

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

July 25, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 96-0526, 96-0527, 96-0528
96-0529, 96-0530

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

STEENBERG HOMES, INC.,

Defendant-Appellant.

APPEAL from judgments of the circuit court for Clark County:
MICHAEL W. BRENNAN, Judge. *Affirmed in part and reversed in part.*

DYKMAN, J. This is a single-judge appeal decided pursuant to § 752.31(2)(c), STATS. Steenberg Homes, Inc. appeals from judgments in which the circuit court found that it was strictly liable for five motor vehicle violations. Steenberg Homes raises the following issues on appeal: (1) whether the circuit court erred in denying Steenberg Homes' motion to stay the civil traffic forfeiture proceedings on Fifth Amendment grounds pending the conclusion of the State's criminal investigation; (2) whether the circuit court erred in concluding that all the motor vehicle statutes under which Steenberg Homes

was prosecuted impose strict liability; and (3) whether the State presented sufficient evidence to support the circuit court's finding of liability.

We conclude that: (1) the trial court did not err by refusing to stay the civil traffic proceedings; (2) not all of the motor vehicle statutes impose strict liability; and (3) the State did not present sufficient evidence to uphold all convictions. Accordingly, we affirm in part and reverse in part.

BACKGROUND

On August 8, 1995, one of Steenberg Home's trucks, which was pulling a flatbed trailer, was involved in an accident with three bicyclists on State Highway 73 in Clark County. Two of the bicyclists were killed and the third was injured. Daniel Oliver, an employee of Steenberg Homes, was driving the truck and trailer at the time of the accident.

Inspector Michael Klingenberg of the Wisconsin State Patrol inspected the truck and trailer involved in the accident and prepared a report detailing his investigation. In this report Klingenberg made several findings. First, Klingenberg noted that the trailer appeared to be homemade, did not have a vehicle identification number and was unregistered. Second, Klingenberg reported that the trailer was not equipped with permanently attached safety chains. Third, Klingenberg noted that the hooks were not attached to the trailer when the trailer disengaged from the truck. Fourth, Klingenberg determined that none of the three axles on the trailer had operational brakes. Fifth, Klingenberg concluded that the trailer was not equipped with a means of activating the trailer's brakes in the event of a breakaway. Finally, Klingenberg noted that the trailer frame was cracked.

Based on his investigation, Klingenberg issued five motor vehicle citations to Steenberg Homes as the owner of the truck and trailer: (1) defective trailer frame, pursuant to WIS. ADM. CODE § TRANS 327.03(4); (2) towing with improper safety chains, pursuant to § 347.47(3), STATS.; (3) violation of emergency breakaway device, pursuant to WIS. ADM. CODE § TRANS 327.03(4);

(4) inadequate/defective brakes, pursuant to § 347.35(3), STATS.; and (5) non-registration, pursuant to § 341.04(1), STATS.

Counsel for Steenberg Homes maintains that on October 6, 1995, he had a conversation with Richard Wachowski, the attorney for Daniel Oliver. Steenberg Homes' counsel alleges that, in this conversation, Wachowski said the State told him that any resolution of the traffic citations would not occur until after the criminal investigation was complete. Nonetheless, a trial date was set for December 11, 1995. However, Wachowski was under the impression that December 11, 1995, was not actually a trial date, but was set only for calendaring purposes.

According to Steenberg Homes, it was not until December 1, 1995, that it learned the actual trial would take place on December 11, 1995, as scheduled. At that time, the State was still conducting its investigation for possible criminal charges against Steenberg Homes. Steenberg Homes filed a motion to stay the traffic proceedings.

The court denied Steenberg Homes' motion for a stay pending the conclusion of the State's criminal investigation, holding that because all the traffic violations were "fairly innocuous" and the citations were all based on strict liability statutes, there was no need for additional time to prepare for trial. Steenberg Homes and the State then agreed that the trial of the matter would be conducted by a stipulation of evidence. The parties agreed that the State would not produce any witnesses, but would rely solely upon the Clark County Sheriff's investigative reports, the Wisconsin State Patrol's reports and a picture of the trailer's frame.

The circuit court found Steenberg Homes guilty on all five citations, holding that the traffic statutes were strict liability statutes. Steenberg Homes appeals.

REFUSAL TO STAY PROCEEDINGS

The constitution does not ordinarily require a stay of the civil proceedings pending the outcome of criminal proceedings. *Keating v. Office of Thrift Supervision*, 45 F.3d 322, 324 (9th Cir.), *cert. denied*, ___ U.S. ___, 133 L. Ed. 2d 49 (1995). Rather, the court has the discretion of granting a stay to a civil proceeding in which there is a parallel criminal investigation. *Id.*

Whether a particular court should stay the civil proceedings in face of the parallel criminal investigation should be decided in light of the particular circumstances and competing interests involved in the case. *Id.* In making this determination, the court should consider the extent to which the defendant's Fifth Amendment rights are implicated. *Id.*

Steenberg Homes contends its Fifth Amendment rights were violated when it was forced to defend a civil forfeiture in the face of a pending criminal investigation of the same incident. Steenberg Homes argues that it could not put on an adequate defense because several Steenberg Homes employees would invoke their Fifth Amendment privilege due to the criminal investigation and would not testify at the civil proceeding. Thus, Steenberg Homes contends that it should have been granted a stay of the civil proceeding until the completion of the criminal investigation.

Corporations are not treated the same as individuals for purposes of the Fifth Amendment. *Braswell v. United States*, 487 U.S. 99, 104 (1988). The Supreme Court has held that the Fifth Amendment privilege only applies to natural persons and protects private papers. *Id.* at 105. Thus, corporations do not enjoy any Fifth Amendment privilege that might entitle them to a stay of civil proceedings. Steenberg Homes is a corporation, and thus cannot invoke a Fifth Amendment privilege. We conclude that the trial court did not erroneously exercise its discretion by refusing to stay the civil proceedings.

DEFECTIVE TRAILER FRAME

Steenberg Homes was charged with violating WIS. ADM. CODE § TRANS 327.03(4) for operating a vehicle with a defective trailer frame. Section TRANS 327.03(4) adopts Title 49, Code of Federal Regulations, part 393. Steenberg Homes challenges the citation on the grounds that 49 C.F.R. § 393.201 does not apply to trailer frames. We agree.

According to 49 C.F.R. § 393.201(a), "[t]he frame of every bus, truck and truck tractor shall not be cracked, loose, sagging or broken." The scope of liability under this section is limited to buses, trucks and truck tractors. Truck is defined as "any self-propelled commercial vehicle except a truck tractor, designed and/or used for the transportation of property." 49 C.F.R. § 390.5. Truck tractor is defined as "a self-propelled commercial vehicle designed and/or used primarily for drawing other vehicles." *Id.* These definitions do not include trailers.

The State contends that WIS. ADM. CODE § TRANS. 327.03(5), which adopts part 396 of Title 49 of the Code of Federal Regulations, may be used to find liability for Steenberg Homes. But the State did not charge Steenberg Homes with a violation of § TRANS. 327.03(5); it charged Steenberg Homes with a violation of § TRANS. 327.03(4). Section 327.03(4) does not adopt section 396 of Title 49, and therefore the judgment regarding the defective trailer frame must be reversed.

SAFETY CHAINS AND DEFECTIVE BRAKES

Steenberg Homes was charged with two equipment violations pursuant to Chapter 347, STATS. First, Steenberg Homes was cited because its trailer contained defective brakes in violation of § 347.35(3), STATS. Second, Steenberg Homes was cited for improper safety chains pursuant to § 347.47(3), STATS. Steenberg Homes contends that the circuit court erred in finding that § 347.35(3) and § 347.47(3) impose strict liability on owners of motor vehicles that violate these provisions.

Section 347.04, STATS., imposes liability for improperly equipped vehicles on the owners of the vehicle. It is through this provision that the State imputes liability to Steenberg Homes for the violations of Chapter 347. However, Steenberg Homes argues that § 347.04 does not provide for strict liability when dealing with owner liability for violations of Chapter 347.

Traffic violations are generally strict liability offenses for which culpability is not an element, and the state is relieved of the burdensome task of proving the offender's culpable state of mind. *State v. Brown*, 107 Wis.2d 44, 53, 318 N.W.2d 370, 375 (1982). However, the legislature may alter the general rule by imposing on the state the burden of proving a mental state in the offense.

"Statutory construction is a question of law, which we determine independently." *State v. Folk*, 117 Wis.2d 42, 45, 342 N.W.2d 761, 763 (Ct. App. 1983). Courts look to five factors in determining legislative intent regarding state of mind: the language of the statute, the legislative history of the statute, the seriousness of the penalty, the purpose of the statute and the practical requirements of effective law enforcement. *State v. Stoehr*, 134 Wis.2d 66, 76, 396 N.W.2d 177, 180 (1986). However, the primary source of statutory construction is the language of the statute itself. *Northwest General Hosp. v. Yee*, 115 Wis.2d 59, 63, 339 N.W.2d 583, 585 (1983).

The language of the statute clearly requires an element of knowledge. Section 347.04, STATS., provides: "Any owner of a vehicle not equipped as required by this chapter who *knowingly causes or permits* such vehicle to be operated on a highway in violation of this chapter is guilty of the violation the same as if he or she had operated the vehicle personally." (Emphasis added.) It is clear from the plain language of the statute that the legislature intended there to be a requirement of knowledge on the part of the owner of the vehicle before liability may attach.

The State relies on *State v. Dried Milk Products Co-op.*, 16 Wis.2d 357, 114 N.W.2d 412 (1962), to support its argument that § 347.04, STATS., imposes strict liability. The State's reliance is misplaced. In *Dried Milk*, the court found a corporate owner of a truck liable for exceeding weight limitations

despite the absence of any actual knowledge on the owner's part. *Id.* at 359-61, 114 N.W.2d at 413-15. However, in coming to this conclusion, the court noted that the word "knowingly," which was part of the previous statute, had been deleted from the statute before the violation occurred. *Id.* at 359-60, 114 N.W.2d at 414. In the absence of the word "knowingly" to modify the words "causes or permits," we held that the statute imposes strict liability. *Id.* at 361, 114 N.W.2d at 414-15. It logically follows that if the word "knowingly" is included in the language of the statute, there cannot be strict liability.

The fundamental rule in statutory interpretation is that, if possible, statutes are to be construed in a manner such that no word is rendered surplusage and every word is given effect. *County of Columbia v. Bylewski*, 94 Wis.2d 153, 164, 288 N.W.2d 129, 135 (1980). To accept the State's interpretation of § 347.04, STATS., would render the word "knowingly" as superfluous and unnecessary. Accordingly, we conclude that § 347.04 requires the State to show that the owner had knowledge of the violation.

Concluding that § 347.04, STATS., was not intended to impose of strict liability does not dispose of this matter entirely. We must still determine whether there was sufficient evidence of knowledge on the part of Steenberg Homes to support the convictions under this chapter.

REGISTRATION REQUIREMENT

Steenberg Homes was also cited for violating § 341.04, STATS., for operating an unregistered vehicle. Steenberg Homes argues that § 341.04 requires the State to prove that the owner consented to the vehicle's use on the highway. We disagree.

The sole purpose of statutory interpretation is to discern the intent of the legislature. *State v. Fetting*, 172 Wis.2d 428, 436, 493 N.W.2d 254, 257 (Ct. App. 1992). The first inquiry is always the language of the statute itself. *Id.* Section 341.04(1), STATS., provides:

It is unlawful for any person to operate or for an owner to consent to being operated on any highway of this state any motor vehicle, mobile home, trailer or semi-trailer or any other vehicle for which a registration fee is specifically prescribed unless at the time of operation the vehicle in question either is registered in this state ... or is exempt from registration.

When the language of the statute is unambiguous on its face, the court need not look beyond the face of the legislation to ascertain the legislature's intent. *Fettig*, 172 Wis.2d at 436, 493 N.W.2d at 257. Here, the statute provides for liability if the State shows that any person operated or an owner consented to the operation.

Corporations necessarily act through agents. *Dried Milk*, 16 Wis.2d at 361, 114 N.W.2d at 415. As long as the agent is within the scope of employment, the corporation will be civilly and criminally liable for the actions of that agent. *Id.* The circuit court properly found that Steenberg Homes was operating the trailer at the time of the accident. Steenberg Homes' employee was driving the vehicle at the time of the accident and was acting within the course of his employment. This is sufficient to prove that Steenberg Homes was operating the vehicle for purposes of § 341.04, STATS. Accordingly, we affirm the conviction.

BREAKAWAY DEVICE VIOLATION

Steenberg Homes contends that an owner of a motor vehicle cannot be convicted of violating WIS. ADM. CODE § TRANS 327.03(4) absent proof that the owner caused or permitted the commercial vehicle to be operated by another. We disagree.

WISCONSIN ADM. CODE § TRANS 327.03(4) adopts part 393 of Title 49 of the Code of Federal Regulations. The applicable federal provision regarding breakaway devices on trailers is 49 C.F.R. § 393.43. The scope of part 393's application is set forth in 49 C.F.R. § 393.1: "No employer shall operate a

commercial motor vehicle, or cause or permit it to be operated, unless it is equipped in accordance with the requirements and specifications of this part."

Absent any express requirement of mental state, the circuit court was right to conclude that this provision imposes strict liability on owners of motor vehicles. In *Dried Milk*, the court found that the words "permit or cause," while inherently carrying the requirement of some awareness, do not imply more than an awareness of the vehicle operating on the highways within the scope of the owner's business. *Dried Milk*, 16 Wis.2d at 361, 114 N.W.2d at 414-15. Thus, in *Dried Milk* the court held that an owner could be found strictly liable for violating weight restrictions even though the statute provided liability only for "[a]ny owner of a vehicle who causes or permits such vehicle to be operated" *Id.* at 359 n.1, 114 N.W.2d at 413. The circuit court judge explicitly determined that Steenberg Homes permitted the vehicle's use, and thus properly found Steenberg Homes guilty of this violation.

SUFFICIENCY OF EVIDENCE

To satisfy its burden of proof in this case, the State needed to offer evidence that is "clear, satisfactory and convincing." Section 345.45, STATS. Whether a party has satisfied the burden of proof is a question of law, which we may independently review, but in doing so we must accept the circuit court's credibility determinations unless they are wrong as a matter of law. *Seraphine v. Hardiman*, 44 Wis.2d 60, 65, 170 N.W.2d 739, 742 (1969).

First, Steenberg Homes contends that the citations issued under Chapter 347, STATS., are not supported by clear, satisfactory and convincing evidence because there is no evidence that Steenberg Homes had knowledge of the violations as required by § 347.04, STATS. But Steenberg Homes will be deemed to have knowledge of the alleged violations if any of its agents had knowledge of the violations. See *Ivers & Pond Piano Co. v. Peckham*, 29 Wis.2d 364, 369, 139 N.W.2d 57, 59 (1966).

It is undisputed that one of Steenberg Homes' employees attached the trailer to the truck. Steenberg Homes is in the business of hauling trailers and must be aware of the safety requirements prescribed by law in attaching trailers to trucks. There was evidence presented that the safety chains were

never attached to the trailer, in violation of § 347.47(3), STATS. It was reasonable for the circuit court to infer from this evidence that Steenberg Homes had knowledge of the violation. Accordingly, we affirm the conviction of §347.47(3).

Next, we must determine if there was sufficient evidence to show that Steenberg Homes had knowledge of the defective brakes in order to support the conviction pursuant to § 347.35(3), STATS. The officer found no evidence that the brakes were operational when inspecting the trailer, but this does not establish that Steenberg Homes had knowledge of the defective brakes. The sole evidence presented on the issue of knowledge was the officer's finding that the clip which would have made the connection of the brakes to the trailer cable was missing. However, the officer could not state whether this clip was pulled off in the collision or was never there in the first place. The missing clip alone is not sufficient to establish knowledge on the part of Steenberg Homes. Thus, the conviction for § 347.35(3) must be reversed.

Finally, Steenberg Homes contends that the citations issued under § 341.04 (1), STATS., were not supported by sufficient evidence. We disagree. The State offered evidence at trial that Oliver, an employee of Steenberg Homes, was driving the vehicle within the course of his employment and that this vehicle was unregistered. Steenberg Homes presented no evidence to rebut this presumption. Thus, the circuit court properly found that Steenberg Homes consented to the trailer's illegal operation based on the evidence adduced at trial.

CONCLUSION

We conclude that the citation for a defective trailer frame pursuant to §327.03(4), STATS., must be reversed because part 393 of the federal regulations does not include defective trailer frames. The citation for improper safety chains under § 347.47(3), STATS., is affirmed because there was sufficient evidence to show that Steenberg Homes had knowledge of the violation. The citation for defective brakes pursuant to § 347.35(3), STATS., must be reversed because the State failed to show that Steenberg Homes had knowledge of defective brakes. Next, the citation for violation of the emergency breakaway device pursuant to § 327.03(4), STATS., must be affirmed because the circuit court properly concluded that this provision imposes strict liability. Finally, the

violation for non-registration under § 341.04(1), STATS., must be affirmed because there was sufficient evidence to show that Steenberg Homes was operating the trailer at the time of the violation.

By the Court. – Judgments affirmed in part; reversed in part.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.