COURT OF APPEALS DECISION DATED AND FILED

September 6, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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 Wis. Stat. § 808.10 and RULE 809.62.

No. 01-0383

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

CITY OF BELOIT,

PLAINTIFF-RESPONDENT,

V.

WILLIAM L. TINDER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Rock County: JAMES E. WELKER, Judge. *Affirmed*.

¶1 DEININGER, J.[1] William Tinder appeals a circuit court order which affirmed a judgment of the City of Beloit Municipal Court. The municipal court found Tinder guilty of violating a city ordinance prohibiting obstructing an

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

officer. Tinder contends that the elements of the offense were not proven at trial. We conclude that the City presented sufficient evidence to the municipal court to allow it to draw reasonable inferences that Tinder was guilty of obstructing an officer. We therefore affirm the order of the circuit court upholding Tinder's conviction.

BACKGROUND

¶2 A South Beloit (Illinois) police officer stopped Tinder for speeding in Illinois, just across the state line. The officer radioed the City of Beloit Police Department requesting assistance, and a Beloit officer arrived at the scene of the stop.[2] After the Illinois officer identified the driver as "William Tinder, 451 Oak Grove," which is an address in the City of South Beloit, the officer asked Tinder to perform field sobriety tests. Instead of complying with the officer's request, Tinder drove away. The Illinois officer notified dispatch and pursued Tinder into Wisconsin until he lost sight of him.

¶3 Later that evening, a different City of Beloit officer stopped Tinder and took him to the City of Beloit Police Department. The Illinois officer who had made the original stop and the Beloit officer who had gone to the scene to assist the Illinois officer were both present at the Beloit Police Department when Tinder was brought in. The Beloit officer asked Tinder where he resided, and Tinder gave the officer an address on Park Avenue and indicated he lived in Beloit, Wisconsin. Tinder's response conflicted with the address at which the Illinois

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[2] The Beloit officer testified that the City of South Beloit, Illinois, and the City of Beloit, Wisconsin, have a mutual aid agreement. *See* WIS. STAT. § 175.46.

officer believed Tinder to reside.[3] The Illinois officer told the Beloit officer that the address given by Tinder was incorrect.

¶4 The Beloit officer conducted a follow-up investigation by going to the address on Park Avenue to determine whether Tinder lived there. On his second visit to the Park Avenue address, the officer made contact with a man residing at the address who told the officer that Tinder no longer lived there and hadn't lived there for three to four months.[4] The Beloit officer issued Tinder a citation for obstructing an officer in violation of Beloit City Ordinance 15.01, adopting WIS. STAT. § 946.41. A trial was held in the Beloit Municipal Court, and the City presented testimony from the Beloit officer, two Illinois officers and the Park Avenue resident. Tinder did not attend the trial, and his counsel called no witnesses.

¶5 The court found Tinder guilty of the offense. Tinder appealed the judgment of conviction to the Rock County Circuit Court, requesting a "transcript

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[3] The Illinois officer testified that, from his prior contacts with Tinder, he knew Tinder to live at an address on Oak Grove in South Beloit.

[4] The resident's testimony was somewhat confused as he could not clearly recall what he told the officer when the officer interviewed him. The officer testified that the resident told him that Tinder had not lived at the address for three to four months. The municipal court found, from the testimony given, that Tinder did not reside at the Park Avenue address at the time Tinder gave it as his address:

> It's true that … [the resident's] testimony was somewhat confusing, but what I did gather from it was that … although he couldn't state exactly when he moved in, it's clear he was living there on [the date the officer made contact with him], and it was clear at least from the officer's testimony that he said that Mr. Tinder hadn't lived there for three to four months.
>
> He also testified … unequivocally that at no time did Mr. Tinder live there when [the resident] was living there.

review." *See* WIS. STAT. § 800.14(5). The circuit court ordered Tinder to file a brief on the facts and the applicable law, but noted in its "Memorandum and Order" that Tinder had failed to file a brief. The circuit court nonetheless reviewed the transcript of the trial, and affirmed the municipal court judgment. Tinder appeals the circuit court's order.

ANALYSIS

¶6 This court's review, just as the circuit court's review, is limited to an examination of the transcript of the trial before the municipal court. ***Village of Williams Bay v. Metzl,*** 124 Wis. 2d 356, 361-62, 369 N.W.2d 186 (Ct. App. 1985). We examine the transcript to determine whether the evidence supports the municipal court's decision.[5] ***Id***. at 361. Findings of fact made by the municipal court will be upheld unless a finding is clearly erroneous and "due regard should be given to the opportunity of the municipal court to judge the credibility of the witnesses." ***Id***.; WIS. STAT. § 805.17(2); *see also* ***State v. Poellinger,*** 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990):

> The credibility of the witnesses and the weight of the evidence is for the trier of fact. In reviewing the evidence to challenge a finding of fact, we view the evidence in the light most favorable to the finding. Reasonable inferences drawn from the evidence can support a finding of fact and,

[5] In this opinion, we address Tinder's arguments that the City did not present sufficient evidence to establish specific elements of the offense of obstructing an officer. We acknowledge that the trial court did not specifically address each element in its bench decision finding Tinder guilty of the offense. We must assume, however, that in finding Tinder guilty, the court determined that each element had been proven. *See* ***Sohns v. Jensen***, 11 Wis. 2d 449, 453, 105 N.W.2d 818 (1960); *see also* ***State v. Williams***, 104 Wis. 2d 15, 22, 310 N.W.2d 601 (1981) (noting that when a trial court fails to express a finding of fact, an appellate court has the option to affirm the judgment if it is clearly supported by the evidence adduced at trial). Our references to the municipal court's "findings," therefore, include its implied findings "in favor of or in support of the judgment." ***Sohns***, 11 Wis. 2d at 453.

> if more than one reasonable inference can be drawn from the evidence, the inference which supports the finding is the one that must be adopted.

¶7 Tinder contends the evidence failed to establish all of the elements of obstructing an officer by clear, satisfactory and convincing evidence. *See* WIS. STAT. § 800.08(3). The ordinance at issue adopts WIS. STAT. § 946.41, and we therefore look to the statute defining the offense, and to WIS JI—CRIMINAL 1766A, to determine the elements which must be proven. The first element requires that Tinder knowingly gave an officer false information. ***Id***. The second element requires that the officer was acting in an official capacity, and the third that the officer was acting with lawful authority. ***Id***. The fourth element requires that the defendant intended to mislead the officer in the performance of his or her duty, ***id.***, which requires a showing that Tinder knew that the officer was acting in an official capacity and with lawful authority. ***State v. Lossman***, 118 Wis. 2d 526, 539-40, 348 N.W.2d 159 (1984).

¶8 Tinder does not challenge the sufficiency of the evidence to prove that he knowingly gave a false address to the Beloit officer, but he does challenge the proof on the remaining three elements. First, Tinder argues that there is nothing in the record which shows that the Beloit officer was acting in an official capacity. We disagree. The record shows that the Beloit officer was employed by the City of Beloit Police Department on the night in question, was on duty, and had been radioed by an Illinois officer to assist in Tinder's initial traffic stop. We conclude that the trial court could reasonably infer that the Beloit officer was continuing to assist the Illinois officers when Tinder was later apprehended following his flight from the Illinois stop and questioned at the Beloit police station.

¶9 We disagree with Tinder that ***State v. Barrett***, 96 Wis. 2d 174, 291 N.W.2d 498 (1980), points to a different result. The supreme court concluded in ***Barrett*** that when an officer attempts to exercise law enforcement authority outside of his employing jurisdiction, and "there are no circumstances of his employment extending his duty to act," he cannot be said to be acting in an official capacity. ***Id***. at 181. Here, the Beloit officer was on duty, within the City of Beloit, and following up on an investigation of an individual who had been apprehended in the city following his flight from Illinois officers. The trial court did not err in finding that the Beloit officer was acting "within the scope of that which he is employed to do," as opposed to "engaging in a personal frolic." ***Id***. at 180.

¶10 We also reject Tinder's suggestion that, in order to establish that the Beloit officer was acting in an official capacity, it was incumbent on the City to introduce a copy of its mutual aid agreement with the City of South Beloit. First, as we have noted, the Beloit officer was performing duties in the City of Beloit at the time of the alleged obstructing offense. The fact that the Beloit officer had previously been summoned by Illinois officers to assist at the scene of Tinder's initial stop is largely irrelevant to the question of whether the Beloit officer was acting in an official capacity at the time of the obstruction. Moreover, we note that Tinder did not object to the officer's testimony that Beloit and South Beloit have a mutual aid agreement, nor did he argue to the trial court that the City's lack of production of such an agreement was somehow fatal to its prosecution. Accordingly, we conclude that, to the extent the municipal court relied on the officer's testimony regarding a mutual aid agreement between the two cities to find that the Beloit officer was acting in an official capacity on the evening in question, it was entitled to do so.

¶11 Tinder next argues that the officer was not acting with lawful authority at the time he questioned Tinder at the Beloit police station. Tinder claims that, because it is not known why or how Tinder was stopped in Wisconsin, the City did not establish that the unidentified officer who stopped and brought Tinder to the police station had acted lawfully in doing so. That is, according to Tinder, if the unidentified officer lacked lawful authority to make the second stop, then the Beloit officer who later questioned him also lacked lawful authority to do that. There is nothing in the record to indicate that Tinder moved to suppress any evidence gathered following the Wisconsin stop based on its alleged unlawfulness. In the absence of a challenge to the stop and detention either prior to or during the trial, we conclude the trial court was entitled to infer that Tinder's presence at the police station had been lawfully procured. The court's finding that the Beloit officer acted within his lawful authority when asking Tinder for his address, in order to assist Illinois officers in pursuing charges against Tinder, was thus not clearly erroneous.

¶12 Finally, Tinder argues that the City of Beloit failed to prove that he knew the officer was acting with lawful authority. We again disagree. The supreme court concluded in ***Lossman*** that:

> Based on the evidence that the officer was in full uniform, driving a marked patrol car, which still had its headlights on and red flashing lights, and that the officer told the defendant a traffic stop was in progress, a jury acting reasonably, properly under the evidence, could have determined beyond a reasonable doubt that the defendant knew, or believed, that the deputy was acting with lawful authority.

Lossman, 118 Wis. 2d at 544-45. Here, Tinder had previously fled from law enforcement officers; he was now at the Beloit police station, in the presence of those officers; and both testified that they were on duty at the time and thus

presumably in uniform. We conclude that the trial court could reasonably infer, under the lesser "middle" burden of proof, that Tinder knew or believed that the Beloit officer who questioned him was acting with lawful authority.

¶13 In summary, after reviewing the record, we conclude that the finding of the municipal court that Tinder was guilty of obstructing an officer was not clearly erroneous.

CONCLUSION

¶14 For the reasons discussed above, we affirm the order of the circuit court upholding Tinder's conviction for violating the Beloit municipal ordinance.

By the Court.—Order affirmed.

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