

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2014

Diane M. Fremgen
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. 2013AP2549-CR

Cir. Ct. No. 2013CT71

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHAWN N. HILL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County:
DAVID M. REDDY, Judge. *Reversed.*

¶1 REILLY, J.¹ Shawn N. Hill appeals his conviction for third-offense operating a motor vehicle while under the influence of an intoxicant (OWI). Hill

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

argues that as he was operating a utility terrain vehicle (UTV) at the time of the offense, he was charged under the wrong drunk driving statute and the court improperly denied his motion to dismiss. We agree that as Hill was operating a UTV, he should be charged with intoxicated operation of a UTV under WIS. STAT. § 23.33(4c), and therefore, we reverse.

BACKGROUND

¶2 Hill was operating a State-registered UTV when he was stopped by a Bloomfield police officer at 2:18 a.m. on February 8, 2013, on a public roadway. Hill was subsequently charged with OWI, contrary to WIS. STAT. § 346.63(1)(a), and operating a motor vehicle with a prohibited alcohol concentration, contrary to § 346.63(1)(b), both as third offenses pursuant to WIS. STAT. § 346.65(2)(am)3.

¶3 Hill moved to dismiss the charges on the basis that as he was operating a UTV, he could not be charged with violating WIS. STAT. § 346.63(1)(a) and (b) as those are not violations made applicable to UTVs by WIS. STAT. § 346.02(11). The State opposed Hill's motion, arguing that as Hill's vehicle was steered by levers instead of a "wheel," it did not meet the definition of a UTV under WIS. STAT. § 23.33(1)(ng), and therefore, it was a motor vehicle for purposes of the Motor Vehicle Code's intoxicated driver statutes. The circuit court denied Hill's motion.² Hill subsequently pled no contest to third-offense OWI. Hill appeals.

² The Honorable David M. Reddy presided over the proceedings through the plea hearing. The Honorable James L. Carlson signed the judgment of conviction following a judicial transfer.

DISCUSSION

¶4 The single question on appeal is whether Hill’s vehicle is a UTV. The difference determines whether Hill’s actions violated WIS. STAT. § 346.63(1)(a) and (b), as he was charged, or if they violated WIS. STAT. § 23.33(4c). Statutory interpretation raises a question of law that we review de novo. *State ex rel. Angela M.W. v. Kruzicki*, 209 Wis. 2d 112, 121, 561 N.W.2d 729 (1997). “Our primary purpose when interpreting a statute is to give effect to the legislature’s intent.” *Id.* Ascertaining the meaning of a statute “requires more than focusing on a single sentence or portion thereof.” *State v. Ziegler*, 2012 WI 73, ¶43, 342 Wis. 2d 256, 816 N.W.2d 238. Statutory language must be interpreted as part of a whole so as to avoid absurd results or contravention of the statute’s purpose. *Id.*

¶5 We start with the language of the statute. WISCONSIN STAT. ch. 346 relies primarily on WIS. STAT. § 340.01 to define its terms. WIS. STAT. § 346.01(1). Section 340.01(35) defines “motor vehicle” as any vehicle that is self-propelled and not operated on rails. UTVs are motor vehicles “only for purposes made specifically applicable by statute.” *Id.* According to WIS. STAT. § 346.02(11), UTVs are not motor vehicles for purposes of WIS. STAT. § 346.63(1)(a) and (b). UTVs are not defined in either § 340.01 or ch. 346.

¶6 UTVs are defined in WIS. STAT. § 23.33(1)(ng). Relevant to this case, § 23.33(1)(ng)1. defines a UTV as

[a] motor driven device that does not meet federal motor vehicle safety standards in effect on July 1, 2012, that is not a golf cart, low-speed vehicle, dune buggy, mini-truck, or tracked vehicle, that is designed to be used primarily off of a highway, and that has, and was originally manufactured with, all of the following:

- a. A net weight of less than 2,000 pounds.
- b. Four or more low-pressure tires.
- c. A cargo box installed by the manufacturer.
- d. A steering wheel.
- e. A tail light.
- f. A brake light.
- g. Two headlights.
- h. A width of not more than 65 inches.
- i. Seats for at least 2 occupants, all of which seating is designed not to be straddled.
- j. A system of seat belts, or a similar system, for restraining each occupant of the device in the event of an accident.
- k. A system of structural members designed to reduce the likelihood that an occupant would be crushed as the result of a rollover of the device.³

This statutory definition is used to identify UTVs for the purpose of regulating most of the activities related to their operation, including a registration requirement prior to operation and a prohibition on the intoxicated operation of such vehicles. *See* § 23.33(2), (4c). Intoxicated drivers of UTVs are subject to similar penalties as intoxicated drivers of motor vehicles, with an exception that only prior convictions for intoxicated operation of UTVs may be counted as penalty enhancers for the intoxicated operation of a UTV. *See* § 23.33(13)(b), WIS. STAT. § 346.65(2)(am). UTVs are forbidden from operating on or near public roadways under most circumstances, *see* WIS. STAT. § 23.33(4), subject to

³ This definition has since been modified by 2013 Wis. Act 67, §§ 2-3, 5.

penalty under § 23.33(13)(a) for such a violation. Thus, a UTV is not made a motor vehicle simply by its operation on a public roadway.

¶7 The State considered Hill's vehicle to be a UTV, and Hill complied with the UTV registration requirement of WIS. STAT. § 23.33(2), prior to February 8, 2013. The State now argues that it should not be bound by its registration of the vehicle as a UTV when the plain language of WIS. STAT. § 23.33(1)(ng)1. requires that for a vehicle to be considered a UTV, the steering mechanism must be shaped like a wheel. We do not give credence to absurd arguments. The State defined and registered Hill's vehicle as a UTV.

¶8 As we see it, the purpose for requiring registration of UTVs under WIS. STAT. § 23.33(2) is similar to the purpose for registering vehicles under WIS. STAT. ch. 341. This purpose is twofold: (1) to raise revenue and (2) to aid law enforcement with the identification of a vehicle and its owner in case of loss, theft, or other violations of the law. *State v. Yellow Freight Sys., Inc.*, 96 Wis. 2d 484, 489-90, 292 N.W.2d 361 (Ct. App. 1980). The State cannot apply a statutory definition one way so as to collect a registration fee and then turn around and interpret the same definition another way so as to increase the applicable penalties for a law violation.

¶9 By registering Hill's vehicle as a UTV, the State placed Hill on notice that he was bound to the laws applicable to UTVs. We assume the State, through its agents at the Department of Natural Resources, considered the requirements of WIS. STAT. § 23.33(1)(ng)1. before registering Hill's vehicle. If the State did not believe that Hill's vehicle was a UTV under § 23.33(1)(ng)—and therefore that it should not be exempt from WIS. STAT. § 346.63(1)(a) and (b)—

then the State should not have registered Hill's vehicle as a UTV under § 23.33(1)(ng).

¶10 The State points to no reason why local law enforcement officers' definition of a "steering wheel" in WIS. STAT. § 23.33 should override a determination of the Department of Natural Resources. UTVs were added to that statute in 2009 to permit their use on all-terrain vehicle trails as part of a pilot program. *See* 2009 Wis. Act 175, § 5. This program was made permanent on July 1, 2012. *See* 2011 Wis. Act 208. Although the drafting notes related to this legislation indicate that there was some discussion about how to define UTVs, the reason behind the "steering wheel language" is unclear. *See* Legislative Reference Bureau, 2009 Wis. Act 175 Drafting File, Meeting Notes for Nov. 12, 2009, *available at* http://docs.legis.wi.gov/2009/related/drafting_files/wisconsin_acts/2009_act_175_sb_448/02_sb_448/09_3642df.pdf. Other states are divided as to whether a UTV (also known as a "utility type vehicle") requires a "steering wheel." *Compare* CAL. VEH. CODE § 531 (Deering 2014), NEB. REV. STAT. § 60-135.01 (2013), UTAH CODE ANN. § 41-6a-102(71)(a) (LexisNexis 2013), W. VA. CODE § 17A-1-1(v) (2014) (including "steering wheel" in definition), *with* IDAHO CODE ANN. § 67-7101(17) (2014), WASH. REV. CODE § 46.09.310(19) (2013) (not including "steering wheel" in definition).

¶11 We discern no reason why the registration of a vehicle that meets all of the requirements for a UTV under WIS. STAT. § 23.33(1)(ng)1. except that it is steered by levers rather than a wheel would contravene the purpose of the legislature and its statutes. On the other hand, we can see a very real reason why permitting local law enforcement officers to override the Department of Natural Resources' registration of a vehicle as a UTV would defeat the purpose of the UTV registration statute. Accordingly, we find that the circuit court erred when it

denied Hill's motion to dismiss the charges against him for violating WIS. STAT. § 346.63(1)(a) and (b).

By the Court.—Judgment reversed.

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

