RECEIVED
JAN 23 2023
CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

In the matter of: the refusal of Zachary LaFave-LaCrosse:

CITY OF RHINELANDER,

Plaintiff, -Respondent,

vs.

ZACHARY TYLER LAFAVE-LACROSSE,

Defendant, -Appellant,

Case No. 2020AP001120 & 2020AP001121

APPELLANT'S REPLY BRIEF

Appeal from Oneida County Circuit Court

The Honorable Michael H. Bloom, Circuit Court Judge

Oneida County Circuit Court Case No. 2020TR000068 & 2020TR000069

Prepared by:

Zachary T. LaFave-LaCrosse

1105 N. Dysart Rd #91

Avondale, AZ 85323

Defendant-Appellant, pro-se

TABLE OF CONTENTS

STATEMENT OF CASE

The appellant brings forth this reply brief with review of facts in good faith as a rebuttal to the City's account of the case. Mr. LaFave-LaCrosse's position of the arguments on this appeal still stands and will not restate each issue in this reply brief; he will only reiterate that there is no evidence or probable cause that brought about charges to render a GUILTY verdict by law.

In review of this case alone the contradictory of terms and "painted picture" of the City's proposed evidence stands with no merit. In the City Attorney only defense he writes "by clear, satisfactory and convincing evidence" What evidence? The court relied on the "preponderance of controversial testimony, falters to ignorance of the law and justifies with circumstantial evidence."

The facts of this case are simply. Did Mr. LaFave-LaCrosse break the law in accordance to Wis. Stat. 346.63(1)(A) OWI (1st) and 343.305(9)(a) Refuse to take a test for Intoxication after arrest in which he was CITED the answer is clearly NO.

The City Attorney notion to the fact that Mr. LaFave-LaCrosse was the only person present at the time the officer arrived, so he is the only one who could have been driving, testimony by both parties contradicts that scenario, leaving no evidence to support that assumption. The city's witness, Officer Decker's own testimony sites that she NEVER seen the appellant in "operation of the vehicle." The court even recognized that Mr. LaFave-LaCrosse was not "operating" the vehicle as an undisputed fact at

hearing (R57; 8-9) yet finds that **most** important fact irrelevant to the case, showing the court's blatant indication of ignorance to the law as precisely written.

The City's attorney attempt to place merit to the courts findings he points out that the officer "asserted that LaFave-LaCrosse did not offer any explanation for how the vehicle came into the snowbank and further that she did not recall him indicating that he was driving." (R56; 12-13)(Key word "asserted") When Mr. LaFave-LaCrosse was actually given the opportunity to provide that information, his testimony is chastised, belittled, and is made to believe that he was a liar and his testimony is marked as "unbelievable." The City's attorney would like you to believe that from Mr. LaFave-LaCrosse's testimony that his designated driver, whom was his 43year old mother, 10 months out of pregnancy either had no capability or was expected to walk approximately 1 ½ miles in dead of winter, snow and ice covered roads and return to the scene in **less** then 30 minutes, in doing the court's formulates a character bias comes that Mr. LaFave-LaCrosse is an "overly protective son." (R:56;31) OR is it the other notion in which the city's attorneys "painted picture" that Mr. LaFave-LaCrosse should have walked a 1 ½ miles, and then actually "operate" a motor vehicle back to the scene. So, which is it? Both notions or "painted pictures" are not reasonable nor feasible but was noted by the court as "circumstantial evidence." When Mr. LaFave-LaCrosse was asked why his witness was not in court to testify he states to the court that due to uncontrolled circumstances the witness was not able to be present but did attempt to contact the City Attoney's office day prior to ask for hearing to be rescheduled. (P-App pg 59) The court

overlooks, reprimands him and then threatens Mr. LaFave-LaCrosse's witness by stating, "its to Mr. LaCrosse's credit that he didn't bring his mother her to commit perjury." (R56:32)

The only base of fact to the City's defense is that Mr. LaFave-LaCrosse had consumed a couple of drinks and the officer noticed odor of intoxicants. Mr. LaFave-LaCrosse's own testimony collaborates his admittance to consumption of a couple drinks yet where in his testimony does he state he "operated" after consumption of those drinks? (R:56; 27) There is none. Where in the state of Wisconsin state statutes does it state that an of age adult male can not consume alcohol? What relevance is that in this case? There is no relevance, it was only presented as a base of fact in the defense's case. What law did Mr. LaFave-LaCrosse violate in that fact? None

The other assertion of fact that the City attorney brings up is that Officer Decker administered a field sobriety test with unfavorable factors of "snow" covered conditions. The City Attoney fails to emphasis that their own "expert" witness testimony, Officer Decker expressed concern regarding those factors as well as the testimony of Mr. LaFave-LaCrosse having suffered a concussion days prior that may hinder accurate results by stating to both the officer and the court "balance will be impaired." (R56:27). Even with those factors Mr. LaFave-LaCrosse complied with Officer Decker's request. There again both witness testimonies are clearly and concise that the outcome of those tests being accurate is highly improbable and unlikely shows merit that Mr. LaFave-LaCrosse's request that the court disregard the field sobriety test under those conditions

is not unreasonable. The city attorney tries to imply that by Mr. LaFave-LaCrosse complying to the request of the officer was wrong doing, yet here in this very case Mr. LaFave-LaCrosse was cited for a refusal, so was he to comply or not comply? He goes on to state that Mr. LaFave-LaCrosse did not "give a description of the type of impairment he was experiencing" yet restates Mr. LaFave-LaCrosse's testimony, "balance will be impaired." In the City attorney's attempt to cover up that the evidence that should have been deemed inadmissible and not used as a base of "probable case for a lawful arrest" he places emphasis that Officer Decker received certification to administer the test and then sites the results of those tests which Mr. LaFave-LaCrosse compiled a 50% pass rating. The court overlooks the testimony and rules as satisfactory evidence.

Mr. LaFave-LaCrosse's argument stands with merit, to the fact of the refusal charge, given the established timeline; 2:35am (marked as arrival at scene) to 3:10am marked on "Informed Consent" form, which is **when** Mr. LaFave-LaCrosse was provided the form, in booking at the Oneida County Jail. Mr. LaFave-LaCrosse's argument is that in order to make an informed decision as the "informed consent" does; it should be provided upon request of the officer as clearly and precisely cited by law and in this case, it was **not**. Officer Decker's own testimony states that her request for a preliminary breath test was at the scene. (R56;12) There is no mistaken belief as the City attorney indicates, the law is written clearly and precise and backed by legal authority in Motion marked in appellant's brief as document 5 pg 8-10 and appellant's brief pgs 29-30. Mr. LaFave-LaCrosse's testimony reflects and acknowledged by the court that he was not

aware of the consequences of the refusal as he held an Arizona Driver's License and not knowing that Wisconsin was a implied state. (R:57; 12) The argument restated is Mr. LaFave-LaCrosse was provided the information **not upon request** but after the fact, he was already detained and booked at the Oneida County Jail. This action by the court again shows a clear indicator of preposterous ignorance of the law. But when Mr. LaFave-LaCrosse testifies to ignorance to the law holding an Arizona driver's license it is deemed as "irrelevant".

CONCLUSION

We the people have been asked to entrust our faith in a justice system that is suppose to be viewed as an entity that follows the rules, to serve, protect, uphold the law and provide justice. In this case the justice system has failed. The Circuit Court has been allowed to miss file in the record, withholding viable documents, not comply with rules of the appellant court procedures not once but several times resulting in the court of appeals to compose orders to force the court to follow, and in doing so, Mr. LaFave-LaCrosse has had to file several motions for extensions, denying Motions for transcripts due to the fact of inadequate application of law, (all in which can be found in the appellant's Brief appendix), but most importantly impeding on Mr. LaFave-LaCrosse's right to a fair and timely appeal. These actions bring about more questions as to what the justice system actually stands for. It was presumed that it was founded on the preponderance of truth NOT the preponderance of circumstantial evidence. A defendant goes to court to prove their innocence, stands before the court and rises their right hand

and swears under oath to "state the whole truth and nothing but the truth." In this case alone, WHY is the question? When Mr. LaFave-LaCrosse's whole testimony is viewed as irrelevant, unbelievable, dismissed, overlooked, viewed as a liar, given a label, and threatened with "perjury". Yet the court relied on the "preponderance of controversial testimony, falters to ignorance of the law and justifies with circumstantial evidence," still with an outcome of a GUILTY verdict. Is that how justice is served?

Mr. LaFave-LaCrosse bring forth is appeal with great confidence that the Circuit Court erred in its findings, there was no application of law, nor application of standards of law. Even with the City of Rhinelander's notions of fact and preponderance of circumstantial evidence it still DOES NOT outweigh the testimony and factual evidence presented to the court. The City's theory is impractical and improbable with that being said the evidence of this case lacks justification of conviction. The testimony of the City's only witness is found to have discrepancies, the findings of the field sobriety test should have been marked as inconclusive and inadmissible as the witness testifies to her own concern before administration holding no weight that the results yet was entered as factual evidence. All in which has led to an assumption of probable cause and a lawful arrest which is the argument of Mr. LaFave-LaCrosse.

Mr. LaFave-LaCrosse, Appellant respectfully requests that both cases be **reversed** with an **order of dismissal with prejudice and all charges be removed from his permanent record.**

RESPECTFULLY SUBMITTED this 18th day of January, 2023.

Zachary T. LaFave-LaCrosse

Defendant-Appellant (Pro Se)

ORIGINAL of the

foregoing sent by U.S. mail for filing

with the Clerk of the Court of Appeals

for the State of Wisconsin this 18 day of

January, 2023 and

1 copy to:

City of Rhinelander Attn: Steven Michlig
106 N. Oneida Ave
Rhinelander, WI 54501
Plaintiff-respondent

Oneida County Clerk of Courts
PO Box 400; 1 S. Oneida Ave
Rhinelander, WI 54501

By:

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(bm) and (c) for a brief produced with a proportional serif font.

The length of this brief is **1966** words.

Date: 1/18/23

Signature: Jennifer LaCrosse

CERTIFICATION OF MAILING

I certify that the original of this brief were deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on 1/18/23. I further certify that the brief was correctly addressed, and postage was pre-paid.

Also 1 copy of brief were sent to:

City of Rhinelander Attn: Steven Michlig
106 N. Oneida Ave
Rhinelander, WI 54501
Plaintiff-respondent

Oneida County Clerk of Courts
PO Box 400; 1 S. Oneida Ave
Rhinelander, WI 54501

Date: 1/18/23

Signature Jacqueline J. Krosse