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DISTRICT IV

September 24, 2026

To:

Hon. Craig R. Day
Circuit Court Judge
Electronic Notice

Anthony J. Pozorski
Electronic Notice

Tina McDonald
Clerk of Circuit Court
Grant County Courthouse
Electronic Notice

Greg Douglas Griswold
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2025AP1428
2025AP1429

Grant County v. Greg Douglas Griswold (L.C. # 2024TR1556)
Grant County v. Greg Douglas Griswold (L.C. # 2024TR1828)

Before Kloppenburg, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

A jury found Greg Griswold guilty of failing on two occasions to drive on the right half of the roadway, in violation of the Grant County ordinance adopting WIS. STAT. § 346.05 (2023-24). None of the arguments that Griswold makes on appeal challenging the verdicts have merit, and, therefore, I affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

Griswold lives in a house on property located on a rural road west of the Village of Muscoda. That property is on the south side of the road. He also owns property a short distance to the west down the same road, also on the south side of the road. Griswold's neighbors on the north side of the road contacted the sheriff's department and complained that, when traveling between his two properties, Griswold frequently drove various vehicles—including a tractor, a minivan, and a backhoe loader—on the neighbors' property. The neighbors provided the Grant County Sheriff's Office with videos and photographs of various instances of this behavior. After reviewing the neighbors' videos and photographs, a sheriff's deputy issued Griswold two citations for violating the Grant County ordinance adopting WIS. STAT. § 346.05(1)—once on June 7, 2024, and once on July 14, 2024. As applicable here, that statute provides that “[u]pon all roadways of sufficient width the operator of a vehicle shall drive on the right half of the roadway.”

The videos and photographs were introduced at trial. Generally, they show that Griswold would depart from one of his two properties and cross the road. He would then drive the distance between his two properties on the neighbors' (north) side of the road, with two wheels on the gravel adjacent to the paved roadway and two wheels in the grass abutting the gravel, and also over the neighbors' driveway aprons. One of the neighbors erected stakes with plastic tape to mark the portion of the neighbor's property the neighbor wished Griswold to avoid; video shows Griswold driving through the tape. The jury found Griswold guilty of both violations.

Although Griswold's appellant's brief is not completely clear, it appears that he is asserting three errors. He argues that: he did not violate the statute (and therefore the ordinance) because he never operated “left of center,” and instead operated on the gravel to the right of the roadway; a lack of clarity about the statute's prohibition rendered his trial a violation of due

process; and he was entitled to drive his vehicle where he did because, by statute, a town highway like the one concerned here is generally 66 feet wide and he was operating within this width, even though he was not on the paved roadway. I address these issues in turn.

Griswold's arguments require some background to be understood and addressed. As noted, and with exceptions not relevant here, WIS. STAT. § 346.05(1) directs that a motorist "shall drive on the right half of the roadway." "Roadway" is a statutory term. Its definition, as relevant here, is "that portion of a highway ... which is improved, designed or ordinarily used for vehicular travel, excluding the berm or shoulder." WIS. STAT. § 340.01(54). "Highway," in turn, is also a statutory term, which "includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel." § 340.01(22). A highway is generally 66 feet wide. WIS. STAT. §§ 82.18, 82.31. So, in the case of the road running between Griswold's properties, the "roadway" is the two-lane paved portion within the 66-foot-wide "highway," with the "highway" including the roadway, the gravel shoulder, and any other land within the 66-foot width.

As stated, WIS. STAT. § 346.05(1) directs that a motorist "shall drive on the right half of the roadway," and the citations issued to Griswold cite § 346.05(1). However, the citations also describe the alleged violation as "operating left of center." Certainly, driving one's vehicle completely or partially to the left of the center of a roadway is one way to violate the requirement to operate on the right half of the roadway, and a review of state case law reveals that many of the cases involving violations of § 346.05(1) involve motorists who crossed over the centerline onto the left half of the roadway. *See, e.g., State v. Popke*, 2009 WI 37, ¶18, 317 Wis. 2d 118, 765 N.W.2d 569. But the statutory language does not mention the left side of the roadway; it instead mandates that the motorist drive only on the "right half of the roadway." Pursuant to the

statutory definitions reviewed above, to drive on the “right half of the roadway” means to drive on the right half of the two-lane paved portion of the highway. In other words, the statute generally prohibits driving a motor vehicle on any part of the highway, including the shoulder, to the left or to the right of the right half of the two-lane paved portion.

With this legal background in mind, I now address Griswold’s arguments. Griswold argues that he had a “consistent operation of having always been driving to the far right of the highway’s pavement” such that he cannot be said to have operated left of center in violation of the statute. This argument fails as a matter of fact and of law. The citations and the trial concerned Griswold’s conduct on two days: June 7 and July 14, 2024. Regarding the June 7 date, the jury saw video showing Griswold driving from west to east on the north shoulder of the road—that is, contrary to Griswold’s argument, he was driving against the flow of traffic to the left of the paved roadway, not the right. Regarding the July 14 date, there was no video of Griswold again driving against the flow of traffic from west to east on the north shoulder, but one of the witnesses testified that he had done so. So, even if it were correct that WIS. STAT. § 346.05(1) only prohibits operating “left of center,” there was evidence that Griswold did so on the dates in question.

Even if Griswold had been driving with the flow of traffic to the right of the paved roadway, his argument fails as a matter of law. As the circuit court concluded and as explained above, driving on either shoulder violates WIS. STAT. § 346.05(1). In other words, no matter the direction of travel, a motorist driving on the shoulder is not operating on the “right half of the roadway,” which, again, is the part of the highway “improved, designed or ordinarily used for vehicular travel,” and which expressly excludes the shoulder. WIS. STAT. § 340.01(54).

Griswold argues that a lack of clarity during trial as to the scope of the statute's prohibition deprived him of due process. The record shows that, throughout the trial, both parties and the circuit court at times expressed uncertainty as to whether the issue was Griswold driving to the left of the centerline, or if Griswold could be guilty of violating the statute and ordinance even when he was operating on the right shoulder. As noted, the court ultimately clarified that driving on either shoulder violates WIS. STAT. § 346.05(1), for the reasons explained above. Griswold's argument that the expressions of uncertainty until the court's clarification deprived him of due process fails for at least the following three reasons.

First, during the trial, Griswold did not object to the jury instructions that the circuit court gave—after it clarified the scope of the statute's prohibition—which made no reference to operating “left of center” and included, as an element of the violation, that Griswold had “failed to drive the vehicle on the right half of the roadway.” Nor did Griswold object to the County's closing argument, which incorporated the notion that it was a violation of WIS. STAT. § 346.05(1) to drive on the shoulder in either direction. Griswold's failure to object, in each instance, constitutes forfeiture of any argument that the instructions or closing argument were in error. See WIS. STAT. § 805.13(3) (“Failure to object at the [jury instruction] conference constitutes a waiver of any error in the proposed instructions or verdict.”); *State v. Goodrum*, 152 Wis. 2d 540, 549, 449 N.W.2d 41 (Ct. App. 1989) (“Failure to object at the time of the alleged improprieties in the closing argument ... waives review of that alleged error.”). Griswold cannot complain on appeal that the law as defined and argued to the jury violated his due process rights based on a lack of clarity when he did not raise this argument before the circuit court. *Goodrum*, 152 Wis. 2d at 549.

Second, the jury instructions given, and the County's closing argument, closely followed the statute's language; that is, they correctly stated the law. Griswold does not explain how the jury receiving correct statements of the law that they were to apply could violate his due process rights. And, to the extent that Griswold may be arguing that the statute is so vague as to violate his due process rights, such an argument fails based on our explanation of the statute's meaning in the legal background above.

Third, a party's theory of the case often changes during trial as the evidence comes in. Griswold does not argue that any of the evidence about his driving was unknown to him before trial, and in fact, he agreed with the circuit court and the County that the case presented only a question of law, because the facts regarding his driving were undisputed. Thus, Griswold has no basis to argue that he was unfairly surprised by the evidence the County introduced. He also has no basis to argue that he was surprised by the language of the statute he was accused of violating, as the statute was referred to in the citations he received, and the language itself was recited in the proposed jury instructions Griswold received months before trial. Under these circumstances, there was no due process violation. See **Robinson v. State**, 100 Wis. 2d 152, 159, 301 N.W.2d 429 (1981) (due process not violated where prosecutor adopted theory of the case during trial in accord with statements defendant had made seven months prior).

Griswold also argues that he had the right to drive on the shoulder or on the grassy area abutting the shoulder because those areas are within the 66-foot width of the highway and the 66-foot width of the highway constitutes a public right-of-way or easement. See, e.g., **Walker v. Green Lake Cnty.**, 269 Wis. 103, 111, 69 N.W.2d 252 (1955) (the public holds an easement in highways and has the right to travel upon them). However, as the circuit court noted, even allowing that the public has a right of *access* to the full width of the highway, it does not follow

that this gives the right to *drive* as one wishes on all portions of the highway. Driving on highways is extensively regulated; speed, direction, signaling, and vehicle equipment rules are just a few of the restrictions that the traffic code places on what a motorist may lawfully do on the highways. WISCONSIN STAT. § 346.05(1) is another restriction. It specifies where on a 66-foot-wide highway one is permitted to drive a motor vehicle, and Griswold violated this restriction by driving elsewhere, regardless of whether Griswold might have the right to walk or to ride a bicycle where he was instead driving. To the extent Griswold suggests, as part of this argument, that his driving off the roadway was a legitimate response to his concerns about safety on that stretch of road, I observe that § 346.05(1) provides various exceptions to the general rule that one must drive on the right half of the roadway, including to pass in accordance with the law, and to avoid obstacles, animals, pedestrians, etc. § 346.05(1)(b), (d). However, the statute does not permit each motorist using the highway to establish a personal set of exemptions based on the motorist's own beliefs about what conduct would be safest.

IT IS ORDERED that the judgments are summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals