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COURT OF APPEALS

In the Court of Appeals of Wisconsin

District II

Daniel Doubek,

Petitioner-Appellant,

v.

Joshua Kaul,

Respondent-Respondent

Appeal No. 2020AP000704

Appeal from the Judgment of the Brown County Circuit Court, The Hon. Kendall M. Kelley

Brief of Appellant

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Statement of Issues

1. Is a circuit court required to apply Court of Appeals of Wisconsin precedent interpreting federal law even though the Court of Appeals' precedent has been overruled by the Supreme Court of the United States?

   Circuit Court answer: Yes

2. Is a petitioner who is seeking circuit court review of a revocation of a concealed carry license required to serve the Department of Justice with a copy of the petition at an address other than the official address of the Department of Justice and at a post office box, even though the applicable statute gives the petitioner an option to serve the petition in person?

   Circuit Court answer: Yes.

Statement on Oral Argument and Publication

Petitioner Daniel Doubek ("Doubek") does not believe oral argument is necessary in this case. While this is an issue of great statewide interest, the issue is straightforward and it is not likely that oral argument would assist the Court in deciding the case.

Doubek believes that the opinion in the case should be published. Doubek seeks a ruling clarifying that this Court's precedents have been overruled by the Supreme Court of the United States.

Statement of the Case

On November 11, 1993, Doubek was convicted in the Circuit Court of Door County of disorderly conduct, in violation of Wis.Stats. § 947.01. R7, p. 13.[1] The Door County Clerk of Courts has no record for that case, including any transcripts of a plea colloquy or jury verdict. R7, p. 29. Subsequent to that conviction, the Department of Justice ("DOJ") had issued a license to carry a concealed weapon ("CCW") to Doubek. R7, p. 19.

On September 29, 2019, DOJ revoked Doubek's CCW. R14. DOJ asserted that Doubek was "no longer eligible for a [CCW]" because he had a "Federal Disqualifier for Domestic Violence." *Id.* On October 14, 2019, Doubek commenced this action pursuant to Wis.Stats. § 175.60(14m)[2], challenging the revocation. R1. On March 31, 2020, the Circuit Court denied Doubek's petition. R22. Doubek filed a notice of appeal the same day. R23.

[1] References to the record in this brief are to document numbers as they appear in the Index to the record at the Clerk's office. Please note that these document numbers are ***not*** the same as the document numbers in the record at the Circuit Court clerk's office and are therefore not the document numbers that the Circuit Court clerk stamped on the documents.

[2] All Wisconsin statutory references are to the 2017-18 version unless otherwise noted.

Argument

Summary: The Circuit Court erred by failing to apply binding U.S. Supreme Court precedent to the facts of this case.

Under Wis.Stats. § 175.60(14m)(f)(2) and (3), a reviewing court must reverse DOJ if DOJ erroneously interpreted a provision of law or if DOJ's action depends on a fact not supported by substantial evidence in the record. Doubek will show that the circuit court incorrectly affirmed DOJs erroneous interpretation of federal law, and that the record is factually incomplete (as a matter of federal law).

The crux of the merits of this case is whether Doubek is prohibited under federal law from possessing firearms on account of a prior conviction for what DOJ claims was a "misdemeanor crime of domestic violence" ("MCDV"), pursuant to 18 U.S.C. § 922(g)(9). Under Wis.Stats. § 175.60(3)(b), a person who is prohibited under federal law from possessing firearms is not eligible for a CCW. Because whether someone has been convicted of a MCDV is a matter of federal law, this case will turn largely on federal law and cases interpreting that law.

A MCDV is defined in 18 U.S.C. § 921(a)(33) as an offense that i) is a misdemeanor under federal or state law; ii) has, ***as an element,*** the use or attempted use of physical force; and iii) is committed against someone within a certain relationship to the perpetrator. *United States v. Hayes*, 555 U.S. 415, 420, 426, 129 S.Ct. 1079, 172 L.Ed.2d 816 (2009) [emphasis supplied]. Thus, there is

a misdemeanor test, a force test, and a relationship test. Generally, the misdemeanor test is obvious – a crime of conviction either was a misdemeanor or it was not. Likewise, the relationship test is not difficult. Assuming there is a victim, the victim's relationship to the perpetrator generally can be established.

The difficulty can lie in determining if a given crime meets the force test. Whether the disorderly conduct statute met (and meets) the force test is at the heart of this case. This will be discussed in great detail below.

The Force Test

The Supreme Court of the United States has ruled that courts are not to look to the actual conduct of the misdemeanant in determining if a given crime meets the force test and therefore constitutes a MCDV. The Court has referred to this methodology as an "elements" approach as opposed to a (disallowed) "brute facts" approach. So, for example, if a person was convicted of violating a noise statute, but the facts of the case are that he very loudly beat his wife, the conviction would not be a MCDV (assuming the noise statute did not have use of force as an ***element*** of the crime). It would not matter that the "brute facts" would clearly otherwise meet the definition of a MCDV (i.e., the beating of the wife). Only the elements of the noise statute (e.g., making an unreasonably loud noise) would be used to determine if the force test were met. Because making a loud noise is not a use of force, the hypothetical noise statute would not, under the elements approach, meet the force test.

An understanding of Supreme Court of the United States jurisprudence in this area requires a review of a series of cases. The Court developed a line of cases mostly in the area of the federal Armed Career Criminal Act ("ACCA"), and then later applied that line of cases to MCDVs. The ACCA concerns itself with whether a felon's prior history includes certain violent crimes. The Court has developed a methodology for determining if certain convictions count under the ACCA. This Brief will review the cases in chronological order, with the understanding that where cases reference whether a crime counts under the ACCA, the methodology will apply to whether a crime is a MCDV because the methodology was later incorporated by the Court into MCDV jurisprudence.

The Categorical Approach

The analysis begins with the so-called categorical approach the Supreme Court developed in *Taylor v. United States*, 495 U.S. 575, 110 S.Ct. 2143, 109 L.Ed. 607 (1990). In *Taylor*, the Court ruled that courts should look to the elements of a given statute under which a person was convicted to see if they meet the force test.

For simple criminal statutes without alternatives or compound sentences, the categorical approach is straight forward. For example, say there were a battery statute that criminalized the intentional, unwanted touching of another person resulting in an injury. If a person were convicted of that statute, a reviewing court could see that the person necessarily was found to have committed all the elements

of the statute. The force test would be met "categorically," because unwanted touching inherently involves some (even if minor) use of force.

Under the categorical approach, a reviewing court may "look only to the fact of conviction and the statutory definition of the … offense" to make the determination of whether the force test has been met. 495 U.S. at 602. A statute is "overbroad" if it includes behaviors that do not meet the force test. An overbroad statute fails the categorical approach, so that a conviction of an overbroad statute never can be the basis for a MCDV. This is true even if the person were convicted for engaging in behavior that would fit the force test. The idea is that the court cannot "try" him again, so the court may not look at his actual behavior, only his conviction. Thus, in the example of the noise statute described above, because the noise statute does not contain an element of force, that statute categorically fails the force test. A conviction of the noise statute cannot, as a matter of law, be an MCDV, even if the facts giving rise to the conviction ***could have*** constituted a MCDV under a different statute.

The Modified Categorical Approach

Taylor also recognized that statutes might not fit neatly into the categorical approach. This is especially true for a statute that describes multiple ways a crime may be committed. In those instances, *Taylor* adopted what later became known as the "modified categorical approach." Under the modified categorial approach, the court must determine if the statute of conviction is "divisible." A divisible

statute is one that can be committed in multiple ways by the application of different elements. A divisible statute could be said to define separate crimes with those separate elements. In such a case, the court may look at certain "extra-statutory materials … to discover which statutory phrase contained within a statute listing several different crimes covered a prior conviction." *Descamps v. United States,* 133 St. Ct. 2276, 2284, 186 L.Ed.2d 438 (2013). In *Shepherd v. United States,* 544 U.S. 13, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005), the Court ruled explicitly that the ***only*** documents a court may inspect (to determine if the force test were met) are the charging document and the terms of a plea agreement or the transcript of a plea colloquy between the judge and the defendant (or a comparable court document). And even then, the court may not look at the "brute facts" if they happen to be included in the charging documents. Documents such as police reports are inadmissible for this purpose.

Application to MCDV Cases

As noted earlier, cases such as *Taylor*, *Descamps,* and *Shepherd* are ACCA cases. In *United States v. Castleman,* 134 S.Ct. 1405, 1413, 188 L.Ed.2d 426 (2014), however, the Court announced it would "follow the analytic approach of [*Taylor* and *Shepherd*]" to determine if a crime constituted a MCDV.

Means v. Elements

After the above-referenced Supreme Court cases, this Court issued two rulings applying them to specific disorderly conduct convictions. In *Evans v. Wisconsin Department of Justice,* 353 Wis.2d 289, 844 N.W.2d 403, 2014 WI App 31 (2014), this Court reviewed the DOJ's denial of a CCW for Robert Evans. The Court considered the MCDV implications of the disorderly conduct statute, Wis.Stats. § 947.01(1), which states:

> Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

This Court noted that disorderly conduct has two elements: 1) engaging in an enumerated conduct and 2) doing so under circumstances that causes or tends to provoke a disturbance. This Court applied the modified categorical approach on the theory that the conduct element can be accomplished in multiple ways (i.e., one or more of the enumerated conducts). Some of those ways may encompass the force test for a MCDV (e.g., violent) and some may not (e.g., profane). This Court reasoned it must therefore look to the *Shepherd* documents to see which way of accomplishing the first element applied.

In *State v. Leonard,* 364 Wis.2d 491, 868 N.W.2d 186 (Ct.App. 2015), this Court once again considered the application of the disorderly conduct statute to the MCDV statute. The Court followed the *Evans* reasoning and applied the modified categorical approach to the disorderly conduct statute. The result of *Evans* and

Leonard is that sometimes the disorderly conduct statute is a MCDV and sometimes it is not.

Since *Evans* and *Leonard*, the Supreme Court of the United States has clarified how the modified categorical approach is to be applied, and specifically how to distinguish between statutes that have alternative elements and those that have alternative means of committing the crime. In *Mathis v. United States*, 136 S.Ct. 2243, 195 L.Ed.2d 604 (2016), the Court effectively overruled *Evans* and *Leonard*, to the extent they applied the modified categorical approach to the disorderly conduct statute. The Court did so by announcing/reiterating the distinction between elements and means of committing a crime.

The *Mathis* Court considered a different type of crime from those in earlier cases. *Mathis* "involve[d] a different type of alternatively worded statute – one that defines only one crime, with one set of elements, but which lists alternative factual means by which a defendant can satisfy those elements." *Id.* The Court ruled that the modified categorical approach only may be used with crimes that have alternative ***elements***, but may not be used with crimes that have alternative ***means***.

The Court provided a road map for such cases. First, the reviewing court must determine if the alternatively phrased statute lists elements or means. 136 S.Ct. 2256. If they are elements, the court should use the *Shepherd* documents to determine with which alternative elements the defendant was charged (and

convicted). If they are means, the modified categorical approach should not be used. Only the categorical approach is allowed and no extrinsic documents are to be consulted (i.e., only the fact of conviction and the statute of conviction are used). The Court reminded the parties that "it is impermissible for a particular crime to sometimes count … and sometimes not, depending on the facts of the case." 136 S.Ct. at 2251. The Court went on to say, "[I]f instead [of being elements] they are means, the court has no call to decide which of the statutory alternatives was at issue in the earlier prosecution." *Id.* at 2256. The Court went on to explain how to determine if a given crime contains elements or means.

To begin the inquiry, the reviewing court should look to state court decisions to see if alternatives listed in the statute are elements or means. *Id.* If the state courts have said that the list is alternative methods of committing one offense, so that the jury need not agree on which of them was actually done, the list is means and not elements. *Id.* If case law is no help, the statute itself may provide the answer. If the statutory alternatives carry different punishments, they must be elements. *Id.* And, finally, the Court said, if jury instructions list or reiterate all the elements, "That is as clear an indication as any that each alternative is only a possible means of commission, not an element that the prosecutor must prove to a jury beyond a reasonable doubt. *Id.*

Wisconsin Law on Elements v. Means

The Supreme Court of Wisconsin has decided the question of how statutory alternatives are treated. In *Manson v. State,* 101 Wis.2d 413, 304 N.W.2d 729 (1981), the Court ruled that jury unanimity on the particular alternative means of committing the crime is required only if the acts are "conceptually distinct." Unanimity is not required if the acts are "conceptually similar." 101 Wis.2d at 419, 428-430. In *State v. Lomagro,* 113 Wis.2d 582, 335 N.W.2d 583 (1983), the Court said that when the legislature groups acts together under one definition, that grouping as a matter of public policy declares them to be conceptually similar. 113 Wis.2d 593. In *Lomagro*, the legislature had grouped fellatio and penis-vagina intercourse together as alternative means of committing sexual assault. So, the Court reasoned, in a prosecution for sexual assault, the state need not prove specifically which of those acts was committed, and the jury need not agree which act was committed as long as it unanimously convicts for sexual assault. The Court gave a then-recent example of a prosecution for battery where the state claimed the defendant threw a log at, punched, and kicked the victim. 113 Wis.2d 594, *citing State v. Giwosky,* 109 Wis.2d 446, 326 N.W.2d 232 (1982). In that example, the jury need not have been unanimous on which specific act the defendant committed as long as it unanimously convicted for battery.

The jury instruction given in *Lomagro* told the jury that sexual intercourse could be penile penetration of the female genitals or fellatio. That is, some jurors could vote to convict if they believed there was penile penetration, and some could

vote to convict if they believed there was fellatio. Juror unanimity was not required on which alternative occurred, in order for there to be a valid conviction. The Court affirmed that instruction, thereby approving of a jury instruction that made the alternatives means and not elements.

In addition, juror "unanimity is not required with respect to the alternative means or ways in which the crime can be committed." *Holland v. State,* 91 Wis.2d 134, 143, 280 N.W.2d 288 (1979). When the charged behavior constitutes one continuous course of conduct, the jury unanimity requirement is satisfied regardless as to which act constituted the crime charged. *State v. Giwosky,* 109 Wis.2d 446, 451, 326 N.W.2d 232 (1982).

Since *Lomagro,* the Court somewhat modified its test for determining when juror unanimity is required. In *State v. Derango,* 613 N.W.2d 833, 236 Wis.2d 721, 737 (2000), the Court followed a recent Supreme Court of the United States precedent and said, "We start with [the] presumption in favor of the legislative determination to create a single crime with alternative modes of commission, for which unanimity is not required." If that presumption is "fundamentally fair" and "rational," then juror unanimity is not required. *Id.*

After *Derango,* this Court ruled that a person who was "yelling, swearing, and object throwing … were alternative means of committing disorderly conduct…. [U]nanimty was achieved because the jury agreed Galarowicz engaged in conduct that…tended to cause or provoke a disturbance." *State v.*

Galarowicz, 345 Wis.2d 848, 286 N.W.2d 123, 2013 WI App.13 (2012) (unpublished). Clearly, yelling and swearing do not include the use of force, but object throwing can. Because juror unanimity is not required in a disorderly conduct prosecution, the disorderly conduct statute is "overbroad" and a conviction under that statute cannot count as a MCDV.

Application to the Present Case

With the foregoing in mind, we turn to the present case. Petitioner was convicted in Door County Circuit Court of disorderly conduct in 1993. R7, p. 13. Respondent characterizes that conviction as for a MCDV. There are several reasons, however, why that cannot be.

The 1993 version of the disorderly conduct statute, Wis.Stats. § 947.01 was identical to the current version of § 947.01(1) quoted above. Because there is a list of seven types of conduct that can constitute disorderly conduct, we must determine if they are elements or means.[3] As it happens, case law tells us they are means and not elements.

This Court in *Evans* ruled that disorderly conducts has but two elements: 1) engaging in conduct of the type or types enumerated, and 2) doing so under circumstances that tend to cause or provoke a disturbance. 2014 WI App 31, ¶10. "Although there may be different ways to state the first element, what is clear is

[3] The misdemeanor test and relationship test are not at issue in the present case.

that the first element need not consist of all seven types of listed conduct…. Rather the first element allows for alternatives." *Id.* Thus, this Court has announced there are only two elements to disorderly conduct with seven different means of committing the first element (the conduct element). The circuit court followed that conclusion in the present case, and DOJ has not appealed that determination.

Second, applying the *Manson-Lomagro-Derango* analysis, the legislature has grouped all seven types of conduct together in § 947.01 and declared them to be disorderly conduct. By making this grouping, the legislature has declared as a matter of public policy that they are conceptually similar and therefore jury unanimity (as to which means of conduct was committed) is not required in a prosecution for disorderly conduct. The *Derango* presumption applies, that the legislature intended to define but one crime with alternative means of committing it.

Moreover, it is fundamentally fair to treat the alternatives in the disorderly conduct statute as means, because they are morally equivalent (engaging in behavior that tends to provoke a disturbance). Finally, this Court determined in *Galarowicz* that juror unanimity is not needed among the disorderly conduct means, because they all the means listed in the statute tend to provoke a disturbance.

Because the disorderly conduct statute lists alternative means, not elements, only the categorical approach can be applied to a conviction for that crime. Applying the categorical approach, we see, as already noted, that some alternative means could meet the force element (*e.g.*, "violent") and some could not (*e.g.*, "profane"). Under the categorical approach, the disorderly statute is "overbroad" and therefore not, as a matter of law, a MCDV.

Doubek notes that this conclusion is at odds with this Court's decisions in *Evans* and *Leonard*, but those decisions were released before the Supreme Court of the United States' decision in *Mathis* that instructed lower courts on the proper application of alternative means of committing a crime. This Court's conclusion that disorderly conduct sometimes is a MCDV and sometimes it is not has therefore been overruled. The *Mathis* decision negates the logic of DOJ in the present case in looking to the charging document to see whether the alternative means were charged in the conjunctive or disjunctive. Under *Mathis*, it does not matter because the statute is overbroad and cannot meet the force test.

Moreover, in *State v. Jennings*, 2002 WI 44, 252 Wis.2d 228, 647 N.W.2d 142 (2002), The Supreme Court of Wisconsin ruled that this Court may, but is not required, to certify a matter to the Supreme Court if a state appellate decision has been overruled by the Supreme Court of the United States. The *Jennings* Court went on to say that if certification is not sought, or if it is declined, then ***this Court is bound by the subsequent decision of the Supreme Court of the United States***.

Id., ¶43 ("The Supremacy Clause of the United States Constitution requires all state courts to adhere to United States Supreme Court precedent on matters of federal law, ***although it means deviating from a conflicting decision of this court.***") [Emphasis supplied]. Thus, to the extent this Court's decisions in *Evans* and *Leonard* conflict with *Mathis*, this Court must follow *Mathis* although it means deviating from *Evans* and *Leonard.*

The circuit court seemed conflicted by *Mathis.* It readily concluded, "Applying *Mathis* would require this Court to accept [Doubek's] argument that the disorderly conduct statute lists alternative means and not alternative elements. It would also require this Court to accept [Doubek's] interpretation of *Mathis* and disregard the court of appeals' decisions in *Evans* and *Leonard.*" Exactly. And, under *Jennings*, the circuit court (and this Court) are bound by *Mathis.* Nevertheless, despite the circuit court's conclusion that applying *Mathis* would compel ruling in Doubek's favor, the circuit court contradicted itself by ultimately concluding "it is unclear to this Court as to whether a conflict exists."

The conflict is clear. This Court in *Evans* and *Leonard* applied the modified categorical approach to the disorderly conduct statute, and concluded that sometimes disorderly conduct is a MCDV and sometimes it is not, depending on which of the alternative means of committing the crime were found for conviction. The *Mathis* court ruled that single crimes with alternative means of commitment are subject only to the categorical approach, and either always are

MCDVs or never are MCDVs (if they are overbroad). Because the disorderly conduct statute is overbroad, it can never be a MCDV and *Evans* and *Leonard* have been overruled.

Missing Circuit Court Records

Even if this Court somehow concluded that the modified categorical approach is appropriate to disorderly conduct (which it is not), it cannot be applied in the present case. As noted earlier, in order to apply the modified categorical approach, the reviewing court has to examine, not just the charging document, but the plea colloquy or jury verdict in order to determine what the conviction actually was for. The Clerk of the Door County Circuit Court has reported that she has no criminal case files on Doubek. R7, p. 29. That means there is no copy of the plea colloquy or the jury verdict on which to apply the modified categorical approach. If the modified categorical approach cannot be applied, DOJ cannot demonstrate that the apparent conviction was for a MCDV.

Consider, for example, the charging document in the present case. R7, pp. 14-16. It accuses Doubek of "engag[ing] in violent, abusive, and otherwise disorderly conduct." R7, p. 14. Because we do not have the plea colloquy or jury verdict, we do not know of what Doubek was convicted. It is possible, for instance, that he pleaded guilty but as the factual predicate for his plea he said he engaged in "otherwise disorderly conduct" but not violent or abusive conduct. If

that were the case, even the modified categorical approach would conclude that Doubek had not been convicted of a MCDV.

If DOJ used the modified categorical approach (which it should not have done in the first place), it would have had to base its conclusion on facts not contained in the record (on account of the lack of the plea colloquy or jury verdict). Under Wis.Stats. § 175.60(14m)(f)(3), reversal of DOJ's decision would still be required.

Because the *Shepherd* documents are not available, DOJ made use of non-*Shepherd* documents, which is categorically forbidden. For example, DOJ draws most of its "brute facts" from the charging document. DOJ draws them, however, not from the description of the crime in terms of the elements, but from a narrative that follows, which essentially consists of a regurgitation of a police report from the Door County Sheriff. These facts simply cannot be used. The only thing that can be drawn from the criminal complaint is the actual statute that was allegedly violated. DOJ completely ignores the application of the categorical approach (or even the modified categorical approach), and instead engages in a "brute facts" analysis that has been thoroughly discredited. Said another way, DOJ erroneously interpreted a provision of law, so Wis.Stats. § 175.60(14m)(f)(2) requires reversal.

Summary: The Circuit Court erred by failing to find the DOJ in default and for failing to apply Supreme Court precedent.

A reviewing court must reverse the DOJ's revocation of a CCW if the court finds that DOJ failed to follow any procedure, or take any action, prescribed under § 175.60. Wis.Stats. § 175.60(14m)(f)(1). As discussed further below, DOJ failed to file an answer within 15 days after being served with the Petition as required by § 175.60.

A person whose CCW has been revoked by DOJ has the option of seeking administrative review or judicial review. Wis.Stats., § 175.60(14g) and (14m). If the person seeks judicial review, he files a petition in circuit court and serves a copy of the petition on DOJ "either personally or by registered or certified mail." Wis.Stats. § 175.60(14m)(c). On October 14, 2019, Doubek served a copy of his petition on DOJ via certified mail addressed to Defendant Joshua Kaul, the chief executive of the DOJ, at 17 W. Main Street in Madison. R3, p. 1. DOJ admits that it received the petition on October 21, 2019. R3, p. 2. DOJ claims, however, that it did not bother routing the petition to its "firearms unit" until November 5, 2019.

Under Wis.Stats. § 175.60(14m)(d), DOJ is required to file an answer within 15 days after being served. Generally, service by mail is complete upon mailing, but even taking the date on which DOJ ***received*** the petition (October 21), DOJ was required to file an answer by November 5. On that date, DOJ filed a motion for an extension of time to file an answer. R3. The circuit court never ruled upon that motion. Instead, the circuit court said Doubek "failed to put any

effort into finding the correct mailing address to serve the Department of Justice." This conclusion is demonstrably incorrect.

The circuit court first contradicts itself by then saying that Doubek "carefully read through" the statutes and administrative codes applicable to CCW revocations. The circuit court concluded that the administrative code "provides the address to send petitions to throughout the code. Wis.Admin.Code JUS 17." Despite this conclusion, the circuit court only found one instance of an address in the administrative code, not in the section dealing with judicial review.

The section dealing with administrative review, JUS 17.09, has in a "note" (and not in the text of a regulation) a mailing address for DOJ to which to send petitions for administrative review. The administrative code contains ***no reference*** to the possibility of judicial review, so it contains no mention of an address to which to serve petitions for judicial review.

The circuit court's opinion was that Doubek should have served a petition for judicial review on DOJ at the address for serving petitions for administrative review. There are several reasons why this conclusion does not follow.

First, DOJ's own administrative regulations only specify that address for administrative review, not judicial review. The rules of statutory construction dictate that the inclusion of one implies the exclusion of all others. *State v. Riekkoff*, 112 Wis.2d 119, 126, 332 N.W.2d 744, 748 (1983). That rule would indicate that only administrative review petitions are to be sent to the address listed.

Moreover, it would make sense for DOJ to have an address to send petitions ***to DOJ*** for DOJ's own internal administrative review. On the other hand, it also makes sense that civil litigation attorneys would work on petitions for judicial review (which is exactly what happened), and they might not be at the same address.

Perhaps most importantly, the statute authorizing judicial review provides that petitioners may serve their petitions "either personally or by registered or certified mail." The circuit court found that the "proper" address for service was a post office box. It is self-evident that personal service is not possible on a post office box. Because the legislature has made a public policy decision that personal service is permissible, DOJ lacks the authority to require service at a post office box where personal service cannot be achieved.

Finally, in the face of a statute instructing a petitioner to serve the "Department of Justice" with the petition, it is only logical that a petitioner would use the address of the Department of Justice. Using common internet search engines, one finds that the Department of Justice is located in the Risser Justice Center at 17 W. Main Street in Madison. And, the Department of Administration's official employee directory lists the address for Attorney General Joshua Kaul as 17 West Main Street in Madison[4]. That is exactly where Doubek served the petition.

[4] https://stateempdir.wi.gov/Search/SearchName

The circuit court also determined that the address listed in the revocation letter (for other purposes) should have been the one Doubek used for service of the petition. Again, there is no basis for this conclusion, especially in light of the statute permitting personal service.

Conclusion

For the foregoing reasons, the judgment of the circuit court should be reversed, with instructions to order the reversal of DOJ's decision to revoke Doubek's CCW.

/s/ John R. Monroe
John R. Monroe
Attorney for Appellant

Certificate of Service

I certify that on July 14, 2020, I served three copies of the foregoing via U.S. Mail upon:

Christopher J. Blythe
POB 7857
Madison, WI 53707-7857

/s John R. Monroe
John R. Monroe

Certifications:

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact 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 preserve confidentiality and with appropriate references to the record.

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) as modified by the court's order for a brief and appendix produced with a proportional serif font. The length of this brief is 5,350 words.

I certify that the text of the electronic copy of the Brief of Appellant is identical to the text of the paper copy of the Brief of Appellant.

I certify that this Brief of Appellant was mailed via priority mail to the Clerk of the Court of appeals on July 14, 2020.

/s/ John R. Monroe

John R. Monroe