

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 19, 1998**

**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. 98-0020**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**FLORENCE COUNTY,**

**PLAINTIFF-RESPONDENT,**

**v.**

**BRAD RICHTIG,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Florence County:  
**ROBERT A. KENNEDY, Judge. *Reversed.***

**HOOVER, J.** Brad Richtig appeals a judgment finding him guilty of passing a school bus without stopping, contrary to § 346.48(1), STATS. On appeal, he contends that the trial court erred by failing to correctly apply the statute and consider his defense that the bus was moving when he proceeded to pass it. This court agrees and therefore reverses.

Brad Richtig was stopped by sheriff's deputy Curtis Jensen after the deputy received a report that a person driving a gray Cadillac failed to stop for a school bus. Richtig received a citation. At trial, Richtig and three passengers in his car testified that Richtig stopped after approaching the school bus from the opposite direction. Richtig and one passenger testified that Richtig began to slowly proceed and pass the bus once the bus was in motion. The other two passengers did not testify as to whether the bus was moving. The school bus driver testified that Richtig slowly passed the bus while the red flashing lights were on and the stop arm was extended.

The court found that Richtig stopped his car when approaching the bus. It concluded, however, that Richtig violated § 346.48(1), STATS., by proceeding while the bus had its flashing lights engaged. Richtig appeals, claiming that the applicable statute provides a defense if the bus is moving. Section 346.48(1) provides:

The operator of a vehicle which approaches from the front or rear any school bus which has stopped on a street or highway when the bus is equipped according to s. 347.25(2) and when it is displaying flashing red warning lights, shall stop the vehicle not less than 20 feet from the bus and shall remain stopped until the bus resumes motion or the operator extinguishes the flashing red warning lights.

Statutory interpretation presents a question of law we review de novo. *State v. Michels*, 141 Wis.2d 81, 87, 414 N.W.2d 311, 313 (Ct. App. 1987). The primary source of interpretation is the statutory language itself. *Hartlaub v. Coachmen Indus.*, 143 Wis.2d 791, 797, 422 N.W.2d 869, 871 (Ct. App. 1988). If the language is unambiguous, resort to extrinsic aid for purposes of statutory interpretation would be improper. *General Telephone Co. v. A Corp.*, 147 Wis.2d 461, 464, 433 N.W.2d 264, 265 (Ct. App. 1988).

This court concludes that the trial court erred by incorrectly applying § 346.48(1), STATS., and thus failing to consider Richtig's defense that the bus was in motion when he passed it. The clear language of the statute provides that it is not a violation for a vehicle to pass a bus displaying flashing red lights when that bus is in motion. Richtig presented firsthand evidence through his testimony and that of a passenger that he proceeded only after the bus began moving. The testimony of the other two passengers does not contradict this evidence. The bus driver was the only other witness with firsthand knowledge, and his testimony also does not contradict that of the defense witnesses. Therefore, Richtig presented a valid, uncontradicted defense to the charge of passing a school bus without stopping and his conviction is therefore reversed.

*By the Court.*—Judgment reversed.

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

