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STATE OF WISCONSIN
COURT OF APPEALS

District II

Case No. 2023 AP 1183

CITY OF SHEBOYGAN FALLS

Plaintiff-Respondent,

v.

WESLEY MELTON,

Defendant-Appellant.

On Appeal from the Circuit Court of Sheboygan County
Case No. 2022 CV 556
The Honorable Daniel J. Borowski

**PLAINTIFF-RESPONDENT’S RESPONSE TO
DEFENDANT-APPELLANT’S BRIEF-IN-CHIEF**

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Counsel does not request oral argument. Counsel does not request publication. Pursuant to Wis. Stat. § 809.23(4)(b), an opinion may not be published when it is a decision by one court of appeals judge under Wis. Stat. § 752.31(2) and (3).

ARGUMENT

Defendant-Appellant, Wesley Melton (“Melton”), raises one issue for review: did the testimony and evidence presented at the municipal court trial support the municipal court’s findings of fact and decision to convict Melton of failing to stop for a school bus contrary to Wis. Stat. § 346.48.

For the reasons stated below, the testimony and evidence presented at the municipal court trial supports the municipal court’s findings of fact and decision to convict Melton of failing to stop for a school bus contrary to Wis. Stat. § 346.48.

A. *Standard of Review*

Melton appealed the municipal court’s decision to the circuit court pursuant to Wis. Stat. § 800.14(5). An appeal under Wis. Stat. § 800.14(5) “shall be based upon a review of the proceedings in the municipal court.” “An appeal ... based upon a review of a transcript

of the proceedings under Wis. Stat. § 800.14(5), does not permit the circuit court to review the record *de novo* and to substitute its judgment for that of the municipal court.” *Village of Williams Bay v. Metzl*, 124 Wis.2d 356, 361, 369 N.W.2d 186 (Ct.App.1985). Review under Wis. Stat. § 800.14(5) is limited “to an examination of the transcript to determine whether the evidence supports the municipal court decision.” *Id.* at 361.

The court of appeals reviews the decision of the municipal court and not that of the circuit court. *Id.* When reviewing the municipal court’s decision, “the court of appeals applies the same standard of review as the circuit court.” *Id.* at 362. Accordingly, the court of appeals upholds the municipal court’s factual findings unless they are clearly erroneous, and the court will “search the record for facts to support the municipal court’s findings of fact.” *Id.* at 361-362.

B. *Governing Statute*

A driver’s obligation to stop for a school bus which is displaying flashing red warning lights is governed by Wis. Stat. § 346.48. Section 346.48, Stats. provides in relevant part:

- (1) The operator of a vehicle which approaches from the front or rear any school bus which has stopped on a street or highway when the bus is equipped according to

s. 347.25 (2) and when it is displaying flashing red warning lights, shall stop the vehicle not less than 20 feet from the bus and shall remain stopped until the bus resumes motion or the operator extinguishes the flashing red warning lights. The operator of any school bus which approaches from the front or rear any school bus which has stopped and is displaying flashing red warning lights shall display its flashing red lights while stopped. This subsection does not apply to operators of vehicles proceeding in the opposite direction on a divided highway.

(2)

(a)

1. Except as provided in par. (b), the operator of a school bus equipped with only flashing red warning lights as specified in s. 347.25 (2) shall actuate the lights at least 100 feet before stopping to load or unload pupils or other authorized passengers, and shall not extinguish the lights until loading or unloading is completed and persons who must cross the highway are safely across.

2. Except as provided in par. (b), the operator of a school bus equipped with flashing red and amber warning lights as specified in s. 347.25 (2) shall do all of the following when stopping to load or unload pupils or other authorized passengers:

a. Actuate the flashing amber warning lights at least 300 feet before stopping in a 45 miles per hour or greater speed zone or at least 100 feet before stopping in a less than 45 mile per hour speed zone.

b. At the point of loading or unloading, bring the bus to a stop, extinguish the flashing amber warning lights, and actuate the flashing red warning lights.

C. *The municipal court record supports the municipal court's findings of fact and decision to convict Melton of failing to stop for a school bus contrary to Wis. Stat. § 346.48.*

The testimony and evidence presented at the municipal court trial supports the municipal court's findings of fact and decision to

convict Melton of failing to stop for a school bus.

At the municipal court trial, testimony was provided by Patrick Czubkowski (“Czubkowski”), who, for 21 years, has operated a school bus for the City of Sheboygan Falls School District in the City of Sheboygan Falls. (R. 10, 5:25 – 5:42). Czubkowski testified that he was operating a school bus in the City of Sheboygan Falls on March 18, 2022, at approximately 3:25 p.m. at which time Melton’s vehicle passed his school bus on the left side while the bus’s red flashing lights were illuminated. *Id.* at 5:45 – 6:15. Following this observation, Czubkowski filed a written complaint with the City of Sheboygan Falls police department in which he explained he had extended the bus’s stop arm and signal to discharge a student when he saw in his left rearview mirror a vehicle passing his bus on the left side that ultimately sped away. *Id.* at 6:17 – 7:06. Czubkowski’s written complaint was received into evidence by the municipal court. (R. 8; R-App. 2).

Czubkowski also provided an incident report to the City of Sheboygan Falls police department in which Czubkowski explained that he activated the amber warning lights for approximately 300 feet as he approached his stop and, once stopped, the red flashing lights were activated. (R. 10, 7:27 – 10:00). Czubkowski testified that

Melton's vehicle was approximately 50 feet behind him at the time the red warning lights were activated and that, based on his training and experience, Melton had enough time to stop at least 20 feet behind the bus. *Id.* Czubkowski's incident report was received into evidence by the municipal court. (R. 8; R-App. 3).

Lastly, Czubkowski testified about a picture that was taken from his bus showing Melton's vehicle passing the bus on the left side as the bus's stop arm was extended. (R.10, 10:05 – 10:45). This picture was received into evidence by the municipal court. (R. 8; R-App. 4).

During cross-examination, Czubkowski explained the mechanism for activating the warning lights; specifically, Czubkowski explained there is a switch that he flips to activate the amber lights as he approaches his stop and then, when he opens the bus's door, it triggers the red lights to activate. (R.10, 11:45 – 12:00). Czubkowski also advised he did an inspection of the bus earlier that day and everything was working properly. *Id.* at 12:05 – 12:11. Further, Czubkowski testified there were vehicles behind Melton's vehicle that were able to stop in time. *Id.* at 14:20 – 14:29.

Officer Jade Sand ("Sand") of the City of Sheboygan Falls police department testified and explained that, following receipt of

the complaint, incident report, and a conversation with Czubkowski, she spoke with Melton. *Id.* at 21:53 – 22:00. Sand testified that Melton advised he did not see the bus's stop sign and therefore could not stop in time. *Id.* at 26:10 – 26:50. Ultimately, Sand issued Melton a citation for failing to stop for a school bus.

Melton testified that the posted speed limit on this stretch of road was 35 miles per hour. *Id.* at 30:25 – 30:30. He testified the bus was traveling below the posted speed limit and so he made the decision to pass the bus; he claimed that no amber warning lights were displayed at this time. *Id.* at 30:30 – 30:45. Melton stated as he was passing the bus, the stop arm extended simultaneously. *Id.* at 30:45 – 31:02. This version of events from Melton is inconsistent with the amber lights/red lights mechanism described by Czubkowski. *Id.* at 11:45 – 12:00. Melton testified that the statute required Czubkowski to activate his amber warning lights at least 300 feet before the stop. *Id.* at 34:45 – 34:55. Melton also references the 300 feet requirement throughout his appeal, but Melton is incorrect on this issue. Wis. Stat. § 346.48(2)(a)2.a. requires a bus driver to activate his amber warning lights at least 100 feet before stopping in a less than 45 mile per hour speed zone; Melton affirmed the speed limit on this road was 35 miles per hour. (R.10, 30:25 –

30:30).

Following the evidentiary portion of the trial, the municipal court judge found Melton guilty of failing to stop for a school bus. *Id.* at 45:30 – 45:36. The municipal court judge weighed his decision heavily upon the picture that was received into evidence. (R. 8; R-App. 4). The judge reasoned “the picture tells me, as your car is approaching, going around that bus, that stop sign is out and that light is illuminated and you stated as you passed, the lights were on.” (R.10, 45:11 – 45:23).

The court is required to “search the record for facts to support the municipal court’s findings of fact.” *Metzl* at 361-362. The court will uphold the municipal court’s factual findings unless they are clearly erroneous. *Id.* Based on the testimony of Czubkowski, Sand, and Melton and the exhibits introduced into evidence and part of the court record, there are clearly facts to support the municipal court’s findings of fact. As such, this court should uphold the municipal court’s factual findings.

CONCLUSION

For the foregoing reasons, the City of Sheboygan Falls requests that this court uphold the factual findings of the municipal court and affirm the judgment of conviction.

Dated this 5th day of December, 2023.

Electronically signed by Oliver M. Bauer

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CERTIFICATE OF FORM AND LENGTH

I hereby certify that this brief and appendix complies with the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief produced with a 13-point proportionately spaced serif font. The length of this brief is 1,585 words.

Dated: December 5, 2023.

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CERTIFICATE OF ATTORNEY

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) a copy of any unpublished opinion cited under Wis. Stat. §§ 809.23(3)(a) or (b), if any; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order of judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portion of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated: December 5, 2023.

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