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**STATE OF WISCONSIN**

**COURT OF APPEALS**

**DISTRICT 4**

**Case No. 2019AP2339-CR**

**STATE OF WISCONSIN,**

Plaintiff-Respondent,

v.

**SAMUEL M. POLHAMUS,**

Defendant-Appellant.

**On Appeal from Jury Trial Order of  
Hon'ble Radcliffe, Richard  
Monroe County Case Number 2019CM000030  
State of Wisconsin vs. Samuel Martin  
Polhamus**

**BRIEF OF  
APPELLANT SAMUEL M. POLHAMUS**

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**I. CLARIFICATION OF ISSUE PRESENTED**

A. Question is whether videotaping can be considered a threat and whether that conduct would be intention to do harm.

B. In the event videotaping is not a threat,

a. then JASON was not threatened [contrary to JASONS' testimony of feeling threatened by videotaping] and

b. JASON was wrong when JASON threw first punch on POLHAMUS;

jury must have reached a verdict of NOT GUILTY.

C. DA is incorrect in labeling this incident a fight? There was no fight - a fight requires more than one combatant - this was an assault. This was purely an assault with the

victim only using his hands to push the assaulter away or to knock the assaulter's punches out of the air.

**II. STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

Oral argument is not requested. It is anticipated that the issue will be sufficiently addressed in the briefs. Publication is not warranted because the issue raised involves the application of established legal principles to the facts of this case.

**III. STATEMENT OF THE CASE**

The defendant-appellant, SAMUEL POLHAMUS, acting pro se, was erroneously found guilty of disorderly conduct.

The incident leading to this conviction occurred in the downtown bars in Sparta, Wisconsin while the defendant

was allegedly intoxicated; with his friend; unknown aggressor walked up to POLHAMUS - started verbal assault - in defense POLHAMUS started videotaping - and was badly beaten up by aggressor. (2; 37; 40.) In all the video evidence presented, POLHAMUS never hit the aggressor but infact tried to avoid the aggressor.

The following statement of the case presented by State is wrong:

*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.)*

The defendant now appeals and he requests to have his conviction vacated.

A simple fact of videotaping, when a person receives threats and feels great danger to life, health and safety; which

he indeed suffered cannot be considered a threat and that conduct cannot be construed as intention to harm to his aggressor/ assailant / assaulter.

#### **IV. FACTS**

Facts are very clear that this was a minor incident where in fact defendant took beating and suffered injuries. Following are factual excerpts from Jury Trial Transcripts:

A. Mr. Schodeberg **Threw First Punch and**

Hit Defendant. POLHAMUS never hit JASON.

B. Defendant Did Not Press Charges Against Mr. Schodeberg

C. Defendant Did Not Make Any Threats

D. Defendant Disarmed Himself

E. Defendant Disarmed Himself Even When Allegedly Intoxicated but Was Suffering Concussion / Medical condition.

F. Defendant Was Only Using Cell Phone to Protect Himself From Threat To His Life Health And Safety

G. POLHAMUS jumped behind the bar to retrieve his phone, which for the second time was knocked and sent flying from POLHAMUS' hand by JASON. POLHAMUS had to jump over the bar again because JASON had also jumped the bar in attempt to keep his assault against POLHAMUS going.

H. Court Disallowed Defendants' Medical Condition of suffering from a concussion.

I. Trouble Followed Defendant



## V. ARGUMENT

### A. Videotaping Cannot Be Considered A Threat

The disorderly conduct statute, WIS.

STAT. § 947.01, provides:

*"Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor." The elements of disorderly conduct are: (1) The defendant engaged in (violent) (abusive) (indecent) (profane) (boisterous) (unreasonably loud) (or otherwise disorderly) conduct; and (2) The conduct of the defendant, under the circumstances as they then existed, tended to cause or provoke a disturbance. WIS JI - CRIMINAL 1900.*

Bar/ establishment was recording [without consent] via surveillance camera, POLHAMUS was not aware of it, which was in fact produced as evidence.

POLHAMUS felt threatened and started recording the verbal and physical assault he received. His action was not a threat to anyone.

This act of videotaping is no where defined as "disorderly conduct" in the above statute.

To extract guilty plea from POLHAMUS in previous pending case Prosecution went overboard in its discretion.

The crime has two elements: (1) "the conduct must be of the type enumerated in the statute or similar thereto in having a tendency to disrupt good order," and (2) "the conduct must be engaged in under circumstances which tend to cause or provoke a disturbance." City of Oak Creek v. King, 148 Wis. 2d 532, 540, 436 N.W.2d 285 (1989.)

There was no good "order" in the bar at that time of night. Everybody was drunk and **picking a fight** with "POLHAMUS." POLHAMUS did not disrupt any good order, in fact POLHAMUS was himself victim of bad conduct of other patrons.

Thus, rather than attempting to enumerate "the limitless number of antisocial acts which a person could engage in that would menace, disrupt, or destroy public order," § 947.01 "proscribes conduct in terms

of results which can reasonably be expected therefrom." King, 148 Wis. 2d at 541.

Whether conduct is disorderly depends upon the surrounding circumstances; "what would constitute disorderly conduct in one set of circumstances, might not under some other." State v. Elson, 60 Wis. 2d 54, 60, 208 N.W.2d 363 (1973.)

State v. Eggum, Appeal No.

2016AP2036-CR, at \*8-9 (Wis. Ct. App.

Nov. 8, 2017.)

To satisfy the first element, the State alleges in its petition that A.S.'s statements were "abusive and otherwise disorderly conduct." Wisconsin appellate courts have not directly addressed what is meant by abusive conduct. However, they have considered what constitutes "otherwise disorderly conduct" in several cases. Here, we need not determine if A.S.'s threats constitute abusive conduct because we conclude that his threats could be determined to be otherwise disorderly conduct. In the Interest of A.S., 99-2317, No. 99-2317, at \*1 (Wis. Ct. App. Mar. 2, 2000.)

Here it is a matter of record that POLHAMUS never threatened anyone. He

himself felt threatened and started recording for evidence. [See Page 375 of Jury Trial Transcripts.]

**B. Defendants Videotaping Would Not  
Be Intention to Do Harm**

The second element of disorderly conduct requires that the conduct be of the type which "tends to cause or provoke a disturbance...." See **Wis. Stat. § 947.01.**

In determining what conduct satisfies this element, the supreme court has looked to both the actual effect and the potential effect that the conduct had on others.

For example, in **Elson**, 60 Wis.2d at 66, 208 N.W.2d at 370, the court upheld a jury verdict which found that an attorney, who refused to leave a mental ward until he saw his client, exhibited conduct that tended to cause or provoke a

disturbance. The court noted that numerous patients were gathering in response to the attorney's arguments and refusals to leave the ward.

Here, none of POLHAMUSs' action was capable to cause or provoke a disturbance. State Exhibit Video is clear that POLHAMUS tried his best to avoid any conflict, POLHAMUS did not start assault, POLHAMUS never hit anyone, including JASON. POLHAMUS tried to get away from the assaulter by getting behind the counter.

The only possible mistake POLHAMUS did is that he is a good person and Christian at heart. He immediately forgave his accuser and declined to press charges.

## **VI. CONCLUSION**

Therefore, as explained above,  
POLHAMUS did not commit the crime of  
947.01(1) "disorderly conduct." His  
conviction must be set aside.

Dated this December 7, 2020.

Respectfully submitted

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**CERTIFICATION AS TO FORM/LENGTH**

I certify that 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 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is **2990** words.

Dated this December 7, 2020.

Signed:



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**CERTIFICATE 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 § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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 December 7, 2020.

Signed:



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