

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 26, 2003**

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.

**Appeal No. 03-1314  
STATE OF WISCONSIN**

**Cir. Ct. No. 03FO000178**

**IN COURT OF APPEALS  
DISTRICT II**

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**COUNTY OF FOND DU LAC,**

**PLAINTIFF-RESPONDENT,**

**V.**

**KEVIN C. DERKSEN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Fond du Lac County:  
RICHARD J. NUSS, Judge. *Affirmed.*

¶1 BROWN, J.<sup>1</sup> Kevin C. Derksen appeals from an order finding him guilty of violating a Fond du Lac county ordinance prohibiting the underage consumption of alcohol. Derksen raises two arguments on appeal. First, he

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

submits that the circuit court did not obtain jurisdiction over him because he was not properly served with a summons and complaint. Second, he argues that Fond du Lac County lacks the constitutional authority to regulate underage drinking. We hold that Derksen was properly served when the charging officer issued the citation. We also hold that Fond du Lac's county ordinance regulating the consumption of alcoholic beverages by underaged persons is constitutional. We affirm.

¶2 The pertinent facts are as follows. Shortly before midnight on December 31, 2002, a deputy sheriff with the Department of Fond du Lac County stopped a vehicle in Fond du Lac county. Derksen was a passenger in the vehicle. The officer observed that Derksen had an odor of alcohol on his breath along with bloodshot, glassy eyes consistent with drinking alcohol. Next, the officer administered a PBT, which established that Derksen had been drinking alcohol. The officer determined that Derksen had not reached Wisconsin's legal drinking age, and he issued Derksen a citation for underage consumption of alcohol in violation of Fond du Lac County ordinances Sec. 6-1, adopting WIS. STAT. § 125.07(4)(b). At trial, the court found Derksen guilty; this was Derksen's second offense.

¶3 Derksen's first argument is that the trial court lacked jurisdiction over him because the violation of the underage drinking ordinance is a civil action, and therefore requires a summons and complaint for proper service of process. Whether a court has established proper jurisdiction over a defendant is a question of law that is reviewed de novo. See *Dungan v. County of Pierce*, 170 Wis. 2d 89, 93, 486 N.W.2d 579 (Ct. App. 1992).

¶4 Derksen misunderstands the law. WISCONSIN STAT. § 800.01(1)(a) provides, “[i]n municipal court, personal jurisdiction in municipal ordinance violation cases and cases involving a violation of a resolution or bylaw if the resolution or bylaw is authorized by statute is obtained over a defendant when the defendant ... is served with a summons and complaint or citation and such documents are filed with or transmitted to the court.” Hence, by statute, proper service occurs in cases involving a violation of a municipal ordinance when a citation is issued. Because Derksen’s underage consumption of alcohol was a violation of a municipal ordinance, a citation was proper service of process and the trial court had jurisdiction.

¶5 Derksen’s second argument is that the County lacks the constitutional authority to regulate matters relating to underage drinking. Whether a statute is constitutional is a question of law that is reviewed de novo. *State v. Migliorino*, 150 Wis. 2d 513, 524, 442 N.W.2d 36 (1989).

¶6 It is well established that there is a strong presumption in favor of a statute being constitutional, and the challenger shoulders the burden of demonstrating that the statute is unconstitutional beyond a reasonable doubt. *Guzman v. St. Francis Hosp., Inc.*, 2001 WI App 21, ¶4, 240 Wis. 2d 559, 623 N.W.2d 776. Derksen offers no argument to rebut this presumption.

¶7 Moreover, it is well established in Wisconsin that the state has broad power to regulate not only the liquor industry but also underage drinking. *Alberti v. City of Whitewater*, 109 Wis. 2d 592, 601, 327 N.W.2d 150 (Ct. App. 1982); *Farmers Mut. Auto. Ins. Co. v. Gast*, 17 Wis. 2d 344, 348, 117 N.W.2d 347 (1962), *overruled on other grounds by Sorensen by Kerscher v. Jarvis*, 119 Wis. 2d 627, 350 N.W.2d 108 (1984). Regulation of underage consumption of

alcohol occurs to protect the safety of persons who might be injured as a result of the intoxication of underage persons as well as for the health and morals of the underage persons themselves. *Id.*

¶8 WISCONSIN STAT. ch. 125 was enacted to answer a “statewide concern for the purpose of providing a uniform regulation of the sale of alcohol beverages.” WIS. STAT. § 125.01. Within ch. 125, sec. 125.07(4)(b) states “any underage person not accompanied by his or her parent, guardian or spouse who has attained the legal drinking age who knowingly possesses or consumes alcohol beverages is guilty of a violation.” Fond du Lac County derives its authority to pass municipal ordinances relating to underage drinking from ch. 125, which allows Wisconsin counties to enact ordinances that comply with the subsections of ch. 125. WIS. STAT. § 125.10(1), (2). Therefore, Fond du Lac County possesses the authority to regulate underage consumption of alcohol, and as a result, Derksen’s second challenge fails. Accordingly, we affirm the circuit court’s order.

*By the Court.*—Order affirmed.

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

