

FILED  
10-29-2018  
John Barrett  
Clerk of Circuit Court  
2018CF003375  
COUNTY

1 STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE  
2 BRANCH 12

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3 STATE OF WISCONSIN,  
4 Plaintiff,

6 v. CASE NO. 2018-CF-3375

7 MARCUS WILBORN,  
8 Defendant.

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10 BAIL REVIEW

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12 OCTOBER 26, 2018

14 HONORABLE DAVID L. BOROWSKI  
15 CIRCUIT COURT JUDGE PRESIDING

17 APPEARANCES:

18 MR. MICHAEL LONSKI, Attorney at Law, appeared  
19 on behalf of the State.

20 MR. PUCK TSAI, Attorney at Law, appeared  
21 on behalf of the Defendant.

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24  
25 CAROLE SEROTA-BODI, RPR  
OFFICIAL COURT REPORTER, BRANCH 12

1 TRANSCRIPT OF PROCEEDINGS:

2 **THE CLERK:** 18-CF-3375, State of Wisconsin  
3 v. Marcus Wilborn.

4 Appearances, please.

5 **MR. LONSKI:** Mike Lonski on behalf of the  
6 State.

7 **MR. TSAI:** Good morning, Your Honor.

8 Mr. Wilborn appears in person with Attorney  
9 Puck Tsai.

10 **THE COURT:** This is here on a violation  
11 report. About a half-an-hour ago, I got information from  
12 Justice Point that the defendant has been tested not once  
13 but twice for drugs. Both of those tests came back  
14 diluted which is a violation. He's had three prior tests  
15 which were negative. He had one in August which was  
16 positive for THC.

17 He's out on in what I think is shocking on a  
18 PR bond, on a homicide where he allegedly was going  
19 between 65 and 75 miles-per-hour in a 30 mile-an-hour  
20 zone with a prohibited blood alcohol concentration and  
21 Delta 9 in his system.

22 I'll hear from both sides starting with the  
23 State on bail.

24 **MR. LONSKI:** What is his bail right now?

25 **THE COURT:** A PR bond.

1                   **MR. LONSKI:** 2,500 cash.

2                   **THE COURT:** Counsel.

3                   **MR. TSAI:** Your Honor, I do not believe  
4 that's appropriate. I can let the Court know that based  
5 on my research in the past dilution could be attributed  
6 to a number of different reasons. I would highlight for  
7 the Court that --

8                   **THE COURT:** Like what?

9                   **MR. TSAI:** Because somebody could be sick or  
10 just drinking extra water. It's not a conclusive test  
11 result.

12                   **THE COURT:** And, of course, Counsel, as we  
13 know, you may be drinking extra water if you wanted to  
14 dilute a test, so it doesn't come back positive for THC  
15 or coke or something else. No one comes to these tests  
16 not knowing -- or they come into Justice Point knowing  
17 there's a possibility you're going to be tested, so  
18 you're only guzzling water for an obvious reason.

19                   **MR. TSAI:** Your Honor, I'll say -- I can't  
20 tell the Court. I wasn't with Mr. Wilborn. I can't tell  
21 the Court that's the case, but I do know that, again,  
22 that there's a high possibility that dilution is not  
23 equated to a violation. It may not come back to be  
24 positive if the result is not diluted.

25                   I can let the Court know that I've spoken to

1 Mr. Wilborn. He's volunteering to test again prior to  
2 going to work today. He has to be at work at 1 o'clock,  
3 so he's willing to test again at 11:45 or 11:30 if the  
4 Court would like to see -- he knows for sure he told me  
5 that he would not come back positive or if the Court  
6 deems it more appropriate he can come back Monday morning  
7 as well.

8 I can let the Court know that he has made  
9 every single Justice Point appointments besides the first  
10 test that came back positive for THC which is at intake.  
11 He's been negative for three times. And looking at the  
12 violation report, I want to make sure the Court knows  
13 that he did test diluted on October 24th. I believe  
14 that's a computer system that they always put in a date  
15 that's incorrect.

16 **THE COURT:** Let me hear from the Justice  
17 Point worker.

18 Can you come up, ma'am, and have a seat next  
19 to the DA. Can you state your name for the record,  
20 please?

21 **MS. KENNEDY:** Kennedy Ochs; O-c-h-s.

22 **THE COURT:** What do you know about these  
23 diluted tests?

24 **MS. KENNEDY:** The reason it's a violation is  
25 because we can't determine what the results are, and I

1 can't speak to why it's diluted.

2 **THE COURT:** If anything the State's request  
3 is low. The bail is \$2,500. He goes into custody. This  
4 is a homicide. I'm not playing games in this case. He  
5 violated the terms of his monitoring, 2,500 cash. If  
6 he's released he goes back to the exact same level, which  
7 is I think Level 5 monitoring.

8 **MR. TSAI:** Your Honor, if I could jump in to  
9 be heard very briefly. There's something I want to  
10 clarify for the record or for the Court. I know, Your  
11 Honor, you're looking at the charging document, you're  
12 looking at the allegations there but --

13 **THE COURT:** Right, looking at the  
14 allegations where he allegedly had THC and alcohol in his  
15 system. Now he's out on what I consider to be and, I'll  
16 say this on the record, a preposterous PR bond, which, by  
17 the way, is vacated and waived, so now the county can try  
18 to collect their PR bond.

19 **MR. TSAI:** Judge, again, if I may be heard  
20 on that. I wasn't -- I want to let the Court know that  
21 the criminal complaint failed to mention the reason why  
22 the collision happened was because -- that the deceased  
23 person was running a stop sign. That's part of the  
24 reason. Again, I want to be clear. I want to let the  
25 the Court know that there are clear statutory defenses in

1 this matter when that other person also has --

2 **THE COURT:** Hang on, counsel. What the  
3 defenses are or are not has nothing to do with bail. The  
4 allegations are your client was going 65 to 75  
5 miles-an-hour in a 30 mile-an-hour zone, he had THC in  
6 his system, he had a BAC that's over the legal limit.  
7 His bail is \$2,500, which, again, I'm being exceedingly  
8 generous. Let's all stop talking.

9 Madam clerk, what are the dates?

10 **THE CLERK:** We have a status conference  
11 November 29th at 1:30.

12 **THE COURT:** Fine.

13 We're done.

14 Counsel, sit down.

15 Deputy, have the defendant sit down again.

16 Counsel, is there something you want to say  
17 or do you want to go into custody?

18 **MR. TSAI:** Judge, this is -- Judge, I wasn't  
19 able to finish any one complete sentence. That's fine  
20 with Your Honor. You know I want to highlight for the  
21 Court this is a person standing here in front of the  
22 Court an innocent person.

23 **THE COURT:** No kidding. I get that.

24 Sit down. Counsel, if you don't knock --

25 Deputy, take him into custody for contempt.

1                   Rolling your eyes, throwing your hands in  
2                   the air, acting like I'm some kind of idiot gets you  
3                   locked up for contempt. We'll discuss purge later. In  
4                   the meantime he sits in custody.

5                   (proceedings in recess)

6                   **THE CLERK:** Recalling Case No. 18-CF-3375,  
7                   State of Wisconsin v. Marcus Wilborn.

8                   Appearances, please.

9                   **MS. STYLER:** Paige Styler appearing on  
10                  behalf of -- actually of Puck Tsai from our office also  
11                  in regards to Mr. Wilborn.

12                  **THE COURT:** Mr. Wilborn, the defendant, is  
13                  not present. He's in custody based on my prior ruling.  
14                  I took defense counsel into custody.

15                  Counsel, I'll let you allocute. The bottom  
16                  line is I'm letting you out, so you can say whatever you  
17                  think is appropriate.

18                  Here's what I perceived -- an awful lot of  
19                  attitude. When you got up you were mumbling under your  
20                  breath about not liking my decision, then when you sat  
21                  down you -- what I perceived was you basically tossing  
22                  yourself back in your chair like "oh, my God, what the  
23                  hell is the Judge doing increasing Mr. Wilborn's bail."

24                  As you know you then made a comment about  
25                  well, Judge, my client is innocent. Yes, counsel, I'm

1       aware of that. He's obviously innocent until proven  
2       guilty. You also started to argue the facts of the case  
3       that allegedly the other driver was going through a red  
4       light, and I say that may or may not have been, but your  
5       client allegedly was going 75 miles-an-hour and had THC  
6       in his system and had a prohibited blood alcohol  
7       concentration.

8                   Anything you want to say?

9                   **MS. STYLER:** Judge, before I see if Mr. Tsai  
10       wants to say something, I guess what I would just say on  
11       behalf of the Public Defender's office is that I know  
12       Attorney Tsai well. He is a very good lawyer. He is  
13       also a father of two.

14                   And I guess I would just indicate to the  
15       Court that in the future if there's any concerns, if the  
16       Court perceives any disrespect, I would ask that a call  
17       be made to me or Tom Reed or Bridget Krause or Nathan  
18       Opland-Dobbs, and we'll be happy to address it with the  
19       Court, and we just ask in the future that no one in our  
20       office ever have to go through something like this.

21                   **THE COURT:** That's fair.

22                   **MR. TSAI:** I just want to --

23                   **THE COURT:** Hang on, please.

24                   That's fair. Ms. Krause was here first as  
25       well as Mr. Opland-Dobbs. This was not something that



1 either of us probably necessarily want to talk about, but  
2 I think it was actually 10 years ago now that Ms. Krause  
3 and I butted heads in DV court; is that right?

4 **MS. KRAUSE:** Correct.

5 **THE COURT:** Mr. Opland-Dobbs and I also  
6 butted heads once. For counsel, the two of them will  
7 tell you that they've, I guess for lack of a better term,  
8 "got over it" or "I got over it" or both.

9 Is that fair, Ms. Krause.

10 **MS. KRAUSE:** (Whereupon, Ms. Krause nodded  
11 her head in the affirmative.)

12 **THE COURT:** Counsel, is that fair?

13 **MR. OPLAND-DOBBS:** I don't disagree.

14 **THE COURT:** So, go ahead, please.

15 **MR. TSAI:** I just want to apologize to the  
16 Court for anything that I've done whether spoken or off  
17 spoken that may have offended the Court. I want to  
18 apologize for that.

19 **THE COURT:** Thank you. It's over.

20 Counsel, your office -- and here's what also  
21 comes into play. When you suggested your client being  
22 retested, that too crossed my mind, and I considered  
23 allowing it. Normally, what we're told as judges is  
24 "well, that's not the protocol, and we're not going to  
25 retest them." That's normally what we get from Justice

1 Point, and I'm confident you're aware of that. They say,  
2 well, we only test randomly, and if a judge says we're  
3 going to retest that's generally a "no." Is that your  
4 impression; that's what Ms. Styler said and what my  
5 impression has always been?

6 **MR. TSAI:** Well, Judge, if I may speak  
7 frankly. I did get a different sister branch in the  
8 courthouse agreed to retest one of my clients in a few  
9 days and that did happen based on a diluted test, so  
10 that's my experience just a couple of weeks ago and  
11 Justice Point inclined.

12 **THE COURT:** I told your office that if they  
13 can prevail upon Justice Point to have him retested  
14 today, I'll stay my increase in his bail until he's  
15 retested.

16 **MR. TSAI:** Thank you, Your Honor.

17 **THE COURT:** Ms. Styler, anything else?

18 **MS. STYLER:** No, thank you, Judge.

19 **THE COURT:** We're done.

20 Ms. Styler, can I talk to you one second  
21 before you leave?

22 (proceedings in recess)

23 **THE CLERK:** Case No. 18-CF-3375, State of  
24 Wisconsin v. Marcus Wilborn.

25 Appearances, please.

1                   **MR. LONSKI:** Mike Lonski for the State.

2                   **MS. OCHS:** Kennedy Ochs for Justice Point.

3                   **MR. TSAI:** Good morning.

4                   Mr. Wilborn appears in person with Attorney  
5 Puck Tsai.

6                   **THE COURT:** Well, what I can hopefully chuck  
7 up to a bad morning, a mulligan, not a very good morning  
8 for defense counsel, was not my best morning, certainly  
9 was not the defendant's best morning.

10                   Where we are now is back where we started  
11 about three hours ago before the initial test. Defense  
12 counsel and other lawyers from his office prevailed upon  
13 me to ask Justice Point to retest the defendant.

14                   Ms. Ochs, you did retest him, correct?

15                   **MS. OCHS:** We did.

16                   **THE COURT:** And?

17                   **MS. OCHS:** He was negative.

18                   **THE COURT:** Great. I'm vacating my prior  
19 increase in bail.

20                   Again, it was not anybody's best morning.

21                   Mr. Wilborn, you're going to remain out on  
22 the PR bond. As I said earlier, I have some questions  
23 about the propriety of the PR bond, but you have been  
24 cooperative, you've had multiple negative tests.

25                   Ms. Ochs, he's otherwise cooperative with

1 monitoring, correct?

2 **MS. OCHS:** Yes, he is.

3 **THE COURT:** So, Mr. Wilborn, you are not  
4 going into custody, the conditions of your PR bond  
5 remain.

6 Anything else from the State?

7 **MR. LONSKI:** No. I don't know how a sample  
8 gets diluted, but if the defendant knows what he did,  
9 don't do that again, don't drink a lot of water.

10 **THE COURT:** I don't know exactly how it  
11 does. It always strikes me as suspicious. It does count  
12 as a violation. I'm not going to belabor it, but it does  
13 count as a violation or I would not have been notified.  
14 That's the protocol with Justice Point and others.

15 Anything else from the defense before we  
16 break for today?

17 **MR. TSAI:** No, thank you, Your Honor.

18 **THE COURT:** We're done.

19 If you don't mind, counsel, if I can talk to  
20 you and Ms. Krause after court.

21

22 (proceedings concluded)

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1 STATE OF WISCONSIN )  
2 COUNTY OF MILWAUKEE )

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4 I, CAROLE SEROTA-BODI, an Official  
5 Court Reporter for the circuit court of Milwaukee County,  
6 Branch 12, do hereby certify that the foregoing is a true  
7 and accurate transcript of my original Stenographic notes  
8 taken on the proceedings in the above-entitled matter.

9 Dated this 27th day of October,  
10 2018, at Milwaukee, Wisconsin.

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Carole Serota-Bodi, RPR  
Official Court Reporter, Branch 12

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