STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 22AP1422

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

TISHA LEE LOVE,

Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM A FINAL ORDER ENTERED IN
CIRCUIT COURT CASE NUMBER 22TR411 ON AUGUST 17, 2022,
IN THE CIRCUIT COURT FOR GRANT COUNTY, BRANCH I,
THE HON. ROBERT P. VANDEHEY PRESIDING.

Respectfully submitted,

TISHA LEE LOVE,
Defendant-Appellant

SASA JOHNEN, SBN: 1087065
Attorney for the Defendant-Appellant
Johnen & Holevoet
316 W. Washington Avenue, Suite 225
Madison, WI 53703
(608) 620-3442

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STATEMENT OF ISSUES

1. IS A SPEEDING VIOLATION UNDER WISCONSIN STATUTES SECTION 346.57(4)(h) PROPER WHEN THE VIOLATION OCCURRED ON A HIGHWAY WITH A POSTED SPEED LIMIT?

   THE COURT ANSWERED YES.

2. DO DEFENDANTS HAVE THE RIGHT TO APPEAR AT A CIVIL TRIAL THROUGH THEIR ATTORNEY AND WOULD A JURY INSTRUCTION INSTRUCTING THE JURY NOT TO CONSIDER A DEFENDANT'S NONAPPEARANCE IN ANY WAY BE PROPER IN SUCH CASES?

   THE COURT ANSWERED NO.

STATEMENT ON PUBLICATION

Defendant-appellant recognizes that this appeal, as a one-judge appeal, does not qualify under this Court's operating procedures for publication. Hence, publication is not sought.

STATEMENT ON ORAL ARGUMENT

Oral argument would be appropriate in this case only if the Court concludes that the briefs have not fully presented the issues being raised on appeal.

STATEMENT OF THE CASE

On February 10, 2022, Ms. Love was cited for speeding by Wisconsin State Trooper Breeser. R. 1. Trooper Breeser originally cited Ms. Love violating Wisconsin Statutes section 346.57(4)(h). *Id.* She was alleged to have been driving 87 miles-per-hour (mph) in a 55-mph zone (32 mph over the limit) on Wisconsin State Highway 35-S in Grant County. *Id.*

On April 12, 2022, Ms. Love filed a motion to dismiss because Wisconsin Statutes section 346.57(4)(h) applies only in the absence of any other fixed limits or the posting of limits. R. 9. However, there are posted signs on Highway 35 indicating a speed limit of 55-mph. *Id.* Attorney Saša Johnen argued the defendant's motion to dismiss at a hearing on April 22, 2022. R. 13. At that hearing, the parties and circuit court discussed whether Ms. Love's citation should be amended to a violation of 346.57(5). *Id.* at 9-10. The Court ruled that the amendment was not necessary, and the State declined to make the amendment voluntarily. *Id.* There was also a discussion at that hearing about whether the mandatory 15-day suspension of a defendant's operating privilege under Wisconsin Statutes section 343.30(1n) would apply for those convicted of violating Wisconsin Statutes section 346.57(5). *Id.* at 5-6. Also, during this status conference, Ms. Love's counsel informed the Court that she would be exercising her constitutional and statutory right to appear at trial through counsel. *Id.* at 12. .

The Court expressed displeasure with this, stating that "if your client wants a jury trial, I expect her to be here for one." *Id.* at 12:3-4.

On June 2, 2022, Ms. Love filed a Motion to Reconsider. R 14. There was a hearing on that motion on June 29, 2022. R. 20. At that hearing, after the Parties briefly reiterated the arguments made at the April 22 hearing, the Court denied the motion, stating that 346.57(4)(h) was the correct statute. *Id.* at 7:13-16. The case was then scheduled for another status conference on July 11, 2022. *Id.* at 8.

At the July 11 status conference, the issue of Ms. Love's appearance by attorney was discussed. R. 43. Ms. Love's counsel informed the Court that she would likely appear through him. *Id.* The Court again expressed displeasure with this, stating that "it reflects very poorly on everyone when a defendant doesn't show up". R. 43 at 2:23-3:2. The case went to trial on August 17, 2022. R. 45.

At trial, at the close of evidence, Ms. Love renewed her motion to dismiss, maintaining the position that the citation was issued under the incorrect section. *Id.* at 23. The motion was again denied. *Id.* at 26. Ms. Love further asked for a jury instruction stating her decision to appear by attorney not be considered by the jury or influence their verdict. *Id.* at 27; R. 26; R. 27. This instruction was denied by the Court, which stated, "I don't agree that's the law, so I'm not going to give that… she doesn't have the constitutional right not to appear." R. 45 at 29:6-9.

The jury found Ms. Love guilty of violating 346.57(4)(h) and the court convicted her of such. *Id.* at 42-43. The court imposed a mandatory 15-day suspension of Ms. Love's operating privileges under 330.30(1n). *Id.* at 43-45.

ARGUMENT

1. SPEEDING VIOLATIONS UNDER WISCONSIN STATUTES SECTION 346.57(4)(h) ARE NOT PROPER WHEN THE VIOLATION OCCURRED ON A HIGHWAY WITH A POSTED SPEED LIMIT.

1.1. OVERVIEW

Traffic tickets often appear to be insignificant cases. However, for many people, traffic tickets represent the only interaction they will have with the court system. Therefore, the fair and thoughtful handling of these cases is incredibly important to the public's perception of the justice system and courts. While it is rare that these cases make it to the Court of Appeals, the issues raised here are not meaningless and deserve careful consideration.

Convictions under Wisconsin Statutes section 346.57(4)(h) for exceeding the speed limit by 25 mph or more are subject to a mandatory 15-day suspension of operating privileges under Wisconsin Statute section 343.30(1n), while convictions under section 346.57(5), the proper section for the violation in this case, are not. The impact of a mandatory 15-day suspension of one's license without the ability to get an occupational license can be life changing. It could mean the loss of employment and significant financial hardship. That is why the correct application of the statutory language of Wisconsin Statutes section 346.57(4)(h) matters so much. Correcting the Circuit Court's error in this case and clarifying the distinction between sections 346.57(4)(h) and (5) is similarly important.

The issue in this case is an issue of statutory interpretation. The statute in question, Wisconsin Statute section 346.57(4)(h) (hereinafter "(4)(h)"), reads as follows:

> (4) FIXED LIMITS. 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:
> …(h) In the absence of any other fixed limits or the posting of limits as required or authorized by law, 55 miles per hour.

Wisconsin has a well-established textualist methodology for statutory interpretation. This is underscored by cases like *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58. In *Kalal*, the Court emphasized the importance of statutory text when it embraced the principle that a court's role is to determine what a statute means rather than determine what the legislature intended. *Id.* at ¶ 44. The assumption is that the legislature's intent is expressed in the statutory language. *Id.* Therefore, statutory interpretation "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." *Seider v. O'Connell*, 2000 WI 76, ¶¶ 43, 236 Wis. 2d 211, 612 N.W.2d 659. "If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning." *Bruno v. Milwaukee County*, 2003 WI 28, ¶ 20, 260 Wis. 2d 633, 660 N.W.2d 656. When statutory language is unambiguous, there is no need to consult extrinsic sources, such as legislative history. *Id.* ¶ 7. "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).

1.2. MS. LOVE'S ARGUMENT

Ms. Love's argument is simple: the statutory language is clear and should be applied as written. Ms. Love views (4)(h) as being split into two clauses. The first, "in the absence of any other fixed limits or the posting of limits as required or authorized by law," means where there is no other speed limit, either fixed or posted. The second clause, "55 miles per hour," means the speed limit is 55 mph This reading is supported by the placement of the comma within the subsection. Comma usage and placement is a significant matter when it comes to statutory construction and interpretation.

Read together then, Ms. Love views (4)(h) as a catchall statute that says, in essence, if there would otherwise be no speed limit, the speed limit is 55 mph. This is a simple, clear reading of the plain language of (4)(h), free of ambiguities. In this case, it is undisputed that there was a posted speed limit. R. 45 at 19:5-7. Therefore, the Circuit Court erred by failing to dismiss the charges. To decide otherwise would disregard the plain meaning of (4)(h).

1.3. THE STATE'S ARGUMENT

The State's argument is harder to understand. The State views (4)(h) as being split into three clauses, the first being "in the absence of any other fixed limit," the second being "or the posting of limits as required or authorized by law,"

and the third being "55 miles per hour." R. 16. The State would read the first clause as meaning if there is no other fixed limit for the area in question then you cannot use (4)(h). *Id.* Ms. Love agrees. The State, however, would go on to argue that the second clause somehow both does not apply because there is no limit required to be posted, but also that because there is no speed limit required to be posted, that the citation under (4)(h) was still proper. *Id.* Ms. Love, obviously, does not agree.

It is worth taking a moment here to point out the difference between "fixed limits" and "posted limits." Wisconsin Statutes section 346.57(4) is titled "FIXED LIMITS." The statute goes on to delineate fixed limits for areas such as school zones with children or crossing guards present, safety zones occupied by pedestrians, alleyways, service roads, roads within and without corporate limits of cities and townships, and other areas where speed limits are altered by the locations and surroundings of the roads. Logically following then, the various limits stated in subsection (4) are the "fixed limits" referred to by its title. This gives meaning to what the State argues is the first clause of (4)(h), stating that it applies "in the absence of any other fixed limits," which means that it applies in the absence of any of the other limits delineated by subs. (4).

Posted limits, however, are covered by Wisconsin Statutes section 346.57(5), titled "ZONED AND POSTED LIMITS." It states:

> 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.

Ms. Love would argue that these are the posted limits referenced by (4)(h). The State would argue that this clause somehow refers to section 346.57(6), which is titled "CERTAIN STATUTORY LIMITS TO BE POSTED." R. 16. The State argues that because section 346.57(6) refers to subsections (e), (f), (g). and (k) under 346.57(4), and not to subsection (h), that the delineated subsections are the only speed limits "required or authorized by law," and therefore, because the posted speed limit in this case was not one required by law under subsection (6), what the State views as the second clause does not bar the citation being issued under (4)(h). *Id.*

The State's argument misses the mark for several reasons. First, the State's reading would ignore the words "or authorized," improperly limiting the scope of (4)(h) to apply only to required speed limits, instead of **any** speed limit as the statutory language suggests; if a speed limit was neither required nor authorized by law, it would not exist. The State would willfully ignore those words because they give credence to Ms. Love's argument: that (4)(h) is meant as a catchall statute in rare instances where there would otherwise be no speed limit.

Second, the State's reading would have us entirely skip subsection (5), which discusses posted limits, in order to get to their preferred meaning for (4)(h). It is unclear why the State believes that (4)(h) does not refer to subsection (5), because (4)(h) refers to the posting of limits, and subsection (5) is titled "ZONED AND POSTED LIMITS." The State argues that, instead of referring to the immediately

preceding section, the portion of subsection (5) which refers to speed limits "established pursuant to law by state or local authorities" for some reason refers to Wisconsin Statutes section 349.11, entitled "AUTHORITY TO MODIFY SPEED RESTRICTIONS." *Id.* The State goes on to explain what that section does, largely, that speed limits may not be made in excess of the 55 mph limit imposed by (4)(h), but that reductions may be permissible. *Id.* The State would have us believe that the modified speed limits considered by section 349.11 are the only limits "established pursuant to law by state or local authorities," as subsection (5) requires. However, subsection (5) makes no reference to section 349.11 or to modifications of speed limits. Subsection (5) specifically refers to "**any** speed limit established pursuant to law," not just to speed limits which have been modified. (Emphasis added). The State's reference to section 349.11 is misplaced, and again attempts to substitute meaning to make (4)(h) fit the State's preferred outcome. It is far more logical to read section 346.57(5) in the context of the rest of section 346.57. Section 346.57 establishes speed limits pursuant to law by state authority. Subsection (5) refers to speed limits established pursuant to law by state authority. Therefore, subsection (5) refers to the speed limits established in section 346.57.

The State also argued, albeit informally at a status conference, that subsection (5) is a catchall provision, and that exceeding a 55 mph speed limit is a violation of (4)(h), regardless of whether or not the speed limit is posted. R. 13 at 3. They argued that because section 346.57(4) lists specific speed limits, it should

be used instead of subsection (5) which does not list specific speed limits. *Id.* This is also an incorrect reading of (4)(h). As we have discussed, subsection (4) is titled "FIXED LIMITS" and as such, deals with fixed speed limits. Section (4)(h) sets itself out as a catchall statute for fixed speed zones by referring to the absence of any other limits fixed by subsection (4). It refers to the absence of posted speed limits because if there is a posted limit, there would be no need for a catchall speed limit to be applied. Clearly then, by its plain language, it is meant to be the catchall statute when there would otherwise be no speed limit. Subsection (5), however, gives no indication that it is meant to be a catchall statute. It specifically does not mention the fixed limits set by (4) (even though subsection (5) specifically mentions subsections (2) and (3)), and further specifies that the speed limits be indicated by official signs, while that is not a requirement for any fixed limits. Logically, catchall statutes should be broader than other statutes, in order to catch scenarios the other statutes may miss. Subsection (5) however narrows itself to dealing with only posted speed limits.

The State has also argued that the phrase "any other fixed limits" means any limit besides 55 miles per hour, and that because Ms. Love was in a zone with a speed limit of 55 miles per hour, (4)(h) applies. R. 16. This is again incorrect, as the meaning behind the phrase is elucidated by simply reading subsection (4)'s title: "FIXED LIMITS." As discussed above, section 346.57(4) sets the fixed speed limits in Wisconsin. Section (4)(h) refers to "any other fixed limits." This is a clear reference to the other subsections under 346.57(4), which set the "other fixed

limits." Therefore, "any other fixed limit" means any of the other limits under section 346.57(4). Not any limit besides 55 mph as the State suggests. R. 16.

Finally, reading (4)(h) as the State would like us to leads to an absurd result. Without even getting into the fact that the legislature could have written (4)(h) as three separate clauses simply by adding a comma after "fixed limits," the State's splitting of the first clause into two clauses is still problematic. As the State would read it, the second clause begins with "or." The disjunctive "or" in a statute typically means that only one of the listed requirements be satisfied for the statute to apply. Under the State's reading then, if there is either no fixed limit **OR** no posted limit, then the speed limit is 55 mph.

That would mean that roads which have a posted limit, but no statutorily fixed limit, would still fall under what the State views as the first clause, and would therefore have a speed limit of 55 mph. It would also mean that roads with a statutorily fixed limit, but not posted limits, would fall under what the State views as the second clause, and would therefore also have a speed limit of 55 mph. This simply cannot be the case. That would either mean creating areas of roads with multiple, differing, valid speed limits, or causing either (4)(h) or the other speed limit statutes to invalidate themselves as contradictory, both of which would be absurd outcomes.

The State may argue the opposite: that Ms. Love's reading would lead to an absurd result when read with Wisconsin Statutes section 343.30(1n), where would-be offenders who exceed the speed limit by 25 or more miles per hour where the

speed limit is posted would not be subject to a suspension, but would-be offenders where there is no posted speed limit would be subject to a suspension. This is, quite simply, not an absurd result. It is possible that the legislature intended to punish severe speeding more harshly when there is no posted speed limit because they felt that roads without a posted speed limit warrant more caution. Those roads are often back country roads, with minimal (or nonexistent) lighting, poorer surfaces, and fewer pavement markings, so extra care would be warranted. But, regardless of what the legislature intended, it does not matter. A plain reading of (4)(h) gives a plain, clear, statutory meaning, free of ambiguity. Therefore, the statute should be applied according to that meaning. See *Bruno*.

Statutory interpretation involves the ascertainment of meaning, not a search for ambiguity. *Id.* at ¶25. The State would ask the Court to find ambiguities where there are none, to substitute meanings when clear meanings are in place, and to rewrite the statute to save themselves a headache. The defense would ask the Court to simply read and apply the statute.

2. DEFENDANTS HAVE THE RIGHT TO APPEAR AT A CIVIL TRIAL THROUGH THEIR ATTORNEY, AND A JURY INSTRUCTION CLARIFYING THAT RIGHT SHOULD HAVE BEEN GIVEN.

2.1. THE CIRCUIT COURT ERRED BY REFUSING TO GIVE MS. LOVE'S PROPOSED JURY INSTRUCTION.

The law in this area is clear. The Wisconsin Supreme Court Rules state: "**Every person** of full age and sound mind **may appear by attorney in every action** or proceeding by or against the person in any court except felony actions, or may prosecute or defend the action or proceeding in person." SCR 11.02 (emphasis added). Also, Wis. Stat. section 799.06(2) provides, "a person may commence and prosecute or defend an action or proceeding under this chapter and may appear in his, her, or its own proper person **or by an attorney**," which is the applicable section for traffic forfeiture actions in circuit court. *See,* Wis. Stat. § 345.20(2)(a) (emphasis added). Further, the Wisconsin Constitution states, "**in any court** of this state, any suitor may prosecute or defend his suit either in his own proper person **or by an attorney** of the suitor's choice." Wis. Const. art I, § 21(2) (emphasis added).

Case law provides further elucidation. In *Sherman v. Heiser*, the Wisconsin Supreme Court held that a party had appeared at trial because his counsel had appeared. *Sherman v. Heiser*, 85 Wis. 2d 246, 254. While that appears to be one of the only published cases on this topic, a plethora of unpublished cases continue to point us in the right direction. Ms. Love recognizes that unpublished opinions may

not be cited as precedent or authority, but unpublished opinions may be cited for their persuasive value. Wis. Stat. §§ 809.23(3)(a), (b).

In *Village of Butler v Clay*, where a defendant did not personally appear, and the court had ordered defendant to appear, the Circuit Court ordered a default judgment, even though defendant's attorney was present. The Appellate Court reversed the judgment, finding that the circuit court lacked authority to require defendant to personally appear, so long as counsel for defendant appeared. *Vill. of Butler v. Clay*, 2010 WI App 33. Additionally, in *County of Shawano v. Buntrock*, the Circuit Court again issued default judgments when a defendant did not personally appear at trial, but appeared through his attorney. Again, the Appellate Court reversed because the defendant had appeared through counsel. *Cty. of Shawano v. Buntrock*, 2013 WI App 1. It is worth noting that in *Buntrock*, the County argued the local court rule which allowed the default judgment could be likened to a subpoena. *Id.* at 5. The Court rejected that argument, because while the circuit court had the statutory authority to issue subpoenas, subpoenas also have service requirements that were not met by the local court rule. *Id.* at 12. These cases, while not published, show a clear history of Wisconsin courts allowing parties in civil matters to appear by their attorneys.

The right to appear through an attorney is clearly established in the Wisconsin Constitution, the Wisconsin Statutes, and through Wisconsin case law. The circuit court was made aware of this through Ms. Love's attorney's letter. R. 27. The circuit court also mentioned, on numerous occasions, that jurors do not

like it when a defendant does not personally appear at trial. R. 45 at 45; R. 43 at 3; R. 13 at 12; R. 32. The purpose of jury instructions is to fully and fairly inform the jury of the rules of law applicable to the case and to assist the jury in making a reasonable analysis of the evidence. *State v. Coleman*, 206 Wis. 2d 199, 212. All together then, the circuit court was aware that jurors may have been biased by Ms. Love's appearance through counsel, should have been aware that Ms. Love had a statutory and constitutional right to appear through counsel, and refused to give an instruction that would mitigate that bias. R. 45 at 29, 45-48. Because that bias was unmitigated, there is a reasonable possibility that this error contributed to the jury's guilty verdict, and therefore the error was not harmless, and the conviction must be reversed. *See Coleman.*

2.2. THE CIRCUIT COURT'S LETTER DOES NOT PROPERLY EXPLAIN THE LAW.

The circuit court, in a letter to Ms. Love's counsel, explained its reasoning for refusing to grant the proposed instruction. R. 32. In that letter, the circuit court referenced the decision in *City of Sun Prairie v. Davis* case, where the Wisconsin Supreme Court held that a municipal court did not have inherent authority to order an out-of-state defendant to personally appear at a civil forfeiture action. *Id.*; *City of Sun Prairie v. Davis*, 226 Wis. 2d 738. The circuit court distinguished the *Davis* case from this case by noting that Ms. Love is not an out-of-state defendant and that this was a jury trial, rather than a bench trial. The court said this was distinguishing because there were no statutory prohibitions from compelling her

attendance and because the orderly administration of justice did not require a defendant's presence at a bench trial. R. 32. At trial, the court said that the *Davis* court could order a defendant to appear even though their attorney appeared. R. 45 at 45-46.

This is an incorrect reading of *Davis* and an incorrect application to this case. First, the statutory prohibition discussed in *Davis* is on a municipal court judge ordering a subpoena for the personal attendance on an out-of-state witness. *Davis* at 757. The *Davis* court noted that a municipal court judge has statutory power to authorize a subpoena of Wisconsin residents. *Id.* However true that may be, this reasoning cannot apply to this case because a subpoena was never issued. R. 45 at 27, 45.

Second, the circuit court has made the same misinterpretation of the *Davis* case as the County of Shawano did in the *Buntrock* case: that "because the *Davis* court determined a municipal court lacked inherent authority to order an out-of-state defendant to appear at a forfeiture trial, it follows that a circuit court has inherent authority to order an in-state defendant to appear at a forfeiture trial." *Buntrock* at 6-7. Here, like in *Buntrock*, the circuit court has tried to say that because the circuit court lacks the inherent authority to subpoena an out-of-state defendant, it follows that the circuit court does have the power to subpoena an in-state defendant. The *Buntrock* court rejected this argument outright. *Id.* at 7. The *Buntrock* court quoted part of the *Davis* decision which stated:

> [T]he City has cited to no case in this state nor any other jurisdiction in which a court has recognized the judiciary's power to order a defendant to personally appear based *solely* on inherent authority, and we have found none .... In fact, this court has previously stated that a defendant who failed to personally appear in a civil action nonetheless appeared "'since he was entitled to and did appear by his attorney.'" *Sherman v. Heiser*, 85 Wis. 2d 246, 255, 270 N.W.2d 397 (1978) (citations omitted). The defendant in *Sherman* appeared by the fact that his counsel appeared on his behalf. *Id*. at 254, 270 N.W.2d 397. "The most generous interpretation that could be given to Sherman's action [failure to personally appear] is that he was willing to let his attorney try the case without him. This he had a right to do." *Id*. at 256, 270 N.W.2d 397.

Id. The *Buntrock* court concluded that "the County's reliance on *Davis* to assert the circuit court had inherent authority to order Buntrock's personal presence appears to be foreclosed by *Davis* itself." *Id.* at 7-8. Further, the *Davis* court went on to say that "neither the municipal court in its written judgment, nor the City in its brief and argument to this court, have convinced us that ordering the defendant's presence in the court is necessary to the orderly and efficient exercise of its jurisdiction." *Davis* at 757.

Here, as in *Davis*, there is no support for the assertion that Ms. Love's personal attendance was necessary to the orderly and efficient exercise of the circuit court's jurisdiction. The closest argument to that is in the circuit court's letter to Ms. Love's counsel, where the court raised the issue of jurors having a bad attitude about a defendant choosing to appear through counsel. R. 32. This could possibly be interpreted as saying the jurors' bias may inhibit the court's ability to orderly and efficiently exercise its jurisdiction, but the easiest solution to that problem would have been to simply read the proposed jury instruction. Reading the proposed jury instruction would have served to alleviate any bias with which the circuit court was concerned, allowing for the orderly and efficient

exercise of jurisdiction. The circuit court would trample on Ms. Love's clearly established constitutional and statutory rights instead of utilizing the simple and readily available method to orderly and **efficiently** exercise its jurisdiction. That does not seem very efficient.

2.3. MS. LOVE'S COUNSEL PROPERLY PRESERVED THE OBJECTION TO THE LACK OF A PROPER JURY INSTRUCTION.

"The party alleging error has the burden of establishing, by reference to the record, that the error was raised before the trial court." *State v. DeMar*, 157 Wis. 2d 815. "In the absence of a specific objection which brings into focus the nature of the alleged error, a party has not preserved its objections for review." *State v. Gomaz*, 141 Wis. 2d 302, 318. "The objection should be specific -- it should not only identify the particular instruction or instructions objected to, but should also state what counsel contends is the proper instruction." *Id.* at 321. The underlying purpose of requiring a specific objection is to promote judicial economy by providing the trial court the opportunity to address objections and correct errors in the first instance. *Id.* at 323. If due regard is given to that purpose, the requisite degree of particularity cannot be interpreted to require that objections be accompanied by legal argument. *Id.* "While *supporting an objection with legal authority would satisfy the requirement of grounds being stated with particularity*, this statement does not suggest that legal authority must be supplied in order to preserve an objection." *Id.* at 319. (Emphasis added).

Here, Ms. Love's counsel raised the issue before the trial court when he asked if his proposed jury instruction would be read. R. 45 at 27. After some discussion, and after the court listed the instructions it intended to read, Ms. Love's counsel again asked about his proposed instruction. *Id*. at 28. After the court stated it would not read the instruction, Ms. Love's counsel asked whether the court had received his letter with the proper legal authority. *Id.* at 29. The court confirmed it had received the letter but still refused to read the instruction. *Id.*

The error was raised before the trial court and was stated with particularity because counsel supported the objection with legal authority. Therefore, the objection was properly preserved.

CONCLUSION

For the reasons stated in this 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 Ms. Love's operating privileges and dismiss the charges under Wisconsin Statutes section 346.57(4)(h).

Dated this 26th day of October, 2022.

Respectfully Submitted,

Electronically signed by Saša Johnen

SAŠA JOHNEN,
State Bar No. 1087065
Attorney for the Defendant-Appellant
P.O. Box 367
Madison, WI 53701-0367
(608) 216-7000

CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 4,789 words.

Dated this 26th day of October, 2022.

Signed,

Electronically signed by Saša Johnen

_____

SAŠA JOHNEN
State Bar No. 1087065