

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 27, 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. 01-0621

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF MADISON,

PLAINTIFF-RESPONDENT,

V.

DUKE M. JAWARA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
C. WILLIAM FOUST, Judge. *Affirmed.*

¶1 DEININGER, J.¹ Duke Jawara appeals a judgment convicting him of operating a motor vehicle while under the influence of an intoxicant (OMVWI). The precise nature of Jawara's claim of error cannot be ascertained from his brief,

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.

but it appears that he is challenging the trial court's factual finding, based on credibility determinations, that he was in fact driving the vehicle at the time of the offense. After reviewing the transcript of the court trial in circuit court, we conclude that the trial court's finding that Jawara committed the offense of OMVWI is not clearly erroneous. Accordingly, we affirm the appealed judgment.

BACKGROUND

¶2 The Madison municipal court found Jawara guilty of OMVWI, as prohibited by the City of Madison traffic ordinance adopting WIS. STAT § 346.63(1). Jawara appealed the municipal court judgment to the circuit court, and elected to have a de novo bench trial.²

¶3 The arresting officer testified that he first observed Jawara's vehicle squealing its tires and driving erratically. The officer pursued the vehicle and stopped it, finding it to be occupied by Jawara as the driver and no one else. Because Mr. Jawara was somewhat uncooperative, the officer called for backup, and another officer arrived shortly thereafter. Jawara subsequently consented to a search of his vehicle, which resulted in the discovery of what appeared to be a marijuana cigarette. When the officers attempted to place Jawara under arrest, he resisted, but was ultimately subdued, restrained, and transported for a blood test, which yielded a result of 0.14 g/100 ml.

¶4 Jawara did not contest the fact that he was intoxicated at the time of his arrest, but vigorously disputed that he had been driving his car. He testified

² The municipal court also found Jawara guilty of another ordinance violation, entitled "Light Motor Vehicle Noise Control," but this violation was not specifically addressed during subsequent proceedings in the Dane County circuit court.

that he had been attending a party in the vicinity of where his car had earlier been parked. He maintained that he had gone to the car to get a catalog when he was apprehended by the officers. He presented a witness who testified that she saw the officers searching the vehicle and then the ensuing scuffle at the time of Jawara's arrest. She acknowledged that she had not been looking out her window beforehand and could not say whether Jawara had or had not been driving the vehicle.

¶5 At the conclusion of the testimony, the trial court noted that it had the opportunity to observe the witnesses and that it had formed definite opinions about their credibility. The court informed Jawara that it did not find him credible for a number of reasons, including his admitted intoxication at the time of the offense, the fact that he resisted officers who were attempting to perform their duties, and the fact that his own witness corroborated much of the officers' versions of events. The court further found the testimony of the arresting and backup officers as credible and as corroborating one another. The court concluded that it was "convinced that [Jawara was] driving the vehicle as described by [the officer] and therefore I find [Jawara] guilty" of OMVWI. Jawara appeals the subsequent judgment of conviction.

ANALYSIS

¶6 As we have noted, Jawara makes no coherent argument as to why he believes the trial court erred in finding him guilty of OMVWI. Because "we cannot serve as both advocate and judge," this court may decline to review issues that are inadequately briefed. *State v. Pettit*, 171 Wis.2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶7 Nonetheless, we have reviewed the transcript of the trial in the circuit court, and we are satisfied that the trial court's finding of guilt was not clearly erroneous. *See* WIS. STAT. § 805.17(2). When a trial court sits as a trier of fact, it determines issues of credibility. *Fidelity & Deposit Co. v. First Nat'l Bank*, 98 Wis. 2d 474, 485, 297 N.W.2d 46 (Ct. App. 1980). It is for the trier of fact, and not this court to assess witness credibility. *Rohl v. State*, 65 Wis. 2d 683, 695, 223 N.W.2d 567 (1974).

¶8 As we have noted, there was credible testimony from the arresting officer that Jawara was driving the vehicle at the time of the offense. The arresting officer's version of the events of the evening were corroborated by the testimony of the backup officer, and to some extent by the testimony of Jawara's defense witness. We will not second guess the trial court's conclusions regarding the lack of credibility of Jawara's alternative version of what happened prior to his arrest. *Amoco Oil Co. v. Capitol Indem. Corp.*, 95 Wis. 2d 530, 553, 291 N.W.2d 883 (Ct. App. 1980). Accordingly, we find no basis in the record to set aside the judgment of conviction.

By the Court.—Judgment affirmed.

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

