

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

April 16, 1996

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(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3141

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**COUNTY OF BAYFIELD,**

**Plaintiff-Respondent,**

**v.**

**ANDREW J. PETERSON,**

**Defendant-Appellant.**

APPEAL from a judgment and an order of the circuit court for Bayfield County: THOMAS J. GALLAGHER, Judge. *Judgment reversed and cause remanded; order affirmed.*

MYSE, J. Andrew J. Peterson, pro se, appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant contrary to BAYFIELD COUNTY ORD. 82.1, adopting § 346.63(1)(a), STATS., and an order revoking his driving privileges based upon his refusal to submit to a chemical test pursuant to § 343.305(3)(a), STATS. While Peterson raises a number of issues on appeal, this court need only address the dispositive issues. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938). The issues addressed are: (1) whether the trial court erred at Peterson's initial appearance when it failed to inform Peterson of his right to a jury trial and ask Peterson whether he wanted a continuance; (2) whether the trial court prohibited Peterson from obtaining legal counsel by signing an order

substituting Peterson as his own counsel of record; and (3) whether the trial court wrongfully refused to assist him in his pro se representation.

This court concludes that: (1) the trial court erred by not informing Peterson of his right to a jury trial and by not asking Peterson whether he wanted a continuance; (2) the trial court did not prohibit Peterson from obtaining legal counsel; and (3) the trial court properly refused to abandon its role of impartiality to assist or advise Peterson in his pro se representation. Because Peterson is entitled to a jury trial on the OWI charge but not for the refusal hearing, this court reverses the judgment of conviction but affirms the order.

Peterson was charged with two criminal misdemeanors in addition to operating a motor vehicle while intoxicated, open intoxicants and refusing to take a chemical test. The charges were consolidated and Peterson was represented by an attorney at his initial appearance. After standing moot to the misdemeanor charges, the court recognized that there were also some citations and asked how Peterson wanted to plead to the citations. Peterson's attorney responded that he would plead not guilty. The transcript of the initial appearance reveals that there was no mention that Peterson had a right to a jury trial or a right to a continuance for the ordinance violations.

At the status conference almost fifty days later, the district attorney requested that the misdemeanor charges be separated from the citations because Peterson had not requested a jury trial on the citations. Peterson's attorney responded that he thought the mode of trial would be set at the status conference because the charges had been consolidated at the initial appearance. Peterson's attorney subsequently requested a jury trial for the ordinance violations and a ten-day extension to post the \$72 jury fee. The court denied the request concluding that the right to a jury trial on the ordinance violations had been waived by Peterson's failure to request a jury trial within ten days of entering his not guilty plea. *See* § 345.43(1), STATS.<sup>1</sup> Accordingly, the trial court separated the misdemeanor charges from the citations.

---

<sup>1</sup> Section 345.43(1), STATS., provides:

Peterson subsequently requested that his attorney be relieved of representation and that either he or an attorney selected by him be substituted as his counsel. The court signed an order substituting Peterson as his own attorney of record in the case.

The trial court conducted the refusal hearing and trial on the OWI charge at the same time and Peterson appeared pro se.<sup>2</sup> At the close of the trial, the trial court determined that Peterson had improperly refused to take a blood test and convicted Peterson of operating a motor vehicle while under the influence of an intoxicant.

Peterson first contends that he was not informed of his right to a jury trial and his right to a continuance as required by § 345.34(1), STATS. The interpretation of a statute and its application to undisputed facts presents a question of law that this court reviews without deference to the trial court. *Madison v. Donohoo*, 118 Wis.2d 646, 650-51, 348 N.W.2d 170, 173 (1984).

Section 345.34(1), STATS., provides:

If the defendant appears in response to a citation, or is arrested and brought before a court with jurisdiction to try the case, *the defendant shall be informed that he or she is entitled to a jury trial and then asked whether he or she wishes presently to plead, or whether he or she wishes a continuance.* If the defendant wishes to plead, the defendant may plead guilty, not guilty or no contest. (Emphasis added.)

(..continued)

[I]f in circuit court either party files a written demand for a jury trial within 10 days after the defendant enters a plea of not guilty under s. 345.34 and immediately pays the fee prescribed in s. 814.61(4), the court shall place the case on the jury calendar of the circuit court. ... If no party demands a trial by a jury of 12, the right to trial by a jury of 12 is waived forever.

<sup>2</sup> While it is unclear from the record, it appears the open intoxicants charge was dropped or otherwise disposed of.

Section 345.34(1), STATS., unambiguously provides that at the initial appearance, the court must inform the defendant of his or her right to a jury trial and ask the defendant whether he or she wishes to plead or wishes a continuance. See *Donohoo*, 118 Wis.2d at 651, 348 N.W.2d at 173. There is no evidence that the trial court informed Peterson of his right to a jury trial or asked whether Peterson wanted a continuance. Accordingly, this court concludes that the trial court erred by not informing Peterson of his right to a jury trial and by not asking Peterson whether he wanted a continuance. This error is not amenable to harmless error analysis. See *Sullivan v. Louisiana*, 508 U.S. 275 (1993).

The County suggests that Peterson waived his right to a jury trial by failing to demand it within ten days after entering his not guilty plea, even though he was not informed of his right to a jury trial. This court is not persuaded. Section 345.43(1), STATS., provides that a party may file a demand for a jury trial "within 10 days after the defendant enters a plea of not guilty under s. 345.34 and immediately pays the fee ...." Conditions precedent in § 345.34, STATS., are that the court inform the defendant of his or her right to demand a jury trial and ask whether he or she wishes to plead or wishes a continuance. Only when these conditions have been fulfilled does the time start running on the demand for a jury trial.

While this conclusion is dispositive of the conviction for OWI, this court must address Peterson's other claims because he also appeals the refusal order. Peterson next contends the trial court prohibited him from obtaining legal counsel by ordering him to represent himself. Peterson refers to his request that his attorney be relieved of representation and that either Peterson or an attorney selected by him be substituted as counsel. The trial court signed an order substituting Peterson as his own counsel of record in the case. This court concludes that the trial court did not prohibit Peterson from obtaining other legal counsel to represent him; the trial court only substituted Peterson as his own counsel because Peterson's previous attorney was being relieved of representation and Peterson had not named an attorney to replace him. Peterson's misunderstanding of the court's order is one of the disadvantages of self-representation. This court does note however that Peterson may obtain an attorney to represent him in the new trial on remand.

Finally, Peterson makes a series of objections this court construes as his concern that the court did not properly assist him in his pro se representation at trial. Peterson suggests that the court was rude in responding to his questions regarding the proceedings, that he felt humiliated by the court's treatment of him during the trial, and that the court improperly sustained the County's objections to his questioning. In making the decision to proceed pro se in this action, Peterson accepted the limitations inherent in such representation. The trial court cannot and should not abandon its role of impartiality to advise, assist or otherwise instruct a single party appearing before it. To do so abandons its role of impartiality and creates issues as to the court's objectivity. Having decided to appear pro se, Peterson was bound by the rules of evidence, the local court rules and the rules of procedure. This court concludes that the trial court did not err in its handling of the trial or in its rulings on evidentiary objections that were properly made.

While Peterson raises a variety of issues in his pro se brief, it is difficult to determine the exact nature of the issues he wishes to present to this court. This court has examined the brief and identified the issues it believes are dispositive of this appeal. If Peterson intended to raise issues that are not identified by this court and are relevant to the refusal order, they are not raised with sufficient clarity or legal authority to be addressed on appeal. See *State v. Pettit*, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992).

Because the trial court erred when it denied Peterson's request for a jury trial concluding it was untimely even though it failed to inform Peterson of his right to a jury trial at the initial appearance, this court concludes that Peterson is entitled to a new trial before a jury on the OWI charge. However, because a refusal hearing is conducted before the court without a jury, the refusal order is affirmed. See § 343.305, STATS. The defendant has ten days after the record is remitted to the trial court to file his written demand for a jury trial and pay his fee.

*By the Court.*—Judgment reversed and cause remanded; order affirmed. No costs on appeal.

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