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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV.

APPEAL NUMBER 2020AP001598
Grant County Circuit Court Branch 1 Case Number 20-FO-0479

State of Wisconsin - Plaintiff-Respondent

v.

Greg Griswold - Defendant-Appellant

APPEAL FROM ADVERSE DECISIONS
ENTERED IN GRANT COUNTY CIRCUIT COURT,
THE HONORABLE JUDGE VANDEHEY

REPLY BRIEF OF DEFENDANT / APPELLANT GREG GRISWOLD

Respectfully Submitted By:

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Reply:

It remains with pure singular amazement here, to at least Defendant/Appellant Griswold, that notwithstanding what was the Assistant District Attorney Pozorski's opportunity to have directly dealt with each of Griswold's 3 different assertions raised, that under no possible pretense of circumstance should this particular citation violation continue to stand as ever having been legally asserted, almost as exactingly identical to what was the circumstances of President Trump's spectacular denials maintained as to there having been even the slightest modicum of fraud involved within the entirety of our country's recent November, 2020 election, the facts of this case, and what all were Griswold's protestations taken to the contrary of the very legitimacy of the citation's violation given, attorney Pozorski's singular refusal to have actually opposed any one, much less all 3 of what were Griswold's suppositions, remains the classic instance of having entirely left Griswold's 3 arguments rather spectacularly and singularly completely unrebutted.

> ". . . More precisely, the attorneys reply to this . . . argument in form but not in substance. In their . . . purported argument, they change the subject." [unknown]
>
> *See* ***Fischer v. Wisconsin Patients Comp. Fund***, 2002 WI App 192, ¶1 n. 1, 256 Wis. 2d 848, 650 N.W.2d 75 (argument asserted by the appellant and not disputed by the respondent may be taken as admitted).
>
> The attorneys fail to reply to the substance of this forfeiture argument, which we construe as a concession, which we accept. *See* ***Shadley***, 322 Wis. 2d 189.
>
> A party will not be heard to maintain a position on appeal inconsistent with that taken in the trial court. ***State v. Washington,*** 142 Wis.2d 630, 635, 419 N.W.2d 275, 277 (Ct.App.1987).

See Schlieper v. DNR, 188 Wis.2d 318, 322, 525 N.W.2d 99 (Ct.App.1994) (lack of response may be taken as a concession).

Arguments not rebutted on appeal are deemed conceded. ***See Hoffman v. Economy Preferred Ins. Co.,*** 2000 WI App 22, ¶ 9, 232 Wis.2d 53, 606 N.W.2d 590.

Facts outside the record are not to be considered by the Court. ***Parr v. Milwaukee Building & Construction Trades,*** 177 Wis. 2d 140, 145 n.4, 501 N.W.2d 858 (Ct. App. 1993); ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Indeed, though both Pozorski's Reply Brief's "***Statement of Case***" and "***Statement of the Facts***" contributed little other than to have merely but just to have restated Griswold's initial similar portions found in the Initial Brief, Pozorski's "***Statement of the Issue***" did nothing to have even begun to have meaningfully addressed Griswold's Initial Brief's 3 issues presented.

The Reply Brief's "***VII: Argument***:", essentially distilled down to having seemingly sought to have imposed a "statutorily mandated" requirement upon Griswold to have anticipatorily have informed the Muscoda fire chief, in addition to what was the source of the combustion material, what were ALL of the multitude of the "then" purposes of Griswold's having been found burning wood that evening, so as to have included the obvious almost entirely frivolous unstated inclusion that Griswold was then found as having been standing next to the fire's projected radiant heat, so as to only then thereafter not have somehow have entirely escaped the vigor of Warden Worden's issuance of a citation, simply is just NOT even discussed, presented, nor ordained by the controlling statue violation so cited upon Griswold.

Pozorski's Reply never actually addressed even its' own stated question:

> ". . . whether the Trial Court's finding that the defendant violated the burn ban was clearly erroneous?"

so as to have instead, then have been found as having seemingly transformed into what was instead, a self-servingly pretense of the proffered answer, made possible only if Pozorski simultaneously just simply completely ignored the controlling statute's explicitly stated exception:

> ". . . expect [sic] for warming the person. . ."

The weight of the evidence, and so too, the credibility of the witnesses, are not at all even a matter of /in question in this appeal, as Griswold's Initial Brief's 3 arguments as presented, specifically concerned only just the matter centered and pivoted around the uncontested fact that, once Griswold's uncontroverted testimony had indicated he was utilizing the fire to have warmed hisself that early spring evening, the veracity and legitimacy of that evening's temperature, nor what were his actions to have made use of the same combustible wood he was in the process of cleaning up after the multiple previous fires that had resulted in the destruction of the former residence on the property, was each simply of just no possible relevance to have been even considered, much less thereafter somehow adopted in what became as was the inordinate "stretch" of the great efforts undertaken to have upheld what was the very validity of the citation's violation's alleged "as issued" violation having been left presented to the Trial Court's exercise of what became as was such [an erroneous] discretion.

Griswold believes the only relevant "fact" presented within the Reply Brief's contents, was Pozorski's admission that:

> ". . . The defendant testified at the trial on September 1, 2020, that he was warming himself by the fire."

As such, Griswold's uncontroverted statement admitting that he was simply just enjoying the pure pleasure of having started a fire for the purpose of burning some of the wood, (so as to be enjoying the radiant heat warmth provided by the fire that late spring evening), was not ever appropriate to have risen to have become the proffered entirely pregnant question suggested as then having needed a court's analysis as to whether:

1. Griswold's very life was in danger of experiencing hyperthermia;

in any such of a critical need for instant warming as a matter induced by extenuating sub-normal low temperatures that evening, much less that somehow,

2. only IF Griswold could have proffered such an explanation "*sua sponte*" to the Muscoda fire chief during their brief exchange of any such communications;

could Griswold thereafter have legitimately ever raised the issue as remaining controlling, that:

4. the very statutory violation charged against Griswold, was explicit for having wholly exempted Griswold's pleasures stolen that evening, celebrating after a long day's efforts made in cleaning up the burned mess of charred wood, etc.;

that were the result of the prior fires he was then found as attempting to clean up about the premises.

The gross error of both prosecutor Pozorski, as well as the Trial Court, was their having entirely mistakenly presumed simply just that because:

1. Griswold's property exists within "an extensive timber area"; much less that:

2. a fire burning permit was otherwise normally required;

(notwithstanding that such were not then even available, both due to the fact of the no-permits issued January -May seasonality of the instance, and so too, that there was a temporary Covid-19 ban)

Griswold should be instantly found guilty of having enjoyed the personal fire burned the evening of May, 2020.

> "see ***Hedtcke v. Sentry Ins. Co.***, 109 Wis. 2d 461, 471, 326 N.W.2d 727 (1982) (on review, an appellate court must look to the record to determine whether the circuit court undertook a reasonable inquiry and examination of the facts and whether the record discloses a reasonable basis for the circuit court's decision);

even though, and wholly notwithstanding that,

3. Warden Worden's testimony had explicitly stated that the citation ***was not issued*** to Griswold's person ***because of the applicability of any of these particular factors***;

such that:

4. there was simply just no possible availing justification for what had been the initial issuance of the citation's issuance originally; much less,

5. any further reason for Griswold's prosecution; if only,

6. anyone had ever been the slightest wee bit bothered to have ever either first spoken directly with Griswold prior to the citation's issuance; much less later,

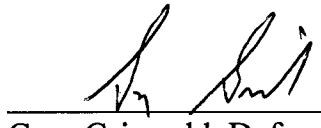
7. to have meaningfully have even listened to Griswold's affirmative defense proffered during the trial entirely defeating the very validity of the citation as written;

stating that the law's explicit exemption completely exonerated Griswold's enjoyment of having been found warming hisself that May evening, precisely as had the Wisconsin legislature so intended.

Conclusion:

Because Griswold's affirmative defense was explicitly provided for within the controlling statute governing what was the entire basis for Warden Worden's having issued Griswold's citation, AND that once Griswold had so formally informed the Trial Court that in fact, Griswold was at the pertinent time, then simply just enjoying warming hisself by the radiant heat given off by the burning of the fire on the May evening in question, the Trial Court's finding Griswold guilty of violating the statute was clearly an erroneous exercise of the court's discretion, so as to now require an instant reversal and dismissal of the charge issued against Griswold's person, exactly because of the exemption so provided for, to have permitted and excused Griswold's warming fire by legislative mandate, for exactly all of the context of provided exemption reasons, as the statute was so then adopted as written.

Respectfully submitted this 12th day of January, 22021 by:



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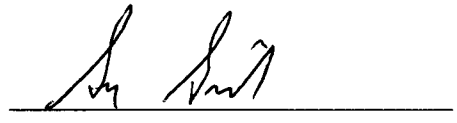
I hereby certify that this brief conforms to the rules contained in Sec. 809.19 (8) (b) and (c), for being a brief having been produced with a 13 point proportional serif font. The length of this brief, as was counted to have been determined by my word processing software, came out to have been calculated as exactly 1498 words, as now so submitted.



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