

STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT 2

<u>City of Sheboygan Falls</u>) (party designation) <u>Plaintiff-Respondent</u>) -vs-) <u>Wesley Melton</u> (party designation) <u>Defendant-Appellant</u>)	Brief Cover Case No. <u>2023AP001183</u>
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ON APPEAL FROM THE CIRCUIT COURT FOR Sheboygan COUNTY,
THE HONORABLE (Name of Judge) Daniel J. Borowski, PRESIDING

BRIEF OF APPELLANT *

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STATE OF WISCONSIN – WISCONSIN COURT OF APPEALS
DISTRICT II

City of Sheboygan Falls

Plaintiff-Respondent

v.

Appeal No. 2023AP001183

Wesley Scot Melton

Defendant-Appellant

November 7, 2023

BRIEF OF APPELLANT

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Statement of Issues:

Wisconsin Statutes Chapter 346.09; 346.48; 901.03.

The Municipal Court found the Appellant in violation of Wisconsin Statute 346.48(1), stating that although the driver of the school bus did not activate his flashing amber lights until the Appellant had begun to legally pass the bus, still the Appellant was required to stop. This stop would have then been in a lane of oncoming traffic, which would have violated Wisconsin Statutes and created public danger. The Municipal Court ignored Wisconsin Statutes mandating school bus drivers activate the warning lights on their buses at required distances in order to give drivers time to stop. The Municipal Court failed to recognize that it is legal to pass a vehicle traveling at less than the posted speed limit, even in a no-passing zone. The Municipal Court admitted unreliable documentation as evidence despite its witness providing information contradicting it under oath and the Appellant's objection.

In its affirmation of the Municipal Court, the Circuit Court also condoned these things, and in its analysis and conclusion the Circuit Court made several false statements which contradict the facts on record and also present an erroneous interpretation of Wisconsin Statutes.

Statement of the Case:

The Appellant received a voice message in March, 2022 left on his business line from a Sheboygan Falls Police officer regarding a traffic complaint. The Appellant returned the officer's call after receipt of the message, and confirmed that he had been driving in Sheboygan Falls on March 18, 2022. The officer, who had not witnessed the incident, issued the Appellant a citation for violation of Wisconsin Statutes 346.48(1), stating "that is not what the video shows."

The Appellant repeatedly made requests for a copy of the video from the Sheboygan Falls Police Department. The videos provided did not contain the Appellant's vehicle nor the school bus, but appeared to be a police dash camera recording video while parked somewhere. No video was ever presented, only a single frame photo which did not appear as evidence until trial.

At trial in Sheboygan Falls Municipal Court, the Appellant was found in violation of 346.48(1).

The Appellant filed a timely Appeal, requesting a review of the record in Sheboygan County Circuit Court. The case was assigned to Branch 5, Daniel J. Borowski presiding.

After a number of months, Judge Borowski upheld the ruling of the Municipal Court.

Statement of Facts:

At trial in Municipal Court, the City of Sheboygan Falls called officer Sand as a witness. Sand testified that she did not witness the incident in question, but issued a citation based on one cell phone photo taken by the bus driver.

During trial in Municipal Court, the prosecution's trial witness, the driver of the school bus, testified that he did not turn on the required lights at the required distances to indicate that his bus was going to stop in accordance with Wisconsin Statutes 346.48, and that "it was impossible" for him follow this fundamental part of the Wisconsin traffic law for school bus drivers. This witness also testified that his bus was equipped with both flashing amber and flashing red warning lights. When faced with a question about distance and his ability to determine distance the witness was asked how far is 300 feet from the room in which he was sitting, to which the witness responded that it is 300 feet from the courtroom to the entrance of the Municipal Building where the courtroom is located (this distance is 50 feet or less; 300 feet from the courtroom is the intersection of highway 32, the road on which the incident occurred). The Appellant asked the Court for the matter to be dismissed based on the failure of the school bus driver to give the required warning at the legal distance that he was preparing to stop in accordance with Wisconsin Statutes which are mandated in order to give drivers time to stop for the sake of the safety of children.

The Appellant testified that the school bus was traveling at a speed less than half of the posted speed limit, and legally began to pass the bus on the left prior to the bus driver indicating that he was going to stop by deploying his warning lights. The Appellant testified that after he began passing the bus and he was beside it, that the bus driver then deployed the stop sign and flashing red lights, which is exactly what the evidence (lone photo) shows.

The Appellant testified in Court that the sole article of evidence, the lone photo the Court was relying on to determine what occurred on March 18, 2022 since there was no other witness than the bus driver, was a snapshot of the Appellant passing the school bus as the bus driver simultaneously and suddenly opened the door to the bus and activated the stop sign and flashing red lights. The Appellant testified that the photo did not prove that the red flashing lights nor the stop sign were activated prior to the passing of the school bus.

At the trial in Municipal Court, the Appellant objected to the admission of "Exhibit #2" as evidence because the Court's witness had supplied testimony which indicated that the "evidence" he had previously provided in Exhibit #2 was unreliable. Sheboygan Falls Municipal Court admitted the information as evidence anyway. The Appellant made the objection at the appropriate time when the prosecutor requested its admission.

The Sheboygan Falls Municipal Court Judge ruled that the Appellant was "still required to stop" in the lane of oncoming traffic he was in when passing the bus, which would be in violation of Wisconsin Statutes and a deadly hazard. As permitted by Wisconsin Statutes 346.09(3)(b), the Appellant was passing a school bus which had not yet activated its flashing amber or red warning lights and which was traveling at less than half of the posted speed limit.

On appeal of the matter and review of the record, the Circuit Court Judge made several false statements, including:

- That the evidence was not disputed.

- That the Appellant stated the bus driver's flashing red lights and stop sign were activated before the Appellant completed passing the bus.
- That the school bus driver activated the warning lights 200 to 300 feet before his stop.

Argument:

1) The Circuit Court's analysis and conclusion is unfounded:

The court record proves that there was a blatant disregard of the fundamental elements of Wisconsin Statutes with regard to the the distances required for school bus drivers to display warning lights when preparing to stop: these laws are not whimsical, but specific and purposeful, thoughtfully planned by our legislature in order to make sure drivers have time to stop, and to protect children in this state.

- The Circuit Court states that "a stop sign is extended from the back of a bus when the driver stops and opens the door." No bus in Wisconsin is equipped in such a way: the stop sign on school buses is mounted near the front of the bus on the driver's side.
- At trial, the school bus driver **did not** testify that "he illuminated the amber yellow lights 200 to 300 feet before the stop," but that "it was impossible" for him to obey this statute.
- The Circuit Court ignored the fact that the bus driver failed to activate the amber lights at the mandated distances, but focused on the Appellant's passing the bus although the bus driver did not provide the required distance needed to stop.
- The Appellant **did** dispute the photograph that showed the bus driver activating the red flashing lights and stop sign after the Appellant had already begun passing the bus because it was traveling at less than half of the posted speed limit.
- The Circuit Court states that "at some point prior to the incident, the bus driver activated the amber lights on the bus as well as the red flashing lights and stop sign." Wisconsin Statutes mandate that school bus drivers do not "at some point" activate the amber lights on the bus as well as the red flashing lights and stop sign, but 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 miles per hour speed zone. These statements by the Circuit Court directly contradict what it had before stated about the witness' testimony.
- During trial, the Appellant never stated nor admitted that he had been "impatient" when encountering the school bus going slow in the middle of the road without any warning lights on.
- The Circuit Court concluded that there was "clear, convincing and satisfactory" evidence "that the defendant failed to yield to, and stop behind a school bus with its red warning

lights and stop sign activated.” Wisconsin statutes 346.48 requires bus drivers to actuate the 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 miles per hour speed zone. Wisconsin Statutes 346.48(1) mandates that drivers shall stop not less than 20 feet from a school bus **when it is displaying flashing red warning lights**. No evidence was ever presented that shows the driver of the school bus activated the warning lights at the required distance, nor evidence that there were red flashing warning lights being displayed when the bus was all but stopped in the middle of Highway 32 on March 18, 2022 requiring the Appellant to pass it on the left in Accordance with Wisconsin Statutes 346.09(3)(b). The Circuit Court’s conclusions regarding evidence being “clear, convincing and satisfactory” do not meet legal criterion as set forth in Wisconsin Statutes, are an oversimplification based on very questionable information, and remain by the best legal standards unclear, unconvincing, and ultimately unsatisfactory.

Conclusion:

The Appellant has proven that the statements by the Circuit Court are unfounded and without merit. Accordingly, the Wisconsin Court of Appeals should dismiss the matter in the interests of public justice.

Signed,

Wesley Melton