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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 4

Case No. 2022AP001065
Circuit Court Case No. 2022TR000273; 2022TR000274

COUNTY OF GRANT, Plaintiff-Respondent,

v.

BRAD A. HOCHHAUSEN,
Defendant-Appellant.

ON APPEAL FROM THE CIRCUIT COURT FOR GRANT COUNTY,
THE HONORABLE Craig R. Day, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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CASES CITED

1. *State v. Matthews*, 2019 WI App 44 ¶17, 388 Wis. 2d 333, 344-345.....Page 4
2. *State ex rel. Kalal v. Circuit Court*, 271 Wis. 2d 633, 63 (2004).....Page 3

STATUTES CITED

1. 343.30(1n), Wis. Stats.....Pages 3,4,8
2. 346.57(4), Wis. Stats.....passim
3. 346.57(5), Wis. Stats.....Pages 2,3

STATEMENT OF ISSUE

Whether a conviction for speeding 25 or more miles per hour over a posted speed limit of 55 miles per hour in violation of Section 346.57(5), Wis. Stats., subjects the speeder to a mandatory 15-day suspension of that person's operating privilege (driver's license.)

Trial Court Answer: Yes

STATEMENT ON ORAL ARGUMENT

The State does not request oral argument. The parties should be able to adequately present their respective arguments in the briefs.

STATEMENT ON PUBLICATION

Although publication is not appropriate in an Appeal assigned to one Appellate Judge, publication may be appropriate because the Court's decision would clarify a law of substantial and continuing public interest. According to the Wisconsin Department of Transportation, during 2019, there were more than 3,000 driver's licenses suspended because of excessive speeding convictions.¹ (App. 1-2)

¹ Please find accompanying this brief, a document from the Wisconsin DOT-Bureau of Driver Services. The document was not made part of the trial court record because it was not relevant during those proceedings. It may be relevant when the appellate court determines whether publication is appropriate.

STATEMENT OF THE CASE

This is a speeding case. Brad Hochhausen received a speeding ticket for violating Grant County Ordinance 26-1, adopting Section 346.57(4)(h), Wis. Stats. (R.1) The Defense filed a motion to dismiss the ticket because the area where the violation took place, was in a POSTED 55 mile per hour zone. (R.10) The County argued against the motion. (R.11); App. 3-5. On 5/19/2022, the trial court granted the motion, but allowed the County to amend the citation. The County then moved to amend the citation to reflect a violation of Section 346.57(5). (R.25; App. 6-18) On 6/16/2022, the defendant pleaded no contest to the amended citation, was found guilty and the defendant's operating privilege (driver's license) was suspended for 15 days. (R.27; App. 19-25) The defendant appeals the suspension of his driver's license.

STATEMENT OF THE FACTS

On 1/25/22, the defendant was driving 81 miles per hour on Highway 61 in Grant County, Wisconsin. (R.1) The 55 mile per hour speed limit was posted in that area. Deputy Vesperman issued the defendant a speeding citation for violating Grant County Ordinance 26-1, adopting Section 346.57 (4)(h). The defense moved to dismiss the citation because the speed limit was posted. (R.10) The trial court dismissed the citation, but allowed the County to move to amend the citation. (R.25); App. 6-18. The County moved to amend the citation to reflect a violation of Section 346.57(5), Wis. Stats., and the motion was granted. (R.25; App. 6-18) On June 16, 2022, the defendant was found guilty and the trial court suspended the defendant's driver's license for 15 days. (R.27; App. 19-25)

ARGUMENT

A person driving 25 or more miles per hour over a posted 55 mile per hour speed limit, contrary to Section 346.57(5), Wis. Stats., is subject to a mandatory 15 day suspension of that person's driver's license.

I.

Section 346.57(4), Wis. Stats., states in relevant part, the following, "No person shall drive a vehicle in excess of the following limits...(h)In the absence of any other fixed limits or the posting of limits as required or authorized by law, 55 miles per hour."

Section 343.30(1n), Wis. Stats., states that, "A court shall suspend the operating privilege of a person for a period of 15 days upon the person's conviction by the court of exceeding the applicable speed limit as established by s.346.57(4)(gm)or(h) by 25 or more miles per hour."

Section 346.57(5), Wis. Stats., states that, "In addition to complying with the speed restrictions imposed by subs. (2) and (3), no person shall drive a vehicle in excess of any speed limit established pursuant to law by state or local authorities and indicated by official signs."

In *State ex rel Kalal v. Circuit Court*, 271 Wis. 2d 633, 663 (2004), the Court stated, "Thus, we have repeatedly held that statutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.'"

The trial court read Section 343.30(1n), Wis. Stats., literally. Section 343.30(1n), Wis. Stats., does not require a 15-day suspension for violating Section 346.57(4)(h), Wis. Stats. Section 343.30(1n), Wis. Stats., mandates the suspension for violating the 55 mile per hour speed limit that is referred to in Section 346.57(4)(h), Wis. Stats. Therefore the literal and precise reading of Section 343.30(1n), Wis. Stats., in combination with the speed limit of 55 miles per hour referred to in Section 346.57(4)(h), Wis. Stats., results in a mandatory 15-day suspension of the speeder's driver's license. The Trial

Court followed the Supreme Court's directive in *Kalal* by implementing a literal and precise interpretation of Sections 343.30(1n) and 346.57 (4)(h), Wis. Stats.

II.

The Defendant's "plain" reading of the relevant statutes in this case would lead to an absurd result. In *State v. Matthews*, 2019 WI App 44, ¶17 388 Wis. 2d 335, 344, the Court stated,

It is a well-settled proposition that statutory language be read in context and in a reasonable manner so as "to avoid absurd or unreasonable results." *Kalal*, 271 Wis. 2d 633, ¶46. When the statutory language is clear and straightforward, a court would normally apply the plain meaning to the specific set of facts in the case. However, if that application leads to results that are absurd or unthinkable, then courts should "look beyond the plain meaning" to avoid the absurd results. [Citations] ("Absurd results include results the legislature could not have intended". The standard is high, as it entails departing from the literal language of the statute:

It is not enough for a court to find that upon application of the plain meaning of a statute, a given outcome is foolish. Instead, a court so finding must be convinced that the result is so absurd that [the legislature], not the court, could not have intended such a result.

The defense argument, if adopted, would lead to an absurd and unthinkable result. A person driving 25 miles per hour or more over the 55 mile per hour speed limit on a back road, with no signage to advise him or her as to the speed limit, would be subject to a mandatory suspension of his or her driver's license, while the person who gets notice of the 55 mile per hour speed limit, and exceeds that speed limit by 25 or more miles per hour, would not be subject to a mandatory suspension of his or her driver's license. The defense interpretation of the law would

result in the naïve, unwarned drivers, some being tourists from our western sister states being punished more harshly than the people who are warned, know better and who often choose to purposefully violate the speed limits by driving at such excessive speeds. While it is axiomatic that ignorance of the law is no excuse, a reasonable interpretation of the state's laws so as to avoid absurd or unreasonable results, should be no less axiomatic.

III.

As the courts have made clear in *Kalal and Matthews*, and as mentioned above, it is well settled that statutory language is to be read in context. The County maintained at the motion hearing before the Trial Court that even though the 55 mile per hour speed limit along Highway 61 in rural Grant County, Wisconsin, is a posted speed limit, Section 346.57(4)(h), Wis. Stats., was still applicable. Read in its entirety, and therefore in context, Section 346.57(4), Wis. Stats., states the following:

In addition to complying with the speed restrictions imposed by subs. (2) and (3), no person shall drive a vehicle at a speed in excess of the following limits unless different limits are indicated by official traffic signs:

- (a) fifteen miles per hour when passing a schoolhouse at those times when children are going to and from school or are playing within the sidewalk area at or about the school.
- (b) Fifteen miles per hour when passing an intersection or other location properly marked with a "school crossing" sign of a type approved by the Department when any of the following conditions exist:
 - 1. Any child is present.
 - 2. A school crossing guard is within a crosswalk at the intersection or the other

location or, if no crosswalk exists, is in the roadway at the intersection or the other location.

3. A school crossing guard is placing in or removing from the roadway at or near the intersection or the other location a temporary sign or device that guides, warns or regulates traffic.

- (c) Fifteen miles per hour when passing a safety zone occupied by pedestrians, and at which a public passenger-vehicle has stopped for the purpose of receiving or discharging passengers.
- (d) Fifteen miles per hour in any alley.
- (e) Twenty-five miles per hour on any highway within the corporate limits of a city or village, other than on highways in outlying districts in such city or village.
- (em) Twenty-five miles per hour on any service road within the corporate limits of a city or village unless modified by the authority in charge of the highway.
- (f) Thirty-five miles per hour in any outlying district within the corporate limits of a city or village.
- (g) Thirty-five miles per hour on any highway in a semi-urban district outside the corporate limits of a city or village.
- (gm) 1. Except as provided in subd.
2., sixty-five miles per hour on any expressway.

- (d) Seventy miles per hour on any freeway, including freeways that are part of the National System of Interstate and Defense High-ways, and on any portion of an expressway that gets preference to thru traffic by utilizing interchanges only.
- (h) In the absence of any other fixed limits or the posting of limits as required or authorized by law, fifty-five miles per hour.
- (i) Fifteen miles per hour on any street or town road, except a state trunk highway or connecting highway, within, contiguous to or adjacent to a public park or recreation area when children are going to or from or are playing within such area, when the local authority has enacted an ordinance regulating such traffic and has properly marked such area with official traffic controlled devices erected at such points as said authority deems necessary and at those points on the streets or town roads concerned where persons traversing the same would enter such area from an area where a different speed limit is in effect.
- (j) Thirty-five miles per hour on any town road where on either side of the highway within any one thousand feet along such highway the buildings in use for business, industrial or residential purposes fronting there on average less than 150 feet apart, provided the town board has adopted an ordinance determining such speed

limit and has posted signs at such points as the town board deems necessary to give adequate warning to users of the town road.

- (k) Forty-five miles per hour on any highway designated as a rustic road under s. 83.42.

When reading Section 346.57(4), Wis. Stats., in its entirety, it is reasonable to conclude that the reference to Section 346.57(4)(h), Wis. Stats., "in the absence of any other fixed limits," refers to the speed limits outlined in Sections 346.57(4)(a) through (gm) and (i) through (k). When reading Section 346.57(4)(h), Wis. Stats., in that way, it is reasonable to read it to mean that in the absence of any of those other fifteen mile per hour speed limits, twenty-five mile per hour speed limits, twenty-five mile per hour speed limits, thirty-five mile per hour speed limits, forty-five mile per hour speed limits, sixty-five mile per hour speed limits and seventy mile per hour speed limits, the speed limit is fifty-five miles per hour. Reading Section 346.57(4)(h), Wis. Stats., in that reasonable and contextual way, would have allowed the County in this case to proceed under Section 346.57(4)(h), Wis. Stats., and would also have resulted in the defendant's driver's license being suspended for 15 days.

CONCLUSION

Reading Section 343.30(1n) and the speed referenced in Section 346.57(4)(h), Wis. Stats., in the literal and precise way that the trial court read that statute in combination with Section 343.30(1n), Wis. Stats., would mandate a suspension of the defendant's driver's license in this case.

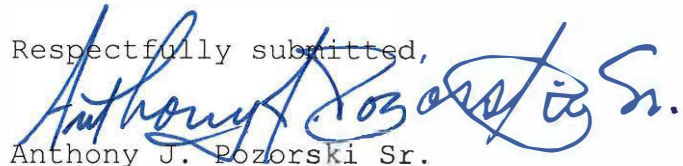
Reading Section 346.57(4)(h), Section 346.57(5) and Section 343.30(1n), Wis. Stats., in the reasonable context of each other would result in a mandatory suspension of the defendant's driver's license so as to avoid an absurd interpretation of the law.

Reading Section 346.57(4)(h), Wis. Stats., in context as outlined in the County's argument III, would mandate,

upon conviction, a fifteen day suspension of the defendant's operating privilege.

Dated this 23rd day of September, 2022.

Respectfully submitted,



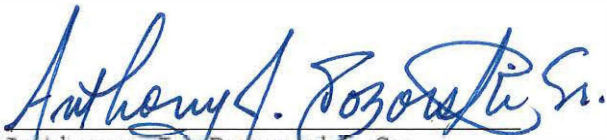
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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § (Rule) 809.19(8)(b) and (c) for a brief produced with a monospaced font. The length of the brief is nine pages.

Dated this 23rd day of September, 2022.



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**CERTIFICATE OF COMPLIANCE
WITH WIS STAT. §(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 Wis. Stat. § (Rule) 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 23rd day of September, 2022.

A handwritten signature in blue ink, reading "Anthony J. Pozorski Sr.", is written over a horizontal line.

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