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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2022AP000941

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JUSTIN DAVID DETTMERING,

Defendant-Appellant

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

BRIEF FOR PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

- I. Did the trial court err in denying Mr. Dettmering's request for a jury trial?
Circuit Court: No.

POSITION ON ORAL ARGUMENT
AND PUBLICATION

Neither oral argument nor publication is necessary in that the issues raised can be resolved using well-established principles set forth in existing published case law.

STATEMENT OF THE CASE

On December 24, 2021, Justin David Dettmering, defendant-appellant, (Dettmering), was issued uniform traffic citation BG042542-3, for a violation of Operating a Motor Vehicle While Under the Influence of an Intoxicant, in violation of Wisconsin Statute, section 346.63(1)(A). [R.1]

On February 3, 2022, Dettmering arrived at the Washington County Justice Center for a conference with an Assistant District Attorney (ADA). At that conference, an offer to resolve was made and Dettmering declined the proposed resolution. [R.2] There is no indication that the ADA informed Dettmering that he must request a jury trial within 10 days. Dettmering was not seen by a judge on February 3, 2022.

Dettmering hired private counsel who, on March 15, 2022, filed a cover letter, notice of retainer, and demand for discovery. [R.5, R.6, R. 7]. On March 24, 2022, Dettmering appeared via his defense attorney and a new court date was selected; no jury trial was requested at that time.

On April 8, 2022, Dettmering filed a Motion to Allow Jury Trial. [R.9]. No jury trial fees were submitted with the request. The County filed a response to Dettmering's jury request, via letter. [R. 10]. On April 14, 2022, a hearing was held on the motion for a jury trial and

arguments were made to the Court. The Court agreed with the County's argument that the written notice of the right to a jury trial, as stated on the citation, was sufficient to comply with Wis. Stat. § 345.34. [R.25]

The case proceeded to a court trial where Dettmering was found guilty of Operating a Motor Vehicle While Impaired and a judgement was filed on April 14, 2022. [R.25] An order denying Dettmering's request for a jury trial was filed on May 24, 2022. [R.17]

On June 3, 2022, Dettmering filed a Notice of Appeal. The only issue on appeal is whether the Court erred in denying Mr. Dettmering's request for a jury trial.

STATEMENT OF FACTS

On December 24, 2021, Washington County Sheriff's Deputy Cody Ausloos stopped Dettmering's truck after watching the truck do a "burnout" near a bar. As Deputy Ausloos activated his emergency lights and siren, he observed the truck drive through a ditch, after missing a driveway.

Deputy Ausloos noted Dettmering had bloodshot/glassy eyes, slurred speech, and had a strong odor of intoxicants coming from his person. Deputy Ausloos suspected Dettmering was impaired and requested that Dettmering do standardized field sobriety tests. Mr. Dettmering stated he would not do any field sobriety tests.

Dettmering was arrested and issued a citation for Operating a Motor Vehicle While Under the Influence of an Intoxicant. The bottom of the citation has a section which has "INSTRUCTIONS – READ CAREFULLY" written in all capital letters. Within those instructions is a subsection, which states in bold, capital letters "COURT APPEARANCE NOT REQUIRED" Under the court appearance not required heading, it states: "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.” In the upper-left part of the citation, it notes that an appearance at the February 3, 2022 court date is not required.

ARGUMENT

I. THE COURT DID NOT ERR IN DENYING MR. DETTMERING’S REQUEST FOR A JURY TRIAL.

On appeal, Dettmering argues that Wis. Stat. § 345.34 requires a defendant be advised by the court of their right to jury trial, when brought before court. Dettmering argues that “the procedure for an in court appearance differs from that of a letter appearance. Wis. Stat. §345.34 (1) and (3) respectively” (App Br: 4). Wis. Stat § 345.34(1) states

If the defendant appears in response to a citation, or is arrested and brought before a court with jurisdiction to try the case, the defendant shall be informed that he or she is entitled to a jury trial. The defendant may plead guilty, not guilty, or no contest. If the defendant requests a continuance at the initial appearance, the court shall adjourn the arraignment without entering a plea.

Wis. Stat § 345.34(3) states

If a summons is served or citation is issued by a police officer for a violation of...chps. 194 or 340 to 348...the defendant may enter a plea of not guilty based on such summons or citation by letter to the judge at the address indicated on the summons or citation.... The letter may include a request for trial during normal daytime business hours.

City of Madison v. Donohoo, 118 Wis.2d 646, 348 N.W.2d 170 (1984), interprets the mandates set out in Wis. Stat. § 345.34. In *Donohoo*, the citation issued to the defendant *required* the defendant to appear in Court at a certain date and time, for an initial appearance in front of a

commissioner. 118 Wis.2d at 647. After arriving for his mandatory court date, the defendant was informed that if he wanted a jury trial, he would have to request one within 10 days of that date. *Id.* at 648. The defendant was not informed that he could request a continuance and the commissioner entered a not guilty plea on the defendant's behalf. *Id.* at 650. The defendant's request for a jury trial was deemed untimely and his request was denied. *Id.* The Supreme Court ultimately found that the entry of a not guilty plea by the commissioner, rather than allowing a continuance, was improper. *Id.* at 653-654. In its analysis, the Court notes "[a]t the initial appearance the court informs the defendant that the defendant has a right to a jury trial. Sec. 345.34(1)." *Donohoo*, 118 Wis.2d at 652.

Here, if the Dettmering appeared "in response to a citation, or is arrested and brought before a court," the parameters of Wis. Stat. § 345.34(1) would apply. However, the defendant was not required to appear nor was he "brought before" the court. The uniform citation issued to the Dettmering clearly states it is a non-mandatory appearance. Because there was no requirement Dettmering appear before a judge, there was no judge to discuss various rights. In *Donohoo*, the defendant appeared in front of the court for a mandatory initial appearance. In this case, there was no initial appearance as it was a meeting with a prosecutor to discuss a resolution.

In the case at hand, the defendant was served a citation issued by a police officer for a violation of Wis. Stat. § 346.63(1)(A). The procedure outlined in Wis. Stat. § 345.34(3) should control. Under Wis. Stat. § 345.34(3), there is no requirement that a defendant be personally informed of the procedure for requesting a jury trial, because

there is no requirement for a judge to be present, as there is no mandatory initial appearance date.

CONCLUSION

Dettmering was not required to appear at an initial appearance, with a judge presiding. Dettmering was given a non-mandatory appearance citation, which clearly stated the procedure and timeline for requesting a jury trial. As Dettmering was issued a citation by a police officer, the procedure outlined in Wis. Stat. § 345.34(3) holds.

The written explanation outlined in the citation properly advised Dettmering of his right to a jury trial and the parameters of requesting a jury trial. As Dettmering was properly advised of the time frame to request a jury trial, the trial Court did not err in denying the late request for a jury trial.

Respectfully Submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c), Wis. Stat., for a brief produced with a proportional serif font. The length of this brief is 1689 words.

Electronically signed by: Kristian K. Lindo
KRISTIAN K. LINDO
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH § 809.19(12), Wis. Stat.

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12), Wis. Stat.

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 certification has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Electronically signed by: Kristian K. Lindo
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Assistant District Attorney