

FILED
02-28-2024
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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2023AP1367

STATE OF WISCONSIN,
Plaintiff-Respondent,
v.
JOSEPH B. VENABLE,
Defendant-Appellant.

BRIEF OF STATE OF WISCONSIN
PLAINTIFF-RESPONDENT

Respectfully Submitted,

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ISSUE PRESENTED

Was the trial court clearly erroneous in its conclusion that the State presented sufficient evidence to satisfy the clear, satisfactory, and sufficient evidence burden?

The trial court answered yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not seek publication, and believes that the written briefs will adequately present the relative positions of the parties.

STATEMENT OF FACTS

The State does not dispute the facts as presented in the Appellant's brief.

STANDARD OF REVIEW

The issue of whether there is sufficient evidence to support a conviction is a question of law for the Court reviews *de novo*.¹ The State agrees that, when conducting a review, the Court considers the evidence “in the light most favorable to the State and reverse the conviction only where the evidence ‘is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.’”² The State agrees, as stated in the Appellant’s brief, that the beyond a reasonable doubt standard is replaced by the burden of clear, satisfactory, and convincing evidence in this case, and, that courts “uphold the conviction if there is any reasonable hypothesis that supports it.”³

¹ *State v. Booker*, 2006 WI 79, ¶ 12, 292 Wis. 2d 43, 54, 717 N.W.2d 676, 681.

² *Id.* at ¶ 24, citing *State v. Poellinger*, 153 Wis.2d 493, 507, 451 N.W.2d 752 (1990) (citation omitted).

³ *State v. Smith*, 2012 WI 91, ¶ 24, 342 Wis. 2d 710.

ARGUMENT

I. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT A CONVICTION PRESENTED AT TRIAL.

The trial court was presented with sufficient evidence to support a conviction based on the applicable standard. The evidence presented led the finder of fact—the trial court—to a conclusion that is not so lacking in probative value as to render a conviction unreasonable. The Appellant suggests that a theoretically possible explanation of Mr. Venable's appearance and performance on Standard Field Sobriety Tests is exhaustion, and contends that the evidence supports that Mr. Venable was simply too tired to drive. This assertion does not satisfy the Appellant's burden.

Even if this Court finds that the Appellant's theoretically possible explanation that Mr. Venable was impaired by fatigue rather than substances, that does mean that the trial court should have made the same conclusion. Simply asserting an alternative narrative does not satisfy the Appellant's requirement to prove that no reasonable finder of fact could come to a different conclusion and instead find Mr. Venable guilty.

The Appellant attempts to analogize Analyst Vosters' testimony regarding the possible interaction between the substances in Mr. Venable's blood as an improper expert opinion about, specifically, Mr. Venable's clinical physical state. This is an inaccurate characterization of the witness's testimony. Analyst Vosters testified about potential interaction between the drugs—not that Mr. Venable was suffering from a particular condition.

Proper foundation was laid to satisfy the trial court that the witness could testify about pharmacology topics in general. The Appellant notes that the Analyst did not “consider any personal characteristics of Mr. Venable,” which would have been improper because the Analyst was not providing an expert opinion of definitively why Mr. Venable was impaired and how.

Whether the substance or substances in Mr. Venable’s blood impaired his ability to exercise the necessary control and steady hand required to safely operate a motor vehicle was a the primary factual question for the trial court. The trial court was presented with testimony from Analyst Vosters as to the substances present in Mr. Venable’s blood, and testimony from Trooper Van Oss regarding his appearance and performance on sobriety testing. The trial court relied on all facts in totality in reaching its decision and made a reasonable inference as to whether Mr. Venable was impaired by the substances in his blood.

CONCLUSION

The State respectfully requests that this Court deny the Appellant's request for a directed verdict of not guilty, and the alternative request for a new trial. The Appellant has failed to establish that the evidence presented was so lacking in probative value that no reasonable finder of fact could find guilt at the burden of clear, convincing, and satisfactory evidence.

Dated at Portage, Wisconsin, February 28, 2024.

Respectfully Submitted,

MARGARET SORRENTINO

Assistant District Attorney

State Bar No. 1129270

Attorney for the State

Plaintiff-Respondent

**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(12)**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 889 words.

Dated this 28th day of February, 2024.

Electronically Signed By:
Margaret Sorrentino

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