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

**Appeal No. 2022 AP 000941
Washington County Circuit Court Case Nos. 2022TR000086**

WASHINGTON COUNTY,

Plaintiff-Respondent,

v.

JUSTIN DAVID DETTMERING,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND THE DECISION OF THE TRIAL
COURT DENYING MR. DETTMERING'S MOTION FOR
A JURY TRIAL, IN WASHINGTON COUNTY, THE
HONORABLE JAMES K. MUEHLBAUER, JUDGE,
PRESIDING**

**THE BRIEF AND APPENDIX OF THE DEFENDANT-
APPELLANT JUSTIN DAVID DETTMERING**

**By: Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997**

**Piel Law Office
500 W. Silver Spring Drive
Suite K-200
Milwaukee, WI 53217
(414) 617-0088 (920) 390-2088 (FAX)**

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Wisconsin Statutes

Wis. Stat. §345.34	1-2,4-6
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STATEMENT OF THE ISSUES

Did the trial court erroneously deny Mr. Dettmering's motion for a jury trial where the defendant responded to a citation by appearing in court, and where Mr. Dettmering was not advised of his right to a jury trial?

The trial court answered: No.

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

Because this is an appeal within Wis. Stats. Sec. 752.31(2), the resulting decision is not eligible for publication. Because the issues in this appeal may be resolved through the application of established law, the briefs in this matter should adequately address the arguments; oral argument will not be necessary.

STATEMENT OF THE CASE/FACTS

Justin David Dettmering, defendant-appellant, (Mr. Dettmering) was charged in the Washington County Circuit Court, with having operated a motor vehicle while under the influence of an intoxicant contrary to Wis. Stat. §346.63(1)(a) on December 24, 2021. On said date, Mr. Dettmering was issued a citation for OWI first. (R1:1 / App.1) The citation summoned Mr. Dettmering into court on February 3, 2022. Mr. Dettmering appeared at the courthouse and was directed to meet with the Washington County District Attorney. The District Attorney tendered an offer to Mr. Dettmering, Mr. Dettmering declined the offer, and the District Attorney entered not guilty pleas on behalf of Mr. Dettmering. Mr. Dettmering was not advised by the District Attorney, or the Court as to his right to demand a jury trial, as required pursuant to Wis. Stat. §345.34.

On April 8, 2022, the defendant, by counsel, filed a Motion to Allow Jury Trial. (R9:1-3 / App.2-4). On April 12, 2022, the County filed a letter response to said motion. (R10:1-2 / App.5-6) A hearing on said motion and a subsequent court trial was held on April 14, 2022. At said hearing, the defense argued the Court failed to comply with the provisions of Wis. Stat. §345.34 and because of this, Mr. Dettmering is entitled to a

jury trial. Consistent with its letter brief, the County argued the citation issued to Mr. Dettmering, which included language as to the right to a jury trial, was sufficient to satisfy the provisions of notice required by Wis. Stat. §345.34. (R25:3-4 / App.9-10)

The Court agreed with the County's argument and denied the defendant's motion for a jury trial. Subsequently, the Court conducted a trial to the court, and found Mr. Dettmering guilty of operating a motor vehicle while impaired. A dispositional order/judgment was filed on April 14, 2022. (R25:4-5 / App.10-11). An order denying Mr. Dettmering's motion for jury trial was filed on May 24, 2022. (R17:1-2 / App.7-8)

On June 3, 2022, the defendant timely filed a Notice of Appeal.

The issue on appeal is limited to whether the Court erred in denying the defendant's motion for a jury trial herein. The pertinent facts are as follows:

On December 24, 2021, Mr. Dettmering was stopped by Washington County Deputy Cody Ausloos. Deputy Ausloos made contact with Mr. Dettmering and suspected alcohol impairment. He requested Mr. Dettmering to submit to field sobriety testing, but Mr. Dettmering refused. Subsequently

Deputy Ausloos arrested Mr. Dettmering for operating a motor vehicle while impaired.

Deputy Ausloos issued Mr. Dettmering a citation for the charge, and the citation indicated Mr. Dettmering could appear at the Washington County courthouse on February 3, 2022. The citation provided had form language advising of the right to demand a jury trial. The County's letter brief correctly quotes the language which is "you may demand a jury trial, rather than a trial before a judge, but must make that demand in writing and pay the proper fee within 10 days of entering a not guilty plea." The County, however, does not dispute Mr. Dettmering's allegation that on February 3, 2022, Mr. Dettmering was not advised of his right to a jury trial.

Because Mr. Dettmering was not advised of his right to a jury trial when he appeared at the courthouse on February 3, 2022, Mr. Dettmering moved the Court to allow a jury trial. The Court denied said motion on April 14, 2022, and the defendant timely appealed the decision.

STANDARD OF REVIEW

This case deals with the interpretation of Wis. Stat. §345.34. Statutory interpretation is a question of law that is reviewed de novo. *City of Madison v. Donohoo*, 118 Wis. 646, 338 N.W.2d 530 (1984).

ARGUMENT

A. THE TRIAL COURT ERRONEOUSLY DENIED MR. DETTMERING A JURY TRIAL WHERE THE COURT FAILED TO ADVISE MR. DETTMERING OF SAID RIGHT

The sole issue herein is whether the Court erred in denying Mr. Dettmering's motion to allow jury trial. The relevant statute is Wis. Stat. §345.34. It provides the procedure to be used in entering a plea in response to a citation. The procedure for an in-court appearance differs from that of a letter appearance. Wis. Stat. §345.34 (1) and (3) respectively. When a defendant is summoned to appear in court, section (1) requires "If the defendant appears in response to a citation... the defendant shall be informed that he or she is entitled to a jury trial..." Thus, a condition precedent under Wis. Stat. §345.34(1) is that a defendant who appears to respond to a citation must be advised of his right to a jury trial.

The Wisconsin Supreme Court has interpreted this provision as mandatory rather than discretionary. In *City of Madison v. Donohoo*, 118 Wis.2d 646, at 652, 348 N.W.2d 170, the Court held at the initial appearance, “the statute requires the defendant to be informed that he or she has a right to a jury trial...” The *Donohoo* court went on to state, “the statutes clearly set out a specific procedure for pleadings, initial appearance, entering a plea, trial, and demand for a jury trial. At the initial appearance the Court informs the defendant that the defendant has a right to a jury trial...” *Id.* at 653. The *Donohoo* court found “the time for demanding a jury trial runs not from the date of the initial appearance but from the date “the defendant enters a plea of not guilty under s. 345.34.” *Id.* at 654.

Here, the defendant responded to the citation by appearing in court on February 3, 2022. However, rather than being brought before the court, Mr. Dettmering was told to meet with the District Attorney. Mr. Dettmering met with the District Attorney and was tendered an offer. Mr. Dettmering declined the offer, and the District Attorney had Mr. Dettmering sign a stipulation entering a not guilty plea and requesting the matter be set for a court trial.

This is not a case where Mr. Dettmering entered a not guilty plea by letter. If it were, there would be no requirement that he be informed of the right to a jury trial. Rather, Mr. Dettmering appeared in response to the citation. He appeared at the Washington County courthouse. This is undisputed. Furthermore, it is undisputed that no one, not the District Attorney, who prepared the stipulation entering the not guilty plea, or anyone else, including the Court, advised Mr. Dettmering of his right to a jury trial.

Under Wis. Stat. §345.34 the requirement of notification of entitlement to a jury trial is a condition precedent only if a defendant appears in response to a citation. Mr. Dettmering clearly appeared “in response to a citation”. Because of this, it was mandatory that Mr. Dettmering be advised of his right to a jury trial. He was not so advised. This clearly violated the provisions of Wis. Stat. §345.34(1).

CONCLUSION

Because Mr. Dettmering appeared in response to a citation and was not informed that he was entitled to a jury trial, the Court erred in denying Mr. Dettmering’s motion to allow

jury trial. The Court should reverse the order and vacate the conviction.

Dated this 6th day of September, 2022.

Respectfully Submitted

Piel Law Office

Electronically Signed by Walter A. Piel, Jr.

Walter A Piel, Jr.

Attorney for the Defendant-Appellant

State Bar No. 01023997

POST OFFICE ADDRESS:

PIEL LAW OFFICE
11414 W. Park Place Suite 202
Milwaukee, WI 53224
(414) 617-0088
(920) 390-2088 (fax)

FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 16 pages. The word count is 2335.

Dated this 6th day of September, 2022.

Respectfully Submitted

Piel Law Office

Electronically Signed by Walter A. Piel, Jr.
Walter A Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

POST OFFICE ADDRESS:

PIEL LAW OFFICE
11414 W. Park Place Suite 202
Milwaukee, WI 53224
(414) 617-0088
(920) 390-2088 (fax)

**CERTIFICATION OF COMPLIANCE WITH 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 s. 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 6th day of September, 2022.

Respectfully submitted,

Piel Law Office

Electronically Signed by Walter A. Piel, Jr.
Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

APPENDIX CERTIFICATION

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: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) 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 circuit court order or a 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.

Dated this 6th day of September, 2022.

Respectfully submitted,

Electronically Signed by Walter A. Piel, Jr.

Walter A. Piel, Jr.

Attorney for the Defendant-Appellant

State Bar No. 01023997

APPENDIX