STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

CITY OF EAU CLAIRE,
Plaintiff-Appellant,

v.

Appeal No. 2015AP000869

MELISSA BOOTH,
n/k/a/ MELISSA M. BOOTH BRITTON,
Defendant-Respondent,

BRIEF OF PLAINTIFF-APPELLANT CITY OF EAU CLAIRE

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT
OF EAU CLAIRE COUNTY CASE NO 2014GF804
THE HONORABLE WILLIAM M. GABLER PRESIDING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

STATEMENT OF THE ISSUES

Does a circuit court lack subject matter jurisdiction to enter an OWI 1st offense civil judgment if a defendant has a prior unknown out-of-state OWI conviction?

Trial Court Answered: Yes.

Is a municipality legally precluded from pursuing a civil OWI citation if the defendant could also be charged criminally?

Trial Court Answered: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

This appeal involves the application of several contradictory Wisconsin Supreme Court cases, and also involves matters of statewide importance. Oral argument and publication are recommended.

STATEMENT OF THE CASE

The material facts of this case have been stipulated and are not in dispute. Ms. Booth Britton was convicted of a (civil) 1st offense OWI in Eau Claire Circuit Court in 1992 that was prosecuted by the Eau Claire City Attorneys' office. Ms. Booth Britton was previously convicted of an OWI in Minnesota on April 28, 1990. After she was convicted of the 1992 Eau Claire 1st offense OWI, Ms. Booth Britton was subsequently convicted of four OWI offenses which counted both the 1992 Eau Claire 1st offense conviction and the 1990 Minnesota conviction as prior OWI offenses. Ms.

Booth Britton was represented by an attorney in all of her subsequent OWI convictions.

On November 13, 2014, while a 7th offense OWI charge was pending in Douglas County, Ms. Booth Britton filed a Motion to Vacate her 1992 Eau Claire 1st offense OWI civil judgment arguing that the circuit court lacked subject matter jurisdiction over the case due to the existence of the 1990 Minnesota conviction. Ms. Booth Britton cited Wis. Stat. § 806.07(1)(d) in support of her motion, and did not cite any other provisions of § 806.07 in her request for relief.[1]

Almost of all of the relevant records related to the 1992 Eau Claire 1st offense OWI case have been destroyed. However, Ms. Booth Britton's attorney was able to locate a copy of the citation from the Wisconsin Department of Transportation which included the date of the initial appearance and the date of conviction. Based on the citation information, the parties were able to reach an agreement on the stipulated facts above.

The City responded to the Motion to Vacate by arguing that any alleged loss of court authority to enter the 1992 OWI 1st offense civil judgment was a loss of court competency, not subject matter jurisdiction, and Ms. Booth Britton waived the right to challenge a loss of court

[1] Booth Britton raised a "retroactive application" argument in a supplemental brief. Because this argument, should it be raised on appeal, is also premised on the 1992 Eau Claire judgment being "void," the City believes it involves the application of § 806.07(1)(d).

competency. The City of Eau Claire also argued that municipalities are not legally precluded from pursuing OWI citations if an unknown out-of-state prior OWI conviction exists. The parties did not stipulate that the City of Eau Claire had actual or constructive knowledge of the prior out-of-state conviction at the time of the 1992 conviction.

The Circuit Court concluded that the existence of the prior 1990 Minnesota OWI conviction deprived the 1992 Eau Claire Circuit Court of subject matter jurisdiction to enter the civil judgment, and granted Ms. Booth Britton's Motion to Vacate the 1992 conviction. The City of Eau Claire then appealed.

SUMMARY OF ARGUMENT

Booth Britton waived the right to challenge the 1992 OWI civil judgment. Assuming, for the sake of argument, that Wis. Stat. § 346.65 required Booth Britton's 1992 Eau Claire OWI to be charged as a crime, the failure to fulfill that requirement did not revoke the circuit court's constitutionally granted subject matter jurisdiction. *Mikrut* and a vast body of recent case law make clear that statutory limitations on court authority implicate court competency (which may be waived) rather than subject matter jurisdiction.

The circuit court decision is inconsistent with the facts and reasoning of *Rohner*. *Rohner* did not involve the existence of an unknown out-of-state OWI conviction, nor did it consider whether charging a 2nd offense

implicates subject matter jurisdiction *rather than* court competency. The circuit court's decision is inconsistent with the purpose of Wisconsin's drunk driving laws and encourages unfair and inefficient results.

STANDARD OF REVIEW

Where facts are uncontested, the question of whether an alleged statutory limitation on court authority implicates subject matter jurisdiction or court competency is a question of law. *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 7, 273 Wis. 2d 76, 85, 681 N.W.2d 190, 194. The party claiming that a judgment is void for lack of subject matter jurisdiction has the burden of proving subject matter jurisdiction did not exist. *State ex rel. R.G. v. W.M.B.*, 159 Wis. 2d 662, 668, 465 N.W.2d 221, 224 (Ct. App. 1990); *see also Vill. of Shorewood v. Steinberg*, 174 Wis. 2d 191, 200, 496 N.W.2d 57, 60 (1993) ("party asserting a lack of competency has the burden of proving that assertion.").

ARGUMENT

COURT COMPETENCY AND SUBJECT MATTER JURISDICTION

Court competency is different than subject matter jurisdiction.[2] Competency refers to whether a court can adjudicate the *specific* case before it rather than whether it can adjudicate the *kind* of case before it. *State v. Starks*, 2013 WI 69, ¶ 36, 349 Wis. 2d 274, 294, 833 N.W.2d 146,

[2] For a summary of Wisconsin's Court Competency Doctrine *see* Douglas J. Hoffer, *Keep Your Case Afloat: Wisconsin's Court Competency Doctrine,* 87-JUN Wis. Law 26 (June 2014).

156 *reconsideration denied*, 2014 WI 91, ¶ 36, 357 Wis. 2d 142, 849 N.W.2d 724 and *reconsideration denied*, 2014 WI 109, ¶ 36, 358 Wis. 2d 307, 852 N.W.2d 746 and *cert. denied*, 135 S. Ct. 1548 (2015) ("Subject matter jurisdiction refers to the power of a court to decide certain types of cases" and "Competency, meanwhile, speaks to 'the power of a court to exercise its subject matter jurisdiction in a particular case"); *see also Kohler Co. v. Wixen*, 204 Wis. 2d 327, 336, 555 N.W.2d 640, 644 (Ct. App. 1996) ("Subject matter jurisdiction is defined as the power of the court to entertain a certain type of action" and "a court may have subject matter jurisdiction and yet not be competent to entertain a particular matter"); *see also Stern v. Wisconsin Employment Relations Comm'n*, 2006 WI App 193, ¶ 24, 296 Wis. 2d 306, 324, 722 N.W.2d 594, 603 ("Subject matter jurisdiction, in general, is the power of a tribunal to treat a certain subject matter in general, while competency is a narrower concept relating to the statutory conditions imposed on the exercise of subject matter jurisdiction in individual cases.").

Courts have not always rigidly distinguished between subject matter jurisdiction and competency, and courts have described the jurisprudence concerning subject matter jurisdiction and court competency as "murky at best." *In re Commitment of Bush*, 2005 WI 103, ¶ 16, 283 Wis. 2d 90, 103, 699 N.W.2d 80, 87. Recent case law has clarified that statutory limitations on court authority implicate competency, not subject matter jurisdiction.

Village of Trempealeau v. Mikrut, 2004 WI 79, ¶ 1, 273 Wis. 2d 76, 681 N.W.2d 190; *see Xcel Energy Servs., Inc., v. Labor & Indus. Review Comm'n*, 2013 WI 64, ¶ 27, 349 Wis. 2d 234, 253, 833 N.W.2d 665, 675 ("[B]ecause subject matter jurisdiction is conferred on the courts by the constitution, it cannot be revoked by statute"); *see also Starks*, 2013 WI 69, ¶ 36 ("the failure to comply with any statutory mandate goes to competence, not jurisdiction."); *see also Vill. of Elm Grove v. Brefka*, 2013 WI 54, ¶ 16, 348 Wis. 2d 282, 291, 832 N.W.2d 121, 126 *amended*, 2013 WI 86, ¶ 16, 350 Wis. 2d 724, 838 N.W.2d 87 (circuit courts "may lack competency to render a valid order or judgment in a civil or criminal matter when the parties fail to meet certain statutory requirements.").

The state legislature may not revoke the subject matter jurisdiction of circuit courts by statute. "Circuit courts in Wisconsin are constitutional courts with general original subject matter jurisdiction over all matters civil and criminal." *Mikrut*, 2004 WI 79, ¶ 1; *see also Stern*, 2006 WI App 193, ¶ 24 ("When the concepts of subject matter jurisdiction and competency are applied to circuit courts, the distinction is that subject matter jurisdiction is plenary and constitutionally-based and is not affected by statutes, whereas statutory requirements may affect a court's competency, depending on the nature of the requirement."). "Accordingly, a circuit court is **never** without subject matter jurisdiction." *Mikrut*, 2004 WI 79 at ¶ 1 (emphasis added). "The jurisdiction and the power of the circuit court is conferred not by act

of the legislature, but by the Constitution itself."[3] *Id.* at ¶ 8. "Thus, the subject matter jurisdiction of the circuit courts cannot be curtailed by state statute." *Id.*

"Because the circuit court's subject matter jurisdiction is plenary and constitutionally-based, however, noncompliance with such statutory mandates is not jurisdictional in that it does not negate the court's subject matter jurisdiction." *Id.* at ¶ 9. "Rather, a failure to comply with a statutory mandate pertaining to the exercise of subject matter jurisdiction may result in a loss of the circuit court's competency to adjudicate the particular case before the court." *Id.* "A judgment rendered under these circumstances may be erroneous or invalid because of the circuit court's loss of competency but is not void for lack of subject matter jurisdiction." *Id.* at ¶ 2.

Wisconsin's court competency doctrine – which concludes that statutory mandates implicate court competency rather than subject matter jurisdiction - has continued to be clarified since *Mikrut.* *See Xcel Energy,* 2013 WI 64, at ¶ 27 ("[B]ecause subject matter jurisdiction is conferred on the courts by the constitution, it cannot be revoked by statute"); *see also Starks*, 2013 WI 69, at ¶ 36 ("the failure to comply with any statutory mandate goes to competence, not jurisdiction."); *Brefka*, 2013 WI 54, at ¶ 16 (circuit courts "may lack competency to render a valid order or

[3] *See* Wis. Const. art. VII, § 8.

judgment in a civil or criminal matter when the parties fail to meet certain statutory requirements.").

Wisconsin Courts have articulated instances where subject matter jurisdiction is implicated "as otherwise provided at law." Wis. Const. art VII § 8. "Federal law may confer exclusive jurisdiction over certain subject matters to the federal courts, precluding state court jurisdiction in those areas by operation of the Supremacy Clause." *Mikrut*, 2004 WI 79 at ¶ 8, n. 2. Additionally, a facially unconstitutional statute is null and void, and the Court lacks subject matter jurisdiction to act under the statute. *Bush*, 2005 WI 103 at ¶ 17. "If a statute is unconstitutional on its face, any action premised upon that statute fails to present any civil or criminal matter in the first instance." *Id.*

I. Booth Britton waived the right to challenge the authority of the circuit court to enter the OWI 1st offense civil judgment.

The Court should apply *Mikrut* and other recent case law to the facts of the present case and determine that Booth Britton waived the right to challenge the authority of the circuit court to enter the 1992 OWI 1st offense civil judgment.[4] Booth raises an argument similar to the argument the

[4] *Mikrut* described the failure to challenge court competency as "waiver." Future cases have clarified the difference between "waiver" and "forfeiture" *See State v. Ndina*, 2009 WI 21, ¶ 30, 315 Wis. 2d 653, 761 N.W. 2d 612; *see also In re Commitment of Talley*, 2015 WI App 4, 359 Wis. 2d 522, 527 n. 3, 859 N.W.2d 155, 157 *review denied sub nom State v. Talley*, 2015 WI 24, 862 N.W.2d 602 (Failure to make timely assertion of right is forfeiture; intentionally relinquishing or abandoning known right is waiver). The distinction likely does not impact this case because Booth Britton's request for relief is entirely premised on the original judgment being "void" under Wis. Stat. § 806.07(1)(d).

defendant unsuccessfully raised in *Mikrut*: that a civil judgment resulting from a municipality (allegedly) issuing a citation without statutory authority is void for lack of subject matter jurisdiction. *Mikrut* concluded that the Village's issuance of citations without (alleged) statutory authority resulted in a loss of court competency, not a loss of subject matter jurisdiction. Because the defendant neglected to raise court competency in the original action *Mikrut* concluded that the argument was waived.

A judgment entered by a court lacking competency is not void, but rather is voidable. *State v. Campbell*, 2006 WI 99, ¶ 44, 294 Wis. 2d 100, 121-22, 718 N.W. 2d 649 ("if a court lacks only competency, its judgment is invalid only if the invalidity of the judgment is raised on direct appeal," and "[l]ack of competency is not 'jurisdictional' and does not result in a void judgment."). A voidable judgment has the same force and effect as a valid judgment until it is set aside. *Id.* at ¶ 42.

a. The Circuit Court's Order in this case conflicts with *Mikrut.*

The Circuit Court's Order in this case conflicts with *Mikrut.* The Motion to Vacate in *Mikrut* was based on the same argument raised by Booth Britton in the present case: that the municipality lacked *statutory*

The defendant relinquished her rights to challenge court competency – regardless of whether the court determines "waiver" or "forfeiture" is the more appropriate standard.

authority to issue the type of citations issued to the defendant, and thus the resulting civil judgment was void for lack of subject matter jurisdiction.[5]

Mikrut held that an alleged lack of statutory authority to enter a civil judgment implicated court competency rather than subject matter jurisdiction and the defendant waived the right to challenge the citations. A lack of court competency, *Mikrut* concluded, "does not negate subject matter jurisdiction or nullify the judgment." *Mikrut*, 2004 WI 79 at ¶ 34. Furthermore, *Mikrut* held that motions for relief based on a circuit court's alleged lack of competency cannot be brought at any time but rather are subject to the time limitations governing relief from judgment. *Mikrut* held that the defendant waived the right to challenge the alleged defects in the issuance of the citations by failing to assert the challenge in the original circuit court action.

The Court should apply *Mikrut* and reverse the Circuit Court decision to grant Booth Britton's Motion to Vacate because the judgment is not void. A Circuit Court judgment entered without competency is not void, and Booth Britton waived a court competency challenge by not raising it in the original action. *Mikrut* is not the only recent case that contradicts the circuit court's decision in this case.

[5] Similar to this case, the defendant in *Mikrut* also alleged that municipality lacked statutory authority to issue uniform traffic citations for ordinance violations of the type charged against the defendant. *Mikrut*, 2004 WI 79 at ¶ 6.

b. The Circuit Court decision contradicts Wisconsin's Constitutional grant of subject matter jurisdiction to circuit courts.

The Circuit Court Order in this case contradicts Wisconsin's Constitutional grant of subject matter jurisdiction to circuit courts. Wis. Const. art VII § 8 provides that "[e]xcept as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within the state." In addition to *Mikrut,* a wide body of case law concludes that Wis. Const. art. VII. § 8's grant of subject matter jurisdiction cannot be revoked by statute.[6] *See Starks*, 2013 WI 69 at ¶ 36; *Stern*, 2006 WI App 193 at ¶ 24; *Xcel Energy,* 2013 WI 64 at ¶ 27; *Brefka*, 2013 WI 54 at ¶ 16; *Campbell*, 2006 WI 99 at ¶¶ 44-45; *Kohler*, 204 Wis. 2d at 336-37; *Cepukenas v. Cepukenas*, 221 Wis. 2d 166, 170, 584 N.W.2d 227, 229 (Ct. App. 1998); *In re Termination of Parental Rights to Joshua S.*, 2005 WI 84, ¶ 16, 282 Wis. 2d 150, 160, 698 N.W.2d 631, 635; *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, ¶ 6 n. 2, 288 Wis. 2d 693, 698 n. 2, 709 N.W.2d 520, 523; *In re Guardianship of Carly A.T.*, 2004 WI App 73, ¶¶ 6-7, 272 Wis. 2d 662, 667, 679 N.W.2d 903, 905; *In re Commitment of Bollig*, 222 Wis. 2d 558, 565, 587 N.W.2d 908, 911 (Ct. App. 1998).[7]

[6] For an in depth discussion on the importance of this constitutional provision *see Eberhardy v. Circuit Court for Wood Cnty.,* 102 Wis. 2d 539, 547-553, 307 N.W.2d 881 (1981).

[7] This string cite does not include an exhaustive list of cases supporting this interpretation.

Because the Motion to Vacate is premised on statutory limitations it implicates court competency and not subject matter jurisdiction. The Circuit Court's holding cannot be reconciled with the wide body of case law interpreting Wis. Const. art VII § 8. Simply put, the legislature may pass statutes which render a court incompetent to enter a judgment, but the legislature is incapable of revoking the circuit courts' constitutionally granted subject matter jurisdiction. Because Wis. Stat. § 346.65 cannot revoke circuit court subject matter jurisdiction the 1992 OWI civil judgment is not void and Wis. Stat. § 806.07(1)(d) does not apply.

c. No non-statutory limitations on circuit court subject matter jurisdiction apply in this case.

Although the state legislature may not revoke subject matter jurisdiction by statute, Wisconsin courts have articulated instances where subject matter jurisdiction may be revoked from circuit courts "as otherwise provided at law." Wis. Const. art VII § 8. None of the non-statutory based limitations on subject matter jurisdiction apply in this case and the Court should not endeavor to create a new limitation.

First, "[f]ederal law may confer exclusive jurisdiction over certain subject matters to the federal courts, precluding state court jurisdiction in those areas by operation of the Supremacy Clause." *Mikrut*, 2004 WI 79, at ¶ 8 n. 2. The Motion to Vacate does not allege that state court subject

matter jurisdiction was precluded by federal law. Consequently, this limitation does not apply.

Second, facial constitutional challenges are matters of subject matter jurisdiction and cannot be waived.[8] *In re Commitment of Bush*, 2005 WI 103, at ¶ 17. "If a statute is unconstitutional on its face, any action premised upon that statute fails to present any civil or criminal matter in the first instance." *Id*. A facially unconstitutional statute is null and void, and the Court lacks subject matter jurisdiction to act under the statute. *Id.* The Motion to Vacate does not allege a facial constitutional challenge. Consequently, this limitation on subject matter jurisdiction also does not apply.

The circuit court did not rely on any limitations on court authority other than statutory limitations. Accordingly, the circuit court decision must be reversed because it contradicts the Wisconsin Constitution and current Wisconsin jurisprudence on subject matter jurisdiction and court competency.

[8] Although facial constitutional challenges are matters of subject matter jurisdiction which cannot be waived, "as applied" constitutional challenges are considered non-jurisdictional defects which may be waived. *See State v. Trochinski*, 2002 WI 56, ¶ 34 n. 15, 253 Wis.2d 38, 644 N.W.2d 891. Permitting "as applied" constitutional challenges to be waived but not permitting statutory based challenges to be waived is neither reasonable nor consistent with Wisconsin law.

II. *Rohner* is legally and factually distinguishable from the present case.

Rohner does not support the circuit court's decision because *Rohner* is distinguishable from the present case in a number of respects. First, *Rohner* did not consider whether charging a 2nd OWI offense as an OWI 1st offense implicates subject matter jurisdiction *rather than* court competency. *Walworth Cnty v. Rohner*, 108 Wis. 2d 713, 721, 324 N.W.2d 682, 685 (1982) When *Rohner* was decided courts did not rigidly distinguish between subject matter jurisdiction and court competency. *See Miller Brewing Co. v. Labor & Indus. Review Comm'n*, 173 Wis. 2d 700, 706, 495 N.W.2d 660, 662 (1993) (noting that "Wisconsin courts and commentators have used the terms 'subject matter jurisdiction" and 'competence' in a variety of ways."). In fact, even after *Rohner* was decided the Wisconsin Supreme Court commented that "the critical focus is not, however, on the terminology used to describe the court's power to proceed in a particular case. The focus is on the effect of non-compliance with a statutory requirement on the circuit court's power to proceed." *Id.*

Although *Rohner* described the Court's lack of authority to proceed as a "loss of subject matter jurisdiction," numerous subsequent Wisconsin cases clarified that the loss of authority to act based on a failure to fulfill a statutory mandate actually constitutes a "loss of court competency." The

clarification of the Wisconsin Court Competency rule precludes the circuit court decision in this case.

The most reasonable way to reconcile *Rohner* with *Mikrut* and other recent case law is to conclude that *Rohner* implicates court competency rather than subject matter jurisdiction. Such a conclusion clarifies *Rohner's* holding regarding what type of court authority was implicated, involves the least disruption to existing case law, and is consistent with the reasoning and intent of *Rohner.* This approach is also consistent with *Mikrut's* concurring opinion, which concluded that *Mikrut* "requires overturning or casting doubt on numerous prior opinions (many not cited)." *Mikrut*, 2004 WI 79, at ¶ 42, (Abrahamson, C.J., concurring). *Rohner* is clearly one of the numerous (unnamed) prior opinions that was overturned or called into doubt by *Mikrut.*[9]

Rohner sought to ensure that drunk driving was severely punished, and that drunk driving prosecutors exercised their discretion consistent with the purpose of Wisconsin's drunk driving laws: "the clear policy of sec. 346.63(1), Stats., is to facilitate the identification of drunken drivers and to remove them from the highways." *Rohner*, 108 Wis. 2d at 721 (also noting the court's interpretation furthered the state policy of strict enforcement of drunk driving laws).

[9] Cases pre-dating *Mikrut* also call *Rohner's* "subject matter jurisdiction" holding into doubt. To the extent none of these prior cases either overruled or called *Rohner into* doubt, *Mikrut* undoubtedly does.

Rohner did not involve an unknown out-of-state prior OWI offense, nor did it involve an offense that could not be retried. *Id.* *Rohner* involved a known (in-state) prior OWI offense and an act of prosecutorial discretion to maintain an OWI 1st offense charge despite the existence of a known prior OWI conviction. *Id.* *Rohner* also involved an OWI offense that the Supreme Court explicitly stated could be retried as a 2nd offense. *Id.* at 722 ("The state is at liberty to commence the criminal action").

The Court should distinguish *Rohner* and reverse the circuit court in this case.

III. The circuit court's decision is inconsistent with legislative purpose of Wisconsin's drunk driving laws and Wisconsin's strong public policy against drunk driving.

The Court should conclude that the circuit court's alleged loss of authority implicated competency rather than subject matter jurisdiction. The circuit court's decision is inconsistent with the purpose of Wisconsin's drunk driving laws and inconsistent with Wisconsin jurisprudence encouraging parties to timely raise objections to court authority.

The circuit court's decision contradicts Wisconsin jurisprudence encouraging efficiency and fairness. *See In re Commitment of Talley*, 2015 WI App 4, 359 Wis. 2d 522, 527 n. 3, 859 N.W.2d 155, 157 *review denied sub nom State v. Talley*, 2015 WI 24, 862 N.W.2d 602 (requiring timely objections promotes efficiency and fairness); *State v. Erickson*, 227 Wis. 2d 758, 766, 596 N.W.2d 749, 754-55 (1999) (by timely raising objections

"both parties and courts have notice of the disputed issues as well as a fair opportunity to prepare and address them in a way that most efficiently uses judicial resources."); *State v. Ndina*, 2009 WI 21, ¶ 30, 315 Wis. 2d 653, 670, 761 N.W.2d 612, 620 ("The purpose of the 'forfeiture' rule is to enable the circuit court to avoid or correct any error with minimal disruption of the judicial process, eliminating the need for appeal. The forfeiture rule also gives both parties and the circuit court notice of the issue and a fair opportunity to address the objection; encourages attorneys to diligently prepare for and conduct trials; and prevents attorneys from 'sandbagging' opposing counsel by failing to object to an error for strategic reasons and later claiming that the error is grounds for reversal.").

"Requiring challenges to the circuit court's competency to be raised in the circuit court encourages diligent investigation and preparation of cases." *Mikrut*, 2004 WI 79 at ¶ 29. "It also gives the circuit court and both parties a fair opportunity to address any objections to the court's competency to proceed and may diminish appeals on competency issues." *Id.*

Rohner did not conceive, nor does it require, the unfair result of the circuit court's decision in this case, namely allowing defendants to completely avoid punishment through sandbagging and dilatory tactics. *Rohner* encouraged drunk driving prosecutors to exercise their discretion in a manner consistent with the strong public policy in favor of strict

enforcement of OWI laws. *Rohner*'s holding, unlike the circuit court decision in this case, was consistent with Wisconsin jurisprudence that concludes that drunk driving laws "must be construed to further the legislative purpose." *State v. Neitzel*, 95 Wis. 2d 191, 193, 289 N.W.2d 828, 830 (1980).

Booth Britton waited over 20 years to raise her objection to the 1992 Eau Claire circuit court's authority, and did so after four subsequent OWI convictions counted the 1992 conviction as a prior offense. There is no evidence that the Eau Claire Police Department or the Eau Claire City Attorney's office knew or should have known anything about the prior conviction. Booth Britton's lack of diligence in pursuing her challenge to court authority should not be rewarded by completely eliminating her OWI conviction. Booth Britton's 22 year delay in challenging the 1992 Eau Claire civil judgment deprives the City of an opportunity to retry the case.

Additionally, the circuit court's decision holds drunk driving prosecutors to an unreasonable standard. It is unreasonable to interpret Wis. Stat. § 346.65 as requiring sandbagging or dilatory defendants to evade punishment because the prosecution does not know about the existence of an unknown out-of-state prior OWI conviction. Booth Britton already benefited once from this alleged oversight when she was tried civilly rather than criminally in 1992. She should not benefit again by interpreting a statutory limitation on court authority inconsistently with the

purpose of Wisconsin drunk driving laws, inconsistent with the constitutional grant of circuit court subject matter jurisdiction, and inconsistent with current Wisconsin jurisprudence on subject matter jurisdiction and court competency.

CONCLUSION

For all the foregoing reasons, the Court should reverse the decision of the circuit court.

Dated: June 15, 2015

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CERTIFICATION OF FORM AND LENGTH

I certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(c) for a brief produced using the following font:

Proportional serif font: Min. printing resolution of 20 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text. The length of this brief is 4401 words.

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CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief mailed on June 15, 2015.

A copy of this certificate is being filed with the court and served on all opposing parties as of this date.

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CERTIFICATION OF APPENDIX

I certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and contains: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) copies of any unpublished opinions cited under 809.23; and (4) any portions of the record essential an understanding of the issues raised.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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CERTIFICATION OF MAILING

I certify that this brief or appendix was 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 June 15, 2015.

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PLAINTIFF-APPELLANT APPENDIX TABLE OF CONTENTS