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STATE OF WISCONSIN
COURT OF APPEALS, DISTRICT IV
CASE NO. 2025AP300

COUNTY OF WAUSHARA,

Plaintiff-Respondent

vs.

BEATRICE BRUNING

Defendant-Appellant

BRIEF OF PLAINTIFF-RESPONDENT

APPEAL FROM JUDGMENT OF CONVICTION AND ORDER DENYING
MOTION FOR DE NOVO REVIEW IN CIRCUIT COURT FOR
WAUSHARA COUNTY, THE HONORABLE SCOTT C. BLADER,
PRESIDING, CASE NUMBER 2024TR1316

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STATEMENT OF THE ISSUES

1. Did the Circuit Court err in denying the request for de novo review based upon the contention that the Circuit Court Commissioner lacked the authority to conduct a contested TR trial?

The Circuit Court did not address Bruning's contention, rather it denied the request for de novo review based upon the grounds of untimeliness.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent does not request either oral argument or publication.

STATEMENT OF FACTS

Beatrice Bruning received two citations stemming from an incident on June 24, 2024: Failure to Keep Vehicle Under Control and Operating Left of Center. R1, R14. The case proceeded to a court trial on October 22, 2024 before Circuit Court Commissioner Joan Olson. R14.

The County called Deputy Lance Nelson, who testified that he had almost ten years of experience with the Sheriff's Department. R14:4. He testified that on June 24, 2024, he located an SUV-type vehicle off the road on County Road G near Norwegian Lane in the Town of Mount Morris.

R14:4-5. He testified that the vehicle was in the ditch on the right hand side of the road. *Id.* He noted that the vehicle was unoccupied. *Id.*

Deputy Nelson testified that eventually Bruning arrived on the scene and stated that she had swerved to miss a deer at around 1:00 a.m. and ended up putting her vehicle in the ditch. R14:5-6. Deputy Nelson testified that based on his observation of the tire tracks at the scene, he believed that Bruning was heading south on County Highway G. R14:6. He noted that at Norwegian Lane there was a 90 degree curve. *Id.* Per Deputy Nelson, tire tracks showed that she went across the center line, hit the left shoulder, came back onto the roadway, and overcorrected. *Id.* Deputy Nelson noted that there were skid marks showing the vehicle rotated 180 degrees and went into the left ditch. *Id.* Deputy Nelson noted that the vehicle was facing the opposite direction that it had been traveling in. *Id.* Deputy Nelson estimated the vehicle was traveling 40 to 45 miles an hour. R14:7.

On cross-examination, Bruning asked Deputy Nelson about his awareness concerning the sudden emergency doctrine. R14:8. Deputy Nelson noted that in the past he had encountered numerous deer in the road and had not yet left the roadway. R14:10. On re-direct, he testified that based on his experience with that curve, the safe speed to travel would probably be 30 miles an hour. R14:17.

Bruning did not testify, but rather read a statement in which she argued that the sudden emergency doctrine applied because of her statement that she swerved to avoid a collision with a deer. R14:21-22. The Commissioner opted to research the cases that Bruning cited before rendering a decision. R14:24.

The Commissioner later, in a written decision on October 29, 2024, rejected the use of the sudden emergency doctrine, noting that there was sufficient evidence in the record to show that Bruning was driving at a speed in excess of what a “reasonable driver of ordinary prudence would have operated her vehicle when considering traveling at night on a country road in an area likely to encounter deer and other wildlife.” R7. The commissioner found Bruning guilty of Failure to Keep Vehicle Under Control. *Id.*

The Commissioner dismissed the Operating Left of Center Citation as the Commissioner viewed it as part of the events constituting the other citation. *Id.*

Bruning first appealed the decision to the Court of Appeals. R8. This appeal was dismissed due to lack of jurisdiction. R24. She then appealed to the Circuit Court. R25. The Circuit Court denied the request, noting the amount of time that had passed since the Commissioner’s ruling. R28. Bruning appeals.

ARGUMENT

I. THE COURT ERRED IN DENYING THE REQUEST FOR DE NOVO REVIEW

The County concedes that the Court erred in failing to grant de novo review of the ruling by the Court Commissioner by having a new trial. The County would concede that, upon its review of Wis. Stat. Sec. 757.69, that the powers of the Circuit Court Commissioner do not include presiding over contested traffic and county ordinance trials. The Statute notes that as related to traffic and county ordinance matters, the

Commissioner has the power to conduct initial appearances, “receive noncontested pleas, order revocation or suspension of operating privileges and impose monetary penalties according to a schedule adopted by a majority of the judges of the courts of record within the county, and refer applicable cases to court for enforcement for nonpayment.” Wis. Stat. Sec. 757.69(1)(c).

As it relates to the court’s order regarding the untimeliness of the request, the State would note that neither of the statutes cited by the court reference a particular timeline for filing a request for de novo review. As such, the County concedes error.

II. THE REMEDY FOR THE COURT’S ERROR IS TO REMAND FOR A NEW TRIAL BEFORE THE CIRCUIT COURT

While the County is unsure of what exactly Bruning is requesting, it is the County’s position that the remedy for the error would be for the Court of Appeals to remand to the Circuit Court for a new trial on the traffic forfeiture. This would in effect be a de novo review of the Court Commissioner’s ruling, as a hearing for de novo review properly requested under Wis. Stat. Sec. 757.69(8) is entitled to a hearing that would be conducted as if the original hearing had not taken place. See *Nehls v. Nehls*, 2012 WI App 85, ¶11, 343 Wis. 2d 499, 819 N.W. 2d 335.¹

While the County believes that its concession that Bruning is entitled to a new trial before the Circuit Court renders her other arguments moot,

¹ The County would note that upon remand it intends to request that the court reopen the accompanying citation for operating left of center that the Court Commissioner dismissed.

the County will address Bruning's arguments concerning the sufficiency of the evidence taken at the original hearing. In reaching a determination if the evidence presented was sufficient, if "the evidence presented could have convinced a trier of fact, acting reasonably, that the appropriate burden of proof had been met," the finding of guilt should be upheld. See *City of Milwaukee v. Wilson*, 96 Wis. 2d 11, 21, 291 N.W. 2d 452 (1980).

The County was required to prove the violation by evidence that was clear, satisfactory, and convincing. See Wis. Stat. Sec. 345.45. "When more than one inference can reasonably be drawn from the evidence, the inference which supports the trier of fact's verdict must be the one followed on review unless the evidence is incredible as a matter of law." *State v. Below*, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95 (internal citations omitted). Whether the evidence presented at trial is sufficient to support a conviction is a question of law that the appellate court shall review de novo. See *State v. Booker*, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676.

While the County believes this analysis is unnecessary given the County's concession, the County would note that the evidence presented at the trial was sufficient to sustain a guilty verdict on the count charged. The County needed to prove that Bruning was driving at a speed greater than that which was reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. See Wis. Stat. Sec. 346.57. The evidence presented showed that based on the Deputy's observation, Bruning's vehicle crossed the center line while negotiating a curve, hit the shoulder, came back onto the roadway, overcorrected, spun 180 degrees, and ended up in the ditch on the other side of the road facing the opposite direction that she had been traveling

in. R14:6. The deputy estimated that Bruning was traveling 10 to 15 miles an hour greater than the safe speed to travel. R14:7, 17. While Bruning has frequently alluded to her contention that she swerved to avoid a deer, it is not reasonable to argue that a deer crossing the road at night in a rural Wisconsin County is an unforeseen circumstance, and it is further not reasonable to argue that losing control of one's vehicle and ending up in a ditch is a reasonable response to such a situation.

CONCLUSION

Based on the County's concession, the case should be remanded to the Circuit Court for a trial to be conducted on the merits of the citation. Bruning's other arguments are moot.

Respectfully submitted,

Dated this 14th day of June, 2025,

Electronically signed by Matthew R. Leusink

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RULE 809.19(8)d) CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Rule 809.19(8)(b),(bm), and (c) for a brief. The length of this brief is 1737 words.

Electronically signed by Matthew R. Leusink

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