



OFFICE OF THE CLERK

Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. Box 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: www.wicourts.gov

November 16, 2015

To:

Hon. Michael Moran
Circuit Court Judge
500 Forest St.
Wausau, WI 54403

Kenneth J. Heimerman
Marathon County District Attorney
500 Forest St.
Wausau, WI 54403-5554

Shirley Lang
Marathon County Clerk of Circuit Court
500 Forest St.
Wausau, WI 54403

Katherine Desmond Lloyd
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Thomas E. Brown/ Kathryn A. Keppel
Emily I. Lonergan
Gimbel, Reilly, Guerin & Brown
330 East Kilbourn Ave., #1170
Milwaukee, WI 53202

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

No. 2014AP827-CR State v. McKellips L.C.#2011CF645

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of plaintiff-respondent-petitioner, State of Wisconsin, and considered by this court;

IT IS ORDERED that the petition for review is granted as to the following issues:

1. What is the proper interpretation of Wis. Stat. § 948.075(1r), including the term “computerized communication system?”
 - a. Does the use of a cellular telephone to send text messages, make telephone calls, or leave voicemail messages constitute the use of a computerized communication system?
 - b. Must an individual use the data transmission capabilities of a cellular telephone or otherwise use the Internet to constitute the use of a computerized communication system?

2. Was the jury instruction regarding the charge of violating Wis. Stat. § 948.075 an accurate statement of the law? Is asking whether the cellular phone constituted a computerized communication system equivalent to asking whether the cellular phone constituted a component of a computerized communication system?
3. Is Wis. Stat. § 948.075(1r) unconstitutionally vague as applied and interpreted by the circuit court because persons of ordinary intelligence would not understand that use of a mobile phone that has no independent internet capabilities would constitute use of a “computerized communication system” in violation of law?
4. As a matter of law, can a new trial in the interest of justice be granted on the ground the real controversy was not fully tried based on a waived challenge to a jury instruction where the erroneous instruction was harmless error? If the jury instruction in this case was erroneous, was the error harmless?
5. Did the court of appeals erroneously exercise its discretion by granting a new trial in the interest of justice without analyzing whether this is an exceptional case that warrants the extraordinary remedy of discretionary reversal?

IT IS FURTHER ORDERED that pursuant to Wis. Stat. § (Rule) 809.62(6), the plaintiff-respondent-petitioner may not raise or argue issues other than the issues set forth in the order; and

IT IS FURTHER ORDERED that pursuant to Wis. Stat. §§ (Rules) 809.62(6) and 809.63, within 30 days after the date of this order the plaintiff-respondent-petitioner must file a brief in this court; that within 20 days of filing the defendant-appellant, Rory A. McKellips, must file either a brief or a statement that no brief will be filed; and that if a brief is filed by the defendant-appellant, within 10 days of filing the plaintiff-respondent-petitioner must file either a reply brief or a statement that no reply brief will be filed; and

IT IS FURTHER ORDERED that in any brief filed in this court the parties shall not incorporate by reference any portion of their court of appeals' brief or petition for review or response; instead, any material in these documents upon which there is reliance should be restated in the brief filed in this court; and

IT IS FURTHER ORDERED that the first brief filed in this court must contain, as part of the appendix, a copy of the decision of the court of appeals in this case; and

IT IS FURTHER ORDERED that within 30 days after the date of this order, each party must provide the clerk of this court with 10 copies of the brief previously filed on behalf of that party in the court of appeals; and

Page Two

November 16, 2015

No. 2014AP827-CR

State v. McKellips L.C.#2011CF645

IT IS FURTHER ORDERED that the allowance of costs, if any, in connection with the granting of the petition will abide the decision of this court on review.

Prosser, J., did not participate.

Diane M. Fremgen
Clerk of Supreme Court