

17AP2131

Wisconsin Court of Appeals District 2

Village of Pleasant Prairie  
Plaintiff-Respondent

v.

Brian Lucas  
Defendant-Appellant

Brief of Appellant

Submitted by:  
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2017AP2131

Circuit Court Number 2017 CV 000869  
The Honorable Chad G. Kerkman

Kenosha County

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Appeal No. 2017 AP 002131  
Circuit Court # 2017 CV 000869

Village of Pleasant Prairie,  
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Statement of the issues:

The issue(s) on appeal are as follows:

- 1) Whether the court was in error on pushing the defendant/appellant to trial without a lawyer when the defendant/appellant requested time to get a lawyer;
- 2) Whether the court was in error by deciding the case based on facts that the Judge used which can only be testified by an expert witness and no expert witness testified.

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Oral argument is not necessary in this matter and I do not believe the opinion needs to be published.

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Statement of the Case:

This case involves a bench trial that was conducted on October 2, 2017 in the Court of the Honorable Chad G. Kerkman. The defendant/appellant was given a citation for operating while intoxicated. The Judge found the defendant/appellant guilty and ordered a fine and 6 month driver's license revocation.

The defendant/appellant believes that the Judge should have allowed time for him to have a lawyer represent him. The facts here are such that a lawyer familiar with the rules of evidence and procedure in Wisconsin could have helped the defendant/appellant show that he was not guilty of driving while intoxicated. In addition, the Judge in this case put facts into his opinion of guilty that were not testified too at trial. By doing this, the Judge used evidence to find the defendant/appellant guilty that had never been testified too.

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Argument:

- 1) Defendant/Appellant should have been given time to get a lawyer for the trial on this case and/or given time to make a complete motion.

The defendant/appellant asked the Court to dismiss the case as was without counsel and further asks the Court to appoint counsel for him. **(page 3 lines 7-25 & page 4 lines 1-2 of the Record)**. At the time of the trial the defendant/appellant requested a lawyer and the request was denied. This case deals with specific evidence relating to blood alcohol testimony and field sobriety testing. The defendant/appellant agreed to a blood alcohol test **(page 18 lines 21-24 of the record)**. The defendant was given two blood alcohol tests and both results were .05 which is below the level of intoxication for non-commercial drivers in the State of Wisconsin. **(page 20 lines 22-24 of the record)**. Because the scientific evidence in this case showed the defendant/appellant was below the legal limit of intoxication for driving, it was especially important that he have the right to an Attorney to handle this trial for him.

- 2) The Trial Judge found the defendant/appellant guilty of driving while intoxicated by using evidence that was not introduced at the trial.

The Judge states on the record that it would be impossible to have one standard 1 ounce drink, or 12 ounce beer or glass of wine, just one standard drink and then have a blood alcohol content of .05 a couple of hours later. **(page 77 line 25 & page 78 lines 1-4 of the record)** The Trial Judge here used evidence that could only be testified too by an expert witness and no expert was called to testify at trial. The Judge did not himself say he was an expert and gave no facts to show that he was an expert on these issues and therefore did not comply with **Wisconsin Statute 907.02** Because this was used by the Judge in his ruling, but was not a part of the evidence in the trial, the defendant/appellant could not have objected to it during the trial.

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**Conclusion:**

For the reasons stated in this brief, the defendant/appellant believes that there were errors committed by the court at the trial of this matter. The defendant/appellant is requesting that the Appellate Court set aside the guilty verdict of the Trial Judge in this matter and grant a new trial.

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Brian Lucas.

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Certificate of Word/Page Count:

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 9 pages.

  
Brian Lucas

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Appendix to Appellant's Brief

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