STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appeal No. 2024AP001104

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

DEVRON MICHAEL GREEN,

Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT

ON APPEAL FROM A FINAL ORDER ENTERED IN
CIRCUIT COURT CASE NUMBERS 23TR7531, 23TR7816, AND 24TR2326
ON MAY 22, 2024 IN THE CIRCUIT COURT FOR WINNEBAGO COUNTY,
THE HON. TERESA BASILIERE PRESIDING

Respectfully submitted,

DEVRON MICHAEL GREEN,
Defendant-Appellant

SAŚA JOHNEN, SBN: 1087065
Attorney for the Defendant-Appellant
Johnen & Holevoet Law Offices, LLC
44 E Mifflin Street, Suite 905
Madison, WI 53703
(608) 229-1630

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES

1. UNDER WIS. STAT. § 343.301(1G)(A), DOES A COURT HAVE THE AUTHORITY TO IMPOSE AN IGNITION INTERLOCK DEVICE WHEN MR. GREEN'S BAC WAS UNDER .15, HE HAD NO PRIOR CONVICTIONS, AND THERE WAS NEVER A DETERMINATION OF AN IMPROPER REFUSAL?

THE COURT ANSWERED YES

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 August 6, 2023, Mr. Green was cited for operating with a restricted controlled substance, operating under the influence (OWI), and refusing to submit to a chemical test. After completing a blood test, Mr. Green's blood showed an alcohol level of .01, and a low level of THC and a cocaine metabolite. Pre-trial Conference Tr. 4:25-5:1. At the pre-trial conference, the parties stipulated for Mr. Green to plead to the OWI 1st charge and receive a six-month driver's license revocation and dismiss both the refusal and operating with a restricted controlled substance charges. *Id.* at 2:15-20. The parties were free to argue regarding the installation of the ignition interlock device. *Id.* at 2:16-17.

The State claimed that the basis for imposing the ignition interlock device was due to Mr. Green refusing to submit to a chemical test, despite the fact the refusal charge was dismissed as agreed by the parties. *Id.* at 4:5-6. The trial court never determined if Mr. Green had improperly refused to take the chemical test, however, Judge Basiliere still found that there *had been* a refusal, but it was dismissed as part of the plea agreement between the parties. *Id* at 5:18-19. Based on this, Judge Basiliere imposed a 12-month ignition interlock device order on Mr. Green. *Id* at 6:6-7.

ARGUMENT

I. WIS. STAT. § 343.301(1)(a) IS UNAMBIGUOUS AND THE COURT WENT AGAINST THE PLAIN MEANING OF THE STATUTE BY REQUIRING MR. GREEN TO INSTALL AN IGNITION INTERLOCK DEVICE.

The trial court had no authority under Wis. Stat. § 343.301(1g)(a) to sentence Mr. Green to a 12-month ignition interlock device. Under § 343.301 (1g)(a) a court can only enter an order for the installation of an ignition interlock device ("IID") in two situations. First, the court shall enter an IID order if there was an improper refusal to take a test under § 303.305. Wis. Stat. § 343.301(1g)(a)(1). Second, the court shall enter an IID order if there is a violation of § 346.63(1) or (2), § 940.09(1), or § 940.25 and there was either an alcohol concentration of .15 or more at the time of the offense or there were one or more prior convictions, suspensions, or revocations. Wis. Stat. § 343.301(1g)(a)(2).

The Court must conduct statutory interpretation to determine if the lower court had the authority to impose a 12-month ignition interlock device order on Mr. Green. To interpret § 343.301(1g)(a), the Court must first look at intrinsic evidence. If, after looking at the intrinsic evidence the statute is unambiguous, yielding to plain and clear statutory meaning, the analysis ends, and the plain meaning is adopted. *State ex rel. Kalal v. Cir. Ct. for Dane County*, 2004 WI 58, ¶ 46, 271 Wis. 2d 633, 681 N.W.2d 110. Intrinsic evidence includes the words, scope, context, purpose and plain meaning that are apparent from the text of the statute itself. *Kalal* at ¶ 46. Statutory language is given its common, ordinary, and accepted meaning and interpreted to avoid absurd or unreasonable results. *Id* at ¶¶ 46-53.

The text of § 343.301(1g)(a) is unambiguous and yields a plain and clear meaning. The trial court did not have the authority to impose an IID device order on Mr. Green and its order should be reversed.

a. THE COURT NEVER FOUND THAT MR. GREEN IMPROPERLY REFUSED A CHEMCIAL TEST, THEREFORE IT CANNOT IMPOSE AN IGNITION INTERLOCK DEVICE.

The trial court never found that Mr. Green improperly refused an evidentiary test. Thus, the trial court cannot impose an IID under § 343.301(1g)(a)1. §343.301(1g)(a)1 plainly requires there be an improper refusal to submit to an evidentiary test under § 343.305 for a court to have the authority to impose an ignition interlock device order. In Mr. Green's case, the trial court never made a determination that he improperly refused testing pursuant to § 343.301(1g)(a)1. The refusal charge was dismissed outright, as the parties stipulated, without any further

inquiry into whether Mr. Green improperly refused the chemical test. There were minimal to no facts put on the record at the pre-trial conference regarding the issue of whether there was an improper refusal. Without a proper determination that Mr. Green refused testing, there cannot be a requirement for an ignition interlock device. Because the trial court never made a formal determination on whether Mr. Green improperly refused an evidentiary test under § 343.305, the court lacked authority to impose an IID order on him under § 343.301(1g)(a)1.

b. MR. GREEN DID NOT MEET THE REQUIREMENTS UNDER WIS. STAT. § 343.301(1g)(a)2 FOR AN IGNITION INTERLOCK DEVICE TO BE IMPOSED.

Under § 343.301(1g)(a)2, the trial court improperly imposed an ignition interlock device order on Mr. Green as he did not fit the criteria listed in either of the two subsections. § 343.301(1g)(a)2. requires an individual to violate § 346.63 (1) or (2), § 940.09(1), or § 940.25. In Mr. Green's case, the parties stipulated that Mr. Green violated § 346.63(1). § 343.301(1g)(a)2.a. then requires an individual to have an alcohol concentration of .15 or more at the time of the offense or (b) have one or more prior convictions, suspensions, or revocations. Both subsections are unambiguous, and therefore do not give the court authority to impose a 12-month ignition interlock device order on Mr. Green.

The subsections of § 343.301(1g)(a)2. are unambiguous and their plain meanings should be adopted and applied to Mr. Green's case. The purpose of § 343.301(1g)(a)2.a. is clear from its text that ignition interlock device orders were meant to be imposed in cases where the individual has an extremely high alcohol

concentration at the time of their offense. The text shows that ignition interlock devices are meant to address drunk driving. An alcohol concentration that is almost double the legal limit is greater evidence that the person may have an alcohol problem and therefore requires an ignition interlock device order.

The stated purpose of the ignition interlock statute does not reach a case such as Mr. Green's. Mr. Green's alcohol concentration was found to be .01 at the time of his offense, and there was a low level of other controlled substances. An alcohol concentration of .01 is not indicative of excessive alcohol consumption whatsoever. The ignition interlock device is not designed to address or measure THC or cocaine levels. Subsection a. does not apply in Mr. Green's case, as it requires an alcohol concentration of .15 or more. Therefore, an ignition interlock device order cannot be imposed on Mr. Green.

Additionally, § 343.301(1g)(a)2.b. plainly requires an individual to have one or more prior convictions, suspensions, or revocations. The purpose is once again clear from the text that an ignition interlock device is to be imposed in situations where an individual is a repetitive or habitual drunk driver. This shows that ignition interlock devices are not meant to be imposed for every person alleged to have committed an OWI offense for the first time. Mr. Green does not have any prior convictions, suspensions or revocations, so subsection b. does not apply. The purpose of subsection b. is not accomplished by imposing an ignition interlock device on an individual with no history of drunk driving. Both subsections yield

plain and clear meanings which do not give the court authority to impose an ignition interlock device order on Mr. Green.

Further, if the Court finds that § 343.301(1g)(a)2. is ambiguous, case law reveals the legislative intent and purpose of the refusal statute. In *State v. Brooks*, the Supreme Court of Wisconsin found that the purpose of the refusal statute is to penalize drunk drivers by finding them guilty of an OWI charge. *State v. Brooks*, 113 Wis. 2d 347, 355, 335 N.W.2d 354 (1983). The purpose is to obtain evidence in order to prosecute drunk drivers and deter others from doing the same. *Id.* at 355 (citing *State v. Neitzel*, 95 Wis. 2d 191, 203, 289 N.W.2d 828 (1980)).

CONCLUSION

Based on the above, judgment of the trial court should be reversed, and this action should be remanded to the Circuit Court with instructions to rescind the ignition interlock device order.

Dated September 10, 2024.

Respectfully submitted,

Electronically signed by Saša Johnen

SAŚA JOHNEN, SBN: 1087065
Attorney for the Defendant-Appellant
Johnen & Holevoet Law Offices, LLC
44 E Mifflin Street, Suite 905
Madison, WI 53703
(608) 229-1630

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 10 pages, 1,420 words.

Dated this 10th Day of September, 2024.

Respectfully submitted,

Electronically signed by Saša Johnen

SAŚA JOHNEN, SBN: 1087065
Attorney for the Defendant-Appellant
Johnen & Holevoet Law Offices, LLC
44 E Mifflin Street, Suite 905
Madison, WI 53703
(608) 229-1630