

**FILED
11-29-2022
CLERK OF WISCONSIN
COURT OF APPEALS**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 4

Case No. 2022AP001422
Circuit Court Case No. 2022TR000411

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

TISHA LEE LOVE,
Defendant-Appellant.

ON APPEAL FROM THE CIRCUIT COURT FOR GRANT COUNTY,
THE HONORABLE ROBERT P. VANDEHEY, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

Lisa A. Riniker
District Attorney
State Bar No. 1036164
Grant County District Attorney's Office
130 West Maple Street
Lancaster, Wisconsin 53813
(608) 723-4237

TABLE OF CONTENTS

	PAGE
Cases Cited	2
Statutes Cited	2, 3
Statement on Publication	3
Argument	3-10
I. SPEEDING VIOLATIONS CONTRARY TO WISCONSIN STATUTES SECTION 346.57(4)(h) OCCUR ON HIGHWAYS WITH A 55 MILE PER HOUR LIMIT, REGARDLESS OF WHETHER THE SPEED LIMIT IS POSTED.	4-9
II. THE COURT DID NOT ERROR BY NOT GIVING A JURY INSTRUCTION REQUESTED BY THE DEFENDANT.	9-10

TABLE OF AUTHORITIES

CASES CITED

	Page
<i>State v. Popenhagen</i> , 309 Wis. 2d 601, 749 N.W.2d 611 (2008)	4
<i>Kalal v. Circuit Court for Dane Cnty.</i> , 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110	4
<i>State v. Hubbard</i> , 2008 WI 92, 313 Wis. 2d 1, 752 N.W.2d 839	9
<i>State v. Neumann</i> , 2013 WI 58, 348 Wis. 2d 455, 832 N.W.2d 560	9
<i>State v. Perkins</i> , 243 Wis. 2d 141, 626 N.W.2d 762 (2001)	9

STATUTES CITED

Wis. Stat. § 343.30(1n)	9
Wis. Stat. § 346.57	5, 8
Wis. Stat. § 346.57(4)	5
Wis. Stat. § 346.57(4)(d)	5
Wis. Stat. § 346.57(4)(gm)	9
Wis. Stat. § 346.57(4)(h)	4, 5, 6, 7, 8, 9
Wis. Stat. § 346.57(4)(k)	5, 6, 7
Wis. Stat. § 346.57(5)	7, 9
Wis. Stat. § 346.57(6)	6, 7

Wis. Stat. § 349.11	7, 8
Wis. Stat. § 349.11 (1) (a)	8
Wis. Stat. § 349.11 (1) (b)	8
Wis. Stat. § 349.11 (2) (a)	7, 8
Wis. Stat. § 349.11 (3) (a)	7, 8

STATEMENT ON ORAL ARGUMENT

The State does not request oral argument. The issue can be adequately addressed in the briefs.

STATEMENT ON PUBLICATION

The State does not request publication.

ARGUMENT

I. SPEEDING VIOLATIONS CONTRARY TO WISCONSIN STATUTES SECTION 346.57(4)(h) OCCUR ON HIGHWAYS WITH A 55 MILE PER HOUR LIMIT, REGARDLESS OF WHETHER THE SPEED LIMIT IS POSTED.

This appeal is one of statutory interpretation. "Statutory interpretation begins with the text of the statute." *State v. Popenhagen*, 309 Wis. 2d 601, 621, 749 N.W.2d 611 (2008). It is proper to interpret statutory language in context and how it compares to closely related statutes. *Id.* "Statutes are interpreted to give effect to each word, to avoid surplusage, to fulfill the objective of the statute, and to avoid absurd or unreasonable results. *Id.* The purpose of statutory interpretation is to "determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶44, 271 Wis. 2d 633, 681 N.W.2d 110.

Wisconsin Statute section 346.57(4)(h) is at issue in this matter and reads as follows:

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

It is important to look at this statute in context. Section 346.57 is entitled "Speed restrictions." Subsection (4) is entitled "Fixed Limits." Sec. 346.57(4) states,

"In addition to complying with the speed restrictions imposed by subs. (2)¹ and (3)², no person shall drive a vehicle at a speed in excess of the following limits unless different limits are indicated by official traffic signs.

Section 346.57(4) has thirteen subsections, each of which set speed limits for different types of highways and different types of situations. For example, section 346.57(4)(d) sets the speed limit at fifteen miles per hour in any alley. See sec. 346.57(4)(d). Section 346.57(4)(k) sets the speed limit at forty-five miles per hour on any highway designated as a rustic road. See sec. 346.57(4)(k). The statute at issue, section 346.57(4)(h), sets the speed

¹ Sec. 346.57(2) is entitled "Reasonable and Prudent Limit" and reads as follows: "No person shall drive a vehicle at the speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a vehicle shall be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and using due care."

² Sec. 346.57(3) is entitled "Conditions Requiring Reduced Speed" and reads as follows: "The operator of every vehicle shall, consistent with the requirements of sub. (2), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, when passing school children, highway construction or maintenance workers, sanitation workers, or other pedestrians, and when special hazard

limit at 55 miles per hour, in the absence of any other fixed limits or the posting of limits as required or authorized by law. Said another way, section 346.57(4)(h) sets the speed limit at 55 miles per hour UNLESS: (1) there is another fixed limit, OR (2) there is a different posting required or authorized by law.

As applied to the facts of this case, it is not disputed that Ms. Love was traveling on a highway with a 55 mile per hour limit. We then turn to the two clauses. Was there another fixed limit? Again, no party argues that some limit, other than 55, applied.

Was there a different posting required or authorized by law? Section 346.57(6) tells us when certain limits are required to be posted. It identifies certain subsections of section 346.57 which must comply. Those subsections include (4)(e) and (f), as well as (4)(g) and (k). Subsection (4)(h) is not referenced in section 346.57(6), and does not apply to the facts of this case.

When would that clause come into play? Had Ms. Love been traveling on a highway that was designated as a rustic road, there would have been a *different posting required* because section 346.57(4)(k) designates the speed limit at

exists with regard to other traffic or by reason of weather or highway

forty-five miles per hour and section 346.57(6) requires the speed limit to be posted in those areas.

It is Ms. Love's position that section 346.57(5) was violated. Section 346.57(5) is entitled "Zoned and Posted Limits" and reads as follows:

(5) 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.

The State breaks this statute down into three separate sections. First, "[i]n addition to complying with the speed restrictions imposed by subs. (2) and (3)." Subsections (2) and (3) are set forth in footnotes 1 and 2 of this brief and can be summarized to require reasonable and prudent speed as well as conditions requiring reduced speed.

The second element of section 346.57(5) is "no person shall drive a vehicle in excess of any speed limit established pursuant to law by state or local authorities." In order to address this, one must look at section 349.11 entitled "Authority to modify speed restrictions." That section prohibits the department and local authorities from declaring a speed limit in excess of the limits stated in s. 346.57(4)(h). See 349.11(2)(a) and 349.11(3)(a). Section

conditions."

349.11 has several other sections which do allow the department and local authorities to *reduce* the speed limits outlined in section 346.57. See section 349.11(1)(a), (... the department ... may ... determine and declare a reasonable and safe speed limit on the highway or part thereof in question. ...) and section 349.11(1)(b), (... the department ... may ... determine and declare a reasonable and safe speed limit on the highway or part thereof in question. ...).

Lastly, section 346.57(5) requires that an official sign is posted. This is consistent with section 349.11(5), which states "... the department and local authorities shall place and maintain upon all highways, where the speed limit is modified by them pursuant to this section, standard signs giving notice of such speed. ..."

An example of this would be a highway with a speed limit of 55 miles per hour pursuant to section 346.57(4)(h), that has a tight curve. Pursuant to section 349.11, if the department and local authorities determine that 55 miles per hour is too fast for that curve, they may reduce the speed to a "reasonable and safe speed." That new, lower, speed must be posted. If Ms. Love was caught exceeding *that lower* speed limit, she would then be violating section 346.57(5). That is not what the facts of this case are.

Pursuant to section 343.30(1n), a court shall suspend the operating privileges of a person exceeding the speed limit as established by sec. 346.57(4)(gm) or (h), by 25 miles per hour or more, for 15 days. See 343.30(1n). No such suspension exists with regard to a violation of section 346.57(5). Reading the statutes as proposed by Ms. Love leads to an absurd result; one where a potential suspension is available only on roads where no speed limit is posted. To believe that the legislature would create a more severe consequence when less notice is given, is absurd.

II. THE COURT DID NOT ERROR BY NOT GIVING A JURY INSTRUCTION REQUESTED BY THE DEFENDANT.

A court has broad discretion when determining which jury instructions will be given to a jury and that court's determination will not be reversed unless an erroneous exercise of discretion is shown. *State v. Hubbard*, 2008 WI 92, ¶23, 313 Wis. 2d 1, 752 N.W.2d 839. When a jury instruction "obfuscates the real issue or arguably caused the real controversy not to be fully tried" this court may reverse a conviction. *State v. Neumann*, 2013 WI 58, ¶139, 348 Wis. 2d 455, 832 N.W.2d 560 citing *State v. Perkins*, 243 Wis. 2d 141, ¶12, 626 N.W.2d 762 (2001).

Ms. Love believes that her proposed jury instruction related to her non-appearance should have been given by the

court. It cannot be argued that this particular instruction would serve to enlighten the jury on the issue to be tried, i.e., speeding. Furthermore, the court did advise the jury that Ms. Love's appearance was optional, albeit not during the reading of the jury instructions. See R. 45 at 4. (THE COURT: She is the defendant in this matter, and her appearance is optional.) With the broad discretion that courts have in determining jury instructions, it is the State's position that there is no erroneous exercise of discretion to be found.

Much time is spent by Ms. Love arguing whether or not a Circuit Court Judge has the power to order a defendant to personally appear at trial. While the argument is interesting, it is not necessary for this court to consider the arguments, because there was no such order made. R. 45 at 27 and 45. Whether this court agrees with the argument outlined by Circuit Court Judge VanDeHey as found in the record, or with the argument set forth in the brief submitted by Ms. Love, is of no consequence.

CONCLUSION

After considering the arguments and reasoning stated in this brief, this court should uphold the conviction for speeding in violation of Wisconsin Statutes Section 346.57(4)(h).

Dated this 23rd day of November, 2022.

Respectfully submitted,



Lisa A. Riniker
District Attorney
State Bar No. 1036164
Grant County, Wisconsin

District Attorney's Office
Grant County Courthouse
130 West Maple Street
Lancaster, WI 53813
(608) 723-4237

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. The length of the brief is 11 pages.

Dated this 23rd day of November, 2022.



Lisa A. Riniker
District Attorney
State Bar No. 1036164
Grant County, Wisconsin