

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 24, 2011

A. John Voelker
Acting 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 Nos. 2010AP1950
2010AP1951**

**Cir. Ct. Nos. 2010TR3037
2010TR3039**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

COUNTY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

V.

JAMES R. MATEL,

DEFENDANT-APPELLANT.

APPEAL from and judgment and an order of the circuit court for Milwaukee County: ELLEN R. BROSTROM and DANIEL L. KONKOL, Judges.¹ *Affirmed.*

¹ This case was originally assigned to the Honorable Ellen R. Brostrom, who presided over the case through Matel's conviction. Following judicial rotation, the case was reassigned to the Honorable Daniel L. Konkol, who presided over sentencing.

¶1 CURLEY, P.J.² James R. Matel appeals a judgment convicting him of operating while under the influence (first) and keeping open intoxicants in a motor vehicle, contrary to WIS. STAT. §§ 346.63(1)(a) and 346.935(3) (2009-10).³ Matel argues that his convictions must be reversed and the claims against him must be dismissed because the trial court did not have jurisdiction over his person. Specifically, he argues that the trial court did not have personal jurisdiction because the traffic citations concerning the aforementioned offenses were issued via mail rather than personally served upon him. Because WIS. STAT. § 345.11(5) governs this issue and does not require personal service to confer jurisdiction upon a defendant, this court affirms the trial court's judgment.

I. BACKGROUND.

¶2 On April 25, 2008, Milwaukee County Deputy Sheriff Nicholas Yohanek noticed a gray minivan traveling at varying speeds and deviating from its lane on interstate I-94 near North 35th Street in Milwaukee. Suspecting the driver might be intoxicated, Yohanek followed the minivan and eventually stopped the driver—Matel—near 84th Street. Yohanek administered several field sobriety tests and a preliminary breath test, and arrested Matel based on the results.

² This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c).

³ Matel filed two related appeals, 2010AP1950 and 2010AP1951, for relief from the trial court's judgment. On a motion from Milwaukee County, this court consolidated the appeals for briefing and dispositional purposes. See *County of Milwaukee v. Matel*, Nos. 10AP1950, 10AP1951, unpublished slip op. (WI App Feb. 9, 2011).

All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶3 Upon arresting Matel, Yohanek issued uniform traffic citations for four charges: (1) operating while under the influence—first offense; (2) operating with a prohibited alcohol concentration—first offense; (3) having open intoxicants in a motor vehicle; and (4) deviating from the designated lane. However, these charges were eventually dismissed because Milwaukee County was unprepared to proceed in court on several occasions.

¶4 Almost two years later, on January 21, 2010, the four citations from the April 25, 2008 incident were reissued and mailed to Matel’s residence in Waukesha County. Matel moved to dismiss the charges on grounds that the circuit court lacked jurisdiction over Matel’s person due to defective service. The trial court denied Matel’s motion, and Matel was convicted of operating while intoxicated and having open intoxicants in his motor vehicle after a bench trial. The charges for operating with a prohibited alcohol concentration and for lane deviation were dismissed.

¶5 Matel moved the trial court to reconsider his motion to dismiss, again arguing that the trial court lacked jurisdiction over his person due to defective service. The trial court denied Matel’s motion, and Matel now appeals.

II. ANALYSIS.

¶6 The sole issue in this case is whether, under WIS. STAT. § 345.11(5), a uniform traffic citation must be personally served upon a defendant in order to convey personal jurisdiction. This is a question of law that this court reviews *de novo*. See *State v. Davis*, 2008 WI 71, ¶18, 310 Wis. 2d 583, 751 N.W.2d 332 (questions of statutory interpretation are questions of law subject to *de novo* review).

¶7 Matel argues that although WIS. STAT. § 345.11(5) states that the “use” of a uniform traffic citation confers personal jurisdiction over a defendant, there are no specific provisions governing the appropriate manner of service. He further argues that because no specific provisions govern service, this court must—pursuant to WIS. STAT. § 345.20(2)(a)—look to WIS. STAT. ch. 799 for guidance. *See* WIS. STAT. § 345.20(2)(a) (“Where no specific procedure is provided in ss. 345.21 to 345.23 [regarding violations of traffic regulations], ch. 799 shall apply to such actions in [the trial] court.”). Under WIS. STAT. § 799.12, personal jurisdiction may only be conferred by personal service, unless service by mail is specifically adopted by local rule. Therefore, according to Matel, because no local rule allowing service by mail exists, service by mail in the instant case was defective. This court disagrees.

¶8 WISCONSIN STAT. § 345.11(5) provides:

Notwithstanding any other provision of the statutes, the use of the uniform traffic citation ... by any peace officer in connection with the enforcement of any state traffic laws ... shall be deemed adequate process to give the appropriate court jurisdiction over the person upon the filing with or transmitting to the court of the uniform traffic citation.

Construing the statutory language to give words their ordinary meaning, as this court is required to do, *see Fox v. Catholic Knights Ins. Soc’y*, 2003 WI 87, ¶19, 263 Wis. 2d 207, 665 N.W.2d 181, it is clear that personal jurisdiction was conferred when the citations were mailed to Matel and filed in the trial court. *See also State ex rel. Prentice v. Milwaukee Cnty.*, 70 Wis. 2d 230, 237, 234 N.W.2d 283 (1975) (“We construe the provisions of sec. 345.11(5), Stats., to mean that a police officer may file a uniform traffic citation and complaint with the appropriate court, and that such filing, after issuance of the citation to the motorist,

is sufficient process to confer upon the court personal jurisdiction over the defendant.”). “Use,” commonly defined as “to put into action or service ... to carry out a purpose or action by means of,” *see* WEBSTER’S NEW INT’L DICTIONARY OF THE ENGLISH LANGUAGE 2523 (3d ed. 1993), is broad enough to encompass service by mail and in person. Yet it is not so ambiguous as to require this court to look beyond the statute for guidance, *see Fox*, 263 Wis. 2d 207, ¶19.

¶9 Moreover, as our supreme court noted in *Prentice*, when the language of WIS. STAT. § 345.11(5) was amended in 1973, the legislature’s aim was to enable the “issuance of a uniform traffic citation to an individual, and filing of that citation with the appropriate court” to constitute “sufficient process to invoke the jurisdiction of the court over the person of the defendant, as is done in the case of service and filing of a summons.” *See id.*, 70 Wis. 2d at 237. In *Prentice*, the defendant argued that WIS. STAT. § 345.11 required an attorney, rather than a police officer, to issue the uniform ticket citation. *Id.* at 235-36. The supreme court disagreed, and held:

We construe the provisions of sec. 345.11(5), Stats., to mean that a police officer may file a uniform traffic citation and complaint with the appropriate court, and that such filing, after issuance of the citation to the motorist, is sufficient process to confer upon the court personal jurisdiction over the defendant.

Id. at 237.

¶10 In this case, as in *Prentice*, the significant factor is that the traffic citations were in fact issued to Matel, not the manner in which they were issued. *See id.* It is therefore unnecessary to look beyond WIS. STAT. § 345.11(5) to either WIS. STAT. §§ 345.20(2)(a) or 799.12 for further guidance, as Matel would have

this court do. Service by mail in this case, coupled with the filing of the traffic citations with the trial court, was sufficient to confer personal jurisdiction.

By the Court.—Judgment and order affirmed.

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

