

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 1, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2008AP2370-CR

Cir. Ct. No. 2007CT912

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JESSE J. HOULE, IV,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: KAREN L. SEIFERT, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Jesse J. Houle, IV appeals from a judgment of conviction for a third offense of operating a motor vehicle while under the influence of an intoxicant. He contends that the evidence was insufficient to show that he had been operating his vehicle in an area held out to the public for use of their motor vehicles, as required under WIS. STAT. § 346.61. We disagree and affirm the judgment.

¶2 In the afternoon of June 24, 2007, Winnebago County Deputy Sheriff Jeff Gruss was patrolling the Country USA campground. He observed a truck doing “donuts,” that is driving fast in tight circles, in a grassy portion of the campground. At the time he encountered Houle, Gruss was driving a “Gator,” which he described as being “like a four-wheeler.” Gruss told Houle to stop doing donuts and Houle complied. After further investigation, Gruss cited Houle for operating while intoxicated and operating with a prohibited blood alcohol concentration.

¶3 The State charged Houle with OWI and PAC, first alleging that Houle had operated his vehicle on a highway and later amending the charges to operating on a premises held out for public use. Houle moved to dismiss, arguing that the Country USA campground is private property. The circuit court held a hearing on November 16, 2007, and heard testimony from Phillip Eccher, security director for Country USA. Eccher stated that the campground may be accessed when a sticker is purchased. At the close of testimony, the court agreed to allow the parties to submit additional briefs on the issue.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶4 On December 21, the court issued an oral ruling denying Houle’s motion to dismiss. Houle was convicted of OWI, third offense, and now appeals.

¶5 Houle presents two issues for our review. First, he argues that the evidence was insufficient to show that he had operated his vehicle in an area held out to the public for use of their motor vehicles. Second, he contends that the court erroneously denied his motion to dismiss. Both contentions involve application of the statutory phrase “premises held out to the public for use of their motor vehicles” under WIS. STAT. § 346.61 to the facts presented. This presents a question of law for our de novo review. See *Knight v. Milwaukee County*, 2002 WI 27, ¶14, 251 Wis. 2d 10, 640 N.W.2d 773.

¶6 Houle relies mainly on *City of Kenosha v. Phillips*, 142 Wis. 2d 549, 419 N.W.2d 236 (1988), for his contention that the grassy area of the Country USA campground does not fall within the “premises” contemplated by WIS. STAT. § 346.61. He observes that the incident took place in the campground and that he was in the grassy area between two driveways. He contends the State’s evidence was insufficient for failing to show (1) that vehicles were allowed on the grassy area, (2) how a vehicle would gain access to the area and whether vehicles normally travel that area, (3) why the arresting officer was using a “four-wheeler” instead of a normal vehicle to travel the area, (4) how close Houle’s truck was to the driveways, (5) whether other vehicles were nearby, and (6) what the proximity was between the grassy area and campsites.

¶7 The State responds that the test for whether a premises is open to the public is “whether, on any given day, potentially any resident of the community ... could use the parking lot in an authorized manner.” See *City of La Crosse v. Richling*, 178 Wis. 2d 856, 860, 505 N.W.2d 448 (Ct. App. 1993). We must ask

whether the person in control of the lot intended it to be available to the public for use of their motor vehicles. *See id.* at 859. Accordingly, we turn to the record for indicators of intent.

¶8 Here, the Country USA security director established that any member of the community, with the appropriate purchased sticker, could access the Country USA campground. Therefore, the grounds were not restricted to a “defined, limited portion of the citizenry.” *Cf. City of Kenosha*, 142 Wis. 2d at 557-58, (private parking lot with signage limiting entry to employees only is not held out to public for use of their motor vehicles). The rules for use of the campground stated that all Wisconsin traffic statutes applied to the grounds, including those related to OWI. Furthermore, the presence of Gruss on the grounds of Country USA is evidence of intent to hold the grounds out for public use. *See State v. Tecza*, 2008 WI App 79, ¶21, 312 Wis. 2d 395, 751 N.W.2d 896 (“police presence on the roadways of [a community] is an indication of an explicit intent to hold the roadways out to the public for the use of their vehicles.”) Finally, Houle told Gruss that he had driven from his campsite to the grassy area where he was doing donuts; in other words, he had operated his truck beyond the grassy area between the roads.² We agree with the State that there is sufficient evidence to establish that Houle operated his vehicle in an area that was held out to the public for use of their motor vehicles as contemplated by WIS. STAT. § 346.61.

² Houle attempts to limit the inquiry to whether the grassy area between the roads was a premises held out to the public for the use of their motor vehicles. His argument ignores his own statement that he drove from his campsite to the grassy area where he was doing donuts.

¶9 Houle next argues that the circuit court denied his motion to dismiss without providing any rationale for its decision. The circuit court order simply states that the motion was denied based on the testimony at the November 16, 2007 hearing and the supplementary briefs. Houle relies on our supreme court’s directive that a circuit court decision must be “reasonably derived by inference from the record and ... based on a logical rationale founded upon proper legal standards.” *McCleary v. State*, 49 Wis. 2d 263, 277, 182 N.W.2d 512 (1971). As a result, Houle argues, the decision was erroneous and must be reversed. We disagree.

¶10 If a circuit court does not explain the reasons for a discretionary decision, we may search the record to determine whether it supports the court’s decision. *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737. As the foregoing discussion demonstrates, we comfortably conclude that it does.

¶11 Houle’s motion to dismiss was properly denied and the record reveals sufficient evidence to support the conclusion that Houle operated his truck on a premises held out to the public for use of their vehicles.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

