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DISTRICT III

May 19, 2015

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You are hereby notified that the Court has entered the following opinion and order:

2014AP2572

City of Eau Claire v. Richard J. Wilczynski
(L. C. No. 2013TR13994)

Before Hoover, P.J.¹

Richard Wilczynski appeals a judgment adjudicating him guilty of operating while intoxicated, first offense. Wilczynski was twice temporarily detained by City of Eau Claire police officer David Mikunda on December 16, 2013, and he was ultimately arrested for OWI. Wilczynski filed a suppression motion challenging his seizure and arrest. The trial court denied the motion after a hearing.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 versions unless otherwise noted.

Wilczynski contends the trial court erred when it denied his suppression motion. However, Wilczynski's attorney's lax draftsmanship and apparent failure to proofread his work product adversely affect this court's ability to confidently comprehend the brief's contents. For example, in his brief-in-chief, Wilczynski's attorney states the issue as follows: "After a police contact in which an individual is told he is free to go then when leaving the area as ordered he is reproached and subsequently arrested, did probable cause exist for the arrest made." In the combined Statement of the Case and Statement of Facts, Wilczynski's attorney writes: "Appellant's Motion stated among other things and the allegation that insufficient evidence existed for a law enforcement officer to affect and arrest for operating under the influence of an intoxicant." The argument section contains the following: "What crime had been committed, or was about to be committed or was being committed that was it, there on the first investigative stop in which the officer activated his overhead emergency lights on a marked squad car." Without any citation to the record or further elaboration, the brief informs us, "The 'stop' while walking and the subsequent arrest are challenged on constitutional grounds in Mr. Wilczynski's Motion." Altogether, Wilczynski's brief sorely lacks clarity.²

² Nevertheless, we briefly observe the first temporary detention was initiated at approximately 9:39 p.m. after Wilczynski parked his vehicle in a secluded parking lot behind privately-owned buildings rented by the Eau Claire Police Department for off-site evidence storage. Mikunda initiated contact after observing Wilczynski and concluding there was no legitimate reason for his presence in the private lot, especially given the late hour. Wilczynski was unable to explain what he was doing on the property, and Mikunda requested he leave. Rather than exiting the premises, Wilczynski began wandering around the parking lot on foot. Mikunda then initiated a second contact with Wilczynski, who could not explain why he failed to leave the parking lot. During the second stop, Mikunda detected an odor of intoxicants. Mikunda began an OWI investigation, during which Wilczynski failed one standardized field sobriety test, refused to perform other requested field sobriety tests, and registered a blood alcohol level of .20 in a preliminary breath test. Were we to reach the merits, we would be inclined to hold that law enforcement had reasonable suspicion to support both investigatory stops of Wilczynski, and probable cause to arrest. Therefore, we would not need to reach the community caretaker exception disputed by the parties.

Accordingly, summary dismissal, as requested by the City, is warranted in this case. Wilczynski's brief-in-chief suffers from a complete lack of argument development. His only discernible argument consists of repeatedly rhetorically asking what was different between the first and second stop by law enforcement.

This decision is not based on an instance of isolated oversight by Wilczynski's attorney. Rather, it is counsel's wholesale failure to follow the *rules* of appellate procedure. Most egregious, and independently sufficient to support dismissal under WIS. STAT. RULE 809.83(2), is counsel's failure to provide the findings or opinion of the trial court in the appendix to Wilczynski's brief-in-chief, despite the certification stating that he had done so. WIS. STAT. RULE 809.19(2)(a).

Therefore,

IT IS ORDERED that the appeal is summarily dismissed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals