

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 23, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 99-1712-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

v.

DONALD M. PETERSILKA,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Door County:
JOHN D. KOEHN, Judge. *Reversed and cause remanded.*

¶1 PETERSON, J. The State appeals a circuit court order dismissing a criminal misdemeanor charge against Donald M. Petersilka for shooting a deer without the required approval pursuant to § 29.99(11), STATS. (1995-96).¹ Section

¹ All references to the Wisconsin Statutes are to the 1995-96 version unless otherwise noted.

29.99(11) provides a list of violations with respect to hunting, snaring and possessing deer. The circuit court concluded that a violation under that section requires more than hunting deer without the required approval. This court disagrees and concludes that the statute unambiguously establishes hunting deer without the required approval as a violation. We therefore reverse the circuit court order and remand for further proceedings.

¶2 According to the criminal complaint, in November of 1998, a state conservation warden observed a group of hunters while on deer season patrol in the Town of Jacksonport. The warden approached several hunters, one of whom was a juvenile. The juvenile admitted that he did not have a hunting license and that he was hunting with his father, Petersilka. The warden interviewed Petersilka who admitted that he knew his son did not have a license, but that he brought him hunting anyway. Based on this evidence, Petersilka was charged with being a party to hunting deer without the required approval in violation of § 29.99(11), STATS.

¶3 The question presented involves an interpretation of a statute, a question of law that we review without deference to the circuit court. *See State v. Setagord*, 211 Wis.2d 397, 405-406, 565 N.W.2d 506, 509 (1997). The purpose of statutory interpretation is to discern the intent of the legislature. *See id.* To do so, we first consider the language of the statute. If the language of the statute clearly and unambiguously sets forth the legislative intent, we apply that intent to the case at hand and do not look beyond the statutory language to ascertain its meaning. *See id.*

¶4 Section 29.99(11), STATS., provides that a person violates the law as follows:

For hunting deer without the required approval, during the closed season, with the aid of artificial light or with the aid of an aircraft, for the snaring of deer or for the possession or control of a deer carcass in violation of s. 29.39 or 29.40, by a fine of not less than \$1,000 nor more than \$2,000 or by imprisonment for not more than 6 months or both. In addition, the court shall order the revocation of all approvals issued to the person under this chapter and shall prohibit the issuance of any new approval under this chapter to the person for 3 years.

¶5 The circuit court concluded that in order for Petersilka to have violated this section, he must have hunted a deer without the required approval *and* hunted “during the closed season or with the aid of artificial light or with the aid of an aircraft.” Therefore, the court’s interpretation combined the initial phrase “for hunting deer” and “without the required approval” to create a compound first element, requiring proof of an additional statutory element before a violation would occur.

¶6 The State argues that the circuit court improperly combined the phrases because the phrase “without the required approval” is the first in a series of listed violations that involve hunting deer. We agree with the State.

¶7 The meaning of § 29.99(11), STATS., is plain on its face. The first portion of the section unambiguously establishes four ways in which a person may violate the law while hunting deer. The sentence structure is a classic example of a list of items in a series separated by commas. “For hunting deer” is the corresponding phrase to each separate item in the series.² The final item in the series, “with the aid of an aircraft,” is not separated by a comma because it is

² Petersilka argues that interpreting the phrases as items in a series is absurd because each item is meaningless in itself. Petersilka fails to recognize that each item in the series must be read after the corresponding phrase, “[f]or hunting deer.”

preceded by the coordinating conjunction “or,” an accepted practice in English usage. *See THE LITTLE, BROWN HANDBOOK* 376 (7th ed. 1998).

¶8 The comma appearing after the final item in the series signals a new series of violations against deer as is indicated by the parallel preposition “for” and the fact that the items that follow are not necessarily restricted to the common and ordinary meaning of the verb “hunting.” The second list encompasses “the snaring of deer” or the “possession or control of a deer carcass.” Although related to the initial list because it involves deer, the second list does not include activities necessarily involving hunting.

¶9 Petersilka’s claim seems to imply that in order to read the language as items in a series, the corresponding phrase needed to be separated by some form of punctuation from the first item in the series. However, a comma is never used to separate the corresponding phrase from the first items in a series, and a colon would have been inappropriate because a colon is *always* preceded by a complete main clause. *See id.* at 416. “For hunting deer” does not contain a subject and, therefore, the use of a colon would have been inappropriate.

¶10 Petersilka also claims that the State’s interpretation renders § 29.99(2), STATS., meaningless. His argument appears to be that if § 29.99(11) applies, somehow that nullifies subsec. (2). Subsection (2) provides a violation “[f]or hunting or trapping without an approval required by this chapter.” Thus, subsec. (2) provides a general violation for the hunting or trapping of *any* animal while § 29.99(11) provides violations specifically involving deer. Contrary to Petersilka’s argument, the subsections are not exclusive. He cites no authority that they must be exclusive. In fact, Petersilka could have been charged under either

subsection. Indeed, several other subsections of § 29.99 also involve violations for the hunting and trapping of specified animals.³

¶11 Finally, Petersilka argues that the DNR “regularly issues permits for the shooting of deer out of season” and that our interpretation leads to absurd results because such permits would violate the prohibition on hunting during the closed season. Admittedly, § 29.177, STATS., provides that special deer hunting permits may be granted under certain conditions. However, the purpose behind granting a special permit is to give hunters latitude not normally authorized. That a general prohibition is subject to exception by a special permit does not render the general prohibition absurd.

¶12 Even if we were to conclude that § 29.99, STATS., is susceptible to more than one reasonable interpretation and is therefore ambiguous, we are convinced that the legislature intended our construction. In the 1985-86 version of § 29.99(11), STATS., the statute read: “For hunting deer without the required approval, during the closed season with the aid of artificial light or with the aid of an airplane” By letter dated August 14, 1985, the DNR advised the Revisor of Statutes that it believed a typographical error was made by omitting a comma between “season” and “with” in the above language. In obvious response, the Wisconsin Legislature inserted the missing comma by 1987 WIS. ACT 379. The analysis by the Legislative Reference Bureau states that the intent of inserting the comma was to identify the phrases as items in a series, each constituting separate offenses: “This bill provides that these penalties apply to a person who hunts deer during the closed season or with the aid of artificial light or with the aid of an

³ Section 29.99(1), STATS., refers to fish; subsec. (3) refers to game; subsec. (3m) refers to moose and elk; subsec. (5m) refers to lake sturgeon; and subsec. (11m) refers to bear.

airplane.” 1987 WIS. ACT 379, *Analysis by the Legislative Reference Bureau*. The intent of the legislature was to make hunting deer without the required approval a separate violation under § 29.99(11), STATS.

By the Court.—Order reversed and cause remanded.

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