IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Respondent,	)	
	)	
vs.	)	No. SC99719
	)	
	)	
CAITLYN WILLIAMS,	)	
	)	
Appellant.	)	

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF LACLEDE COUNTY, MISSOURI
TWENTY-SIXTH JUDICIAL CIRCUIT, DIVISION FIVE
THE HONORABLE STEVE JACKSON, JUDGE

APPELLANT'S REPLY BRIEF

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INDEX

TABLE OF AUTHORITIES

Page

***CASES*:**

***STATUTES*:**

OTHER:

JURISDICTIONAL STATEMENT

Appellant, Caitlyn Williams, adopts and incorporates by reference the Jurisdictional Statement from her original brief.

STATEMENT OF FACTS

Appellant, Caitlyn Williams, adopts and incorporates by reference the Statement of Facts from her original brief, with the following addition.

In Respondent's brief, pages 9 and 10, respondent sets out a clear chronology of the letters sent to Ms. Williams and the charge that followed. As respondent notes, Ms. Williams was charged with the instant offense on March 2, 2022, two days before a final letter was sent to her on March 4, 2022, warning her that

> At this time, we are requesting a conference to determine why your child has accumulated 15 absences. Please contact the school office … Additional absences could result in further review by the Children's Division, Juvenile Office, or the Prosecuting Attorney.

(Ex. 4, D8P1).

INTRODUCTION

Respondent chose in its brief to address appellant's Points I and II in its Point II, and appellant's Point III in its Point I.[1] While appellant maintains her preference for the order in which the Points were originally presented, she has adopted respondent's Point order for ease of discussion of the issues of "regularly" and "knowledge" upon which this case turns.

[1] The Eastern District Court of Appeals has recently condemned this practice in ***State v. Valentine***, No. ED110295, 2023 WL 3184386 (Mo. App. E.D. May 2, 2023), in footnote 3, although it appears that in ***Valentine***, the State did not identify which Points of appellant's brief it was responding to, and respondent has done so in this case.

POINTS RELIED ON

I. [replies to Respondent's Point I]

Section 167.031 fails to give parents notice of the meaning of the word "regular" in the statute, and the vagueness of that term further allows for arbitrary and discriminatory enforcement.

Let us parse respondent's argument that the word "regular" in Section 167.031 means – not a percentage of attendance, as parents are told in the Lebanon school handbook – but *every* school day. Respondent concludes from its analysis that if "regular basis" means attendance every day school is scheduled to be in session, the State of Missouri has unfettered discretion to charge a parent with a violation of Section 167.031 if their child misses one day – one hour – one minute of a scheduled school day where they have not "to the satisfaction of the superintendent [been] determined to be mentally or physically incapacitated." (Resp. br. at 21-22).[2]

Although Section 167.031 does not set forth any specific process or policies under which the superintendent may excuse a student from attendance, respondent argues Section 171.011, a section not referenced in Section 167.031 and, therefore, not a section a person of ordinary intelligence would know was related to any provision in Section 167.031, properly delegates this rule-making to each individual school district. (Resp. br. at 22, n.8). Section 171.011 states that the school board has authority to make the rules and regulations of the government in the school district. From this, respondent extrapolates that Lebanon Public

[2] While appellant's brief analyzes Ms. Williams' child's attendance record based on days missed, respondent spends a great deal of time analyzing the hours that Emmaleigh missed (Resp. br. at 10-11). However, the assistant principal testified that, while the school looks at both daily and hourly absence percentages, the prosecutor bases the charges on full day absences (Tr. 25-26). The assistant principal also testified that she was "not sure how you calculate a percentage" because the system "calculates it for us" (Tr. 24).

School's handbook defines what "satisfies" the superintendent in terms of excused absences, namely, that the Lebanon school policy requires an excuse "from an actual physician." (Resp. br. at 22, n. 8).

But this is contradictory to respondent's premise. According to respondent, the plain language of Section 167.031 defines "regular" attendance as attendance "every day," yet the statutory schema delegates "nonattendance" policies and excused attendance policies to the individual school boards, even though these polices are what triggers prosecution under Section 167.061, and even when these policies conflict with the definition of "regular" respondent asserts is plain from the language of the statute. But, *if* the definition of "regular" means all Missouri parents must cause their children to attend school every day – and not a percentage as set forth in the Lebanon school handbook – and *if* the risk of criminal liability for Missouri parents attaches with any unexcused absence, then the Lebanon school handbook could not tell parents that absences cannot fall below 90%, insofar as the school board would have no authority in which to promulgate an alternative interpretation of the term "regular" as used in Section 167.031.

The problem with Missouri's statute is, in fact, highlighted when it is compared to Wisconsin's compulsory education statutes, which respondent cites as persuasive authority. For example, in the Wisconsin case respondent cites for its premise that "regular" in Section 167.031 means attendance every day, the Wisconsin Court noted that the relevant Wisconsin statute defined when attendance was required. ***State v. White***, 509 N.W.2d 434, 439 (Wis. App. 1993). The Wisconsin statute provided "attendance is required 'during the full period and hours, religious holidays excepted, that the public or private school . . . is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of 18.'" ***Id.*** The Wisconsin Court held that "[b]y this language, a person of ordinary intelligence . . . know that attendance is compulsory during any time school is in session until the child is eighteen, except religious holidays." In contrast, Missouri's compulsory school education statute

has no such definition and, without it, a person of ordinary intelligence would not have fair notice that her contemplated conduct is forbidden.

Additionally, in Wisconsin, the statute in question cross-referenced the truancy statutes, which defined *in the statute* not only how many days of school could be missed but also the evidence a school attendance officer must provide before a parent can be prosecuted for a violation of Wisconsin's compulsory school attendance law.[3] ***State v. White***, 509 N.W.2d 434, 439 (Wis. App. 1993). Unlike Missouri, which provides no relevant statutory definitions to parents, under the Wisconsin statutory schema, the legislature provided that truancy is defined as "any absence of part or all of one or more days from school during which the school attendance officer, principal or teacher has not been noticed of the legal cause of such absence by the parent or guardian of the absent pupil[.]" W.S.A. section 118.16(1)(a)(1), (2) (A-16). The Wisconsin Court held that this provision gave parents "further notice that any absence is considered irregular." In contrast, Missouri's legislature provides no such cross-reference to any statute that would give parents notice that "regular" attendance means attendance "every day."

Moreover, unlike in Missouri, the Wisconsin Court defined "regularly" as "to attend school 'constantly and uniformly.'" ***Id.*** at 438. As noted by

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[3] Specifically, in Wisconsin, before proceeding with prosecution, the school attendance officer must provide evidence that "school personnel in the school or school district" have "(a) Met with the child's parent or guardian to discuss the child's truancy or have attempted to meet with the child's parents or guardian and been refused[;] (b) Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modifications under s. 118.15(1)(d)[;] (c) Evaluated the child to determine whether learning problems may be a cause of the child's truancy and, if so, have taken steps to overcome the learning problems[;] (d) Conducted an evaluation to determine whether social problems may be a cause of the child's truancy and, if so, have taken appropriate action or made appropriate referrals." W.S.A. 118.16(5)(a)-(d) (A-18). Only after "receipt of evidence" of these actions can the child's parents be prosecuted under Wisconsin's compulsory school attendance policy statute. W.S.A. 118.16(6) (A-18). Missouri's statute contains no such provisions.

respondent, however, Missouri, rejected a similar definition and expressly held "[t]he word, 'regularly,' is not synonymous with constantly or continuously." ***Union Mut. Ins. Co. v. Brown***, 809 S.W.2d 144, 145-46 (Mo. App. E.D. 1991); (Resp. br. at 19-20). As such, respondent's reliance on the Wisconsin case and statute is misplaced.

In fact, had Missouri intended "regular" to mean "every day," the Missouri legislature also knows how to be more specific in its definitions. In Section 407.1240, "business day" is defined as "every day except Sundays and holidays." "Holiday" is defined as "any day that the United States Post Office is closed." In Section 493.045, "daily newspaper" is defined as a newspaper which is published "every day" except Sundays and legal holidays. In Section 374.060, the Department of Commerce is instructed to be open "every day" except Saturdays, Sundays and public holidays. Had the Missouri legislature wanted to tell parents that "regular" school attendance meant "every day," they knew how to do so.

The word "regular" in Section 167.031 does not give parents sufficient notice that they can be prosecuted, under the State's reading of the statute, for "every day" of school a child misses school. Nor does it give parents sufficient notice that 90% attendance is mandated by the statute instead of 85 or 86%. Respondent cannot have it both ways – either the statute governs this case, or the Lebanon Public School handbook does (which tells parents that the first 12 absences are excused – or at least do not need a doctor's note to be "excused" – adding to the confusion. D5P20).

Not only does Section 167.031 fail to give sufficient notice to parents to pass constitutional muster, it further allows for arbitrary and discriminatory enforcement. Respondent implicitly concedes this by stating that the school handbooks defining attendance policies are "intended to tell parents the consequences of nonattendance[,]" as well as "determining whether certain absences for illness will be excused." (Resp. br. at 30). According to respondent, however, the "consequence of nonattendance," per the statute, begins on the first

unexcused absences, not after a 90% attendance is not maintained (in Lebanon) or after seven unexcused absences (in Caruthersville). Moreover, the unfettered discretion proposed by respondent would allow prosecutors to prosecute parents after one unexcused absence and, therefore, would allow to continue what already happens – charges to be filed against poor people with job and transportation issues, while allowing affluent parents to take their children to Disney World for a week in October with no consequences.

The State would allow each individual school district in Missouri to make up arbitrary rules and prosecutors to arbitrarily file charges against people for violating the made-up rules.[4] We need a better statute. This one is vague and unconstitutional and this Court should reverse.

[4] Respondent concedes that the only authority for Lebanon School's 90% rule is a "point system" found in the Missouri School Improvement Plan – something to do with money and funding of schools, not educational standards. (Resp. br. at 28, n. 9).

II. [Replies to Respondent's Point II]

The State did not prove beyond a reasonable doubt that Ms. Williams violated Section 167.031 – either in her actions or her purpose.

Respondent and appellant have spent a good deal of time in their opening briefs arguing about math calculations (after which respondent argues that the math calculations do not matter). Respondent also argues that doctor's notes were required for Emmaleigh's sick days (Resp. br. 40) even though the Lebanon School Handbook says they were not, since those occurred before she had been absent twelve times (D5P20). And respondent then says none of this actually matters because, as argued in his Point I, each absence could have been separately prosecuted as violating Section 167.031 (Resp. br. at 40-41).

The question, however, is whether Ms. Williams had knowledge that she was causing her daughter to miss sufficient school to be in violation of the statute. Under respondent's convoluted analysis, no reasonable person could have such knowledge.

Appellant adopts her argument in Point I of this reply brief, and does not concede that Emmaleigh's attendance was not "regular" under the terms of the statute. In this, appellant agrees with respondent – it is the statute that matters, not the school handbook. The statute mandates that a parent shall cause their child to attend school "on a regular basis." Emmaleigh had not ceased coming to school – she had missed a day or two a month, including, as the witnesses made much of, her class Christmas party. If this was not regular attendance, then the legislature needs to amend their statute before putting parents in jail – because not even the witnesses from the Lebanon Public Schools understand the "rules."

CONCLUSION

For the reasons presented, appellant Caitlyn Williams respectfully requests that this Court reverse her conviction and discharge her.

Respectfully submitted,

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Certificate of Compliance and Service

I, Ellen H. Flottman, hereby certify to the following. The attached brief complies with the limitations contained in Rule 84.06(b). The brief was completed using Microsoft Word, Office 2010, in Times New Roman size 13-point font. Excluding the cover page, the signature block, this certificate of compliance and service, and appendix, the brief contains 2,216 words, which does not exceed twenty-five percent of the 31,000 words allowed for an appellant's brief.

On this 5th day of May, 2023, an electronic copy of Appellant's Brief was placed for delivery through the Missouri e-Filing System to Shaun Mackelprang, Assistant Attorney General, at Shaun.Mackelprang@ago.mo.gov.

/s/ Ellen H. Flottman

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