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COURT OF APPEALS OF WISCONSIN

DISTRICT 2

TOWN OF WATERFORD,

Plaintiff -Respondent

vs.

Appeal No. : 2019AP000737

Circuit Court: 2018cv000828

CHRISTOPHER PYE,

Defendant -Appellant

SUPPLEMENTAL BRIEF OF DEFENDANT-APPELLANT

STATUS OF THE CASE

Both parties have submitted their Briefs in this matter, and the Defendant-Appellant has submitted a Reply Brief. However, the Court has ordered the parties to submit supplemental briefing on the issues set forth as subheadings below:

- I. Identify any statutory authority for the tolling of the applicable statute of limitations in this case.

The applicable statute of limitations for municipal court citations is Sec. 893.93(2) Wis. Stats., which requires that any such action be

commenced within 2 years after the cause of action accrues or be barred. This code section contains no internal language as to tolling. However, this section is subject to Sec. 893.13 which states in pertinent part:

"(2) A law limiting the time for commencement of an action is tolled by the commencement of the action to enforce the cause of action to which the period of limitation applies. The law limiting the time for commencement of the action is tolled for the period from the commencement of the action until the final disposition of the action."

The statute of limitations for a municipal forfeiture action is, therefore, tolled only by the commencement of the action itself, under the only tooling statutory authority of which the Defendant-Appellant is aware.

- II. Identify specific cases, treatises, or any other authority for the application of "equitable tolling" to a statute of limitations when a municipality brings an action seeking a forfeiture or penalty for violation of a municipal ordinance.

The Defendant-Appellant-Appellant know of no such cases, treatises or authority in Wisconsin.

III. *Does a municipal court have personal jurisdiction over a defendant when the relevant statute of limitations applicable to a forfeiture or penalty has expired?*

The Defendant's position is that the answer to this question is "No". As supporting authority, the Defendant-Appellant submits *State vs. Kollross*, 388 Wis.2d 135, 931 N.W.2d 263. *Kollross* involves a similar, if not identical factual situation. In *Kollross*, the defendant was originally charged with OWI First offense in West Allis Municipal Court. The charge was pending in Municipal court for a period of time that exceeded the statute of limitations for misdemeanors in Wisconsin. However, Ms. Kollross was also charged with a different OWI first in a different jurisdiction and was convicted. Thus, the Municipal court in question lost jurisdiction and dismissed the charge.

As often happens in such situations, the District Attorney issued a criminal complaint charging OWI Second Offense for the same conduct as was the basis for the OWI First Offense charge that had been dismissed.

Ms. Kollross pointed out that the statute of limitations for charging a misdemeanor in Wisconsin had run, and the State took the position that the statute of limitations was tolled to exclude all of the time that the charge for the same conduct had been pending in the West Allis Municipal Court.

But, the Court of Appeals disagreed and held that Misdemeanors and Municipal forfeitures are two different kinds of actions and subject to two different statutes of limitations, and further that the commencement of an action in Municipal Court could not toll the statute of limitations for a misdemeanor charge for the same conduct in Circuit Court. The *Kollross* court held that the misdemeanor statute of limitations could only be tolled by the commencement of an action in Circuit Court within three years of the accrual of the cause of action. Absent the commencement of a Circuit Court misdemeanor action within that three year period, the Circuit Court had no Jurisdiction over Ms. Kollross. *Kollross* at ¶10.

There is no reason why the converse should not be true. That is, the pendency of a circuit court

criminal action alleging crimes arising from a particular act should have no effect on the statute of limitations for a municipal court action. The only thing that tolls Sec. 893.93(2) Stats. is the commencement of an action in Municipal Court, and only by commencing such an action does the Municipal Court retain jurisdiction after the two year period of limitations had passed.

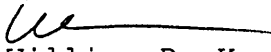
And, clearly, in this case no such action was commenced until the two year statute of limitations had expired. The parties agree upon that.

CONCLUSION

Therefore, the judgment of conviction in the Municipal Court and the Circuit Court below must be reversed.

Dated this 26th day of February

Respectfully Submitted


William R. Kerner Attorney
for Respondent

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CERTIFICATION UNDER RULE 809.19(12)(f)

I, William R. Kerner, Attorney for the Defendant-Appellant in this matter, do hereby certify that the text of the electronic copy of the Supplemental Brief of Defendant-Appellant is identical to the text of the paper copies of the Supplemental Brief of Defendant-Appellant.

Dated this 27th day of February, 2020

Respectfully Submitted,

By



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