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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II**

CASE NO. 2015 AP 2184

County of Kenosha,

Plaintiff-Respondent,

Case No. 2014TR009971;
2014TR009972; 2014TR009973
(Kenosha County)

v.

Robert Paul Adams,

Defendant-Appellant.

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT

**Appealed from a Judgment of Conviction Entered
In the Circuit Court for Kenosha County
The Honorable Chad G. Kerkman Presiding**

BY: _____

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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
APPELLATE CASE NO. 2015 AP 2184
TRIAL COURT CASE NO. 214 TR 9971**

COUNTY OF KENOSHA,
Plaintiff-Respondent,

Case No. 2014TR009971;

2014TR009972; 2014TR009973
v.

(Kenosha County)

Robert Paul Adams,
Respondent-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ISSUE

- I. WHETHER THE CIRCUIT COURT PROPERLY FOUND THAT MR. ADAMS HAD OPERATED HIS MOTOR VEHICLE ON “PREMISES HELD OUT TO THE PUBLIC” WHEN HE DROVE HIS VEHICLE AT A BOY SCOUT CAMPGROUND?**

Trial Court Answered: Yes.

- II. WHETHER THE EVIDENCE AT THE COURT TRIAL SUPPORTED THE CIRCUIT COURT’S FINDING THAT MR. ADAMS WAS INTOXICATED WHEN HE DROVE EITHER OUTSIDE THE CAMPGROUND OR INSIDE THE CAMPGROUND?**

Trial Court Answered: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State preserves the right to oral argument pursuant to 809.22(2)(b) and leaves the issue of publication to the Court's discretion.

STATEMENT OF THE CASE

On September 25, 2015, Defendant-Appellant Robert Paul Adams was convicted of Operating a Motor Vehicle While Intoxicated First Offense pursuant to 346.63(1)(a). The trial court found that Defendant-Appellant was intoxicated when he traveled on the campground roads, which were held out for public use consistent with case law (See page 55 trial transcript attached as **Appendix A**).

The following three witnesses testified at the court trial: Michael Haley (Local executive director for the Northeast Illinois Council); David Davies (Boy Scout volunteer that observed Defendant-Appellant driving at the campground) and Kenosha County Sheriff's Deputy Nicholas Teschler (arresting officer).

Provided below is pertinent testimony that was provided during the September 25, 2015 court trial. The first witness, Mr. Hale, paints a picture that supports the State's position that the campground in question was held out to the public for use of their motor vehicles. Mr. Hale testified, in part, as follows:

- "Q: ... First of all, are you employed by the Boy Scouts of America?
A: Yes.
Q: What position do you hold?
A: My title is scout executive which means I'm the local executive director.
Q: For what council?
A: The Northeast Illinois Council.
Q: Is the Northeast Illinois Council of the Boy Scouts the owner of Camp Sol R. Crown?
A: The answer is yes. We actually have a subsidiary which is the Boy Scouts of America Camp Sol R. Crown Nature Appreciation Society, but that's basically the Northeast Illinois Council that owns that property.
Q: Okay. So it's a privately owned property; is that correct:·

A. Correct.”

(See pages 5-6 of trial transcript attached as **Appendix A**).

* * *

“A. The camp is located in Trevor, Wisconsin, just north of Antioch, Illinois. We've owned the property for decades. We have a caretaker on the property that lives there rent free in exchange for security and maintenance and generally used for about forty acres or so -- generally used for weekend camping.”

(See page 6 of **Exhibit A**).

* * *

“Q. The Camp Sol R. Crown property, are there roadways that are on the property?

A. Yes.

Q. Those are private roadways owned and maintained by Camp Sol R. Crown; is that correct?

A. Correct.

Q. Now the big question I have is whether or not Camp Sol R. Crown is held out for general use by the public and by that question I mean is it possible for any member of the public to use the facility there?

A. No. We don't rent it out just to the public. If there was a partner of ours like St. Patrick's Catholic Church that charts a scout group that wanted to use the facility for retreat or something, we would rent it to them. We don't advertise things like that. It's pretty much scout units. We have enough usage out of scout units that it really isn't-- there really isn't any availability for outside groups.

Q. Okay. So aside from scouts units themselves and other organizations that head up scout units, that's the extent to which the property is available for use; is that right?

A. Correct.

Q. So if my family on some weekend wanted to go camping there and we're not affiliated with the Boy Scouts and we wanted to pay a fee, that wouldn't be allowed; is that the essence of it?

A. Correct.”

(See pages 7-8 of **Appendix A**).

* * *

“Q. Okay. Regardless, all of the gravel paths and dirt paths on the property are for Boy Scout use only; correct;

A. Correct.”

(See page 10 of **Appendix A**).

* * *

“Q. Are you aware of a signage on the property that involves alerting drivers that it's part of the property?

A. I don't recall if we've got private property signs posted.

Q. Are you aware of any signage on the property with regard to the use of the property itself?

A. We do have signage that says it's owned by the northeast Illinois -- owned and operated by the Northern Illinois Council and it's called Camp Crown and there is some signage that directs people to the different facilities.

- Q. Would it be fair to say that on a normal basis people can drive into the campground or onto Camp Sol R. Crown which I believe is the name of the Boy Scout camp, liberally?
- A. We don't have gates that keep people out. We have a caretaker right near the front of the property that on a week day when we generally don't have people --week day, weeknight. If they see somebody driving back and they don't recognize them, they'll check *but it certainly is possible that somebody could drive right by and not be stopped.*
- Q. During weekends and times when Boy Scouts use the facility, the facility is open to vehicular traffic that comes in and out with parents and scout leaders and thing like that; is that correct?
- A. Correct.
- Q. *So on a weekend when there is normal traffic in the facility, the facility is open to public use by automobiles?*
- A. *Yes.*
- Q. With regard to that, there are no signs in the facility at all with regard to private parking; is that correct?
- A. Private parking?
- Q. Yes, sir.
- A. No. There's nothing --there's not -- I'm thinking. I'm pretty sure there wouldn't be any -- a sign that would say that."

(See pages 11-13 of **Appendix A**) (Emphasis added).

* * *

- "Q. It would be fair to say that there's no signage that says employees or Boy Scouts parking only in the facility?
- A. No. No, there would not be."

(See page 13 of **Appendix A**).

* * *

- "Q. My understanding is that when the Boy Scouts are using the facilities, parents may arrive to pick up and drop off and visit with their children; is that correct?
- A. Correct.
- Q. And may use that facility by driving in and out throughout the areas where there are paths or roadways?
- A. Correct."

(See page 13 of **Appendix A**).

* * *

- "Q. So there is a paved driveway or road that enters the facility next to County Trunk Highway B. On the east of B there are signs that identify it as Camp Sol R. Crown which is a Boy Scout camp; is that correct, big signs?
- A. Correct.
- Q. And you and there is no gateway at that point; is that correct?
- A. Well, it depends on your definition of gateway. I mean, we could consider, you know, the camp entrance as a gateway. *There is no gate that we close to keep people out at that point.*" (Emphasis added).

(See page 14 of **Exhibit A**).

* * *

- “Q. Fair enough. I accept that. In any event, the roads that lead in, whether they're paved or gravel, are used frequently by Boy Scouts, Boy Scout leaders, parents, and people who might drive into the campground; is that correct?
- A. Correct.”

(See page 15 of **Appendix A**).

* * *

- “Q. I’m just going to have a follow-up question to that, Mr. Hale. The point here is that the premises is not guarded and people are allowed to drive in on a regular basis; correct?
- A. Well, the caretaker, I would characterize their capacity as guards of the property, but they aren't necessarily-- They're living there, but they aren't necessarily looking out of the window all the time and stopping anybody. That's not necessarily practical, but if they happen to see somebody, I would-- but they're definitely known to say something if they don't feel like they belong there.
- Q. *When the Boy Scouts are having a function as they were on October 11, 2014, parents and leaders and individuals can drive in without being stopped; correct?*
- A. *Correct.*
- Q. The premises, albeit privately owned by the Boy Scouts of America or at least your council, is premises that's involved with employees of the Boy Scouts, volunteers, and general individuals who might be dropping off children and functioning in a relatively normal setting in terms of setting up camp, et cetera, et cetera?
- A. Correct.”

(See pages 16-17 of **Appendix A**) (Emphasis added).

* * *

The following testimony was provided by Mr. David Davies, who was a Boy Scout volunteer cook at the camp ground on the day in question, October 11, 2014:

- Q. Are you employed by the Boy Scouts of America?
- A. No, I'm a volunteer.
- Q. What are the nature of your duties with regard to being a volunteer with the Boy Scouts?
- A. I'm the scout master for Troop 72?
- Q. Was Troop 72 involved in this particular activity on October 11, 2014'?
- A. Yes, it was.
- Q. When did you arrive?
- A. We arrived on -- around 5:00 on that Friday.
- Q. This was a Saturday evening --
- A. Yes.
- Q. --that we're talking about on October 11?
- A. Yes, that's correct.
- Q. I would you like your -- Are you familiar with the campground itself?
- A. Yes, I am.

(Page 21-22 **Appendix A**)

* * *

- A. Sol R. Crown is a Northeast Illinois Council and property in Trevor, Wisconsin. It's on-- I don't know how many acres it is, but it has numerous campsites with roads throughout and a conference center called the Jadel Center, a few other buildings.

(Page 22 **Appendix A**)

* * *

- Q. Directing your attention to sometime in the early evening, probably around 7:00 or 7:30 pm, do you remember where you were?
- A. Yes. I'd just walked out to the Jadel Center.

(Page 23 **Appendix A**)

* * *

- Q. Did you -- Did anything unusual happen or did you have occasion to meet with somebody who was driving in the area who asked for directions?
- A. Yes. As I was on the footpath coming out to the Jadel Center, a car came down the one-way system, and the driver asked me where, I think it was, SEG was located which was the designator for a campsite.
- Q. Did the driver tell you anything about why he was interested in that?
- A. He was looking for his troop.
- Q. What did you observe with -- Was he in a vehicle?
- A. He was.
- Q. Do you remember what the vehicle was?
- A. A silver Grand Marquis.
- Q. What, if anything, did you tell him when he asked for directions?
- A. I gave him directions around the one-way system to the campsite that I'd been informed his troops were at.
- Q. Did you observe him driving?
- A. I did.
- Q. Describe the driving involved?
- A. I didn't really take any note of it. He drove in. I wasn't particularly close to him when I gave him directions and then he drove off.
- Q. Was he on a driveway or on a gravel dirt road when you were giving him directions?
- A. Gravel dirt road.
- Q. About what time was that if you recall?
- A. Around 7:40 so, something -- 7:30, 7:40.
- Q. Did you have occasion to come into contact with this individual again?

- A. I did, yes.
- Q. Tell the Court what happened?
- A. I walked from the Jadel Center to meet some fellow scouts and some friends of mine at the campsite where one of my patrols was camping. Having met with them, I walked back out to that road which is a dead end and the same Marquis was coming up the narrow track towards us.
- Q. When you say a narrow track, what do you mean by that?
- A. It's a single lane. It has two ruts about the width of a tire -- car tires. The -- As you go further down, it is literally the width of a car.
- Q. Were there other vehicles driving in
- A. No.
- Q. Were there other scouts in the area?
- A. Yes.
- Q. Do you have an estimate as to how many scouts were in this general area?
- A. Well, in the camp at the time there were around a hundred.
- Q. In the area of the driving?
- A. I don't know.

(Page 25-26 **Appendix A**)

* * *

- A. Troop 198, to my knowledge, was camped on that first road. The second being the middle road. The third road being to the right-hand road which is where we were. So we told him to turn around. In turning around, he drove his car straight into a bush which concerned us. I approached his car and got very close to him at which point I could smell alcohol.
- Q. What, if anything, did you do at that point?
- A. I reached in his vehicle and turned the ignition off and told him he shouldn't be driving.
- Q. Did he say anything to you?
- A. He told me that he was fine.
- Q. Did he tell you what he was doing at the camp?
- A. No.
- Q. Are you aware of whether or not he had been invited to be on the property or he had just appeared?
- A. As far as I'm aware, he just appeared.

(Page 27-28 **Appendix A**)

* * *

- “Q. When vehicles come into this particular camp, Camp Sol R. Crown, are they stopped in any way? Is it open to the public?
- A. It's open.”

(See page 28 of **Appendix A**).

- “Q. Are you aware of anything at Camp Sol R. Crown that would prevent anybody from

- driving in?
- A. Not while camp is open, no.
- Q. Are you aware of any signage that says that it's private property and that only Boy Scouts and people employed or volunteering are allowed in?
- A. No.
- Q. Have you seen vehicles driving into this camp that may not be associated with the Boy Scouts?
- A. No.
- Q. On October 11, 2014, were there a variety of Boy Scout troops participating in this event?
- A. I think there was about ten.
- Q. Ten troops.
- A. Ten troops.
- Q. You said earlier approximately a hundred people?
- A. Yes.
- Q. Are these people brought by buses or cars or how do they get there?
- A. They're brought in a variety of ways, whether by their parents who drive them in, drop them off, and leave, by school masters, whoever they can get to volunteer bring them.
- Q. In your experience as a troop leader - on this particular occasion prior to Friday, how did you organize getting your troop there?
- A. Volunteer parents.
- Q. Would you have an estimate as to how many cars or buses or vehicles brought these people there?
- A. Not at all. I mean, the parking lot was busy when the boys were dropped off. We had twenty-something boys and probably used six or seven cars, just ours I would guess."

(See page 29-30 of **Appendix A**).

* * *

The following testimony was provided by the arresting officer, Kenosha County

Sheriff's Deputy Nicholas Teschler:

- "Q. . . . On October 11, 2014, did you see any signs for Camp Sol R. Crown when you arrived?
- A. There's an entrance sign out by Highway B, but that's the only sign that they have posted for Camp Sol R. Crown.
- Q. When you say there's an entrance sign do you have a recollection of what that entrance sign says?
- A. It just says Camp Sol R. Crown, Boy Scouts of America.
- Q. Are there any signs -- Is there any signage that you've observed in the camp facility that indicates that it's private property?
- A. No, Sir.
- Q. Have you -- Prior to October 11, 2014, had you been to Camp Sol R. Crown before?
- A. Yes, sir.
- Q. Have you made observations in terms of vehicular traffic inside Camp Sol R. Crown?
- A. Yes, sir.
- Q. What were those observations?
- A. ***Vehicles are allowed to ingress and egress as they please. It's open to the public. Anybody can drive in there.***"

(See pages 37-38 of **Appendix A**) (Emphasis added).

* * *

“Q. Did you interview Mr. Adams?

A. Yes, sir.

Q. What, if anything, did he tell you?

A. Well, when I approached Mr. Adams, he ~ I got within ten feet of him, and he said, yes, I'm the drunk guy that needs to blow. So I said okay. Could you elaborate, and he said, yes, that guy over there, pointing to Mr. Davies, said I'm drunk and I need to blow into -- do the blow test. So as I approached him, I could smell the odor of alcoholic intoxicants on his breath and he was leaning against the shelter and he was extremely unsteady on his feet. So I stopped ten feet prior to him and asked him to walk to me and I observed that he was extremely unsteady on his feet. I asked him -- Oh, I'm sorry. Go ahead.

Q. Go ahead.

A. Oh. I asked him how he arrived at the camp. He said well, I drove of course. I asked him if he was the sole operator of the vehicle. He stated yes.

Q. Did he tell you when he arrived?

A. He did not.

Q. Approximately what time did you have this conversation with Mr. Adams?

A. Approximately 8:20, 20:20. So I asked Mr. Adams where he was coming from. He stated his residence in Mundelein, Illinois. I asked Mr. Adams if he had consumed any alcohol, and he stated that he consumed one Polish IVA beer. I asked him if he consumed any alcohol after he arrived at the camp. He stated no.”

(See pages 41-42 of **Appendix A**).

Defense counsel stipulated that at the time the deputy found defendant that defendant was intoxicated (See page 43 of **Appendix A**).

* * *

“Q. Have you ever been there other than in a law enforcement capacity?

A. No, sir.

Q. So the only time you've been there is investigate issues there; correct?

A. No, sir. We do various exit patrols through that compound in the hours of daylight.

Q. Okay. As a law enforcement officer?

A. Yes, Sir.

Q. Okay. The vehicles that you've --Well, strike that. You testified earlier that Camp Sol R. Crown is open to the public?

A. Yes, sir.

Q. How do you know that?

A. Because during the various exit patrols that I've done, I've had people that had no reason to be there and that were lost, stopping and asking for directions on how to get out of the campground.

Q. So people that were lost?

A. Yes, sir.

Q. You indicated that you've seen vehicles come and go as they please out of the campground?

A. Yes, sir.

- Q. Do you know who those people were?
A. I do not, sir.
Q. You don't know if they're invited to be there, paid to be there, nothing like that; correct?
A. Yes, sir.”

(See pages 44-45 of **Exhibit A**).

STANDARD OF REVIEW

Since the facts in this case are disputed, the applicable standard of review is the sufficiency of evidence.

“Whether a premises is held out for public use is a question of fact to be determined by the trier of fact. See Phillips, 142 Wis.2d at 558, 419 N.W.2d at 239. Here, the jury determined that it was. We conclude that there was sufficient evidence indicating that any resident of the community with a driver's license and access to a motor vehicle could use the parking lot. See Richling, 178 Wis.2d at 860, 505 N.W.2d at 449.”

State v Carter, 229 Wis 2d 200, 208-209 (Ct. App 1999).

“This court will not upset a verdict on appeal if any credible evidence supports it. See Richards v. Mendivil, 200 Wis.2d 665, 671, 548 N.W.2d 85, 88 (Ct.App.1996). The credibility of the witnesses and the weight afforded their testimony are left to the jury. See *id.* If more than one reasonable inference may be drawn from the evidence, this court must accept the jury's choice. See State v. Poellinger, 153 Wis.2d 493, 506-07, 451 N.W.2d 752, 757 (1990). This court searches for credible evidence to sustain the verdict, not for evidence to sustain a verdict the jury did not reach. See Richards, 200 Wis.2d at 671, 548 N.W.2d at 88.”

Carter at 206.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY FOUND THAT MR. ADAMS HAD OPERATED HIS MOTOR VEHICLE ON “PREMISES HELD OUT TO THE PUBLIC” WHEN HE DROVE HIS VEHICLE AT A BOY SCOUT CAMPGROUND.

The controlling statute regarding operating a motor vehicle on premises held out to the public is Wis. Stat. 346.61, which states as follows:

“346.61 Applicability of sections relating to reckless and drunken driving.

In addition to being applicable upon highways, ss. 346.62 to 346.64 ***are applicable upon all premises held out to the public for use of their motor vehicles***, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of 4 or more units for the use of their motor vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof. Sections 346.62 to 346.64 do not apply to private parking areas at farms or single-family residences.”

(Emphasis added).

The following three cases all dealt with the issue of whether premises were held out for public use of motor vehicles: City of Kenosha v Phillips, 142 Wis. 2d 549, 419 N.W. 2d 236 (1988); City of LaCross v Richling, 178 Wis 2d 856, 505 N.W. 2d 448 (Ct. App. 1993) and State v Tecza, 2008, WI App 79, 312 Wis. 2d 395, 751 N.W. 2d 896. All three cases support the State’s position that Defendant-Appellant, while intoxicated, operated his motor vehicle on premises held out to the public for use of their motor vehicles.

In City of Kenosha v Phillips, 142 Wis. 2d 549, 419 N.W. 2d 236 (1988), the Court dealt with the following issue:

“The issue certified to this court by the court of appeals was stated as follows: “Is a business establishment’s privately-owned parking lot ‘held out to the public for use of motor vehicles’ as contemplated in sec. 346.61, Stats., ***when posted signs warn that it is an employee parking lot and violators will be towed away?***”

Phillips at 551-552 (Emphasis added).

* * *

The Phillips Court affirmed the trial court decision when it ruled that the AMC employee parking lot was not “***premises held out to the public for use of their motor vehicles***” for three main reasons: 1) AMC posted signs that stated that the premises was an AMC parking lot, 2) Any person that parked in the AMC parking lot risked having their motor vehicle towed and 3) the City of Kenosha failed to produce “***any*** evidence to establish that the parking lot was “held

out to the public for use of their motor vehicles.” Phillips at 553. (Emphasis added). Based on the third factor listed above, it appeared that the Supreme Court was not presented with any evidence to consider whether the parking lot was held out to the public for use of their motor vehicles.

Contrarily, in the case at bar, the trial court was presented with evidence that the campground was held out to the public. Provided below is a list of relevant factors that demonstrate this point.

- The campground did not have private property signs posted;
- The campground did not have signs alerting the public of the intended use of the property;
- The campground did not have signs that stated parking was private;
- The campground did not have signs that stated employee or Boy Scout parking only;
- The campground did not have any gates that kept the public out;
- On the weekend the camp ground was open to public use by automobiles;
- Parents of Boy Scouts were allowed to use the camp ground by driving in and out throughout the areas where there are paths and roadways;
- When the Boy Scouts were having a function, as they were in this case on October 11, 2014, parents, leaders and individuals can drive into the camp ground without being stopped;
- Kenosha County Sheriff’s Deputy Nicolas Teschler testified that he has been at the camp ground and that vehicles are allowed to ingress and egress as they please. He testified that it is open to the public and anybody could drive there. Deputy Teschler also testified that he did not know the people in the vehicles;
- Deputy Teschler also testified that he has been on the camp ground and that they do various exit [it is believed that this term should be extra] patrols through the camp ground during daylight hours and
- Deputy Teschler testified that the camp ground is open to the public because during the various exit patrols, he met people who were lost on the camp ground and asked him for directions how to get out of the campground.

* * *

In City of LaCross v Richling, 178 Wis 2d 856, 505 N.W.2d 448 (Ct. App. 1993), the defendant operated his motor vehicle in a bar/restaurant (called Schmidty's) parking lot when he collided with another vehicle. According to the bar/restaurant owner, this parking lot was only for customers. There were no signs posted in the parking lot and the bar/restaurant never towed a motor vehicle from their parking lot. The Richling Court stated: "We believe the appropriate test is whether, on any given day, potentially any resident of the community with a driver's license and access to a motor vehicle could use the parking lot in an authorized manner. Thus, in the case before us, practically any motorist in La Crosse could be a customer and park in Schmidty's lot on any day Schmidty's is open." Id. at 861.

In reaching their holding, the Richling Court stated, "[W]e conclude that the lot was held out to the *public* for use of their motor vehicles rather than to a defined, limited portion of the citizenry. In our view, it is not necessary that a business establishment's customers form a representative cross section of a city or town's population for them to be considered the "public" within sec. 346.61, Stats. Nor is it necessary that some minimum percentage of the city's population patronize the business." Id. at 862.

In the case at bar, it was clear that when the campground was open that vehicles could come and go as they pleased on the campground. Even when the campground was closed, vehicles could still use the premises and only on occasion would the campground's caretaker question a driver.

In *State v Tecza*, 2008, WI App 79, 312 Wis 2d 395, 751 N.W. 2d 896, the Court held that the roads in a gated community were held for use by the public.

“The undisputed evidence establishes that there is access for nonresidents, including postal employees, cable television employees, contractors, food service employees, repair persons, and newspaper delivery persons. All that is necessary for entrance is to stop at the security station, state the purpose of the visit and obtain a pass. Community residents cannot bar any nonresident from entry. The public is also admitted to show and view houses for sale, watch fireworks, play golf, attend weddings, and to just look around.”

Id. at 400-401. In addition the *Tecza* Court noted “The Community includes about twenty miles of roadway, consisting of both boulevards and standard sixty-six-foot-wide roads. It is unknown if the roadway meets the construction standards for public roadways but, to the naked eye, they do. The town of Geneva police department patrols the roadways in the Community and enforces the traffic regulations.” Id. at 399.

In the case at bar, Deputy Teschler testified that his department patrols the campground during the daylight hours.

* * *

In his appeal, Defendant-Appellant’s main two claims that the camp ground was not being held out for use by the public include, 1) the campground had a caretaker and 2) there is a sign at the front of the camp ground that stated “Camp Sol R. Crown, Boy Scouts of America.” As it pertains to the caretaker, according to the trial testimony, on week day – when the camp does not have any people – weekday night, if the caregiver sees somebody driving back that he does not recognize, this caregiver will “check.” (P 13 **Appendix A**).

In addition, according to the trial testimony, the caretaker is not necessarily looking out of his window all the time and stopping anybody. However, if the caretaker happens to see someone the caretaker will say something if the person does not belong. (P 19 **Appendix A**). On page 21 of Defendant-Appellant's appellate brief, he stated that the caretaker stopped cars they suspected did not belong. However, there was no such testimony provided during the court trial.

As it pertains to the sign, there is no language that informs the public to keep off the campground. The campground sign simply identifies that name of the campground. As such, this sign is of no persuasive value to Defendant-Appellant.

Based on the totality of the evidence, it is clear that the intent of the campground was to allow the public to use its facility. There are no signs warning any vehicles that happen to come into the campground that they are trespassing, that they are not authorized to be on that property or that they may not use the facility or park on the property. Remember, Deputy Teschler testified that when he has patrolled the campground that he has come into contact with people who were lost who asked him for directions on how to leave the property. It is clear that the caretaker did not make contact with these individuals or ask them to leave.

In addition, the campground enjoys the county resources of having sheriff's deputies patrol the grounds in the daylight hours. This clearly demonstrates an intent to allow the public to use the camp ground premises.

II. THE EVIDENCE AT THE COURT TRIAL SUPPORTED THE CIRCUIT COURT'S FINDING THAT MR. ADAMS WAS INTOXICATED WHEN HE DROVE EITHER OUTSIDE THE CAMPGROUND OR WITHIN THE CAMPGROUND.

Defendant-Appellant was observed by Mr. Davies to be driving on the campground around 7:30 p.m. on Saturday October 11, 2015. Mr. Davies testified that he smelled alcohol on Defendant-Appellant and he took the keys out of the ignition of Defendant-Appellant's vehicle. Further, Mr. Davies observed Defendant-Appellant drive his vehicle into a bush. When Deputy Teschler came into contact with Defendant-Appellant at around 8:20 p.m., Defendant-Appellant was leaning on a shelter and he was extremely unsteady on his feet. All the above events clearly demonstrate that Defendant-Appellant was intoxicated. Remember, Defendant-Appellant testified that he did not consume any alcohol after he arrived at the camp. Based on the testimony and evidence presented at trial it is clear that Defendant-Appellant was intoxicated when he drove the evening of October 11, 2014 while getting to the campground and at the campground.

CONCLUSION

It is clear that Defendant-Appellant was operating a motor vehicle on premises held out for use by the public. It is also clear that Defendant-Appellant was intoxicated while he operated his vehicle on the camp ground premises. Given the above, this Court should deny Defendant-Appellant's requested relief and affirm the trial court's guilty verdict.

Dated at Kenosha, Wisconsin, this 3RD day of June, 2016.

Respectfully submitted,

By: _____

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CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained within Section 809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 17 pages.

Dated this 3rd day of June, 2016.

Margaret Drees
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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. 809.12(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 3rd day of June, 2016.

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