

18AP2130

STATE OF WISCONSIN COURT OF APPEALS  
~~BRANCH 7~~

DISTRICT IV

Dale R. Meyer,

~~Defendant-~~ Appellant,

Case No. 2017CV000824

v.

Village of McFarland

~~Plaintiff-~~ Respondent.

DALE R. MEYER APPELLANT BRIEF

Dane County, The Honorable William E. Hanrahan Presiding  
Appeal No. 2018AP2130

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## Statement of the Issues

### Issue One: Multiple Versions of Video

How many different versions of the police issued evidence does the prosecuting attorney Matthew Fleming get to present in the various court proceedings leading up to this Appellant

Brief? *Being self-represented, the process prevented me from using video evidence while testifying.*  
*Dec 2/04/19*

### Issue Two: Request to submit a follow-up Appellant

#### Brief (If necessary)

This Appellant Brief is respectful of Judge Hanrahan's own process as to brevity as noted with his reminder of Mark Twain's quote. Judge Hanrahan instructs both sides as to the time used for closing arguments as follows: Remember, brevity is always appreciated. Mark Twain said, "Seldom is a sinner ever saved after the first 20 minutes of a sermon." (Trial Transcript, 2018, pp. 187, Lines 6-11)

Therefore, it is respectfully requested that should the Court find to let stand the case as tried after review of this Brief, that an opportunity be granted defense to fully rebut Judge Hanrahan's Refusal Ruling with an Appellant Brief.

## **Statement of Whether Oral Argument is Necessary and if the Opinion Should be published**

By way of review, a brief recap is in order to inform the court as to why it is that this Brief is being done via self-representation. I mean the Court no disrespect in any way.

However, it is abundantly clear Judge William Hanrahan believes otherwise. Thus, my hope is to attempt to show there truly is no disrespect intended and I offer apologies in advance for possibly not getting this document put together in all the proper legal fashion.

On 5/26/16, I am arrested and accused of failing to stop at a controlled intersection and illegally operating a motor vehicle while under the influence. My profession is that of a Financial Planner, running my own company for the last 35 years. This brush with the law is my very first encounter. Most certainly I know the value of a professional and immediately hired an attorney, Michele Tjader. Her \$4,500 fee was to represent me through the Municipal Court Trial and the Circuit Court Refusal Hearing and Trial. What I know now, that fee is terribly unrealistic if a vigorous defense is to be mounted. The incentives are all wrong. Let me be kind and simply sum it up this way, Michele Tjader sold me out. That is apparent in how she handles my Municipal Court

Trial. She is fired. I then hire attorney two, William Ginsberg. He is paid \$17,500. My understanding is that for that amount he will represent me in the Refusal Hearing and OWI Trial in the Circuit Court. I get a feel for how Attorney Ginsberg operates and decide that the money spent to have the police issued camera evidence professionally transcribed is worth it. The firm Verbatim does this work. The cost is over \$2,000.

The Refusal Hearing takes place on 7/24/17. Result, Judge Hanrahan finds for the Village of McFarland. Attorney Ginsberg appeals this ruling to this Court. The prosecution, via Attorney Matthew Fleming, moves that before this Court hears the appeal, this case needed to fully "ripen". This Court grants that motion. In December of 2017 Attorney Ginsberg informs me that I'll need to post an additional \$12,500 to be used on the Appeal legal work. I pay him that fee.

So now the case is ripening over the spring and summer of 2018. Though my efforts, I discover on 8/22/18 that Matthew Fleming has incontrovertibly committed fraud in the Municipal Court Room at the trial held on 3/21/17 in the Village of McFarland. I bring this up to Attorney Ginsberg. He is not interested in pursuing this potential fraud. Whether he is unaware of the very simple matter of filing with the Municipal Court the request to re-open or he is incentivized to be charging me legal fees [I was

mistaken with our agreement. Another \$5,000 was going to be needed for him to represent me in the OWI Trial] I cannot know. Only through his testimony while under oath could that be sworn.

Truly, I offer to this Court, that this amount of money was beyond my breaking point. In addition to these hard costs, tallying up all of life's cost through this ordeal will be for the next stage in the process. Again, I offer this background here only to provide evidence that self-representation was not a road I wanted to take. I mean the court no disrespect.

So to the matter of oral argument and if this should be published, I respectfully submit that I haven't the energy and time to research just what this means. I would like to defer this to the wisdom and good graces of the Court to decide.

### **Statement of the Case**

In the early morning of 5/26/16, Dale Meyer is returning home from his office after a long day of work and an evening of playing cards. At approximately 2:51 am the vehicle he is driving approaches the controlled intersection at Sigglekow and Marsh Roads in the Village of McFarland. He is driving eastbound on Sigglekow needing to stop at the intersection, execute a right turn, and head south on to Marsh Road. Officer Haag captures this

stop with the car cam having turned it on after he had noticed Mr. Meyer's vehicle had slowed down for the stop sign but failed to completely stop as is his contention. The car is already through the intersection before the car cam is activated. However, the alleged stop sign violation still is captured on video because when the camera is turned on the technology has a 30 second look back for its permanent recording. Thus, the driver's execution of the stop and subsequent right turn is preserved as potential evidence.

**Issue one: What Version of the Official Police Issued Camera Evidence is Played in the Courtroom?**

Quite understandably prosecuting attorney Matthew Fleming has presented the front car cam video of Officer Haag's squad car in all three of the proceedings leading up to this Appellant Brief. He has played the evidence at the Municipal Court Trial. He played the evidence at the Refusal Hearing. And, he played the evidence in the Circuit Court Trial. At issue for this Court to review is how many possible different versions of this evidence is he allowed to present in the various Courts.

The McFarland Law Enforcement Agency brings this evidence into



existence. DVD's are issued to both the prosecution and the defense. But are they authentic? Do both parties have the same exact copy?

When played, what safeguards are in place to prevent showing a tampered version of this evidence? Could a corrupt defense attorney or prosecuting attorney play the video in Court at an enhanced speed and pass it off as real time to an unwitting judge or jury? Is defense allowed to inspect the original source document? The server where this original video is stored?

In the courtroom proceedings, the prosecution has his computer to play this evidence. The defense has his computer to play this evidence. What if either side was unethical and simply pretended to have played in court what he hands in as the official evidence [a flash drive or DVD] only to have truly played an altered version that was stored on his computer's hard drive? The very fact that the potential for such shenanigans exists leads to reasonable doubt that a fair and just proceeding has been conducted. That a verdict so derived should be allowed to stand.

Alarmingly and categorically, Matthew Fleming has participated in such shenanigans while prosecuting this case in the various court proceedings. How is it that I can be so bold and assert such a disparaging allegation? The proof resides in the process of these

proceedings. The trial in the Village of McFarland Municipal Court held on 3/21/17 does not have a live court reporter creating the permanent record. The Village preserves this record by videotaping the trial. As it turns out, having video and sound of what gets shown in court is one of the only crosschecks to a potential fraudulent presentation of evidence by an unscrupulous character. The very possibilities and questions I raise with this Brief.

In this Municipal trial, after having watched the video of it more times than I care to admit, I discovered on 8/22/18 how in this proceeding Matthew Fleming played 30 seconds of real time car cam video evidence in only 21 ½ seconds in the courtroom. He played the stop sign violation at an enhanced speed of 40% faster and passed it off on an apparently unwitting court as the real time speed. Exhibit A (Decision and Order: Motion to Reopen, 2018)

The evidence is incontrovertible. My understanding is that upon the jury verdict in the Circuit Court Trial, this Municipal ruling then stands and is enforced. How can it be possible to enforce a ruling resulting from a court proceeding where incontrovertible evidence is present that fraud was committed by the prosecuting attorney? Not the mere potential for it to take place as I question in this Brief as to the process in Judge

Hanrahan's Court, but the reality that it did indeed transpire in a Court of Law. In the Village of McFarland Municipal Court on 3/21/17.

Matthew Fleming did similar moves in both of Judge Hanrahan's Court proceedings at the Circuit Court level. For the Refusal Hearing, I had professionally produced transcripts of the police issued car cam and body cam evidence for use by my second attorney, William Ginsberg. The first attorney was relieved of her services upon my review of how she conducted the Municipal Trial. These transcripts I felt would greatly help Attorney Ginsberg present the defense. That they did.

Early on in the Refusal Hearing, Matthew Fleming wants to show the video from which the transcripts derive and the Court has accepted as evidence. He states the video evidence must take precedence. Fair enough. (Refusal Hearing Transcript, 2017, pp. 9, Line 19-24 p. 10 Line 1-18)

Attorney Ginsberg hands him the official police issued DVD. The DVD that is the accepted evidence. Matthew Fleming puts it in his computer's disk drive and starts to play it. I immediately lean over and whisper to Attorney Ginsberg that he is doing it again. That he is playing something other than the official evidence. He shushes me with a gesture, I cower back to my space alongside him, understanding I am to simply be silent and let him work.

In retrospect, knowing what I know now, that is where an objection needed to be raised. Attorney Ginsberg did not. Matthew Fleming played video that was stored elsewhere on his computer's hard drive. Was it altered? Was it tampered with in any way? How are we to know? There is no video of this Refusal Hearing proceeding, just the court reporter transcript. That can't possible determine the reality that Matthew Fleming did not play what the Court has accepted as evidence in Judge Hanrahan's Refusal Hearing. This I can swear to while under oath if needed.

The police issued DVD, which is the accepted evidence by the Court in the Refusal Hearing, required a Watchguard video player to open it up and run the video. This Watchguard video player has safeguards in place to prevent fraudulent presentations of the evidence. Matthew Fleming has played versions of this evidence in the Refusal Hearing and in the Circuit Court Trial that bypasses these safeguards. He has lifted the raw data from the police issued DVD, dropped it into a Windows Media Player, and then used that version to play the evidence. The Windows Media Player does not have safeguards preventing potential altered playback.

This process is what I had hoped to question Lt. Redman of the Village of McFarland Law Enforcement Agency in the Circuit Court Trial. Lt. Redman is the individual issuing the police produced official DVD's generating the camera evidence. He was to be the

last witness for me to call and testify as to the veracity of such police issued evidence. Pre-Trial, Judge Hanrahan approved that Lt. Redman could testify. Remarkably, Judge Hanrahan changed his mind at the last minute here and would not allow me to call Lt. Redman to testify. How can this be fair and just in this civil trial traffic case where no pre-trial discovery is afforded the defense?

Now, seeing how important it is to have video of the court proceedings, I motioned and Judge Hanrahan granted the request to video tape the Circuit Court Trial. The professional I had do this is Sydney Martin. Presented with this Brief is the video and audio of the entire trial, the original video disks pulled from the camera, lest I be questioned as to authenticity. Exhibit B (Trial Video, 2018)

What these two Sandisk video cards show is once again Matthew Fleming has issues in what version of the evidence he has played in the courtroom. His evidence at this trial is documented with a flash drive. His first playing of the front car cam video from this flash drive did not have any officer or car indications displayed nor date or time clock ticking second by second for jurors to see. As fortune might shine, the jury returned to the court while deliberating requesting a second look at the walk and turn and one leg stand field sobriety tests. Matthew Fleming has to cue this up by putting that flash drive back into his computer

to play the video once again. Low and behold, this time upon playback the Officer and car indications are on full display. The date is indicated and a clock is viewable second by second. (The first viewing during the trial had none of this.) However, this version froze up after the walk and turn is completed. Matthew Fleming is not able to get this version to continue. I detail all this later in this Brief under additional arguments.

The jury decides that just the one reviewed SFST will suffice. They go back to deliberate and return with a guilty verdict. Will this Court find it acceptable for Matthew Fleming to be playing to the courts different versions of the camera evidence? It is one matter to have the potential for shenanigans to take place. The way this trial was conducted, where each side used his own computer to play evidence, that potential is certainly present. It should not be allowed to take place. This very process with its potential for fraud needs to cease. Another matter altogether is if different versions are played.

When circumstances transpire that strongly indicate different versions have indeed been played there is a real problem. Again, Judge Hanrahan prevented me from investigating this possibility by dismissing Lt. Redman from testifying. Again detailed later under additional arguments.

## **Argument**

As self-represented, I have attempted to get all of the facts of the case before presentation to the Refusal Hearing and Circuit Court Trial. At every turn I have been stone walled. During the trial I was made aware of how this could happen. While in conference at the bench, Judge Hanrahan is instructing on how it is that Lt. Redman's testimony is not needed, that this witness has nothing to add. This goes for several pages of the transcript. (Trial Transcript, 2018, p. 150 Line 16 thru p. 159 Line 22) To summarize here, the most salient issues raised by Judge Hanrahan: "In fact, there's been stipulation between parties as to each of the videos that's been presented, so the authenticity hasn't been challenged by anybody, including yourself. So I don't see the relevancy of the proffered testimony here and I do decline to allow this witness to testify." (Trial Transcript, 2018, pp. 159, Line 10)

There was no stipulation by me that the video actually played in the courtroom was authentic or if the version played was done truthfully in the courts. I had no opportunity to authenticate that. In fact, Matthew Fleming notes for the record "that because this is a traffic case, there is no discovery except by leave of the court, so we have provided him everything solely voluntarily. We were under no obligation to provide him any of

the videos but we have." Judge Hanrahan concurs: "Sure. Yeah. Good point." (Trial Transcript, 2018, pp. 159, Line 10-22)

Again, how could I ever stipulate authenticity or how it is played in the courtroom if I have not been able to do discovery. To have Under Oath just what we have for evidence is real and true. Lt. Redman's testimony was needed for that to take place. Regarding the Refusal Hearing, categorically Matthew Fleming played a different version in the court proceeding than what was handed in as evidence. At the Circuit Court Trial, the jury was presented two different versions. My motion to videotape pays off. The cost is well spent.

Amazingly, Fleming hands in a flash drive as the evidence played in court which he states there is a number of videos on the drive. (Trial Transcript, 2018, pp. 209, Line 25) He offers the only video we have watched is under the first folder of Exhibit 4. Yet during deliberating, the jury returns to court and wants to see the walk and turn and one leg stand field sobriety tests a second time. Now Fleming has to cue this up and

has trouble getting to it. He is reminded by the Court: "Well, the only version that should be showed to the jury is the actual exhibit that was admitted into evidence." (Trial Transcript, 2018, pp. 208, Line 18-20) Fleming remarks: "All depends on which player you were using." (Trial Transcript, 2018, pp. 208, Line 23-24) The video is played and it freezes up. The jury only sees



some of this once again. The Court inquires if they want to see more and Juror Stephan replies, "I think we're good with just that portion." (Trial Transcript, 2018, pp. 209, Line 22-25)

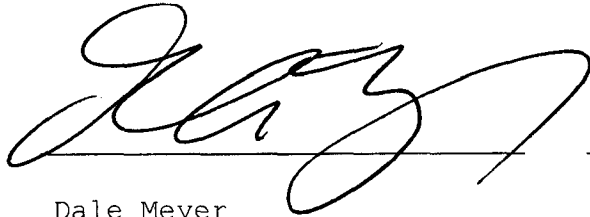
So here we have once again the question of just what version is getting played. Categorically, it was a different one. The first version had no timeline, date, officer name, and car indications. The second playing did have this. This type of potential abuse that could be perpetrated should never, ever be allowed in a courtroom. What if Fleming had played the first version from his hard drive, (a different version not quite true) and this second playing was from the actual evidence handed in. Again, the official police issued video must use a Watchguard video player to open and run and this player has safeguards to potential fraudulent playing of the video. Lt. Redman's testimony was needed. We do not know if that took place, but certainly the potential is there. This is simply wrong. Again, a solid crosscheck to this possibly happening is to have what is played in court on videotape where both video and sound are recorded. Having a recording of what is played in court is essential.

## **Conclusion**

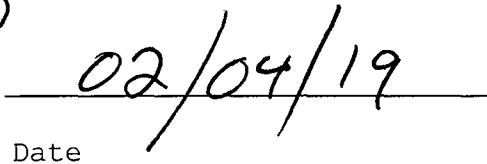
Defense seeks that both Judge Hanrahan's Refusal Ruling and the Circuit Court Trial be vacated. Procedures followed in both instances leave doubt that what was presented to the Court was

the unadulterated true, real time version of the police issued video evidence. The official Watchguard video player which has safeguards in place to prevent potentially fraudulent playback is the only version that should be allowed to be used. Remand it back to the McFarland Municipal Court. Allow Judge Randi Othrow to re-open and investigate whether or not any shenanigans took place in her Court of Law. I have previously requested this and her ruling to my request is enclosed. Exhibit A (Decision and Order: Motion to Reopen, 2018) Should a new Refusal Hearing and Trial be needed, this self-represented appellant assures the Court I will be represented by council. It is quite apparent I am no lawyer and surely not nearly qualified. Again, I meant no disrespect to Judge Hanrahan or the Court as I self-represented in some of these proceedings.

"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 [21 pages] [3590 words]."

A handwritten signature in black ink, appearing to read 'Dale Meyer', written over a horizontal line.

Dale Meyer

A handwritten date '02/04/19' in black ink, written over a horizontal line.

Date

## **Exhibit A**

Decision and Order: Motion to Reopen