COURT OF APPEALS
DECISION
DATED AND FILED

December 2, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1308-CR **Cir. Ct. No. 01CT276**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHANNON P. PATRAW,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Shawano County: JAMES R. HABECK, Judge. *Reversed.*

¶1 PETERSON, J.[1] Shannon Patraw appeals a judgment of conviction for a criminal offense of operating a motor vehicle after revocation of operator's license. He argues that, in order to be charged with a crime, a predicate forfeiture must be a statutory violation, not an ordinance violation. Because his prior

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

forfeitures were all ordinance violations, he concludes he should not have been charged with a crime. For reasons set forth below, we reverse the judgment.

BACKGROUND

¶2 Patraw was charged on November 5, 2001, with operating a motor vehicle after revocation of operator's license under WIS. STAT. § 343.44(1)(b), (2)(b). All his prior convictions were for ordinance violations, rather than statutory violations. Patraw filed a motion alleging that this was his first statutory offense under § 343.44(2)(am), so that he should have been charged with a statutory forfeiture, not a crime. The trial court denied the motion. A jury found Patrow guilty and he now appeals.

DISCUSSION

¶3 WISCONSIN STAT. § 343.44(2)(am) states:

> Any person who violates sub. (1)(b) before May 1, 2002, may be required to forfeit not more than $600, except that, if the person has been convicted of a previous violation of sub. (1) (b), or of operating a motor vehicle in violation of s. 343.44 (1), 1997 stats., with an operating privilege that is revoked, within the preceding 5-year period, the penalty under par. (b) shall apply.

Further, § 343.44(2)(b) states:

> Except as provided in par. (am), any person who violates sub. (1)(b), (c) or (d) shall be fined not more than $2,500 or imprisoned for not more than one year in the county jail or both. In imposing a sentence under this paragraph, or a local ordinance in conformity with this paragraph, the court shall review the record and consider the following ….

Patraw notes that the criminal penalties of subsec. (2)(b) only apply if a person has a previous conviction under subsec. (1)(b). He observes that the statute does not

say a violation of subsec. (1)(b) "or a local ordinance in conformity with" the statute. This, for example, is the language used for operating after suspension. *See* WIS. STAT. § 343.44(2)(a). Similar language is used in other places. *See, e.g.,* WIS. STAT. §§ 343.30, 343.31 (also dealing with suspensions and revocations of operating privileges); § 343.307 (dealing with operating while intoxicated convictions). Patraw contends that, because the legislature inserted specific language about local ordinances into other parts of the statute, its absence here shows an intent that previous violations of ordinances not be counted as predicate offenses under § 343.44(2)(am).

¶4 In further support of his argument, Patraw cites 71 Op. Att'y Gen. 132 (1982), in which the attorney general wrote about the difference between prior violations of ordinances and statutory violations. The opinion states that WIS. STAT. § 343.44(2)

> does not refer to local ordinances adopted in conformity with the statute. Therefore, the criminal penalties for second or subsequent acts of operating after revocation or suspension do not apply where the prior conviction is for an ordinance violation; they apply only where the prior conviction is for a statutory violation.

Id. at 134. Similarly, Patraw argues that § 343.44(2)(am) does not refer to local ordinances adopted in conformity with the statute. Therefore, he concludes, criminal penalties do not apply where the prior convictions are for ordinance violations.

¶5 The State simply asserts that the statute has changed since the attorney general's opinion, and the phrase "or a local ordinance in conformity with" now appears twice within the penalty section of WIS. STAT. § 343.44. Consequently, the State argues the attorney general's opinion is unpersuasive

because it "is more than two decades old, and refers to an arcane version of the statute."

¶6 What the State does not acknowledge, however, is that WIS. STAT. § 343.44(2)(am) is not one of the places where the language "or a local ordinance in conformity with" was added. The two places it appears are in § 343.44(2)(a) and (b). The State gives no response to Patraw's argument that the legislature's failure to insert the language in § 343.44(2)(am) shows its intent not to include prior violations of ordinances in that section. Generally, unrefuted arguments are deemed admitted. ***Charolais Breeding Ranches v. FPC Secs.***, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979).

¶7 The State also comments that it would be "absurd" to make "a distinction between operation after revocation convictions resulting from citations issued by the Wisconsin State Patrol, which are charged as statutory violations, and all other operating after revocation convictions, which come as a result of citations issued by sheriff's deputies or municipal officers, which are issued pursuant to local ordinances in conformity with the operating after revocation statute." However, this was in fact the result at the time of the attorney general's opinion under the then existing statute. The result of the State's argument would mean that the attorney general's opinion was absurd. Simply stating that the result would be absurd, without further argument, is not helpful.

¶8 We have an obligation as an appellate court to address an appellant's arguments. If we were to affirm the judgment, we would first have to develop the State's argument for it. It is not this court's function to supply legal research and develop argument. ***State v. Waste Mgmt.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978). We therefore decline to address the issue further.

By the Court.—Judgment reversed.

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