RECEIVED

MAR 19 2019

CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN
COURT OF APPEALS
District IV
Case No. 2018AP002130

VILLAGE OF MCFARLAND

Plaintiff-Respondent,

vs.

DALE R. MEYER,

Defendant-Appellant

DEFENDANT-APPELLANT'S REPLY BRIEF

APPEAL FROM THE OCTOBER, 12, 2017 DECISION AND ORDER AND SEPTEMBER 20, 2018 JURY VERDICT IN THE DANE COUNTY CIRCUIT COURT CASE NO. 2017CV000824 HONORABLE WILLIAM E. HANRAHAN.

DALE R. MEYER
5801 Running Deer Trail
McFarland, WI 53558
(608) 212-5254
dale@meyerfinancial.com

March 18, 2019

Contents

Rebuttal of Arguments made by the Prosecution.

Addressing the First Two Arguments in the Plaintiff-Respondent's Reply Brief.

I. Nothing that occurred in the Municipal Court Trial is relevant

II. I did not object at either the introduction of or refusal of any video evidence at either my refusal hearing or jury trial and accordingly waived any such issue on appeal.

I am a financial planner by trade since 1984. As such, this process of law is totally foreign to me. Given the serious accusation of driving while under the influence, and a refusal to submit to an evidentiary chemical test, I hire an attorney for representation. This is my first ever experience with these matters so I do indeed take the advice of my attorneys. Attorney one, Michele Tjader, does not want me attending the Municipal Trial. I balk at this. I have nothing to hide. I want any and all evidence to be used. She persists and I decide to go along with her recommendation. I am oblivious to the process and know the value of a professional. I am at the mercy of this person. She tells me a transcript of the trial could be my "eyes and ears" of what took place. What I now know is that her interests were not in line with mine. The compensation scheme of the system the lawyers are using is antithetical to mounting a vigorous defense. Her objective is to process the flow as quickly as possible. My contention that the prosecution used video evidence different from that which is police issued could not be objected to in the Municipal Trial as only she could have done this. It was

recommended by her for me not be present. Also, she promised me that my blood evidence would be used. It was not.

Well, at the Municipal level, a transcript is not done. A video of the trial is made. Upon my review of this, it is apparent her incentives are not in line with mine, or she has been terribly lazy, or she is quite incompetent. Any or all three are cause to remove her. She is fired. Attorney two, Bill Ginsberg, is hired. Right from the start with him I question this discrepancy of the police issued evidence I have been presented and what Attorney Fleming played in the courtroom. What he played being very different from what he took out of his computer and handed in as the evidence. At least four or five times I raise the issue with Attorney Ginsberg before we go to the Refusal Hearing. I never get an answer.

Now going into the Refusal Hearing, we differ on what strategy to execute. I contend it all is about the PBT and the confusion that is wrought when the word preliminary is never mentioned by Officer Haag. The transcript's word index will point to this. Had the word preliminary been said, I'd have a fighting chance to make sense of the process. Attorney Ginsberg does not see it. In retrospect, I will cut him some slack on this. As professional's using the jargon, it is easy to miss the point that what is so common to you is not to the uninitiated. I constantly need to remind myself of this in my financial planning practice. Ultimately, I decide that the professional's advice should be followed. The money I am paying has to have some semblance to value, otherwise what is the point.

Attorney Ginsberg battles extensively with Judge Hanrahan to submit my blood evidence. I marvel at his work at the start of the Refusal Hearing. Left to just me, Judge Hanrahan would have had no trouble. I am not a lawyer as the jury trial so perfectly demonstrated. Still, Judge Hanrahan does not want to accept this evidence. Attorney Ginsberg offers it as proof and still it is not accepted by the Court. The record shows that at the Refusal Hearing this offer of proof was rejected. This strikes me as very odd as a layman. Judge Hanrahan claims to be a finder of fact for the hearing. Should only inculpable evidence be found? My blood evidence does point to how I may or may not have been illegal at the time of the traffic violation. It is about the rate of elimination and the averaging of this. At trial, my pathetic job pretending to be a lawyer woefully and inadequately addressed this with the Jury. That's on me. I had my hands full that day just trying to get through it.

At the Refusal Hearing, this blood evidence issue was first up. Next came the transcripts I had professionally prepared by a firm called Verbatim. Those are agreed to be accepted. Attorney Fleming states the video will ultimately need to prevail however. We hand Attorney Fleming the police issued DVD of the Haag Car Cam. He puts it in his computer to play. I immediately alert my attorney that he is doing it again, playing a different version. Attorney Ginsberg shushes me. I get the point to let him work. Again, I follow the professional's advice. So yes, I

did attempt to object, but my acquiescence to counsel may now be to my detriment. What is a layman to do?

Well, this layman saw the value of a videotape of a trial and so motioned to video record it. This was granted. I do not object to the different version Attorney Fleming presents at the jury trial initially because I now am confident that if he played a fraudulent version, I will have the proof. At the Refusal Hearing this type of watchguard was not in place. I discovered how such an anomaly could take place long after the Refusal Hearing was over. Did an enhanced speed get played at the Refusal Hearing? I can't prove it. I have my suspicions however. During the jury trial, I conclude that Attorney Fleming would not possess such chutzpah to play anything fraudulent, knowing I'm clued in and the cameras are recording. So when the jury returns while deliberating to review some video evidence and Attorney Fleming then gets exposed for playing a different version, again I don't object. It is on video. It is evidence. I logically believe that my contention that this process is terrible flawed will be readily apparent. Am I that mistaken? Is it the case that the video of the very jury trial cannot be reviewed by the Appeals process?

This different version did prejudice me at trial. When it froze up and a long time delay took place, the jury decided to forego watching the second SFST that they wanted to view for a second time. Again, a transcript does not do this awkwardness justice. Time is not captured in a transcript. My video of the jury

trial does and should be a part of the Appeal process. Again, this evidence is available for review.

III. Mr. Meyer fails to identify any prejudice.

Upon reading this concept in Attorney Fleming's reply brief, it hit me like a sledgehammer, that what truly needed to be done in my original Appeal Brief was only vaguely hinted at. Again, that's on me. I apologize to this Court as I learn how best to present an Appeal. If my errors so doom me, I'll have to deal with it and move on.

I did categorically identify how my Attorney's conduct caused prejudice. Not knowing the process of law, a layman is at their attorney's mercy. Attorney one, Michele Tjader, prejudiced me to no end. At the Municipal Trial, her conduct prevented me from having a learned person of case law examing the entirety of events to determine if the process carried out by law enforcement that morning was fair and just. A jury is no substitute for such an entire review. Indeed, Judge Hanrahan instructs them to specifically avoid any such compunction.

Attorney two, Bill Ginsberg, prejudiced me by his nonchalant actions after I showed him the categorical evidence of the fraud that took place in the Municipal Courtroom. In time this will be reviewed by regulators. The evidence is incontrovertible. His response was simply a so what. I am still dumbfounded by this. The jury trial was to take place in three weeks. I do not know law and discover after the fact about a process on how to reopen the municipal court

proceeding. Attorney Fleming writes in his reply brief of my "frivolous' post-jury trial motion to reopen the municipal court proceeding. Could the Appeals Court please affirm, if this would be "frivolous" had it been done in a timely manner pre-jury trial? If it is the case that this would not matter, I truly fear for our justice system. Fraud is fraud whenever it is committed. It matters. Did Attorney Ginsberg simply miss this opportunity for my defense or were other motivations in play. I am a layman and can't hardly know. I have asked Attorney Ginsberg several times and no answer is forthcoming.

Judicial conduct also offered prejudice. Human nature is human nature. With Judge Hanrahan presiding over this jury trial, he is biased to keep out any evidence that might throw in to question his Refusal Ruling. That is precisely what took place. The rules of the game kept changing during the trial. Judge Hanrahan first rules there will be no evidence presented regarding the PBT. He notes the Fisher case. (page 153, line 11, Jury Trial Sept. 20, 2018)

Later, he changes course and PBT evidence would be allowable. Even for an experienced attorney this would be problematic. For me the layperson, it was devastating. My strategy was to show the jury my cognitive awareness during the questions I raise when the ITA is read. For that to make any sense, I first would have to set up the PBT request and what then followed.

So in this civil trial, is the PBT evidence admissible or not? First it was not. Then it was. What is the correct answer? Had the Appeal to the Refusal Ruling first been heard by this court, this confusion would not have occurred. Both the prosecution and the defense would know the ground rules. Having to change course on the fly during trial would have been avoided. Yes, it is my contention I was very prejudiced by this.

Judge Hanrahan additionally flip-flopped with the decision to have Lt. Redman testify. As I've noted, it is my contention that this too severely prejudiced me. Dismissing Lt. Redman was nothing more than a way to shield from the court the very real potential of fraud committed by Attorney Fleming. In his reply brief, Attorney Fleming makes my very case as to why I contend the issues I raise in my Appeal should be affirmed by this Court. Let me include here word for word the pertinent information from his Reply Brief Page 6 to Page 8.

From Attorney Fleming's Reply Brief:

Mr. Meyer claims at page 1 of his brief, in a handwritten addition: "Being self-represented, the process prevented me from using video evidence while testifying." This contention, read in its full breadth, is plainly unsupported by the record. Mr. Meyer was represented by counsel at his refusal hearing, so this comment cannot refer to anything that occurred during that hearing. **My contention, I have noted the lack of an objection raised by Attorney Ginsberg at the Refusal Hearing regarding video evidence played in court.** *At his jury*

trial, Mr. Meyer introduced two different DVD's, both of which were introduced without objection from the Village. (R.59: 3, 90-92, 125-126; R. App. 009, 044-048). Mr. Meyer fails to cite any portion of the record showing where he was denied an opportunity to present any video evidence. **My contention, Lt. Redman was dismissed. He was to authenticate the video evidence the police issued. I did not get to do this with him. Then when it comes to me and my testimony, I can't play this video from the stand. It is not set up for me to do this. Yes I am prejudiced.**

Before trial commenced, however, the circuit court heard motions in limine from Mr. Meyer. During the court's consideration of these issues, it appears the issue of evidence from the municipal court trial became a subject of the court's discussion:

THE COURT: "Transcript of evidence submitted, "I'm not sure what that means, for example. "Offer of proof that was denied, "I'm not sure what that means. **My contention, I want to use any and all evidence for the jury trial. If an offer of proof is not accepted previously, just where do I stand. How is it Attorney Ginsberg battles hard for this blood evidence at the Refusal Hearing, but then does not want to use it for the jury trial. I want the jury to hear it all.**

Do you plan on – once again, the jury is going to be the finder of fact here, and the facts they will be considering are the evidence that's to be presented at trial, not the evidence from the refusal hearing necessarily, not the evidence from municipal court trial, if you had one, but the evidence. We're starting from scratch here. **My contention, the record of evidence this court has points to how Judge Hanrahan became aware of the fraud in the Municipal Court proceeding before this trial commenced. Yet, his response too is so what. The Refusal Hearing is intricately involved. Can any PBT evidence be used or not. To have had those rules change midstream is problematic. I am prejudiced.**

Now, the cross-examining witnesses with prior inconsistent statements, you can do that by using transcripts if you'd like; but in terms of DVD evidence that was submitted, I'm guessing that the prosecution is going to mark DVD as evidence and submit that; is that right?

MR. FLEMING: well, yes, more or less. This time around I think I'm using a flash drive. I was not able to have a DVD, but the substance of your statement is correct. **My contention, Attorney Fleming was not able to have a DVD? Are you kidding? That is the only official police issued evidence. This makes my point entirely. He states more or less. Well, that is exactly what can and did happen. More [enhanced] speed to the stop sign violation and less car cam video from the second squad car [Officer Craft Car Cam]. Lt. Redman's testimony was needed. I was prejudiced.**

THE COURT: Okay. So I guess, Mr. Meyer, I'm not sure what you're asking for.

MR. MEYER: Well, here would be the biggest thing, I guess. Because it's been so much time that's passed, am I able to – and pictures do a lot more also rather than a transcript, which I do have the municipal trial transcript as far as this impeachment stuff, am I able to show Malcolm Haag's answer, you know, per question and how I feel that is so incongruent with the video that we'll be showing here today?

THE COURT:

...

There is a method of impeaching people with prior inconsistent statements. I'm assuming that if it's done incorrectly, the prosecution will object. At that time I'll have to rule upon it, but I can't -- I wish I were retired and I could represent you in this case, but I can't do that.

MR. MEYER: Can I show anything of that trial then or should I just put that DVD away?

THE COURT: Well, you can, subject to the rules of evidence, once again.

MR. MEYER: And then Matt Fleming will just object and –

THE COURT: Well, he might. Might not object, too. I'm not sure what – I don't know what the strategies of either side is. **My contention, the court has evidence in all these documents that I indeed clued in Judge Hanrahan as to my strategy. My very big mistake. I knew no better at the time. Believing Judge Hanrahan would take issue and act was my logic. I was wrong.**

(R.59: 7-9; R.App. 013-015).

> *Mr. Meyer, never actually attempted to use the municipal court DVD (or for that matter, the transcript he had made) in order to impeach any witnesses or for any other reason. Further, Mr. Meyer fails to explain why such evidence would have been relevant in the circuit court trial. As the circuit court explained to him, "We're starting from scratch here." (R.59;R.App. 013).* **My contention, there is no dispute, my attorney skills were pathetic. I will be keeping my day job. However, I had lost all confidence in Attorney Ginsberg to do the trial.**

[End of word for word information from prosecutions Reply Brief]

IV. Mr. Meyer is not permitted to write another Brief to discuss issues he failed to address in his initial Brief.

If I have erred per law in not addressing arguments for Judge Hanrahan's Refusal Ruling in my initial brief, then so be it. That is on me. Much of Attorney Fleming's reply brief is about my pathetic performance as a lawyer. That is not in dispute. However, this court did grant Attorney Fleming's motion to have the case fully "ripen" before it would address the Refusal Ruling of Judge Hanrahan. I do feel it is logical that first this Court would now have to rule on the just nature of the jury trial and then rule on the Refusal. Had this Court first ruled on what evidence could or could not be used definitively in the jury trial, the outcome may well have been a different affair.

As to the implied consent law, I did not refuse to give the state an evidentiary chemical test. I wanted to know with certainty what I was affirming or disaffirming. The fact that I am practically assaulted by Officer Haag because I wanted to read the ITA and that I was not going to leave until my blood was drawn points to this.

No, Officer Haag was not going to read the ITA downtown or let me read the ITA because during the 20 minute observation he determined I was not going to be illegal with a scientific test. George Bernard Shaw has noted that "*The single biggest problem in communication is the illusion that it has taken place.*" This is what took place with the ITA. I hope I have not forfeited the ability to argue this. Attorney Ginsberg did not want to use this strategy in the Refusal Hearing. When the ITA is read to me, it is a serious case of, you don't know what you don't know. With Judge Hanrahan's ruling, the notion of complete familiarity with your own jargon masking what is communicated for the first timer plays a part. The word preliminary matters. A PBT to me meant nothing. Perhaps you could watch that video and get a feel for what that meant in the communication process. Also, what can often be most debilitating is not what you don't know, but what you do know, that just isn't so. There are several issues with this also in Judge Hanrahan's ruling.

V. Mr. Meyer's Appeal is frivolous

I have made serious mistakes in trying to proceed with my case pro se. This was never my intent to go it alone without an attorney. As circumstances

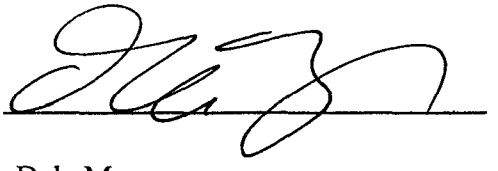
transpired, it became very apparent my interest in a vigorous defense was not truly aligned with those I had hired. I have spent enormous resources to see this through. I am a longtime business owner. I am not frivolous with my money or time. I most certainly will respect this court's decision. For me, it is a simple case that fraud is fraud. Whenever it takes place. If I am to be further punished with additional costs that will be something I'll have to endure and deal with as I move on. I do feel the issues raised matter. That the process is flawed if the professionals involved are less than scrupulous. In time it will be determined if indeed I was frivolous. My contentions, in no way have I abused the courts and that this Appeal was frivolous.

Conclusion

Vacate the jury's verdict. It is my contention this trial never would have transpired if not for the prejudice I experienced from the members of the bar that were involved. And if this trial is vacated, allow me to finish the "ripening" process in time. If granted a new trial, my attorney will know with certainty what evidence will or will not be permitted. The rules of the game will not change while in progress. I do not consider this a frivolous matter in a way, shape or form.

Certification

"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 proportional serif font. The length of this brief is 13 pages 3666 words."



Dale Meyer

3/18/19

Date