17AP1662

Court of appeals
State of Wisconsin V.S. Nathan Bise
Case number 2017TR005830
Brief of Appellant
Circuit court Judge Willaim E. Hanrahan
Appeal No. 2017AP1662

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Statement of Issues

The main focus of this Brief is that There was no refusal. That the appellant actively sought to cooperate and take any test he could but was denied the opportunity to do so by the arresting agency. The Appellant cooperated with law enforcement during the incident and said "Yes." when asked but was never allowed to take a BAC after arrest and Officer Walker marked down on the "informing the Accused" form that the Appellant said "No." The testimony in the case supports the notion that The Appellant agreed to take the test but was not given the opportunity by Officer Walker. The events that took place does not constitute a refusal.

The second focus of This Brief will be that the ruling in the courts was given before the Defense presented their evidence and testimony, that the Evidence of the testimony was therefore not considered when the Court made their ruling. The Appellant was deprived of their right to defend themselves and argue the case when the Judge made a ruling without being able to consider the evidence that the defense presented.

A third focus will focus on the Department having no probable cause to arrest the individual and subject him to a BAC, therefore a case for a refusal is null.

Statement of Case

The case was heard by the Dane County Circuit Courts. The case was heard in conjunction with two other cases. Those cases were An Unsafe Deviation of lane citation (2017TR005831) and an OWI Citation (2017TR005829). The Appellant representing himself, requested a refusal hearing and requested a Jury. The courts granted him both. The Appellant Hired an attorney to represent him further in the matter on May 4. 2017.

A jury Trial was held for all 3 cases July 10, 2017. Before the trial ended and before the defense had entered its evidence and testimony, the Judge informed the courtroom that the Jury would no longer be deciding on

the refusal and ruled it an improper refusal. The Jury found a verdict of not guilty for the OWI citation and guilty for the Deviation of Lane Citation.

The Appellant than filed for an appeal

Statement of the facts

On the morning of 3/26/2017 the appellant was pulled over and arrested on suspicion of OWI by Officer Nathan Walker of the Madison Capitol Police Department. This was the first time the officer made an arrest for an OWI. (R: 79-2) Officer walker performed a field sobriety test but did not allow the appellant to take a BAC test after the Arrest.

The arresting officer testified that the arrest was conducted based, in part, on the appellant's slurred speech(R:75-4) and his performance on a field sobriety test. The officer also testified that he knew the appellant had trouble with his knee (Transcript:74-20.) The officer also testified that during the night he became aware that the individual has a speech impediment. Officer Walker, as testified in court, arrested and detained the individual based on his slurred speech and medical inability to perform the field sobriety test to the officer's standards knowing that the individual had a speech impediment and issues with his knee.

When the appellant was taken to the station Officer Walker asked the appellant "Will you submit to an evidentiary chemical test of your Breath, blood, or urine?" (Informing the accused form) The appellant complied with the request. The Appellant said specifically "Yes." the Appellant then asked for a blood test.

Officer Walker then filled out the informing the accused form after reading it and marked down a "no" and did not give the appellant a test for alcohol concentration.

The appellant requested a hearing on the refusal.

This case was set for trial along with 2 other cases: an OWI charge that the Jury found a ruling of not guilty and a Deviation of lane citation that the Jury found a guilty

verdict. Initially, the issue of the refusal was set to be heard by a Jury. The judge, in fact, (R-Page 50) instructed and informed the counsel of both parties that three citations will all be heard that day. However, the Honorable Judge Willaim E. Hanrahan took that decision away from the Jury and made a ruling on the refusal before the end of the trial and before the defendant's testimony.

The Appellant in this case, by decision of the Jury, was then found not guilty of operating while intoxicated and guilty of unsafe lane deviation. The Appellant, by ruling of the Honorable Judge William E. Hanrahan was found to have refused a Test to determine alcohol concentration

Argument

Officer Walker of the Madison State Capitol police Department as the arresting officer did not follow proper procedure in informing the accused.

Officer Walker read the informing the accused form he provided verbatim. In so doing he gave the Appellant the option of giving a blood, breath, or urine sample (Informing the Accused form). The appellant agreed to give a sample. The appellant also requested to give a blood sample. The officer did not take any samples from the appellant and marked down on the informing the accused form that the appellant refused to provide a sample. Statute 343.305 (5)(a) states "If the person submits to a test under this section, the officer shall direct the administering of the test." We have the testimony of the Appellant that he did in fact submit to a test. The officer did not give any test as was his legal responsibility to do so. There is no evidence or testimony given by the state that there was any test administered. I argue that it is not a refusal if one complies to take a test and then the officer refuses to allow him the opportunity to take the test that was offered. I also argue that Officer Walker improperly followed procedure when he refused to take a sample, that the law requires officers to take a sample when offered

and that by not doing so means that there is no refusal. I further argue that the purpose and spirit of this law is to provide for a sample to be taken. The officers involved did not use the law in such a matter.

The officer did not inform the Appellant of any alternative tests that are offered by Agency. The Officer did read that the appellant may take an alternative test, but there was no testimony that this alternative test was offered, and it is not mentioned as to what test that may be on the "Informing the accused" form. 343.305(5)(a) states that "The person who submits to the test is permitted, upon his or her request, the alternative test provided by the agency under sub. 2" This test was not mentioned to the Appellant and was not provided for the Appellant to take. Furthermore, there was no evidence presented that there was any equipment available to perform any test. I argue that due to the officer not following this procedure there cannot be a refusal.

There was no probable cause for the initial arrest and detainment of the individual that lead to the officer requesting a sample from the appellant. The officer arrested the individual based on his slurred speech pattern caused by a speech impediment (R 75-9, R86-20), and his inability to perform a field sobriety test due to a medical issue and rain during the test (R:79-10). The officer testified in court that he arrested the individual based on his slurred speech and performance on the field sobriety test. Officer Walker also testified that he realized the slurred speech was due to a speech impediment. The officer also testified that the appellant informed him that he has issues with his knee. Despite the knowledge that the appellant has trouble with his knee the officer decided to use the poor performance of the Appellants knee as a cue for intoxication. I argue that an officer cannot arrest someone because they have a speech impediment and a bad knee. To clarify, I argue that an officer cannot use a known speech impairment and a known physical impairment as signs of intoxication to make an arrest. I cannot bring myself to fathom a day where one's genetic and physical make-up that an individual has no control over becomes grounds for an arrest. I further argue that without an arrest the

officer would have no legal grounds to submit the Appellant to a test for concentration of alcohol and therefore there could be no refusal.

The Issue of the refusal was decided before the Defense in this case presented their evidence.

In following the trial procedure, the Defense had not yet called the appellant to the stand to give testimony when the Judge ruled on the refusal. This means that the Evidence of the appellant's testimony had not yet been set before the court. This included the testimony that the appellant Said "Yes" to submitting to a test for alcohol concentration. Had this evidence been considered the verdict of the court would likely have been different. I argue that the defense has a right to present evidence to the court before a decision is made, and that by not being given the opportunity the ruling should be set aside, or at least the opportunity to present a defense be acknowledged and allowed before a ruling is made.

Conclusion as to what is asked of the court

I am asking the court to overturn the verdict, or in the least, order a new hearing to be set so that the Defense can submit testimony before judgement.

Statement Regarding publication, oral argument, form and length and copy served upon the opposing party

Before the court makes its verdict, I request that Oral arguments be allowed. The Appellant has no formal legal training. However, the state of Wisconsin has many attorneys with many years of experience at writing briefs and trying cases. I believe it would be to the detriment of the legal system that Appellant be restricted to presenting his case only in legal brief where he has no formal training in the matter while the opposing party has nearly unlimited resources at their disposal. As to whether the opinion should be published the Appellant has no background in why it should or should not be published and therefore no means to guide such a decision.

A copy of this will be mailed to The Prosecutor as it is to the Appeals court.

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