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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 22AP1422

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

TISHA LEE LOVE,

Defendant-Appellant.

REPLY 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

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ARGUMENT

1. Ms. Love did not violate Wisconsin Statute section 346.57(4)(h) because there was a speed limit posted and that posting was authorized by law.

The text of Wis. Stat. 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.

The State argues that “limits as required or authorized by law” points to 346.57(6) which tells us when certain limits are required to be posted. That subsection identifies subsections (e), (f), (g), and (k) as sections where if the speed limit is not posted, then the fixed limits set in subsection (4) do not apply. The state argues that because (4)(h) is not one of the listed subsections, that this statute does not apply to this case. Ms. Love agrees that this statute does not apply to this case; not because (4)(h) is not listed, but rather because subsection (6) was never truly relevant to the statutory analysis in the first place.

Subsection (6) speaks only to certain limits which **must** be posted. It does not refer to speed limits which are **authorized** to be posted. Because (4)(h) specifically mentions limits which are “required or authorized by law,” the analysis cannot end with one statute which requires some speed limits to be posted. It must include all speed limits which are either required or authorized by law to be posted. Logically, this would be all speed limits in the state of Wisconsin, as if a speed limit is neither required nor authorized by law, it could not exist. Therefore, (4)(h) effectively says that if there would otherwise be no speed limit, the limit is 55 mph.

It is undisputed that there was a posted speed limit of 55 mph. That limit was authorized by law. Therefore, there was a posted speed limit authorized by law, and so (4)(h) can not apply.

2. Ms. Love violated Wisconsin Statute section 346.57(5) because she exceeded a speed limit established by state authority and which was indicated by official signs.

The text of 346.57(5) reads as follows:

ZONED AND POSTED LIMITS. 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 argues that “established pursuant to law” points to Wis. Stat. section 349.11, which gives authority to modify speed restrictions. That section, however, does not discuss establishing speed limits, only modifying them. The State conceded that section 346.57 establishes speed limits on page 6 of the Brief of Respondent, when they noted that “346.57(4) has thirteen subsections, each of which set speed limits....” Section 346.57(5) also establishes a speed limit pursuant to state authority, so this element is met.

The State also argues that “indicated by official signs” points to Wis. Stat. section 349.11(5), which says when modified speed limits must be posted. The State argues that because 349.11 gives the authority to modify speed limits, and because 349.11(5) says when those modifications must be posted on official signs, that because the speed limit was not modified under 349.11 it was not required to be posted, meaning Ms. Love did not violate 346.57(5).

In addition to the State’s argument again failing to address the fact that section 349.11 deals with modifications of speed limits rather than the establishment of speed limits, this argument also fails because it does not matter whether the speed limit was required to be posted. This element does not speak to whether official signs are **required** to be posted, but only whether there **actually is** a limit posted. There is no dispute that there was an official speed limit sign posted.

There was a speed limit established pursuant to law by state authority, that speed limit was indicated by official signs, and Ms. Love exceeded that limit. Therefore, Ms. Love violated 346.57(5).

3. The Circuit Court erred by refusing to give Ms. Love's proposed jury instruction regarding her appearance through her attorney.

The State has argued that the circuit court did not err because the court informed the jury that Ms. Love's appearance was optional. This is simply insufficient to mitigate the potential bias that the court was or should have been aware of. 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. Ms. Love had a constitutional and statutory right to appear through her attorney, which is a rule of law that is applicable to this case. The jury was not fully and fairly informed of this rule of law, and as a result, there is a reasonable possibility that the jury's decision was biased and contributed to the guilty verdict and should therefore be reversed. *See Coleman*.

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 8th day of December, 2022.

Respectfully Submitted,

Electronically signed by Saša Johnen

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