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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

Reply Brief of Appellant

Circuit Court Case Number 2023TR000156

Eau Claire County, District 3

Judge John F. Manydeeds

Submitted By:

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Arguments

Argument 1.1

The Trial Court erred in finding Mr. Thornburg guilty of violating Wis. Stat. §346.57(2) by sustaining the State's relevancy objection to the cause of the collision.

An erroneous rejection of evidence is a harmful error by the court that constitutes an abuse of discretion (*Filipowicz v. American Stores Benefit Plans*). A collision occurred where Thornburg was struck from behind that is relevant because it demonstrates the true nature of the actions in the alleged violation. This error was not harmless because it prevented Thornburg from demonstrating his innocence of violating Wis. Stat. §346.57(2) (*State v. Deadwiller, State v. Magett, State v. Martin*).

The error of sustaining the objection was a harmful error for the following additional reasons.

1.1a

This case came about due to a collision, and photos of the collision explain circumstances of events and are relevant to understanding the events (*State v. Johnson*).

1.1b

By arguing on matters not in evidence, the State verified that the cause of the collision was relevant (R14) (*Karriker v. Sigmon, Calicut v. Smith, Crutcher v. Noel*).

1.1c

Thornburg being rear-ended indicates that a similarly situated driver was driving slower than Thornburg. This shows that Thornburg was driving slower than other drivers and his speed was reasonable (*State v. Deadwiller, State v. Magett, State v. Martin*).

1.1d

This trial rested on Thornburg's description of events. Therefore, since the events of the accident would have lent credibility to Thornburg's statements, this error was harmful (*State v. Deadwiller, State v. Magett, State v. Martin*).

1.1e

The cause of the accident determines whether the interpretation of Wis. Stat. §346.57(2) is reasonable. Courts should interpret statutes to avoid placing its constitutionality in doubt, prioritizing "reasonableness, not strictness, of interpretation" (*Scalia and Garner*). Liberty "cannot be restricted except for a proper governmental objective" (*Bolling v. Sharpe*). If every driver who encountered ice, regardless of their speed or if they caused a collision, was fined, that would be an arbitrary and unreasonable interpretation of the statute. The objective of Wis. Stat. §346.57(2) is to reprimand drivers who are driving at excessive speeds. In this case, Thornburg was hit from behind, indicating that at least one other driver was driving faster than him. It would therefore be unreasonable for the State to fine Thornburg on the basis of his speed.

Based on these reasons, evidence of the cause of the collision is so relevant to the case that it could have changed the verdict, and therefore this error was a harmful error. (*State v. Deadwiller*, *State v. Magett*, *State v. Martin*).

1.1f

A violation of Wis. Stat. §346.57(2) that is not because of a resulting collision must be because of imprudent speed (*1963 Wis. Attorney General Opinion Archive*). During the hearing, the court stated,

“The speed is not necessarily the issue” (R14:29).

If speed is not the issue, then the only other issue under Wis. Stat. §346.57(2) would be the cause of a collision. Therefore, the cause of the collision is relevant.

The State argued that the cause of the collision was irrelevant at the beginning of the trial, but then later implied that it was relevant in their closing arguments (R14). The State argued in their brief that the cause of the collision is irrelevant. If the collision is irrelevant, the State no longer has grounds to argue whether Thornburg violated Wis. Stat. §346.57(2). Since both Thornburg’s speed and the cause of the collision were not areas of contention, the State’s argument is underdeveloped and fails to prove whether or not Thornburg violated Wis. Stat. §346.57(2).

1.1g

The State speculates when arguing that because Thornburg chose to maneuver into the left lane, he must have lost control. Based on the circumstances, maneuvering away from the hazard was the right response, and it is speculation that Thornburg would not have responded appropriately had there been a vehicle in the left lane (*State v. Brown*).

Argument 1.2

The findings of the Trial Court were clearly erroneous, and therefore the Appellate Court should intervene to find Thornburg not guilty.

The prosecution did not present evidence of Thornburg's speed nor that he lacked due care. Trooper Christian testified that the other driver said, "Thornburg slowed down significantly," indicating the exercise of caution, not the opposite (R14). There is insufficient evidence to find Thornburg guilty of violating Wis Stat. §346.57(2).

The frequency of the court's errors indicate that the court was not properly trying the facts, and this should give the Appellate Court discretion to intervene (*State v. Martin*). Neither *State v. Aderemi* or *State v. Walli* had the same frequency of errors that occurred in this case.

In this case, the prosecutor's closing arguments erred by misquoting the appellant and by making improper arguments on matters not in evidence (R14) (*Karriker v. Sigmon*, *Calicut v. Smith*, *Crutcher v. Noel*). These errors were allowed by the Court and misinformed the tryer of the facts. The Court further erred by forgetting to allow Thornburg to open his case (R14). The Trial Court erred again by cutting short testimony from Thornburg while facts were still being ascertained (R14) (Wis. Stat. §906.11(1)(a)). The Trial Court erred by ending Thornburg's closing arguments. Thornburg was only allowed 6 total lines of argument after presenting evidence while Mr. Van Daalwyk was allowed 30. No time limit was set for closing arguments; Thornburg was denied his right to a complete closing argument (Wis. Stat §805.10). The right to counsel includes the right to make a closing summary of the evidence to the trier of fact (*Herring v. New York*). In the case of an error, the beneficiary of the error must show that the error was harmless beyond a reasonable doubt (*State v. Deadwiller*).

A Court is assumed to have certain discretion but because the Court made multiple errors, the Appellate Court should have greater discretion to review the decision.

Argument 1.3

The term “swerving” is not sufficient evidence to support a violation of Wis. Stat §346.57(2).

The State has argued that the term “swerve” is evidence to support a guilty verdict. The definition of “swerve” is “a change or cause to change direction abruptly,” with no implication regarding speed (*Oxford Languages Online Dictionary*).

When a drunk driver swerves, they change direction, but do not have cause to change direction, whereas a sober driver swerving to avoid a collision has cause to change direction. Though a drunk driver swerving would be guilty of violating Wis. Stat. §346.57(2), the driver who avoided a hazard would not. In this case, a dangerous ice hazard in the right lane of the road gave Thornburg cause to change direction. Thornburg therefore did not violate Wis. Stat. §346.57(2).

Wis. Stat. §346.57(2) must be interpreted in a way that is fair and reasonable (*Scalia and Garner; Bolling v. Sharpe*). Thornburg is not in the wrong for choosing to avoid dangerous ice.

Thornburg showed due care, he did not cause any collisions, and his speed was not the issue (R14). Therefore it is unreasonable to assume Thornburg violated Wis. Stat. §346.57(2) (1963 Wisconsin Attorney General Opinion Archive).

Argument 2.1

There were multiple errors in this trial where the State and the Court failed to follow procedures in a way that disadvantaged Thornburg and prevented the ascertainment of truth.

The appellant has a burden to prove the error as clearly erroneous (*State v. Aderemi*). Once the appellant has proven that the error is clearly erroneous, it becomes the burden of the beneficiary of the error to prove beyond a reasonable doubt whether the error was harmless (*State v. Deadwiller*). In this case, the errors of the Trial Court were clearly erroneous. The Respondent has failed to meet the burden to prove whether the errors were harmless. The errors were harmful, as they affected the verdict in this case and prevented Thornburg from presenting evidence (*State v. Magett*). Respectfully, the Appellate Court should review the case and find Thornburg not guilty.

Argument 2.1 of the Brief of the Appellant is intended to be treated as a single argument, with the subsections of 2.1.1, 2.1.2, 2.1.3, 2.1.4, and 2.1.5 functioning as support for the initial claim. Argument 2.1 of the Brief of the Appellant is established according to the requirements of Wis. Stat. §809.19(1)(e). The paragraphs of 2.1.1, 2.1.2, 2.1.3, 2.1.4, and 2.1.5 are not intended to follow the requirements of Wis. Stat. §809.19(1)(e) as self-contained arguments because they do not stand alone.

Argument 2.1 is a full and complete argument (*State v. Petit, Tyler v. Runyon, and Filipowicz v. American Stores Benefits Plans*). A clear theme exists in the Brief of Appellant making comprehensible arguments that are grounded in case law, statutes, and legal reasoning. The Brief of Appellant shows that the Trial Court made several errors and that the Appellate Court should review this case.

2.1a

The Trial Court interrupting Thornburg's closing arguments is a violation of Thornburg's procedural due process rights.

Any civil case brought about by the government taking legal action against a defendant involves a stake of life, liberty, or property. If there were no stake, there would be no trial. The Appellant therefore does not have an obligation to state how the trial involves life, liberty, or property, as this is assumed. Dismissing the arguments on the grounds that this case doesn't have such a stake would only "stand as an obstacle" (*Perez v. Campbell*).

As cited in the Brief of the Appellant, Wis. Stat. §805.10 and §906.11 outline proper court procedure that exists to protect due process rights. In this case, this procedure was not followed. The court should have appropriately tried the facts and allowed Thornburg to present his case. The court did not maintain order in the courtroom according to legal standards (§906.11). Since Thornburg's stutter was a factor, this may also be discrimination against a disabled person

An appeal must be specific to the circuit court ruling, not bringing other claims to the court's attention. Financial relief sought does not need to be stated in the appellate brief, as the brief is specific about reversing the trial court's ruling. Requesting that the appellate court intervene financially is a form of relief sought.

The issue of whether the court violated Thornburg's due process rights is being used to show that the court erred in providing a fair trial. If the Appellate Court determines that

Thornburg's due process rights were not violated, then the Appellate Court should respectfully examine Argument 2 for whether the court failed to provide a fair trial and whether the court maintained order in the courtroom (*Wis. Stat. §906.11*). These elements presented together may constitute a due process violation, but if the Appellate Court does not rise to the same opinion, the Appellate Court still, respectfully, reviews these errors in the ways that they erroneously led to a guilty verdict and intervene to find Thornburg not guilty.

2.1b

The error of forgetting to allow Thornburg to present his case indicated that the court was not properly weighing the facts and were harmful (*State v. Magett*). It's no small matter that the court would forget to allow the defendant to present their case. This error indicates that the court was not giving fair consideration towards Thornburg's case.

Breaking from ordinary court proceedings greatly disadvantaged Thornburg because it led them to not understand the rules of presenting their case and the nature of the hearing at that moment (R14). Although a pro se litigant is not to be given special privileges, they also shouldn't be given special disadvantages. Arbitrarily changing the procedure of a case to become unrecognizable as standard proceedings is unfair. The court erred by not exercising reasonable control over their courtroom which could have changed the verdict of the case (*Wis. Stat. §906.11*).

In *Sullivan v. Louisiana*, the court made an error, but since the error did not affect the tryer of the facts, it was deemed harmless. In this case, the court is the tryer of the facts, and so the error indicated that they were not properly trying the facts. The guilty verdict in this case was therefore not unattributable to the error (*Sullivan v. Louisiana*).

The party who benefitted from an error must prove beyond a reasonable doubt that the error did not contribute to the verdict obtained (*State v. Deadwiller*). The Respondent has failed to meet this burden. The overall strength of the Respondent's case is low due to the multiple errors of the court, due to the errors of the State's closing arguments, due to the fact that Thornburg was not allowed to present key evidence and testimony, and due to the low amount of total evidence the State presented where the defendant is the only eyewitness. The frequency of the error is a factor in determining the harmfulness of the error (*State v. Martin*).

2.1c

The Court erred by cutting Thornburg's testimony short.

The Court swore Thornburg in and interviewed him, but failed to elicit testimony about his concussion, despite those details being the sole reason the court began the interview. Thornburg then never got to clarify the details of the concussion during his testimony and was never allowed to direct himself as a witness to choose testimony to present. The court therefore erred by not allowing Thornburg to present evidence.

The State argues that because the Trial Court asked Thornburg if he had any other witnesses that he would like to call, and Thornburg said "no," that Thornburg was not prevented from providing testimony. However, the Court interrupted Thornburg and then instructed the State to cross examine Thornburg. Per trial rules, Thornburg was then not allowed to present new evidence in the redirect. Thornburg was therefore prevented from sharing relevant facts of the case.

The only eyewitness testimony in this case are those of Thornburg to the officer immediately following the accident (R14). If Thornburg had just suffered a severe brain injury in that moment, with the cognitive and language limitations that severe brain injuries usually cause, it may have significantly changed how the trier of the facts received Thornburg's statements. Failing to allow Thornburg to speak about his alleged concussion, and failing to allow Thornburg to present evidence, constitutes a harmful error, as the State attributes the guilty verdict directly to the interpretation of Thornburg's statements on the officer's video.

2.1d

The State misspoke in closing arguments.

The State argued that Thornburg caused the accident, even though they had previously objected that the cause of the accident was irrelevant, constituting an argument on matters not in evidence (*Karriker v. Sigmon, Calicut v. Smith, Crutcher v. Noel*). The State then made a second error during their closing argument stating, "The defendant admitted that he witnessed accidents on the road," when Thornburg did not state this. (R14:23) (*Karriker v. Sigmon, Calicut v. Smith, Crutcher v. Noel*). These errors were not addressed by the court and misled the trier of the facts (*Mullen v. Braatz*).

Arguments are not personal attacks but are offered for the truth.

2.1e.

Trooper Christian contradicted himself during testimony.

Trooper Christian contradicted himself during testimony, and this was not recognized or acknowledged by the court (R14) (*Wis. Stat. §906.11*).

Conclusion

Jacob Thornburg did not violate Wis. Stat. §346.57(2). Several errors of the court were established in the Brief of Appellant that give the Appellate Court license to review this case. We respectfully ask that the Appellate Court to review this case and find Thornburg not guilty of violating Wis. Stat. §346.57(2).

Jacob Thornburg

Electronically Signed by Jacob Thornburg 09/27/2023