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

FOND DU LAC COUNTY,

Plaintiff-Appellant,

vs.

Appeal No. 2017AP2405

Circuit Court No. 17TR7923

WILLIAM A. TAVS,

Defendant-Respondent.

APPEAL OF AN ORDER TO DISMISS THIS CASE ON THE COURT'S OWN MOTION,
OVER THE OBJECTION OF THE COUNTY, ENTERED IN FOND DU LAC COUNTY
CIRCUIT COURT, THE HONORABLE GARY R. SHARPE, PRESIDING

BRIEF OF PLAINTIFF-APPELLANT,
FOND DU LAC COUNTY

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TABLE OF CONTENTS

ISSUES PRESENTED FOR REVIEW	4
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	4
STATEMENT OF THE FACTS AND THE PROCEDURAL HISTORY OF THE CASE.....	4
STANDARD OF REVIEW	5
ARGUMENT.....	5
I. THE TRIAL COURT ERRED IN THE DISMISSAL OF MR. TAVS' UNIFORM TRAFFIC CITATION..	5
II. THE TRIAL COURT MAY NOT DISMISS A CASE BASED ON THE TRIAL COURT'S SENSE OF FAIRNESS, AS IT INTERFERES WITH PROSECUTORIAL DISCRETION.	6
CONCLUSION.....	7

TABLE OF AUTHORITIES

CASES CITED

<i>City of Janesville v. Wiskia</i> , 97 Wis. 2d 473, 293 N.W.2d 522, 527 (1980).....	5, footnote 2
<i>City of Sunpraire v. Davis</i> , 226 Wis. 2d 738, 595 N.W. 2d 635, (1999).....	5
<i>State v. Braunsdorf</i> , 98 Wis. 2d 569, 297 N.W.2d 808 (1980).....	5,6
<i>State v. Conger</i> , 2010 WI 56, 325 Wis. 2d 664, 797 N.W.2d 341.	6
<i>State v. Krueger</i> , 224 Wis. 2d 59, 588 N.W.2d 921, (1999).....	6

STATUTES CITED

343.05(3)(a)	4
343.18(1)	4, footnote 1
752.31(3)	4
809.23(4)(b)	4
978.05(2)	7

ISSUE PRESENTED FOR REVIEW

May a trial court summarily dismiss a case sua sponte, over the objection of the County, where there is no deprivation of the defendant's constitutional right to a speedy trial?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The County believes that arguments can be adequately addressed in briefing and can be decided by straightforward application of law to the facts. Therefore oral argument is not requested. The County further believes this case does not meet the statutory criteria to justify publication per Wis. Stat. § 752.31(3) and 809.23(4)(b).

STATEMENT OF THE FACTS AND THE PROCEDURAL HISTORY OF THE CASE

On September 27, 2017, William Tavs was issued a citation for Operating without a Valid License contrary to Wis. Stat. 343.05(3)(a). (A.App.1).

Subsequently, on October 16, 2017, Mr. Tavs appeared for his initial appearance pro se and District Attorney Eric Toney appeared for the County. (CR 1:1; A.App.2). It was determined that Mr. Tavs had gotten his license reinstated. (CR 1:2; A.App.2). District Attorney Toney then moved to amend the citation to license not on person with a \$40 fine and costs, a zero point amendment.¹ (CR 1:2-3; A.App.2). The trial court then questioned Mr. Tavs about the process he went through to get his license reinstated, and Mr. Tavs informed the court that he had taken a written test, behind the wheel test, and had a physician sign off. (CR 1:3-4; A.App.2). The trial court then made the determination to dismiss the charge. (CR 1:4; A.App.2). District Attorney Toney objected to the dismissal, stating that he did not believe that the court could summarily dismiss a charge. (CR 1:4; A.App.2).

¹ The County notes that the transcript is void of a statutory reference for license not on person. The statutory reference for license not on person is Wis. Stat. 343.18(1).

The trial court stated a factual basis that Mr. Tavs had “made significant strides” to have his license reinstated. (CR 4:16-18). District Attorney Toney asked four times for a legal basis, and received none. (CR 1:4-5; A.App.2).

The trial court later added more factual reasoning for its decision in its order for dismissal, stating that District Attorney Toney had dismissed other tickets that day based on proof of reinstatement or proof of insurance. (A.App.3).

STANDARD OF REVIEW

The question of judicial authority is a question of law that is reviewed de novo. *City of Sun Prairie v. Davis*, 226 Wis. 2d 738, 747, 595 N.W. 2d 635, 639 (1999).

ARGUMENT

I. THE TRIAL COURT ERRED IN THE DISMISSAL OF MR. TAVS’ UNIFORM TRAFFIC CITATION.

Unless there has been a deprivation of the Mr. Tavs’ constitutional right to a speedy trial, the trial court does not have the authority to dismiss a case sua sponte. *State v. Braunsdorf*, 98 Wis. 2d 569, 297 N.W.2d 808 (1980).²

In *Braunsdorf*, this court carefully considered whether a circuit court has the inherent power to dismiss a criminal case with prejudice. The *Braunsdorf* court extensively reviewed Wisconsin cases, as well as cases from the federal courts and courts of other states, involving the inherent powers of a trial court to dismiss a prosecution with prejudice. After this extensive review, the *Braunsdorf* court concluded that “the trial courts of this state do not possess the power to dismiss a criminal case with prejudice prior to the attachment of jeopardy except in the case of a violation of a constitutional right to a speedy trial.”

State v. Krueger, 224 Wis. 2d 59, 64, 588 N.W.2d 921, 923 (1999), citing *Braunsdorf*, 98 Wis. 2d at 586, 297 N.W.2d 808.

² The County recognizes that this case, as well as others it intends to cite, refer to the dismissal of criminal cases. The Wisconsin Supreme Court has long recognized prosecutions for breaches of municipal ordinances as quasi criminal. *City of Janesville v. Wiskia*, 97 Wis. 2d 473, 483, 293 N.W.2d 522, 527 (1980).

In this case there is no assertion or deprivation of Mr. Tavs' constitutional right to a speedy trial. The trial court dismissed the citation because he didn't agree with the County's proposed outcome due to the "significant strides" that Mr. Tavs had made to obtain his license, the fact that District Attorney Toney had dismissed other cases that day upon proof of insurance or reinstatement, and out of the trial court's sense of fairness to Mr. Tavs.

II. THE TRIAL COURT MAY NOT DISMISS A CASE BASED ON THE TRIAL COURT'S SENSE OF FAIRNESS, AS IT INTERFERES WITH PROSECUTORIAL DISCRETION.

The Wisconsin Supreme Court has stated that a trial court does not have the inherent power to dismiss cases on the basis of a trial court's sense of fairness. *Krueger*, 224 Wis. 2d 59, 64. In *Krueger*, the Court was asked to reexamine its position in *Braunsdorf*. *Id* at 63-64. The Court declined to change its position, however, stating that to permit this would cause a great intrusion into the realm of prosecutorial discretion. *Id* at 64-65. They further reasoned, citing *Braunsdorf*, that "the balance weighs heavily in favor of society's interests", and for these reasons the Court would not recognize the power to dismiss a case with prejudice for the trial court. *Id*.

The County recognizes that the trial court may reject a plea agreement, as a permissible exercise of discretion. *State v. Conger*, 2010 WI 56, ¶ 27, 325 Wis. 2d 664, 797 N.W.2d 341. This case is distinguishable, as the trial court did not reject a plea agreement the trial court simply dismissed the citation because he did not agree with the proposed amendment from the County out of fairness for Mr. Tavs. This is evidenced by the fact that no mention was made of a plea agreement. The County moved for an amended charge based on the fact that Mr. Tavs had reinstated his license. If the trial court disagreed with the amendment, it should have stated so and given District Attorney Toney and Mr. Tavs the opportunity to work out a different agreement, rather than summarily dismissing the case.

To permit a trial court to dismiss cases out of the trial court's sense of fairness would severely interfere with prosecutorial discretion. This corresponding responsibility is vested in the Office of the District Attorney, and is expressly referenced in 978.05(2). Specifically, "The

district attorney shall: (2) [e]xcept as otherwise provided by law, prosecute all . . . county traffic actions . . .” Wis. Stat. § 978.05(2).

CONCLUSION

To conclude, the trial court erred when it dismissed Mr. Tavs’ citation sua sponte, due to the fact that there was no violation of Mr. Tavs’ constitutional right to a speedy trial, and the trial court lacked the authority to dismiss.

The County respectfully requests this Court to reverse the trial court’s decision dismissing Mr. Tavs’ traffic citation and remand with instruction.

Respectfully submitted this ____ day of January, 2018.

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CERTIFICATION TO FORM AND LENGTH

I hereby certify that this brief conforms to the rule contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with proportional and serif font. The length of this brief's body is 1,969 words.

Dated this ____ day of January, 2018.

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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (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 Wis. Stat. § 809.19(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 ____ day of January, 2018.

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the trial court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a trial court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of act and conclusions of law, if any, and final decision of the administrative agency.

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 preserved confidentiality and with appropriate references to the record.

Dated this ____ day of January, 2018.

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CERTIFICATION OF MAILING

I hereby certify, pursuant to Wis. Stat. § 809.19(8)(a)(2), that on the date below, I mailed 10 copies of this brief (original plus 9) to:

Clerk of the Court of Appeals
PO Box 1688
Madison, WI 53701-1688

and three copies to the Respondent at:

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by depositing the same in a mailbox designed for deposit by the United States Postal Service, contained in packaging with the proper amount of prepaid postage thereon.

Dated this ____ day of January, 2018.

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