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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 22AP1065

COUNTY OF GRANT,

Plaintiff-Respondent,

vs.

BRAD A. HOCHHAUSEN,

Defendant-Appellant.

REPLY BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM A FINAL ORDER ENTERED IN
CIRCUIT COURT CASE NUMBER 22TR274 ON JUNE 16, 2022,
IN THE CIRCUIT COURT FOR GRANT COUNTY, BRANCH II,
THE HON. CRAIG DAY PRESIDING.

Respectfully submitted,

BRAD A. HOCHHAUSEN,
Defendant-Appellant

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TABLE OF CONTENTS

	<u>PAGE</u>
Table of Authorities	3
Argument	
I. THE 15-DAY MANDATORY SUSPENSION OF A PERSON’S OPERATING PRIVILEGES UNDER WISCONSIN STATUTES SECTION 343.30(1n) SHOULD NOT APPLY TO PEOPLE CONVICTED OF VIOLATING WISCONSIN STATUTES SECTION 346.57(5).	4
II. IT IS IMPROMPER FOR THE COURTS TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE LEGISLATURE WHEN THE PLAIN LANGUAGE OF A STATUTE IS CLEAR.	6
Conclusion	8
Certification	9

TABLE OF AUTHORITIES

	<u>PAGE</u>
Cases Cited	
<i>Harmann v. Schulke</i> , 146 Wis. 2d 848, 432 N.W.2d 671 (1988).	4
<i>Harris v. Kelley</i> , 70 Wis.2d 242, 234 N.W.2d 628 (1975).	6, 8
<i>State v. Pratt</i> , 36 Wis. 2d 312, 153 N.W.2d 18, 20 (1967).	6
Statutes Cited	
Wis. Stat. § 84.02(4)(e) (2022).	4
Wis. Stat. § 343.30(1n) (2022).	4, 6-7
Wis. Stat. § 346.57(4) (2022).	4-6
Wis. Stat. § 346.57(4)(gm) (2022).	6
Wis. Stat. § 346.57(4)(h) (2022).	4-6
Wis. Stat. § 346.57(5) (2022).	4-6
Wis. Stat. § 349.065	4
Other Authorities Cites	
Manual for Uniform Traffic Control Devices	4
Joe Roposo, Jon Stone and Bruce Hart, <i>One of These Things</i> (1969).	5

ARGUMENT

I. THE 15-DAY MANDATORY SUSPENSION OF A PERSON'S OPERATING PRIVILEGES UNDER WISCONSIN STATUTES SECTION 343.30(1n) SHOULD NOT APPLY TO PEOPLE CONVICTED OF VIOLATING WISCONSIN STATUTES SECTION 346.57(5).

In its brief, the State incorrectly argues that the 15-day mandatory suspension under Wisconsin Statutes section 343.30(1n) can apply to violations of Wisconsin Statutes section 346.57(5) because the posted limits that Mr. Hochhausen was convicted of violating in this case reflected the fixed or statutory 55-mph limit established by Wisconsin Statutes section 346.57(4)(h). This is incorrect for two reasons.

First, Wisconsin Statutes section 346.57(4), including (h), contains Wisconsin's fixed or statutory limits and Wisconsin Statutes section 346.57(5) establishes the legal authority for posted limits. These are two distinct types of speed regulations, which are not meant to overlap. Posted limits exist as a way to trump any statutory limit. Section 2B.13 of the Manual for Uniform Traffic Control Devices (MUTCD), which deals with speed limit signs, also draws the distinction between statutory and posted limits.¹ The Circuit Court recognized this

¹ Wisconsin law mandates that the Department of Transportation adopt a manual establishing a uniform system of traffic control devices for use upon the highways of this state and that system must be consistent with current nationally recognized standards. Wis. Stat. § 84.02(4)(e). These standards are set forth in the MUTCD. Wis. Stat. § 349.065 requires that the design, installation and operation or use of new traffic control devices placed and maintained by local authorities shall conform to the manual. Thus, Wis. Stat. §§ 84.02(4)(e) and 349.065 adopt the MUTCD as state law. See *Harmann v. Schulke*, 146 Wis. 2d 848, 854, 432 N.W.2d 671 (1988).

distinction when it was inclined to grant Mr. Hochhausen's motion for dismissal because it concluded he should not have been cited for violating Wisconsin Statutes section 346.57(4)(h). The prosecution of this case only continued because the State, on the verge of a dismissal, agreed to amend the charge to a violation of Wisconsin Statutes section 346.57(5). When it decided Mr. Hochhausen's motion it was the Circuit Court's view that 346.57(4) and (5) were legally distinct. Mr. Hochhausen agrees, but unlike the Circuit Court, he views this as the strongest argument against applying the 15-day mandatory suspension in this case.

Second, even if this Court were to conclude that the speed limits established by Wisconsin Statutes sections 346.57(4) and (5) can overlap in some instances, roadways that have a posted 55-mph speed limit would be an exception. Wis. Stat. § 346.57(4)(h) states that it only applies "in the absence of other fixed limits or the posting of limits."² The State argues that the mandatory suspension should apply here because the posted limit in this case is numerically the same as the fixed/statutory limit established by Wisconsin Statutes section 346.57(4)(h). It is true that both limits are 55 mph, but the speed limit on U.S. Highway 61 has not been "established" by Wisconsin Statutes section 346.57(4)(h) as the State argues. Indeed, the plain and clear language of Wisconsin Statutes section 346.57(4)(h)

² The State argues that Wisconsin Statutes section 346.57(4)(h) should be read in context. Mr. Hochhausen agrees but urges the court to reach a different conclusion than the one offered by the State. The State would have the court ignore the fact that the speed limit created by (h) is the only one of the thirteen fixed/statutory limits established under Wisconsin Statutes section 346.57(4) that specifies it applies "in the absence of any other fixed limit or the posting of limits." To quote our dear friends from Sesame Street, "One of these things is not like the others."

makes that an impossibility. That subsection only establishes a 55-mph speed limit on roads that lack any other fixed or posted limits.³ It is undisputed that the road where Mr. Hochhausen was stopped for speeding has posted speed limits.

II. IT IS IMPROMPER FOR THE COURTS TO SUBSTITUTE THEIR JUDGMENT FOR THAT OF THE LEGISLATURE WHEN THE PLAIN LANGUAGE OF A STATUTE IS CLEAR.

"In construing or interpreting a statute the court is not at liberty to disregard the plain, clear words of the statute." *State v. Pratt*, 36 Wis. 2d 312, 153 N.W.2d 18, 20 (1967). The legislature may deal with a particular issue in a piecemeal fashion if it so chooses (as it has done with the issue of excessive speeding in Wisconsin Statutes section 343.30(1n)), and where the statutory language is clear, courts should not second guess what the legislature intended. *Harris v. Kelley*, 70 Wis.2d 242, 249, 234 N.W.2d 628 (1975). "When a statute is plain and unambiguous, interpretation is unnecessary and intentions cannot be imputed to the legislature." *Id.*

The State's argument about the supposed absurdity of Mr. Hochhausen's commonsense reading of the language of Wisconsin Statutes section 343.30(1n) is itself absurd. That is because the outcomes created by that statute are anything but

³ The States argument would be more convincing in a case involving a citation for Wisconsin Statutes section 346.57(4)(gm) that was amended to a violation of Wisconsin Statutes section 346.57(5). That is because subsection (4)(gm) does not have the language saying it applies "in the absence of any other fixed limit or the posting of limits." However, Mr. Hochhausen maintains the States argument would still fail in that instance because Wisconsin Statutes section 346.57(4) and (5) deal with totally distinct types of speed limits, i.e. fixed/statutory limits versus posted limits.

logical. For some reason, the legislature found it appropriate to only impose a mandatory 15-day suspension for excessive speeding on the very roadways that are best equipped to handle high rates of speed. It does not make any sense for the 15-day mandatory suspension to apply to defendants convicted of excessive speeding on an expressway, freeway or highway, but not to a defendant who was speeding excessively through a school zone or on a narrow city street. Yet, that is precisely what the legislature chose to do, and it is entirely its prerogative to do so. Neither the district attorney in this case, nor anyone else in the court system, is allowed to second guess the legislators' thought process in doing so.

A more logical mandatory suspension statute would apply equally to all defendants convicted of driving more than 25 mph over the speed limit. That would prevent the absurdity of a person driving 90 mph on an empty six-lane expressway being suspended, while someone driving 90 mph down an urban street with a 25-mph speed limit and lots of pedestrians would not. Arguably even more logical, we might leave the person traveling 90 mph on the empty expressway without a suspension while suspending the speeder on the urban street, since the latter is guilty of the far more dangerous conduct. However, these potential improvements to Wisconsin Statutes section 343.30(1n) are for our legislature to make, not our courts. The legislature has decided to address the issue of excessive speeding in an illogically way. Even reading the statute as the prosecution in this case would like does not make the legislature's approach logical or ideal. Yet, the

legislature is allowed to address issues in a piecemeal fashion and it not for the courts to rewrite the law as they see fit. See *Harris v. Kelley*, 70 Wis.2d 242, 249.

CONCLUSION

For the reasons stated in this reply brief and Mr. Hochhausen's original brief, the judgment of the court should be reversed, and this action should be remanded to the Circuit Court with instructions to rescind the 15-day mandatory suspension of Mr. Hochhausen's operating privileges.

Dated this 7th day of October, 2022.

Respectfully Submitted,

Electronically signed by John Holevoet

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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 length of this brief is 1,251 words.

I also certify I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wisconsin Statutes section 809.19(12). That 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 upon both the court and all opposing parties.

Dated this 7th day of October, 2022.

Signed,

Electronically signed by John Holevoet

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