in the right lane (R14:20). He was already driving slower than other drivers before observing the ice on the road (R14:26). At this time, there was one other driver driving behind Thornburg in the right lane (R14:9).

Thornburg observed dangerous amounts of ice in the right lane and made a quick decision to maneuver away from the dangerous ice (R14:26, 27). At this time, there were no other drivers in the left lane, and so he maneuvered into the middle of the two lanes (R14:9). He also slowed his speed to counteract the ice (R14:25). Thornburg did not leave the right lane and did not stop the vehicle but rather, he continued to drive forward (R14:28). Thornburg was then hit from behind by the other driver (R14:26).

After the accident, Trooper Alan Christian arrived at the scene and questioned Jacob Thornburg (R14:5). Thornburg stated to Trooper Christian at the scene that upon engaging with the ice hazard, he swerved away from the ice hazard (R14:27). There was another accident that was visible from where Thornburg pulled over following the collision (R14:26).

Trooper Christian issued Thornburg a citation for allegedly violating State statute 346.57(2) (R1). Thornburg pleaded not guilty to this citation (R2).

On March 20, 2023, the State prosecution, represented by attorney Mr. Van Daalwyk, presented his case to the court by interviewing Trooper Alan Christian (R14). Trooper Christian testified that there were three other accidents that evening on I-94 eastbound (R14:7). Video evidence entered by Mr. Van Daalwyk during direct examination of Trooper Christian was not provided to Thornburg prior to the trial (R14:6, 14).

During cross examination, Thornburg moved to enter photos of the damage to his vehicle during the collision, but the state objected to their relevancy and was sustained (R14:17-19). During redirect

examination by Mr. Van Daalwyk, Trooper Christian testified that Thornburg stated that he failed to control his vehicle at the scene of the accident (R14:20). During recross examination by Thornburg, Trooper Christian testified that Thornburg did not make that statement at the scene of the accident (R14:21). Later, during closing arguments, Mr. Van Daalwyk used this statement by Trooper Christian to argue that Thornburg was guilty of violating 346.57(2) (R14:23).

Following Trooper Christian's testimony, the court invited Mr. Van Daalwyk to provide a final argument without first giving Thornburg the opportunity to testify (R14:23). Following this, Mr. Van Daalwyk delivered a final argument (R14:23-24). It was Mr. Van Daalwyk's position that the ice on the road was merely the weather conditions as described in 346.57(2) (R14:23). After Mr. Van Daalwyk's argument, the court invited Thornburg to make a final argument (R14:24). During Thornburg's attempt at a final argument, the court interrupted when he mentioned facts that had yet to be brought to light under sworn testimony, particularly the allegation of whether Thornburg got a concussion during the accident (R14:24-25). Thornburg had still not been allowed to testify or provide his case at this time (R14). The court then reopened the case to allow Thornburg to testify (R14:25).

Thornburg testified to swerving away from ice into the middle of two lanes after observing the hazardous ice on the road (R14:27). During Thornburg's testimony, the court interrupted him to invite Mr. Van Daalwyk to cross-examine him (R14:27). Thornburg was interrupted by the court during his testimony, during the cross and re-cross examination of Trooper Christian, and during his closing arguments (R14). Thornburg was also stuttering significantly throughout the trial and struggling to speak coherently (R14). Thornburg never got to clarify the details of the concussion during his testimony (R14). Neither the court nor Mr. Van Daalwyk pursued any line of questioning about this detail during Thornburg's testimony (R14:25-28).

Following Thornburg's testimony, the court invited Mr. Van Daalwyk to add to his closing argument (R14:29). In addition to his closing argument, Mr. Van Daalwyk argued that Thornburg was guilty of violating statute 346.57(2) because he allegedly caused the accident,

which was not established in sworn testimony and was deemed as irrelevant earlier in the trial (R14:23). He also argued that Thornburg saw multiple accidents on the road prior to the collision, which was also not established in sworn testimony (R14:23).

Then, the court invited Thornburg to give a final argument (R14:29). During Mr. Thornburg's final argument, the court did not allow him to finish, but interrupted him after six lines of speaking (R14:29) to declare that the State had met its burden and render judgment (R14:29-30). For his closing argument, Mr. Van Daalwyk was allowed to speak without interruption from the court for a total of 30 lines (R14:23-25, 29). During his closing argument, Thornburg was interrupted several times by the court and only spoke for a total of 22 lines, and only six of those lines were after Thornburg was finally allowed to present part of his case (R14:24, 25, 29). No explicit time limit was established in court regarding testimony or closing argumentation at any point (R14).

Arguments

Issue 1: Whether the circuit court erred in finding Thornburg guilty of violating state statute 346.57(2) by not examining the cause of the collision in question. The cause of the collision is relevant in determining whether or not a driver violated state statute 346.57(2) because the law indicates that collisions are the main criterion of determining violation.

Argument 1.1.

Because the cause of the collision is relevant to the case, because Thornburg did not cause the collision, and because Thornburg drove used due care, Thornburg is not guilty of violating statute 346.57(2).

1.1.a.

The cause of the collision is relevant to the case.

Thornburg sought to enter photos of damage to his own vehicle following the collision on December 2, 2022, into evidence. The motion was denied on the State's objection that they were not relevant to the case (R14). However, because these photos would have given the court insight as to the cause of the collision, the court should have seen the photos as part of understanding the case.

State statute 346.57(2) indicates that a driver must have such control of their vehicle so as to avoid colliding with any object, person, vehicle, or other conveyance. Because the criterion for speed management and vehicle control listed in the statute is avoiding a collision and using due care, the collision that occurred on December 2, 2022, and its facts are relevant to this case. This is why the court's rejection of evidence that the collision was not caused by Thornburg is an incorrect interpretation of the statute.

If the court mistakenly believes that Thornburg is at fault for this collision, the court could reason that Thornburg did violate state

statute 346.57(2) because of its criterion. If Thornburg had caused the collision, he would be liable for violating this statute, and if another driver caused the collision, then that driver would be liable for violating the statute. Therefore the cause of the accident and evidence of the responsible party is relevant to this case.

1.1.b.

Thornburg did not cause the collision and is therefore not guilty of violating State statute 346.57(2).

At the start of the accident in question, Thornburg was in the right lane driving in front of the other driver who was also in the right lane. Upon engaging with a dangerous road hazard, Thornburg maneuvered partially into the left lane, where there were no other vehicles, and then pressed on the brakes (R14). Thornburg did not leave the right lane, and did not stop their vehicle, but was then struck from behind by the other driver (R14).

Because the other driver struck Thornburg from behind, it is more likely than not that the other driver violated the statute where they failed to prevent themselves from colliding with Thornburg's vehicle, which was in front of them. Generally, striking a vehicle with another from behind while both are traveling forward in the same direction is considered negligence according to statute 895.045. Vehicles are required to travel at a safe distance from each other on the highway (346.14), especially in consideration of the weather conditions.

Therefore, it is more likely than not that the collision in question was a loss of control of vehicle by the other driver, and not by Thornburg.

Jacob Thornburg did not collide with another vehicle, object, or person while driving on the evening of December 2, 2022. He was, however, the victim of a collision that was not his fault. This does not make him guilty of violating statute 346.57(2).

Additionally, since there were no other vehicles in the left lane, and since Thornburg had observed that the right lane was potentially

dangerous, Thornburg had the legal right under state statute 346.13(4) to stay in the middle of the two lanes to avoid the ice hazard. This statute states: that a driver may “to the extent necessary, extend into another lane intended for travel in the same direction.” Since Thornburg had observed the presence of dangerous ice in the right lane, it became necessary and reasonably safe that Thornburg temporarily move into the center of the two lanes. Additionally, since Thornburg had reason to fear that the right lane was dangerous, Thornburg had the right to maneuver to most safely avoid the expected danger, as was argued in State of Wisconsin v. Brown in 1982.

Finally, it is physically impossible that Thornburg could have caused the collision with the other driver. In the closing arguments, Mr. Van Daalywk made a claim that contradicts physics when he alleged that Thornburg caused himself to be rear-ended. This statement is a physical contradiction, because by definition, a rear-ended vehicle must be driving slower than the vehicle behind them. In order for the trailing vehicle to collide with the leading vehicle, the trailing vehicle must be going at a speed greater than that of the leading vehicle or it could never catch up with the first vehicle to cause the collision. Therefore, since a rear ended accident occurred, since both vehicles were in the right lane, and since Thornburg’s vehicle was the leading vehicle, he cannot have been going too fast to cause the collision.

In this way, the laws of physics would have to change in order for Jacob Thornburg to be at fault for this accident. The fact that Thornburg was driving ahead of the other driver in the same lane is substantial proof that he could not have caused the accident and is not guilty of violating this statute.

1.1.c.

Jacob Thornburg used due care before and during the incident.

The criteria for violating this statute also involves using due care on the road. “Due care” can be defined as engaging in just, proper, and sufficient care based on given circumstances to show the absence of

negligence (Black Laws Dictionary Online). Additionally, “due care” can also be defined as the implication that a person has not been careless (Black Laws Dictionary Online).

In this way, if a driver were to show carelessness in how they react to an ice hazard, then that person would be guilty of violating statute 346.57(2). However, since Jacob Thornburg was not careless in his reaction to the hazard, and since he did use sufficient care and took proper actions in the given circumstances, he did not violate this statute.

Mr. Van Daalwyk first argued that Thornburg allegedly failed to use due care by allegedly going too fast for the road conditions and causing the accident (R14). Since Thornburg was hit from behind, he could not have been going too fast to cause a rear ended collision.

Additionally, Mr. Van Daalwyk argued that Thornburg allegedly failed to use due care because he allegedly was going too fast for the weather conditions prior to being engaged with the ice hazard (R14). Thornburg was not going too fast for the weather conditions, and this is shown by the way that he safely responded to the ice hazard.

Mr. Van Daalwyk’s argument is essentially that because Jacob Thornburg was engaged with an ice hazard, he must have been going too fast. This argument ignores the nature of ice hazards. Ice is an extremely dangerous hazard and regardless of a person’s speed, if they do not react appropriately to the hazard, the ice can force them off the road or cause them to slide and lose control of their vehicle. Ice is so dangerous that a pedestrian walking two miles per hour could slide on ice and fall over. Any driver, regardless of their speed, has the potential to become engaged with an ice hazard.

Simply experiencing a dangerous ice hazard does not mean that a driver is going too fast, that they have lost control of their vehicle, or that they are driving carelessly. The reason a driver should drive slower in bad weather conditions is that driving slower increases the amount of time a driver has to react to potentially dangerous hazards,

and in this case, Thornburg's low speed allowed him enough time to safely react to the presence of the ice hazard.

In Thornburg's testimony, he showed that he had had enough time to react to the ice hazard whereby he maneuvered his vehicle left, away from the ice hazard, and slowed his vehicle down while continuing down the highway.

Had Thornburg not been using due care, he may not have had time to react to the ice hazard and it would be most likely, based on the described trajectory of the ice hazard, that he would have been forced off the road. Thornburg was not forced off the road because he was using due care and maintained control of his vehicle (R14). Had Thornburg not been rear-ended by the other driver, it is more likely than not that he would not have hit any objects or vehicles and managed to safely continue down the road after avoiding the ice.

It is also important to note that the ice was particularly dangerous in the location that Thornburg experienced the ice hazard. Thornburg was not the only driver to experience the ice hazard on that highway in Eau Claire County, as there were three other known accidents within the same area and on the same road as the accident where Thornburg was struck (R14). Additionally, one accident was so close to the accident where Thornburg was stuck that the crash site was visible from where Thornburg had pulled off the road (R14). Therefore, it is more likely than not that all the drivers in the other accidents were not speeding at the same time in the same spot, but rather that there was unreasonable amounts of dangerous ice in that particular area on the road that became hazardous to multiple drivers. The fact that multiple other drivers experienced bad ice in the same area indicates that it is unlikely that Thornburg was driving carelessly but that he used due care to safely navigate a perilous ice hazard, succeeding where other drivers had failed. Thornburg had been driving safely down the highway for multiple hours in similar weather conditions without any issues (R14). Then, when he encountered the ice hazard, Thornburg reacted safely by maneuvering away from the ice hazard into the center of the two lanes (R14).

Conclusion of Argument 1.1

The criteria for violating this statute includes that the driver's speed is so great that it causes a collision or shows a lack of due care. Because Jacob Thornburg did not cause a collision, because his speed was not too great, and because he used due care, Thornburg did not violate this statute and should therefore be found not guilty of violating statute 346.57(2).

Argument 1.2.

None of the actions Thornburg took to avoid a road hazard were dangerous, and the fact that Thornburg made such choices indicates that he had not lost control of his vehicle.

1.2.a.

Upon engaging with the ice hazard, Thornburg made the following observations and took the following actions (R14):

ACTION 1: Thornburg observed the presence of the ice hazard in the right lane.

ACTION 2: Thornburg maneuvered away from the direction of the ice hazard.

In sworn testimony, Thornburg stated that after engaging with the ice hazard in the right lane, he swerved away from the ice hazard into the center of the two lanes. The term "swerve" is defined as a change or cause to change direction abruptly (Oxford Languages Online Dictionary). Due to the presence of the ice hazard and the fact that there were no other drivers in the left lane, this was the safest decision to avoid the ice hazard.

During the trial, Mr. Van Daalwyk represented the ice hazard as nothing more than weather conditions, but this is not the case. Ice is a dangerous road hazard, and if a driver is not careful about how they respond to the ice hazard, they can easily be pulled off the road by the ice, regardless of the speed they are going. According to Trooper Christian, there were three other accidents on that same road in the

same area, and so this was not just bad weather (R14). It was a dangerous hazard that Thornburg experienced and safely responded to.

Thornburg, driving carefully, was not pulled off the road by the ice hazard but instead responded appropriately to the danger and maneuvered away from the ice. Since there were no drivers in the left lane and since the hazard was in the right lane, the safest maneuver that Thornburg could make was to bring his vehicle out of the right lane into the center of the two lanes. Thornburg had the right to make this maneuver, and by doing so he showed that he was in control of his vehicle, using due care in how he navigated the challenges of the ice hazard (346.13(4)).

Had Thornburg not been capable of maneuvering away from the ice hazard, it is more likely than not that Thornburg would have been forced off the road by the hazard and that he would have hit a tree or other object. Even after encountering a dangerous road hazard, Thornburg had such control over his vehicle that he was able to maneuver away from the hazard and continue driving down the road. Thornburg was not driving recklessly or illegally, but made smart decisions in response to a dangerous hazard on the road.

ACTION 3: Thornburg slowed his speed and continued down the road until he was struck from behind by the other driver (R14).

Mr. Van Daalwyk argued that drivers on the road on the night of December 2nd should have been driving slower than the speed limit, and Thornburg agrees (R14). Both during and before the accident, Thornburg stated that he was driving slower than other drivers due to the weather conditions (R14).

While experiencing the ice hazard, Thornburg had cause to slow down his vehicle even more than he already had (R14). Slowing down allowed Thornburg to maneuver through the hazardous ice more safely since he had more time to react to any ice on the road. Statute 346.57(2) states that a vehicle's speed should not be too great, and so

therefore this action taken by Thornburg was safe and did not violate the statute.

Jacob Thornburg slowing his speed was not illegal or unsafe. Thornburg had a right to slow down his speed, and the driver behind him had a responsibility to keep a reasonable distance from Thornburg's vehicle. None of the actions taken by Thornburg were unsafe or illegal.

Conclusion of Argument 1.2

The actions that Thornburg took before being struck from behind were safe and did not cause Thornburg to hit any object, person, vehicle or other conveyance. Additionally, the actions taken by Thornburg showed that he used due care while on the road to responsibly avoid any collisions and responsibly navigate the observed road hazard.

Finally, the fact that Thornburg made these decisions and took these actions indicates that Thornburg did not lose control of his vehicle, and that he had such control over his vehicle as was necessary to avoid colliding with any object, person, vehicle or other conveyance.

Argument 1.3.

Swerving is not illegal and can be necessary to avoid a collision.

Mr. Van Daalwyk argued that swerving constituted loss of control of the vehicle, and this is simply incorrect. "Swerving" is defined as a change or cause to change direction abruptly (Oxford Languages). State statute 346.57(2) states that a vehicle should be so controlled as may be necessary to avoid colliding with another object or vehicle. If two vehicles are in the right lane and the front vehicle slams on the brakes, it may be necessary that the back vehicle swerve into the empty left lane to avoid a collision. This is one example of a scenario where swerving may be necessary in order for a driver to avoid a collision and be compliant with the statute.

In this case, Thornburg's statement that he swerved upon engaging with the ice hazard indicates that he changed direction in order to avoid the hazard (R14). If instead of ice, this was a large object on the road, it would be obvious to the court that Thornburg should, if reasonable, maneuver around the object to avoid a collision. With ice, it is similarly responsible for a driver to avoid hazardous ice. Since Thornburg observed hazardous ice in the right lane of the road, and since there were no vehicles in the left lane at the time, his response to swerve away from the ice into a safer area of the road should be understood as using due care to avoid a collision.

Additionally, swerving, as defined, does not indicate the angle with which Thornburg moved from the right lane into the center of the lanes, nor that he did so unsafely, but rather should be interpreted that he changed and/or had cause to change his direction abruptly. Since Thornburg testified that he was able to get into the center of the road without sliding off the road, it is reasonable to conclude that Thornburg was testifying that he made a quick and safe decision.

From a preponderance of the evidence, Thornburg was not going too fast for the road conditions. By swerving away from the ice, Thornburg was able to control his vehicle in response to the dangerous ice hazard that Trooper Christian testified caused a minimum of three accidents on that same road in Eau Claire County.

Conclusion of Argument 1.3

In reaction to a dangerous hazard, it is sometimes necessary for a driver to swerve in order to avoid dangerous hazards. In this case, Mr. Van Daalwyk has argued that swerving constitutes a loss of control of a vehicle, but the evidence indicates that swerving away from the ice hazard was a safe decision that allowed Thornburg to maintain control of his vehicle and thwart the ice hazard. Therefore, from a preponderance of the evidence, Thornburg's decision to swerve away from the hazard was the safe and right decision and did not violate state statute 346.57(2).

Issue 2: Whether the circuit court failed to provide due process by:

- A. Interrupting Thornburg's closing arguments;
- B. Directing Mr. Van Daalwyk to give closing arguments before Thornburg was allowed to present his case;
- C. Prematurely ending Thornburg's witness statements while there was still truth to be ascertained;
- D. Failing to recognize that Mr. Van Daalwyk misrepresented witness testimony in closing arguments; and
- E. Failing to recognize inconsistent witness testimony.

Argument 2.1.

There were multiple incidents in this trial where Mr. Van Daalwyk and the court failed to follow procedures in a way that unfairly disadvantaged Thornburg and prevented the ascertainment of truth.

2.1.1.

The court interrupted Thornburg's closing arguments (R14).

According to statute 805.10, if a judge wishes to set a time limit on closing arguments, they must do so before the closing arguments begin. According to the transcript, no such time limit was set, and although Mr. Van Daalwyk was allowed to provide 30 lines of closing arguments after presenting their case, Thornburg was only allowed to present 6 lines after presenting part of his case. Thornburg was also allowed 16 lines of closing arguments before Thornburg presented evidence. Since no time limit was set for closing arguments, and since Thornburg was only allowed to state 6 lines of closing arguments after presenting part of his case, it is clear that the court violated statute 805.10 and failed to provide Thornburg his right to due process (The Constitution of the United States, Article 1, Section 8, Clause 5) (Wisconsin State Constitution, Article I, Section 8).

In the case *Herring v. New York* it was found by the U.S. Supreme Court that:

“The right to counsel includes the right to make a closing summary of the evidence to the trier of fact.”

Additionally, it was the court’s opinion that:

“It can hardly be questioned that closing argument serves to sharpen and clarify the issues for resolution by the trier of fact. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole.”

In Thornburg’s case, this is a clear instance where the court broke procedures in such a way that prevented Thornburg his right to due process by allowing him adequate time for a closing argument (The Constitution of the United States, Article 1, Section 8, Clause 5) (Wisconsin State Constitution, Article I, Section 8). In this brief, there are over six pages of arguments as to why Thornburg is not guilty of violating the statute. In court, Thornburg was only provided six lines to make the same arguments (R14).

Additionally, it is possible that the circuit court discriminated against Thornburg due to his disability, and failed to provide Thornburg equal access to due process (The Constitution of the United States, Article 1, Section 8, Clause 5) (Wisconsin State Constitution, Article I, Section 8). Because the court had been informed of Thornburg’s concussion outside of testimony, and because Thornburg was stuttering and struggling to speak coherently while in court, it should have been clear to the court that Thornburg had a cognitive impairment (R14). The court has a responsibility under The Americans with Disabilities Act to provide reasonable accommodation to a cognitively disabled defendant. Instead of providing such accommodation, the court silenced Thornburg’s final arguments after only six lines of speaking, which may constitute a violation of Section 202 of The Americans with Disabilities Act where it is stated:

“No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

2.1.2.

The court directed Mr. Van Daalwyk to give closing arguments before Thornburg was allowed to present his case or testify (R14).

After Mr. Van Daalwyk finished their examination of Trooper Christian, the judge immediately directed Mr. Van Daalwyk to give their closing arguments without allowing Thornburg to present a case (R14). Ordinarily in a trial, after Mr. Van Daalwyk rests their case, the defendant is then allowed to present their case, but that did not happen in this trial as Mr. Van Daalwyk immediately moved to closing arguments.

This not only unfairly disadvantaged Thornburg, but it also showed an unfair bias by the court in favor of Mr. Van Daalwyk where the court appeared unwilling to hear Thornburg's case. This also shows that the court failed to fulfill its role as the trier of facts, as the court did not seek to allow Thornburg to present his case. Finally, this is also a violation of state statute 906.11 in which:

“The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth.”

Truth cannot be effectively ascertained if only one side is allowed to present their case.

2.1.3.

The court ended Thornburg's witness statements while there was still truth to be ascertained (R14).

When Thornburg was finally allowed to present his case, his statements were cut short while there was still truth to be ascertained. During his first attempt at a closing argument, Thornburg stated to the court that he had a concussion from the accident, which then prompted the judge to allow Thornburg to testify due to this fact not being established in sworn testimony (R14). Thornburg's testimony was then cut short before he was allowed to testify about the

concussion and other factors that may have been relevant to the case (R14). Because the court was aware of Thornburg's concussion and it was known to the court that this was a fact Thornburg felt was relevant to the case, the court's closing of Thornburg's case and testimony without allowing Thornburg to testify about this fact, as well as other presently unknown facts about which Thornburg may have wanted to testify, violates state statute 906.11 in which:

"The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to make the interrogation and presentation effective for the ascertainment of the truth."

Additionally, it is possible that the circuit court may have further discriminated against Thornburg due to his disability, and failed to provide Thornburg equal access to due process (The Constitution of the United States, Article 1, Section 8, Clause 5) (Wisconsin State Constitution, Article I, Section 8). Because the court had been informed of Thornburg's concussion outside of testimony, and because Thornburg was stuttering while in court, it was clear to the court that Thornburg had a cognitive impairment (R14). The court has a responsibility under the Americans with Disabilities Act to provide reasonable accommodation to a cognitively disabled witness. Instead of providing such accommodation, the court violated mode and order of interrogation and presentation according to statute 906.11 by silencing Thornburg's case, this could again be a violation of Section 202 of The Americans with Disabilities Act where it is stated:

"No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

2.1.4.

Prosecuting attorney Mr. Van Daalwyk misspoke in his closing arguments and stated that Thornburg made statements that Thornburg did not make, and spoke on issues that had not been proven by the evidence of the case (R14). The court failed to recognize or acknowledge this error (R14).

During his closing argument, Mr. Van Daalwyk stated that Thornburg caused a collision (R14). There had been no testimony or evidence submitted to support this claim, constituting improper “argument on matters not in evidence” (R14) (State of Wisconsin v. Albright 1980). Mr. Van Daalwyk further argued that not only did Thornburg allegedly cause the collision, but that this was grounds for violating statute 346.57(2). Earlier in the trial, the court sustained Mr. Van Daalwyk’s objection that the cause of the collision was not relevant to the case and allowed no evidence as to the precise cause of the collision.

Additionally, Mr. Van Daalwyk stated that Thornburg admitted to witnessing multiple accidents while driving on the road (R14). Thornburg did not state this, and actually answered in the negative as to this point when asked during cross examination (R14).

These statements in Mr. Van Daalwyk’s closing arguments created three areas of untruthfulness in this trial that unfairly and greatly misled the trier of fact in this case and prevented Thornburg’s substantial rights to a fair trial (805.18).

First, this untruthfulness may have led the trier of fact to believe that there were multiple accidents in other areas of the same highway, when no such evidence had been presented. If Thornburg had observed an unusual amount of accidents on the highway, but continued driving down the highway for multiple hours, then perhaps this decision to continue driving could rise to the level of being careless. Mr. Van Daalwyk argued along these lines in his closing arguments. However, there was no evidence that there had been an unusual amount of accidents on the highway, nor that Thornburg had observed any accidents on the highway while driving. These unsubstantiated claims misled the trier of fact to find Thornburg guilty of violating the statute.

Second, this untruthfulness led the trier of fact to believe that Thornburg caused the collision with the other driver. Thornburg was not allowed to provide evidence that he did not cause the accident,

and so it is unfair for Mr. Van Daalwyk to lead the trier of fact to think that such a claim was proven, as these would constitute “argument on matters not in evidence.” (State of Wisconsin v. Albright).

Because Thornburg was not allowed to present evidence that he had not caused the collision, and because Mr. Van Daalwyk’s closing arguments stated that Thornburg did cause the collision, it can be interpreted that this unfairly misled the trier of fact in this case (805.18.)

Finally, this untruthfulness led the trier of fact to believe that multiple accidents had been witnessed on the highway by Thornburg. This may have prevented the trier of fact from understanding that the three accidents in Eau Claire County could have been related to the collision in which Thornburg was struck from behind. The hazard(s) in Eau Claire County were extraordinary, and Thornburg acted with due care to navigate the ice hazard(s) that affected several drivers in the area that night.

2.1.5.

Prosecution witness Trooper Christian contradicted himself during testimony (R14). This contradiction was not recognized or acknowledged by the court (R14).

During redirect examination by Mr. Van Daalwyk, Trooper Christian testified that Thornburg stated that he failed to control his vehicle at the scene of the accident (R14). During recross examination by Thornburg, Trooper Christian testified that Thornburg did not make that statement at the scene of the accident (R14). This was a direct contradiction by Trooper Christian and shows that he may not have been being truthful in his answers to the questions asked under examination.

Conclusion of Argument 2.1

The circuit court did not effectively ascertain the truth by failing to follow standard court procedures by interrupting Thornburg’s

arguments and testimony, improperly allowing Mr. Van Daalwyk to argue before Thornburg could present their case, allowing contradicting witness testimony, and allowing prosecutorial argument on matters not in evidence. These decisions by the court prevented Thornburg from completing his closing arguments, testimony necessary for the ascertainment of truth from coming out in court (906.11).

Mr. Van Daalwyk's failure to follow court procedures by arguing matters not in evidence falsely represented Thornburg and the case. Mr. Van Daalwyk argued that Thornburg caused an accident which Thornburg had not been allowed to present evidence of his innocence, and that this warranted a guilty verdict. The court failed to recognize these actions for what they were: unfairly and greatly misleading the trier of fact in judgment of the case (805.18). The evidence is clear that the court did not adequately provide due process to Thornburg (The Constitution of the United States, Article 1, Section 8, Clause 5) (Wisconsin State Constitution, Article I, Section 8).

Additionally, the transcript shows that during the entire trial, Thornburg was stuttering and struggling to speak coherently. Because the court was made aware that Jacob Thornburg was mentally disabled yet continued to cut off the statements and closing arguments of Thornburg, it is possible that the court's failure to provide due process to Thornburg violated the Americans with Disabilities Act (The Constitution of the United States, Article 1, Section 8, Clause 5) (Wisconsin State Constitution, Article I, Section 8). The court may have discriminated against Thornburg due to stuttering and being less cognitively capable.

In conclusion, the court did not allow Thornburg to present his case and failed to maintain order in the courtroom.

Conclusion

1. Thornburg asks the court to overturn the verdict and find Thornburg not guilty of violating state statute 346.57(2).

Thornburg believes that enough argument has been made to show that Jacob Thornburg did not violate state statute 346.57(2). For these reasons, Thornburg urges the Appellate Court to find Thornburg not guilty of violating state statute 346.57(2).

2. OR Thornburg asks the court to rule the trial as a mistrial and order the state to drop all charges.

If for whatever reason, the Appellate Court is unwilling or unable to find Jacob Thornburg not guilty based on Issue One, Thornburg urges the court to rule the circuit court trial as a mistrial due to the overwhelming evidence that the circuit court and state failed to provide a fair trial to Jacob Thornburg. Additionally, Thornburg moves that in the case of a mistrial, the court drops the charges and rules that Thornburg is not to be charged again for the events that occurred on December 2nd.

3. OR Thornburg asks the court to rule the trial as a mistrial and allow Thornburg to receive a new case.

Finally, if for whatever reason, the Appellate Court is unwilling or unable to find Thornburg not guilty, and is unwilling or unable to rule the first trial as a mistrial, we motion the court to allow for Thornburg to receive a new trial in the circuit court to argue his case and present evidence. It is clear from the evidence presented in issue two and issue one that Jacob Thornburg was not presented a fair trial by the circuit court, and that Jacob Thornburg therefore has a right under due process to receive a new trial.

Electronically signed by Jacob Thornburg:

Jacob Thornburg