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SUPREME COURT

STATE OF WISCONSIN
SUPREME COURT
Case No. 2022AP1422-TR

State of Wisconsin,

Plaintiff-Respondent

v.

Tisha Love,

Defendant-Appellant-Petitioner

PETITION FOR REVIEW

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TABLE OF CONTENTS TO PETITION FOR REVIEW

TABLE OF AUTHORITIES

Page

Cases Cited

Statutes Cited

PETITION FOR REVIEW

Tisha Love, appellant, hereby petitions the Supreme Court of the State of Wisconsin, pursuant to Wis. Stat. § 808.10 and Wis. Stat. § (Rule) 809.62 to review the decision or order of the Court of Appeals, District IV, in State of Wisconsin v. Tisha Lee Love, case no. 22AP1422, filed on December 30, 2022.

ISSUE PRESENTED FOR REVIEW

1. On highways in Wisconsin with a posted speed limit of 55-mph, does the presence of a posted limit preclude tickets being issued under Wisconsin Statutes section 346.57(4)(h)?

The Court of Appeals held that speeding citations under Wis. Stat. § 346.57(4)(h) are proper even where there is a posted sign, by reasoning that the two clauses within that subsection were exceptions to the 55-mph speed limit which is set by that section, and that neither of the clauses applied to this case. (cite ¶ 14)

STATEMENT OF CRITERIA FOR REVIEW

While on the surface it may seem like a speeding case has no place in front of the highest court in the State, the issue in this case is one which affects every person, resident or not, who drives within the State of Wisconsin. This is a case, not about the facts of speeding, but about providing clarity on a law which affects the vast majority of citizens within the State, and many from outside. Drivers in Wisconsin have an interest in knowing the rules of the road, and this case would provide vital elucidation on when certain statutory penalties (namely, an automatic 15-day suspension for speeding excessively in certain zones under Wis. Stat. § 343.30(1n)) apply.

Without a ruling from the Supreme Court, this issue is almost certain to reoccur. While it is unclear whether there is an official policy in place for police officers on this matter, or if it is simply how their computers autofill the citations when they enter the speed limit, but the standard practice within the state is seemingly to issue citations under Wis. Stat. § 346.57(4)(h) (hereinafter, "(4)(h)") whenever there is an instance of speeding on a road with a speed limit of 55-mph, regardless of whether a sign is posted. It is also true that most roads with a speed limit of 55-mph have a posted sign. This means that this issue could potentially reoccur most of the times when a citation for speeding is issued in a 55-mph zone in the State of Wisconsin.

Further, there are no rulings directly on point on this matter. While there is an appellate court decision in this case, that decision is unpublished, and therefore holds no precedential value. A Supreme Court ruling on this matter would give proper guidance to circuit courts who will be dealing with these tickets for the foreseeable future, improving the judicial economy across the entire state.

STATEMENT OF FACTS AND 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.

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 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. 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.

Ms. Love filed her appellate brief on October 26, 2022. The State filed a response on November 29, 2022. On December 30, 2022, the Court of Appeals, District IV, affirmed the judgment of the trial court.

ARGUMENT

1. Ms. Love's reading of Wis. Stat. § 346.57(4)(h) is clear, reasonable, and unambiguous on its face, and therefore the courts should apply the plain and clear meaning of the statute.

The issue in this case is one of statutory interpretation. Specifically, Ms. Love contends that Wis. Stat. § 346.57(4)(h) is inapplicable to highways with a posted speed limit.

Statutory interpretation presents a question of law which is subject to *de novo* review. State v. Stewart, 2018 WI App 41, ¶18, 383 Wis. 2d 546, 559 (2018). In interpreting statutes, courts primarily focus on the statutory language. Id. Courts assume that the statutory language expresses the legislature's intent. Id. It has been well-settled that when statutory language manifests a clear meaning, the court's inquiry ceases and the court will apply that meaning. Id. *See also*, Custodian of Records v. State (In re Doe), 272 Wis. 2d 208, 220 (2004); State ex rel. Kalal v. Circuit Court for Dane Cty. (In re Criminal Complaint), 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124 (2004).

Only when a statute is ambiguous do courts apply rules of statutory construction or look to extrinsic evidence of the legislature's intent. Stewart, at ¶ 18. Rules of statutory construction are inapplicable if the language of the statute has a plain and reasonable meaning on its face. Id.

The statute in question, (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.

Ms. Love's reading of this statute is clear, unambiguous, and free of absurdities. Her reading of the statute would have it say, in essence:

> "In the absence of: (a) any other fixed limit, or (b) the posting of limits as required or authorized by law, no person shall drive a vehicle at a speed in excess of 55 miles per hour."

The Appellate Court held, correctly, that the phrase "in the absence of any other fixed limits" is irrelevant to this discussion, as no party contends there was any other fixed limit at any point. However, the Appellate Court incorrectly mischaracterized the phrase as an *exception* to the speed limit of 55-mph, rather than a *requirement* for when the 55-mph limit applies, and went on to disregard the other requirement, that there not be a posted limit, as another exception. This is simply not a reasonable reading of the statute.

We know these are not exceptions because the language of Wis. Stat. § 346.57(4) already set an exception for other posted limits, and adding a second exception would be redundant. Further, every subsection under (4) sets out requirements for each fixed speed limit to apply. Read in context then, the two clauses described as exceptions by the Appellate Court are actually requirements, meaning where there is no other fixed limit or where there is no posting of a limit required or authorized by law, the speed limit, in these limited areas, is 55 miles per hour.

Both the State and the Appellate Court have argued that this interpretation leads to an absurdity. This is simply not the case. The alleged absurdity is that speeders on roads with notice are punished more severely than speeders on roads without notice. But that is a mischaracterization. Instead, the legislature appears to be punishing speeders more severely on roads *where they should have heightened awareness and be more cautious*. Roads without a posted speed limit tend to be country roads, far from emergency assistance, with poor or nonexistent lighting and road markings.

Ms. Love has supplied a meaning of the statute which is plain and reasonable on its face, and therefore the rules of statutory construction are inapplicable, and the clear meaning of the statute should be applied. *See*, Stewart; Kalal.

2. The State's reading of Wis. Stat. § 346.57(4)(h) is unreasonable and does not give effect to every word of the statute.

In cases of statutory interpretation, courts must interpret statutory language to give reasonable effect to every word and avoid surplusage. Marathon Cty. v. D.K. (In re D.K.), 390 Wis. 2d 50, 75, 937 N.W.2d 901, 913 (2020); Kalal, at ¶ 46. The State's and Appellate Court's readings of (4)(h) do not give effect to every word. Specifically, both of them ignored the phrase "or authorized" when discussing the clause "the posting of limits as required or authorized by law."

This is a large oversight and unreasonably changes the meaning of the statute. The State and Appellate Court would have you look only to speed limit signs which are *required* to be posted under Wis. Stat. § 346.57(6), but those are not the only speed limit signs contemplated by (4)(h). Rather, (4)(h) specifically states the posting of speed limits must be "required *or authorized* by law." (emphasis added). Wisconsin Statute § 349.065 incorporates the Manual on Uniform Traffic Control Devices (MUTCD) into the Wisconsin Statutes. Section 2B.13 of the MUTCD authorizes local authorities to establish speed limits and post speed limit signs if they fulfill the engineering study requirement. There has been no argument that Grant County officials are not authorized to establish speed limits, or were not authorized to post speed limits on the highway in question at the time. Therefore, the speed limit of 55-mph was authorized by law, and thus the phrase "the posting of limits as required or authorized by law" is directly relevant to this case. Further, it should be obvious that every speed limit is either required or authorized by law, or else it would not be a speed limit, but a mere suggestion.

When the phrase "or authorized" is included, the State's entire reading of the statute necessarily fails. There was not an absence of a posted limit as required or authorized by law. There was a speed limit, which was posted, and which was authorized by law to be posted. Therefore, (4)(h) cannot apply. The proper citation would be issued under Wis. Stat. § 346.57(5). A statute is only ambiguous if it is capable of being understood by a reasonably well-informed person in either of two senses. Reyes v. Greatway Ins. Co., 227 Wis. 2d 357, 365 (1999). The only way to reach the State's interpretation is to fail to give effect to every word of the statute. When properly read, the statute cannot be understood in either of two senses, it simply must mean that there must not be a speed limit sign posted.

This is further evinced by the jury instructions for the respective statutory violations. Wisconsin Statute § 346.57(4)(h)'s jury instruction ("JI 2677") is entitled "SPEEDING: EXCEEDING 55 MILES PER HOUR **IN THE ABSENCE OF POSTED LIMITS** UNDER § 346.57(4)(h) OR AN ORDINANCE ADOPTING § 346.57(4)(h)." (Emphasis added.) In contrast, the jury instruction for Wis. Stat. § 346.57(5) ("JI 2678") is entitled "SPEEDING: **EXCEEDING POSTED LIMITS** UNDER § 346.57(5) OR AN ORDINANCE ADOPTING § 346.57(5)." (Emphasis added). The title of JI 2677 indicates that there must not be a posted limit, and both the title and elements of JI 2678 indicate that there must be a posted limit. JI 2678 takes this a step further, and actually requires a sign be posted as an element of the offense. This indicates that one of the key differences between Wis. Stat. § 346.57(4)(h) and (5) are that one requires a posted limit and the other does not.

The only reading of Wis. Stat. § 346.57(4)(h) which gives reasonable effect to every word is Ms. Love's.

CONCLUSION

For the reasons stated in this brief, the judgment of the court should be reversed, and this action should be remanded 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 27th day of January, 2023.

Respectfully Submitted,

Electronically signed by Saša Johnen

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CERTIFICATION

I hereby certify that this petition conforms to the rules contained in Wis. Stat. § 809.62(4)(b) for a petition produced with a proportional serif font. The length of this petition is 2,150 words.

Electronically signed by Saša Johnen

_____

SAŠA JOHNEN,
Attorney for the Defendant-Appellant-Petitioner

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.62(4)(b)

I hereby certify that I have submitted an electronic copy of this petition for review, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.62(4)(b).

I further certify that this electronic petition is identical in content and format to the printed form of the petition filed as of this date.

A copy of this certificate has been served with the paper copies of this petition filed with the court and served on all opposing parties.

Dated this 27th day of January, 2023.

Electronically signed by Saša Johnen

_____

SAŠA JOHNEN,
Attorney for the Defendant-Appellant-Petitioner