

STATE OF WISCONSIN, COURT OF APPEALS DISTRICT 4

RECEIVED

Grant County
Plaintiff-~~Appellee~~ Respondent
Vs

NOV 20 2018

CLERK OF COURT OF APPEALS
OF WISCONSIN

Kenneth Raney
Defendant-Appellant

Case No. 2017TR4074
Appeal No. 2018AP700

ON APPEAL FROM THE CIRCUIT COURT OF GRANT COUNTY,

THE HONORABLE JUDGE DAY, PRESIDING

APPELLANT'S RESPONSE

Kenneth Raney

P.O. Box 122

Darlington, Wisconsin 53530

Phone (608) 482-4077

ORAL ARGUMENTS REQUESTED

Table of Contents

Appellants Response Brief

8 pages

4TH DISTRICT APPEALS COURT

Grant County Wisconsin
Plaintiff

Vs

Kenneth Raney
Defendant

Appeal Number 2018AP700

Trial Case No 2017TR4074

STATEMENT ON ORAL ARGUMENTS

Kenneth J. Raney, also known as defendant, disagrees and thinks that oral arguments are necessary because of the disputed facts and improper procedure.

FACTS OF THE CASE

On September 1, 2018 Kenneth Raney was pulled over after going out to a festival and dinner with his girlfriend in Dubuque, Iowa. Kenneth Raney had a total of 3 drinks in about a 3-hour period. The Bloody Mary that he had was a 64-ounce drink and very spicy. The drink was either made too strong or the blood alcohol test was inaccurate. The stop was improper and violated defendant's 4th amendment rights and the search after the stop was improper. Proper protocol was not followed for the field sobriety test. The blood alcohol test was not accurate, because of the fact that it was hauled around in the officers', Duane Jacobson, car for 4 or 5 days on very hot days. This could have affected the results should have been kept in a controlled environment.

Kenneth Raney has a very clear medical condition; his toes point out at an extreme angle and that affected his ability to perform the heel to toe test. He repeatedly told Duane Jacobson he could not perform the heel to toe test and Duane Jacobson made Kenneth Raney continue to do the test and used this to say Kenneth Raney was intoxicated. The expert witness, Lorraine Edwards, from the state testing office said defendant might not have been intoxicated at the time he was driving. No blood alcohol breathalyzer test given at the sight of the stop.

As to the 911 call should not have been used as a reason to pull Raney over. Duane Jacobson did not take the call and the caller identified himself, so the anonymous caller should not apply. How does Kenneth Raney and this court know that caller was not drunk or the one causing the problem? When Duane Jacobson pulled behind Kenneth Raney the only things that defendant did was crowd the center line because he was being blinded by the officers' lights in his mirrors. Also, he changed lanes to get over and went right back over because of the other officers', name unknown, car coming down the ramp. Which is exactly what you are supposed to do when emergency vehicle is coming down a ramp when you can do it safely. If Raney didn't move over, he would have pulled Kenneth Raney over for not moving over. So, there was

no probable cause for stop. Raney was not all over the road and doing what defendant was supposed to do when he moved over for the police vehicle coming down the ramp. In Appeal No. 02-1574 Wisconsin District 2, City of Mequon vs Sarah Peacock court, see attached, stated that the tip is lacking both quality and quantity. The anonymous tip is unsupported by any reliability other than innocent information. All the anonymous tip gave Restivo was bare report of an unknown, unaccountable informant who neither explained how he or she knew the driver of the vehicle had been drinking alcohol nor supplied any basis for believing had any inside information. This tip is nothing more than an uncorroborated bold assertion of criminal activity and cannot support a conclusion that Restivo had the requisite reasonable. Ruling December 11, 2002. This is the same as Kenneth Raney's case. No other facts of this case show Raney was driving erratically. As claimed by the 911 call so it was a false report and should be disregarded. Why wasn't the recording presented as evidence when it was available to the DA and the person identified himself and his license number.

As to the ineffective assistance of counsel. Raney's attorney did not bring up fact that he was forced to take the blood screening. Kenneth Raney told the officer, Duane Jacobson that he had to use the bathroom and the officer

would not let him use the bathroom until he took the blood screen. The officer can't do anything to make defendant take the blood screen. Kenneth Raney told this to his attorney, Brian Severson, and he did not bring this up at the suppression hearing. Kenneth Raney tried to address this matter with the court and was denied. They said it was late, but motion was filed within 10 days of receiving copies of the transcripts. As to ground three the officer, Duane Jacobson, did not follow proper procedure to do field sobriety test or submitting the results, as required by the National Highway Traffic Safety Administration (NHTSA). The officer used copied and pasted reports to get the blood screen order. Also had Kenneth Raney take a test that he was physically unable to perform because of a handicap. Duane Jacobson admitted that there was a flat surface available very close and we should have traveled to it. Duane Jacobson knows that the surface should be flat and put it in his report that the test sight was flat. The attached pictures of the sight; Exhibits 2 and 3 from hearing 3/14/18 and Exhibits 5, 9 and 10, from the two hearings show that it was not flat. Lying about a sight on the forms does not make the test a proper test and should not be allowed. If you look at the video it will show that defendant was doing the field sobriety test that the officer asked me to do. Kenneth

Raney was doing the touching my nose test as instructed by officer Duane Jacobson, but because of the fact Duane Jacobson copied and pasted, which should never be allowed, the results of the previous persons OWI field sobriety test then he testified to that test not what defendants test was or showed. If you look at the video defendant never swayed once before the officer started the test and stood in front of defendant, the whole time of the test. The officer admitted that mistakes have been made on these reports. Also, Kenneth Raney is physically unable to perform a heel to toe test which the video clearly showed, that he has a physical condition that makes the heel to toe test impossible for defendant, and Kenneth Raney keep telling the officer Duane Jacobson that during the test and the Duane Jacobson did not care and forced Kenneth Raney to continue. Duane Jacobson delayed the blood test for over 30 minutes when the testing hospital was only 3 or 4 minutes away. Duane Jacobson searched Raney's car, without asking Raney for permission, looking inside envelopes and other things claiming he, officer Duane Jacobson, and the other officer, unnamed were looking for alcohol, you will not find alcohol in an envelope and this is just an excuse to search Raney's vehicle. An officer can't ignore proper procedure to get the test results that he wants and use evidence from other OWI

arrests to convict Kenneth Raney. The statement of the incident is an exact copy of the one OWI previous to it in regard to the field sobriety part of the test. The officer copy and pasted it from the previous test and then testified to what was on the form not to what happened at the test. Kenneth Raney did not once sway while standing at the back of his vehicle. Any test should not be admitted when it was improperly done. With respect to the nine-step test Raney repeatedly told that he could not do the test because of his handicap but was ordered to continue. This test was done on a hill and an area that slopped to the ditch. The state has requirements on how a test should be done. The officer knows this that's why copy and pasted the results from the previous OWI and presented a false copy of the incident to the state. This is not only improper but an outright falsification of an official form.

As to DA, Anthony Pozorski, Sr. testified to something not shown on the video or pointed out when the video was shown. DA, Anthony Pozorski claimed that Kenneth Raney swayed during the test and if you watch the video you will see that defendant did not sway at all before the test. Then during the test when the Duane Jacobson was blocking the view. It is convenient that there is no audio and the Duane Jacobson standing between camera and Kenneth Raney and can

claim whatever Duane Jacobson wants. Anthony Pozorski Sr. is not allowed to testify to something not shown or pointed out at trial. Again, this was not pointed out at trial by the officer just testified to because of the false coping from the previous OWI.

As to the expert testified Kenneth Raney might not have been intoxicated at the time of his driving. After being presented with the facts of this case Lorraine Edwards testified that defendant might not have been intoxicated at the time of his driving. As for the Bloody Mary that defendant drank. It was a 64 oz spicy drink and he could not taste the extra alcohol if there was any in it. Because of the improper handling of the sample by the officer. Test could have been inaccurate and should not be admissible.

As to the driving around with the blood sample in your car on hot days might have affected the sample and raised the alcohol level of sample. Duane Jacobson stated that he carried the sample around in his vehicle until he had time to mail it. DA, Anthony Pozorski, argues that sample was taken to the sheriff's office to be mailed. Officers report states he hauled it around until it was mailed. Kenneth Raney and Duane Jacobson drove right past the post office on the way to the Grant County sheriff's office and it should have been mailed as soon as possible. The blood sample was

not received by the lab until 9/7/2017 almost a week after the sample was taken, see exhibit 3 from hearing 3-23-18. Following an arrest any samples that are collected must be stored in a specific way. If any of these protocols are not followed the blood sample is not admissible. This is against the proper procedure established by the National Highway Traffic Safety Administration.


Based on the use of the 911 call for the stop. The improper field sobriety test. The improper handling of the test sample. The copy and pasting on the report forms that shows mistakes were made by officer Jacobson. The expert witness testimony that Raney might not have been intoxicated at the time of his driving. Defendant was forced to take the test before he could use the bathroom you can't make someone take a test.

Defendant requests this court grant his request for relief and set aside the conviction of Operating Under the Influence and dismiss the case or remand back to the district court.

11-14-2018

Dated

Respectfully Submitted;



Kenneth J. Raney