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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal Case No. 2021AP001224

COUNTY OF MILWAUKEE,
Plaintiff-Respondent,
vs.
ROOSEVELT COOPER, JR.,
Defendant-Appellant.

Appeal From the Denial of the Motion to Dismiss, the Hon.
Jonathan Richards, Presiding, in the Milwaukee County
Circuit Court in Case 2021TR007710

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

The State re-frames the issue presented in Cooper's Brief. Did the circuit court properly deny Cooper's motion, which argued that his case should be dismissed because the County did not provide discovery materials pertaining to the case?

Trial court answered: The trial court denied Cooper's motion because Cooper did not request discovery within the time frame set forth in Wisconsin Stat. § 345.421.

This Court should affirm.¹

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On December 2, 2020, Milwaukee County Sheriff's Deputy Brandon Scales issued a citation to Roosevelt Cooper

¹ Cooper's Brief discusses a number of other potential issues that he does not identify in his issues presented, including the sufficiency of the evidence to find guilt for Unreasonable and Imprudent Speed and whether reckless driving and endangering safety is a requisite for finding one guilty of Unreasonable and Imprudent Speed (Brief of Appellant at 27). Cooper also argues that the trial court improperly amended the citation. (Motion to Relief of Colletion [sic] and Enforce Rules on Respondent at 1). Those issues are not mentioned in the issues presented by Cooper and they are undeveloped. Furthermore, the issue of improperly amending the citation was not objected to, and thus not preserved for appellate review. Therefore, this Court should not entertain any argument on those points. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). However, if this Court decides to entertain argument on those points, the State asks for leave to file a supplemental brief on the merits. *See State v. Tillman*, 2005 WI App 71, ¶ 13 n.4, 281 Wis. 2d 157, 696 N.W.2d 574.

for Reckless Driving-Endanger Safety. (R1:1). On December 29, 2020, Cooper filed a letter with the Milwaukee County Circuit Court asking that the citation be “dropped.” (R4:1). In the letter, Cooper requested that, “[i]f it is decided that this error cannot be remedied with a dismissal, I ask officially for all discovery...” (R4:1).

Cooper filed a second letter with the Milwaukee County Circuit Court on March 31, 2021. (R3:1). In that letter, Cooper again asked that the case be “dropped.” (R3:1). Cooper also reiterated his request for discovery. (R3:1).

Cooper subsequently appeared before Commissioner Sweet for an initial appearance on April 1, 2021, during which Commissioner Sweet noted that Cooper entered a “not guilty” plea. (R5:1). Cooper then filed a “Motion for Discovery and to Dismiss” on April 6, 2021. (R5:1). In his motion, Cooper “move[d] that this case be dismissed if discovery is not made available by April 7, 2021...” (R5:1).

A Pre-trial conference for this case was scheduled on April 21, 2021. (R6:1). On April 22, 2022, ADA Anna M. Meulbroek mailed a letter to Cooper. (Appendix to Brief of Appellant at 3). In the letter, ADA Meulbroek explained that discovery could not be provided until Cooper provided his email address “due to limitation resulting from the pandemic.” (Appendix to Brief of Appellant at 3). The letter was clear that once Cooper provided his email address, discovery would be sent. *Id.* Cooper never supplied an email address. (Brief of Appellant at 15).

On May 7, 2021, Cooper filed a “Motion to Extend Time and Request Additional Discovery.” (R11:1). In that motion, Cooper acknowledges ADA Meulbroek’s letter and its contents, stating that he “neither has nor utilizes an email.” (R11:1). On May 21, 2021, Cooper filed a “Motion to Dismiss.” (R12:1). In his motion, Cooper argued that the case should be dismissed because the State had not yet provided discovery. (R12:1). On May 25, 2021, ADA Thomas Potter sent a letter to Cooper. (R16:1). That letter included the relevant statute regarding discovery requirements and again explained how Cooper could obtain discovery. (R16:1).

A Court Trial was held on May 27, 2022. (R36:1). Before testimony began, the court addressed the Motion to Dismiss that was filed on May 20, 2021. (R36:3). Cooper advised the court:

I asked them for discovery from the beginning of this case from Commissioner Judge [sic] Sweet, and I have yet to receive that information, and as far as the video. And the audio – or requests [sic] that I requested on that particular date before we got to pre-trial. So now that we are here at this point, I have still yet to receive that information so I could examine that in a timely fashion so I could read a response.

(R36:3-4).

Cooper further argued that “[t]he State should have made sure that...I have open records.” (R36:7).

The trial court ultimately denied Cooper’s Motion to Dismiss, reasoning:

And the law is very clear. This case is a traffic case not a criminal case, so the rules in discovery – many of which you cited – don’t apply. What applies is...Wisconsin statute 345.421, and that reads: ‘Neither party is entitled to pre-trial discovery except that if a defendant moves within ten days after the alleged violation and shows cause therefore, the Court may order the defendant be allowed to inspect and test, under such conditions the Court prescribes and the devices used by the plaintiff, to determine whether a violation has been committed.’ In this case...you did not make that request within ten days of the alleged violation.

(R36:12).

The Court Trial proceeded and Cooper was found guilty of “Unreasonable and Imprudent Speed.” (R36:46).

On June 7, 2021, Cooper filed a Motion to Reconsider and Dismiss. (R19:2). In that Motion, Cooper argued that “[t]he continued delay of discovery has been more injurious than direct injustice, and has resulted in deprivation of defendant’s liberty.” (R19:2). On June 10, 2021, the trial court denied Cooper’s Motion to Reconsider and Dismiss, stating that Cooper’s “motion is essentially a rehash of arguments previously raised in his May 20, 2021 motion to dismiss and at

the court trial on May 27, 2021”. (R21:1). Thus, the Motion to Reconsider and Dismiss was denied for the same reasons set forth on the record before the commencement of the evidentiary portion of the Court Trial on May 27, 2021. (R36:12; R21:1).

STANDARD OF REVIEW

The trial court made findings of fact in this case when it found that Cooper did not submit his request to inspect pretrial discovery within ten days of the violation. (R36:12) The trial court then applied Wisconsin Statute Section 345.421 to the facts when he denied Cooper’s Motion to Dismiss. In reviewing mixed questions of fact and law, the Court engages in a two-part inquiry. *State v. McMorris*, 213 Wis. 2d 156, 570 N.W.2d 384 (1997). The Court will not reverse the trial court’s findings of fact unless they are clearly erroneous. *Id.* The Court must then determine whether the trial court properly applied the facts to the status when it denied Cooper’s Motion to Dismiss, which is a question of statutory interpretation that is reviewed de novo. *State v. Hemp*, 2014 WI 129, ¶12, 359 Wis.2d 320, 856 N.W.2d 811.

ARGUMENT

Wisconsin Statute section 345.421 is the exclusive method to obtain discovery in traffic cases. *See Ozaukee County v. Flessas*, 140 Wis. 2d 122, 129-30, 409 N.W.2d 408 (Ct.App. 1987). Wisconsin Stat. § 345.421 states:

Neither party is entitled to pretrial discovery except that if the defendant moves within 10 days after the alleged violation and shows cause therefore, the court may order that the defendant be allowed to inspect and test under §. 804.09 and under such conditions as the court prescribes, any devices used by the plaintiff to determine whether a violation has been committed, including without limitation, devices used to determine presence of alcohol in breath or body fluid or to measure speed, and may inspect under § 804.09 the reports of experts relating to those devices.

Wis. Stat. § 345.421.

The trial court found that Cooper did not make the request to inspect pretrial discovery within ten days of the

alleged violation. (R36:12). These findings are not clearly erroneous.

There is no evidence or documentation, nor is Cooper arguing, that he moved to inspect discovery within ten days after the alleged incident occurred. The incident occurred on December 2, 2020. Cooper questions whether, for purposes of the application of Wis. Stat. § 345.421, whether the date of the “alleged violation” is the date the citation was issued or the date when the citation was filed. (Brief of Appellant at 24). As a matter of statutory interpretation, “within 10 days after the alleged violation” clearly and can only mean within 10 days of December 2, 2020, when the violation occurred.

Cooper made his first request for discovery on December 29, 2020, which is more than days after the violation occurred. (R1:1; R4:1). Thus, Cooper was not entitled to pretrial discovery and court properly denied Cooper’s Motion to Dismiss.

CONCLUSION

For the reasons herein, the State asks that the court affirm the denial of Cooper’s Motion to Dismiss.

Dated this 4th day of February, 2022.

Respectfully submitted,

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Electronically signed by
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 1341.

Electronically signed by

02/04/2022
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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 4th day of February, 2022.

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