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March 27, 2017

Wisconsin Court of Appeals
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

RECEIVED
MAR 27 2017
CLERK OF COURT OF APPEALS
D. WILSON

Re: State v. Julieann Baehni
Appeal No. 2015AP2263-CR

Dear Judge Sherman:

Thank you for the opportunity to provide additional input regarding how the guilty plea waiver rule applies to the three issues that remain at play in this appeal. I address this on an issue-by-issue basis below.

Issue #1 - The suppression of Ms. Baehni's breath test result

We agree with the State that this particularly issue falls squarely within the exception to the guilty plea waiver rule that allows for challenging past rulings on motions to suppress evidence, regardless of a defendant's guilty plea. Wis. Stat. § 971.31(10).

Issue #3 - The denial of Ms. Baehni's collateral attack motions

Appeals based on a defendant collaterally attacking his or her prior conviction(s) are another exception to the guilty plea waiver rule. As *Hawkins v. State* makes clear, the waiver of appellate claims following a guilty plea is a "general rule," not an absolute one. 26 Wis. 2d 443, 448, 132 N.W.2d 545 (1965).

The State appears to agree with this assessment. However, it cites *State v. Peters* for the proposition that no case specifically addresses the applicability of the guilty plea waiver rule in cases involving sentence enhancement issues, like collateral attacks. This appears to be a case where actions speak louder than words. The Court of Appeals and Wisconsin Supreme Court have remained silent on this matter while still accepting and deciding numerous appeals regarding collateral attack motions in cases where the defendant entered a guilty or no contest plea. Indeed, this was case in *State v. Peters*. 2001 WI 74, ¶ 11, 244 Wis. 2d 470, 628 N.W.2d 797.

The same has been true for other cases, both before and after the *Peters* decision. Many of these have involved OWI defendants, which do not lend themselves to publication and by extension to citation. See Wis. Stat. § 809.23(3)(b). Still, there are some published examples of this occurring both before and after *Peters*. See for example *State v. Stockland*, 2003 WI App 177, ¶ 2, 266 Wis. 2d 549, 668 N.W.2d 810 and *State v. Gracia*, 2013 WI 15, 345 Wis. 2d 488, 826 N.W.2d 87. (The fact that Mr. Gracia entered a plea is not specifically discussed in the Supreme Court's decision, but I represented Mr. Gracia before the Supreme Court and I know his appeal arose from a plea, not a trial.) The courts' handling of similar appeals in the past, without regard for the guilty plea waiver rule, should be instructive for this Court as it attempts to address this issue now.

Issue #4 - The admissibility of evidence regarding the alleged prior conviction from 1992

While the fourth issue raised in Ms. Baehni's appeal may not be totally unprecedented, it is certainly unusual. The State correctly points out there does not appear to be any cases that deal specifically with this issue and the guilty plea waiver rule.

The State was certainly aware of Ms. Baehni's intention to pursue an appeal before she entered her plea, but there was no specific stipulation between the parties that she could raise this issue, in spite of her plea. However, the exception to the guilty plea waiver rule found in Wisconsin Statutes section 971.31(10) arguably applies to this issue. Here we are concerned with the admissibility of certain evidence pertaining to an alleged prior conviction. This is not functionally much different than a motion to suppress evidence as described by the exception. Wis. Stat. § 971.31(10). Applying the exception to this issue would also be consistent with the public policy goal upon which it is based, i.e. the reduction of contested trials when the main issue in the case is the admissibility of certain evidence at trial.

Thank you for your time and attention to this matter; both Ms. Baehni and I appreciate it. A copy of this letter has been provided to Assistant District Attorney Michael Albrecht and Assistant Attorney General Charlotte Gibson.

Sincerely,



John Holevoet

CC: Assistant District Attorney Michael Albrecht
Assistant Attorney General Charlotte Gibson
Ms. Julie Baehni