STATE OF WISCONSIN CIRCUIT COURT KENOSHA COUNTS
District 2

Village of Pleasant Prairie
Plaintiff-Respondent

V

Brian Lucas
Defendant-Appellant

Appeal No. 2017 AP2131

Appellant's Reply Brief

Appeal from Decision of the Kenosha County Circuit Court
Branch 8, Honorable Chad G. Kerkman presiding
Trial Court file No. 2017 CV 865

Submitted by:
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ARGUMENT

1. THE COURT SHOULD HAVE CONDUCTED A HEARING TO DETERMINE IF APPELLANT WAS ENTITLED TO A COURT APPOINTED LAWYER BEFORE DENYING HIS REQUEST

This case is the exact reason why Appellant should have been given an attorney. The as noted in Respondent's brief, the Judge in this matter advised the Appellant that he could not appoint a lawyer because it was a civil case. The Respondent, points out that according to the Piper v. Popp case, the judge does have some authority to appoint counsel in the civil case Respondent goes on to say that this case doesn't apply to the facts here, however, the court never conducted any type of hearing for the Appellant to establish whether he was indigent. Also, the loss of one's personal liberty can be different for each individual. Again, no hearing was conducted to determine this. How can the Respondent argue these issues do not apply to this matter when no evidence on either issue was requested by the court prior to the denial of Appellant's request for an appointed lawyer.

2. THE EVIDENCE DOES NOT SUPPORT THE COURT'S FINDING OF GUILTY .

Respondent claims that defendant was found asleep in his car, however, the Respondent dismissed any tickets or allegations of sleeping in a vehicle prior to the trial. The charges were dropped because the Respondent could not prove the Appellant sleeping in his vehicle and the Appellant brought a witness to court who was on the phone with Appellant and would testify as such.

The arguments made by Respondent are additional facts showing why Appellant should have been provided and attorney to assist him in this case. The Appellant raises the Milwaukee case, but that case deals with whether being parked on the road is operating a vehicle. Appellant here admits he operated his vehicle and has no issue with that. The Appellant here is stating that he was not under the influence at anytime while operation his vehicle.

The trial court ruled that Appellant was guilty of driving under the influence. We know from the facts that at the time the police officer gave the Appellant a field sobriety test, Appellant was under the legal limit for Wisconsin. We know this because of the bac was .05 at the time the officer conducted the field sobriety test. Cleary, the officer was wrong about her observations as the Appellant without objection agreed to take a bac and was well under the limit. Knowing this to be true, the Respondent now wants to introduce new evidence in the appeal that was not in the trial. The Respondent argues that it must be assumed that a Wisconsin trial judge would be fully aware of a chart published by the

Wisconsin D.O.T If Respondent is correct on the assuming what a trier of fact assumes, than why have a trial at all. The Respondent has the burden of proof in this case. The law provided that Respondent must prove its case. The Respondent is asking this court to allow the trier of fact to help the Respondent try its case. There is nothing in the record indicating the Court took judicial notice of anything. The Respondent never asked the court to do so and never sought to admit the alleged D.O.T chart into evidence. How could the Appellant cross examine evidence that was not offered. Imaging litigants having to argue against evidence that is never introduced and defendant are unaware a trial judge is considering. That is like saying to a Defendant, "We want to find you guilty and we are going to use evidence and/or charts that help us do so, however, we are not going to tell you about the evidence or charts". That seems very unfair.

Conclusion:

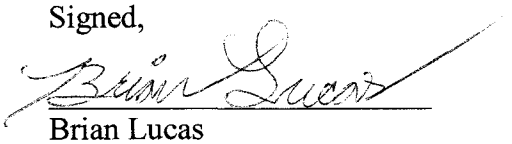
For the reasons pointed out in Appellant's Brief and Reply, the Appellant requests that this Honorable Appellate Court reverse the Trial Court's finding of guilty and declare Appellant not guilty.

CERTIFICATION

I certify that this brief meets the form and length requirements of Rule 809.19 (8) (b) and (c) for a brief and appendix produced with a proportional serif font. The length of the brief is 4 pages.

Dated: July 5, 2018

Signed,



Brian Lucas
Appellant