

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 26, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1537

Cir. Ct. No. 2014FO465

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

CITY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

V.

JERRY D. BUTLER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL G. MALMSTADT, Reserve Judge. *Dismissed.*

¶1 CURLEY, P.J.¹ Jerry D. Butler appeals the judgment entered against him after a trial *de novo* in the circuit court. The circuit court found Butler

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14).

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

guilty of violating a Milwaukee municipal court charge prohibiting the possession of marijuana contrary to MILWAUKEE, WIS., CODE OF ORDINANCES ch. 106-38-2 (2013). Because Butler has failed to perfect his appeal, this appeal is dismissed.

BACKGROUND

¶2 From what can be gleaned from the incomplete record, a copy of a criminal complaint found in the record charging Butler with a State charge of disorderly conduct (which was later dismissed at the behest of the State) and the City's brief, Butler was involved in an altercation with his neighbors over loud music emanating from Butler's apartment on February 26, 2013 at 6307 W. Hampton Avenue in Milwaukee. According to the criminal complaint, during the argument, Butler revealed a chrome handgun after lifting his shirt. The neighbor called the police, and when the police arrived, Butler's apartment was vacant. Apparently, the police entered his apartment at the request of the neighbor who had summoned them. While the police were at the scene, Butler returned and was questioned about the gun. According to the police, Butler gave them permission to search his car where they retrieved a gun. Butler was arrested, and, as noted, charged with a State charge of disorderly conduct. As a result of this encounter with the police, Butler was also given the citation for the municipal charge of possession of marijuana that is at issue in this appeal.

¶3 On April 21, 2014, a trial was held in municipal court on the possession of marijuana charge. Butler was found guilty of violating the city ordinance prohibiting the possession of marijuana and was fined \$386.00, including costs. Butler then filed a notice of appeal in the circuit court on May 8, 2014. In it, he requested a trial *de novo*.

¶4 Once in the circuit court, the matter was dismissed in error but was later reinstated after it was confirmed that Butler was given the wrong date to return to court. The case was heard on March 12, 2015, at which time the case was dismissed on the court's own motion. According to the judgment roll, the reserve judge then requested that the matter be brought back to court. In a letter from Butler to the Honorable J.D. Watts, Butler suggests that this was done after the court received a letter from the city attorney (no letter is in the record). A court trial was ultimately held on May 28, 2015. Judge Malmstadt, after denying a motion to dismiss at the close of evidence, found Butler guilty of the municipal charge of possession of marijuana and fined him \$50.00.

¶5 Butler then filed a notice of appeal in this court.² Butler was unsuccessful in having his transcript fees waived in this appeal, as Judge Lindsey Grady denied his request. However, a later document entitled "Fee Waiver Determination" bears a handwritten "Waived" in red ink. It appears this waiver of appellate fees was authorized by the Clerk of the Court of Appeals.

¶6 Also in the record are two conflicting statements concerning transcripts. In one document entitled "Statement on Transcript" file stamped July 30, 2015, a checkmark was placed next to the box stating "Satisfactory arrangements with the court reporter(s) have been made for the filing and service of the following transcripts(s), as certified below by the court reporter." A handwritten entry states "Transcript Judge Malmstadt on March 12, 2015[,] Judge Malmstadt on May 29, 2015."

² The record contains several letters written by Butler to various circuit court judges. In one, he seeks the return of his gun taken at the time of the incident. That matter and others raised in the letters are not before this court.

¶7 However, the court reporter portion of that certification is blank. Another Statement on Transcript, this one file stamped August 10, 2015, has the box checked which reads: “A transcript is not necessary for prosecution of this appeal.” The record contains no transcripts.

¶8 After Butler’s first attempt to file his brief, an order was sent to him and the City Attorney advising that the court “will not accept the document as [Butler’s] brief because it does not comply with the rules of appellate procedure.” Moreover, the order further explained that his submission did not include a table of contents, a statement of issues, or a table of authorities, and it lacked any reference to the record, among a list of deficiencies. In that order, we directed Butler to the Appellate Help Desk for assistance. It is unknown whether Butler sought their help.

¶9 A short time later, Butler filed a document entitled “Brief in Support of Motion to Suppress Statement of Facts” on November 5, 2015. It is almost an exact copy of the earlier rejected document and does not remedy the problems seen in the original brief or address the other deficiencies mentioned in the order. The City Attorney filed a brief in response on December 1, 2015. Butler did not file a reply brief.

¶10 In his brief, Butler asks this court to either dismiss the charge or hold an evidentiary hearing to determine the admissibility of any statements or evidence. He clearly misunderstands the function of this court. The time to raise any motions concerning the admissibility of statements or evidence was in the circuit court. This court does not hold evidentiary hearings. As he has supplied no transcripts to support his request for dismissal, this court must assume that missing transcripts support the trial court’s ruling. See *Fiumefreddo v. McLean*,

174 Wis. 2d 10, 27, 496 N.W.2d 226 (Ct. App. 1993). An appellate court is “limited to the record as it comes to us from the trial court.” *State v. Flynn*, 190 Wis. 2d 31, 46, n.4, 527 N.W.2d 343 (Ct. App. 1994). Butler has also violated other requirements of appellate procedure found in WIS. STAT. RULE § 809.19 that are too numerous to mention.

¶11 As a result, his appeal is dismissed as being defective.

By the Court.—Appeal dismissed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

