COURT OF APPEALS
DECISION
DATED AND FILED

May 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1451 **Cir. Ct. No. 2012TR1737**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

TAMMY S. CAMDEN,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Grant County: CRAIG R. DAY, Judge. *Reversed.*

¶1 SHERMAN, J.[1] The State appeals a judgment of the circuit court finding Tammy Camden not guilty of driving thirty-seven miles over the posted speed limit. The State contends the circuit court erred when it accepted her

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

defense of necessity. Because I conclude that the necessity defense is not available to Camden, I reverse the judgment of the circuit court.

BACKGROUND

¶2 On March 13, 2012, at approximately 2:13 p.m., Wisconsin State Trooper Daniel Breeser, who was on patrol on Highway 18 in the Township of Patch Grove, observed a motor vehicle traveling at an excessive speed. Trooper Breeser clocked the vehicle at a speed of ninety-two miles per hour in a fifty-five mile per hour speed zone. Trooper Breeser stopped the vehicle which was driven by Camden. Trooper Breeser testified that Camden admitted that she had been speeding, but that she informed him that she had been "attempting to get away from a vehicle." Trooper Breeser testified that Camden was unable to provide him with a description or any details of the vehicle. Trooper Breeser issued Camden a citation for exceeding the posted speed limit.

¶3 At trial, Camden admitted that she was driving at approximately ninety miles per hour when she encountered Trooper Breeser. However, she testified that she was doing so because of another vehicle, which was traveling closely behind her. Camden testified that after leaving Prairie du Chien, she observed a vehicle traveling behind her, in close proximity to her vehicle. She testified that she put her turn signal on and started to pull over and the vehicle behind her did the same. Camden testified that she continued driving and turned on her turn signal at the next possible turn. She testified that she observed that the vehicle behind her "looked like [it was] going to turn also." Camden testified that when she sped up, the vehicle behind her sped up as well, and that she felt that she "need[ed] to get away" from the vehicle behind her.

¶4 The circuit court determined that Camden's speeding was legally justified under the circumstances and dismissed the traffic citation. The State appeals.

DISCUSSION

¶5 The State contends that the circuit court erred in applying the legal justification defense in this case. Whether undisputed facts give rise to a legal defense is a question of law that this court reviews de novo. *See* ***Bantz v. Montgomery Estates, Inc.***, 163 Wis. 2d 973, 978, 473 N.W.2d 506 (Ct. App. 1991) (whether facts fulfill a particular legal standard is a question of law).

¶6 In ***State v. Brown***, 107 Wis. 2d 44, 55, 318 N.W.2d 370 (1982), the supreme court recognized, as a matter of public policy, necessity, or "legal justification," as an available defense to a speeding charge when the violation of the speeding law was caused by the actions of a law enforcement officer. The court explained that the defense was available in that situation because the defendant's conduct, although illegal, was "justified because it preserve[d] or ha[d] a tendency to preserve some greater social value at the expense of a lesser one in a situation where both [could not] be preserved." ***Id.*** at 53. The court stated, however: "We need not and we do not decide whether a defense of legal justification is available to the defendant in a civil forfeiture action for speeding if the causative force is someone or something other than a law enforcement officer." ***Id.*** at 56.

¶7 In Wisconsin, the supreme court is the law-developing, or policy making court. *See* ***State v. Schumacher***, 144 Wis. 2d 388, 405-07, 424 N.W.2d 672 (1988). The court of appeals, in contrast, is mainly an error correcting court. ***Id.*** Although this court has a role in developing the law as it exists, it cannot

declare new law. ***Id.*** Instead, "[W]e are duty-bound to apply the law as it presently exists." ***Thomas ex rel. Gramling v. Mallett***, 2004 WI App 131, ¶20, 275 Wis. 2d 377, 685 N.W.2d 791, *aff'd in part and rev'd in part on other grounds*, 2005 WI 129, 285 Wis. 2d 236, 701 N.W.2d 523.

¶8 Extending the "legal justification" defense established in ***Brown*** to include causes other than law enforcement officers would be incompatible with the error-correcting function of this court. Accordingly, because the supreme court has not extended the defense of necessity to apply to civil forfeiture actions for speeding if the cause is someone or something other than a law enforcement officer, I conclude that the circuit court erred in determining that it applied in this case. The judgment of the circuit court is therefore reversed.[2]

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[2] Camden argues that the State has forfeited its argument that the legal justification defense is not available in this case because it failed to argue before the circuit court that the defense was not available. However, she acknowledges that the State argued that the facts of this case do not support the legal justification defense. A party's failure to properly or timely raise issues in the circuit court may result in the forfeiture of the opportunity to argue those issues on appeal. However, this court may, at its discretion, consider arguments raised for the first time when the issue is solely a question of law and is not dependent upon further fact-finding to resolve the issue. *See* ***Helgeland v. Wisconsin Municipalities***, 2006 WI App 216, ¶9 n.9, 296 Wis. 2d 880, 724 N.W.2d 208; ***Estate of Hegarty ex rel. Hegarty v. Beauchaine***, 2001 WI App 300, ¶¶11-12, 249 Wis. 2d 142, 638 N.W.2d 355.

COURT OF APPEALS
DECISION
DATED AND FILED

May 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2270 **Cir. Ct. No. 2012TR4673**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DANE COUNTY,

PLAINTIFF-RESPONDENT,

V.

JEFFREY K. CROSSFIELD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: ELLEN K. BERZ, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.[1] Jeffrey K. Crossfield appeals a judgment of conviction, after a jury trial, for driving fifteen miles per hour over the posted speed limit in violation of Dane County Ordinance 69.01, adopting WIS. STAT.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

§ 346.57(5). On appeal, Crossfield argues that the posted thirty-five mile per hour speed limit is invalid and that the circuit court improperly excluded as irrelevant any evidence relating to the ordinance's establishment. I affirm for the reasons stated below.

BACKGROUND

¶2 On February 23, 2012, Dane County Deputy James Hodges cited Crossfield with speeding in the Town of Westport. Crossfield pleaded not guilty and the case proceeded to a jury trial. Deputy Hodges and Pamela Dunphy, an Assistant Commissioner with the Dane County Highway and Transportation Department, testified at trial. Crossfield does not dispute Deputy Hodges' trial testimony that: Hodges observed Crossfield driving on County Highway Q; Hodges' laser reading of Crossfield's vehicle's speed was fifty miles per hour; and the posted speed limit was thirty-five miles per hour. During trial, the circuit court struck Dunphy's testimony on Crossfield's direct examination and David Crossfield's testimony pursuant to its ruling that evidence concerning "the establishment of the ordinance, including ... the studies that were done, the measurements that were taken, the businesses or homes which are in the area" was irrelevant. The jury found Crossfield guilty of speeding in excess of the posted speed limit as charged in the citation.[2] Crossfield now appeals.

[2] *See State v. Schneck*, 2002 WI App 239, ¶15, 257 Wis. 2d 704, 652 N.W.2d 434 (noting that although WIS. STAT. ch. 345 forfeiture proceedings are civil proceedings, such proceedings have certain aspects of criminal proceedings).

DISCUSSION

¶3 On appeal, Crossfield does not dispute that he was driving in excess of the speed limit. Rather, Crossfield's primary arguments concern the validity of the speed limit, and the circuit court's exclusion of evidence at trial as to the establishment of the ordinance enacting the speed limit.

¶4 Crossfield appears to argue that the location of his violation (Highway Q, north of Briggs Road, in the Town of Westport) does not meet the conditions for a fixed limit of thirty-five miles per hour under WIS. STAT. § 346.57. First, he argues that the fixed speed limit of thirty-five miles per hour set forth in WIS. STAT. § 346.57(4)(f) does not apply because, at the location of Crossfield's violation, Highway Q is located in the Town of Westport, not "within the corporate limits of a city or village." Second, Crossfield appears to argue that the fixed speed limit of thirty-five miles per hour set forth in § 346.57(4)(g) does not apply because that part of Highway Q in question cannot be classified as a "semiurban district" according to Crossfield's map admitted as Exhibit 2.[3] Crossfield asserts that, because neither fixed limit applies, the speed limit "reverts" to fifty-five miles per hour under § 346.57(4)(h).

¶5 Assuming without deciding that Crossfield has not waived this argument (as asserted by the County), and also assuming without deciding that the

[3] WISCONSIN STAT. § 346.57(1)(b) defines a "[s]emiurban district" as "the territory contiguous to and including any highway where on either side of the highway within any 1,000 feet along such highway the buildings in use for business, industrial or residential purposes fronting thereon average not more than 200 feet apart or where the buildings in use for such purposes fronting on both sides of the highway considered collectively average not more than 200 feet apart." Crossfield's Exhibit 2 sets forth measurements pursuant to this definition but does not depict any "buildings in use for business, industrial or residential purposes" by which to assess the applicability of this definition.

fixed limits of thirty-five miles per hour in WIS. STAT. § 346.57(4)(f) and (g) do not apply, Crossfield's argument remains without merit, because official signs gave Crossfield notice of the thirty-five-mile-per-hour speed limit.

¶6 WISCONSIN STAT. § 346.57(4) plainly states that the relevant presumptive fixed limits apply "unless different limits are indicated by official traffic signs." A local authority, such as the Dane County Highway and Transportation Department, has the authority to "determine and declare a reasonable and safe speed limit," whenever it determines "upon the basis of an engineering and traffic investigation that any statutory speed limit is greater or less than is reasonable or safe under the conditions found to exist upon any part of a highway or that the actual speed of vehicles upon any part of a highway is greater or less than is reasonable and prudent." WIS. STAT. § 349.11(1)(a). Furthermore, "[w]hen appropriate signs giving notice of such speed limit have been erected and are in place, such speed limit shall be effective at all times." WIS. STAT. § 349.11(1)(a).

¶7 Here, during the County's direct examination, Dunphy testified that the speed limit of thirty-five miles per hour was "reviewed and accepted as a speed zone ordinance by the County Board" and that "the speed limit was posted correctly with official signs and at the right distance." While the fixed limits set forth in WIS. STAT. § 346.57(4)(f) and (g) may not have applied, the County "determine[d] and declare[d]" thirty-five miles per hour as "a reasonable and safe speed limit" and gave notice of such using official signs. WIS. STAT. § 349.11(1)(a). Contrary to Crossfield's assertion, a speed limit of fifty-five miles per hour did not apply, as such a fixed limit applies only "[i]n the absence of ... the posting of limits as required or authorized by law." WIS. STAT. § 346.57(4)(h).

¶8 In sum, while Crossfield may disagree with the posted speed limit, the County has exercised its statutory authority in determining the speed limit for Highway Q in the Town of Westport, and pursuant to WIS. STAT. § 349.11(1)(a), the speed limit, as noted on official signs, is effective at all times. Crossfield cannot challenge his speeding citation on the grounds that he disagrees with the speed limit adopted in the local authority's discretion. It follows that the circuit court properly excluded as irrelevant any evidence as to the information that local authorities may have obtained to "determine and declare a reasonable and safe speed limit" under § 349.11(1)(a), including studies undertaken, measurements that were taken, and businesses or homes in the area.

CONCLUSION

¶9 Based on the foregoing, I affirm the judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.