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OF WISCONSIN**

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Appeal No. 2018AP001953 - CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

Vs.

MELODIE C. TAYLOR,

Defendant-Appellant.

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ON APPEAL FROM A FINAL ORDER ENTERED  
ON DECEMBER 11, 2017 IN THE CIRCUIT COURT  
FOR GRANT COUNTY, THE HONORABLE CRAIG  
R. DAY PRESIDING

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REPLY BRIEF OF  
DEFENDANT-APPELLANT

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## ARGUMENT

### **I. The Plain Language of Wis. Stat. § 946.49 Requires an Underlying Crime of a Misdemeanor or Felony to Charge a Defendant with Bail Jumping.**

#### **A. The Work of the Criminal Jury Instruction Committee is not the Sole Basis for Interpreting a Statute.**

This case requires interpretation of the bail jumping statute, Wis. Stat. § 946.49. Interpretation of a statute is a question of law that is subject to de novo review on appeal. *State v. Reed*, 2005 WI 53, ¶ 13, 280 Wis. 2d 68, 75, 695 N.W.2d 315, 319.

The State's sole argument that a person can be charged with bail jumping under Wis. Stat. § 946.49 when the person has been arrested but not charged with a crime is that the standard jury instruction states the defendant was "arrested for" or "charged with" a felony or misdemeanor. (State's Brief: 2-4). The courts do not have to follow the standard jury instructions. *State v. Foster*, 191 Wis. 2d 14, 26, 528 N.W.2d 22, 27 (Ct. App. 1995). The work of the Criminal Jury Instructions Committee is only persuasive. *Id.* at 27 (citing *State v. Kanzelberger*, 28 Wis.2d 652, 659, 137 N.W.2d 419, 422-423 (1965)). Since the standard jury instructions are not infallible, it is appropriate for a trial court to modify the standard jury instructions to fully and fairly state the law. *Foster*, 191 Wis. 2d 14, 26-27 (citing *McMahon v. Brow*, 125 Wis.2d 351, 354, 371 N.W.2d 414, 416 (Ct.App.1985)). For the reasons stated above, interpretation of a statute does not start and end with the standard jury instructions.

#### **B. Reviewing the Plain Language of a Statute is Required when Interpreting a Statute.**

Statutory interpretation begins with the language of the statute. *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 663, 681

N.W.2d 110, 124. If the meaning of the statute is plain, the inquiry ends. *Id.* Courts will inquire if there is technical or specially-defined words or phrases or the context is important to the meaning. *Id.* at ¶ 45-46. However, Wisconsin courts do not consult extrinsic sources of statutory interpretation unless the language of the statute is ambiguous. *Id.* at ¶ 50.

According to Wis. Stat. § 946.49(1), “[w]hoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is: (a) If the offense with which the person is charged is a misdemeanor, guilty of a Class A misdemeanor.” The language of Wis. Stat. § 946.49(1)(a) is plain and does not contain technical or specially-defined words or phrases and the context is not important to the meaning. Wis. Stat. § 946.49(1)(a) requires a person to be *charged* with a misdemeanor. The language in the statute does not allow for a conviction based on bail relating to an *arrest*. Since Ms. Taylor was never *charged* with a misdemeanor offense for the allegations that led to her bail conditions, she should not face criminal charges of Misdemeanor Bail Jumping for failing to follow the conditions of an arrest.

### **C. Summary.**

The State’s sole basis for interpreting Wis. Stat. § 946.49 is citing the standard jury instructions (State’s Brief: 2-4). The work of the Criminal Jury Instructions Committee is only persuasive. *Foster*, 191 Wis. 2d 14, 27 (citing *Kanzelberger*, 28 Wis.2d 652, 659). Statutory interpretation begins and can stop with the plain language of the statute. *State ex rel. Kalal*, 2004 WI 58, ¶ 45. The plain language of Wis. Stat. § 946.49(1)(a) requires a person to be *charged* with a misdemeanor. Since Ms. Taylor was never *charged* with an underlying misdemeanor offense, she should not face criminal charges of Misdemeanor Bail Jumping based on the plain language of the statute.

## CONCLUSION

For the forgoing reasons, Ms. Taylor respectfully requests that this Court reverse the judgment of conviction and the order denying the motion to dismiss and remand the case to the circuit court with directions to dismiss the charge of Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a).

In the alternative, Ms. Taylor respectfully requests that this Court find there is insufficient evidence to support a criminal conviction of Misdemeanor Bail Jumping in violation of Wis. Stat. § 946.49(1)(a), reverse the circuit court's decision to grant judgment on the jury verdict and instruct the circuit court to grant judgment notwithstanding the jury verdict of guilty.

Dated: January 31, 2019

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**CERTIFICATION AS TO FORM AND LENGTH**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of the brief is 1,189 words.

Dated: January 31, 2019

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Kristopher Ellis  
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**CERTIFICATION OF COMPLIANCE WITH WIS.  
STAT. § 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: January 31, 2019

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Kristopher Ellis  
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## **CERTIFICATION OF MAILING**

Pursuant to Wis. Stat. § 809.80, I certify that the Reply Brief of Defendant-Appellant was deposited in the US Mail as Priority Mail on January 31, 2019.

Dated: January 31, 2019

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