COURT OF APPEALS
DECISION
DATED AND FILED

July 24, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP277-FT **Cir. Ct. No. 2006TR3101**

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

CITY OF MINERAL POINT,

PLAINTIFF-RESPONDENT,

V.

PATRICK C. FORD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Iowa County: WILLIAM D. DYKE, Judge. *Affirmed.*

¶1 DYKMAN, J.[1] Patrick Ford appeals from a judgment and an order following a guilty verdict for driving with a prohibited alcohol concentration,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

contrary to WIS. STAT. § 346.63(1)(b). Ford argues that the City of Mineral Point failed to provide sufficient evidence of venue, and therefore he was entitled to dismissal at the close of the City's case in chief.[2] We disagree, and therefore affirm.

Background

¶2 In October 2006, City of Mineral Point Police Officer Neil Pilling stopped Patrick Ford's vehicle. Subsequently, Ford was charged in Iowa County circuit court by the City of Mineral Point with operating a motor vehicle while under the influence of an intoxicant, first offense—a civil forfeiture violation of WIS. STAT. § 346.63(1)(a)—and with operating a motor vehicle with a prohibited alcohol concentration, first offense—a civil forfeiture violation of § 346.63(1)(b). Ford entered pleas of not guilty to both charges and was tried before a six-person jury.

¶3 At the close of the City's case-in-chief, Ford moved to dismiss the case against him due to the insufficiency of evidence proving venue. The trial court denied the motion. The jury found Ford not guilty of operating a motor

[2] The court's final order is labeled as a denial of Ford's motion for judgment notwithstanding the verdict. At the hearing on Ford's motion for judgment notwithstanding the verdict, the parties argued over whether the motion was properly labeled, as it challenged the trial court's denial of Ford's motion to dismiss at the close of the City's case-in-chief. The order states as its purpose: "To reconsider the motion of the defendant, Patrick C. Ford, made at the time plaintiff rested its case during the jury trial held September 27, 2007, for dismissal on lack of sufficiency of the evidence to prove venue in Iowa County." It then states that "defendant's Motion for Reconsideration is denied." Additionally, all of the arguments in Ford's brief address the sufficiency of the evidence to prove venue, and he advances no argument that he is entitled to a judgment notwithstanding the verdict. We thus address this appeal as from the trial court's denial of Ford's motion to dismiss for insufficiency of the evidence to prove venue.

vehicle while under the influence of an intoxicant and guilty of operating a motor vehicle with a prohibited alcohol concentration.

¶4 Ford then moved for judgment notwithstanding the verdict, again arguing that the City failed to establish proof of venue in its case-in-chief. The trial court denied the motion. The court said that, from "unmistakable geographic references to Mineral Point" at trial, an Iowa County jury could infer that the offense occurred on Commerce Street in the City of Mineral Point, Iowa County, Wisconsin. The court also took judicial notice that Commerce Street—the location of the offense—was in the City of Mineral Point, Iowa County. Ford appeals.

Standard of Review

¶5 A motion challenging the sufficiency of the evidence to support the verdict shall only be granted if "the court is satisfied that, considering all credible evidence and reasonable inferences therefrom in the light most favorable to the party against whom the motion is made, there is no credible evidence to sustain a finding in favor of such party." WIS. STAT. § 805.14(1). We "give substantial deference to the trial court's better ability to assess the evidence." ***Weiss v. United Fire and Cas. Co.***, 197 Wis. 2d 365, 388, 541 N.W.2d 753, 761 (1995) (citation omitted). Thus, we will only overturn a trial court's ruling on a motion to dismiss for insufficient evidence if the trial court was "clearly wrong." ***Id.***

¶6 We review a trial court's denial of a motion for judgment notwithstanding the verdict de novo, applying the same standards as the trial court. ***Logterman v. Dawson***, 190 Wis. 2d 90, 101, 526 N.W.2d 768 (Ct. App. 1994).

Discussion

¶7 Ford argues that he was entitled to dismissal after the City rested its case-in-chief because the City had not presented sufficient evidence of venue in Iowa County. We disagree.

¶8 "[V]enue refers to the place of trial, the particular county or district or similar geographical area within which a case is to be heard." ***State v. Corey J.G.***, 215 Wis. 2d 395, 406, 572 N.W.2d 845 (1998) (citation omitted). The proper venue for a traffic violation is the county where the violation occurred. WIS. STAT. §§ 345.31; 971.19(1). The City bears the burden to establish venue by proof that is clear, satisfactory, and convincing. *See* WIS. STAT. § 345.45; ***Corey J.G.***, 215 Wis. 2d at 407-09. Here, Ford challenges the sufficiency of the City's evidence to meet that burden.

¶9 As an initial matter, Ford argues that a motion to dismiss at the close of the plaintiff's case-in-chief precludes a court from considering subsequently offered evidence. We agree that we are so limited. In reviewing a motion to dismiss at the close of the plaintiff's case-in-chief, we consider "only the proof which [has] been offered by the plaintiff at the time it rested its case." *See* ***Beacon Bowl, Inc. v. Wisconsin Elec. Power Co.***, 176 Wis. 2d 740, 788, 501 N.W.2d 788 (1993) (citation omitted). Thus, we will consider only the evidence that was offered in the City's case-in-chief to determine whether there is any credible evidence to sustain a finding of venue in Iowa County by clear and convincing evidence.

¶10 The parties agree that there was no direct proof that the traffic violation occurred in Iowa County in the City's case-in-chief. However, direct proof is not required to establish venue. ***Kellar v. State***, 174 Wis. 67, 69, 182

N.W. 321 (1921). Circumstantial evidence may establish that a violation occurred in a certain county in order to establish proper venue. ***Id.*** The supreme court has held that

> where no witness expressly states that the crime was committed in the county as charged, but there are references in the evidence to various localities and landmarks at or near the scene of the crime, known by or probably familiar to the jury, and from which they reasonably may have concluded that the offense was committed in the county alleged, the venue is sufficiently proved.

Id. (citation omitted).

¶11 In ***Piper v. State***, 202 Wis. 58, 61, 231 N.W. 162 (1930), the defendant was prosecuted for practicing medicine without a license in his shop, located on Fond du Lac Avenue. A police officer for the City of Milwaukee testified that the location was on his beat. ***Id.*** The Wisconsin Supreme Court held that the avenue was "at least probably known to the jurors as a street in Milwaukee" and that there was sufficient evidence for the jury to conclude that the offense was committed in Milwaukee County. ***Id.***

¶12 Here, Pilling testified that he is a police officer for the City of Mineral Point and that he was performing his normal patrol duties when he stopped Ford's vehicle on Commerce Street. He stated that approximately one minute prior to the stop, he left the Mineral Spirits Tavern & Restaurant and turned onto Commerce Street. Heading south on Commerce, Pilling observed Ford's vehicle leaving the End of the Line Saloon at the intersection of Commerce and Old Darlington Road. At Old Darlington Road, Pilling turned around and followed Ford's vehicle north on Commerce until he stopped Ford approximately one block past the intersection of Commerce and Front Street. Pilling also

identified the restored Mineral Point railroad depot as being across the street from the End of the Line Saloon.

¶13 Ford argues that ***Piper*** should be distinguished in that the landmarks referenced in Pilling's testimony are not unique to Iowa County or so well known in the county that they would probably be familiar to an Iowa County jury.[3] We disagree. In ***Piper***, the evidence contained a reference to a single well-known street. ***Piper***, 202 Wis. at 61. In this case, Pilling's testimony contained references to numerous streets and landmarks. Viewing all the references to streets and landmarks together, we conclude that an Iowa County jury would probably be familiar with the location of the violation as being in Iowa County. Together with Pilling's testimony that the traffic violation occurred during his normal patrol as an officer for the City of Mineral Point, the evidence supports a jury finding by clear and convincing evidence that the traffic violation occurred in Iowa County.

¶14 Ford contends that his case is analogous to ***State v. Wiedenfeld***, 229 Wis. 563, 282 N.W. 621 (1938). We disagree. There, the court concluded that the circumstantial evidence was insufficient to prove that the defendant, a sales representative for an Illinois company, forged or possessed a forged check in Richland County, Wisconsin, to establish venue there. ***Id.*** at 564-65, 569. The defendant sold mineral feed to a customer in Richland County for cash, and then the Illinois company received a Wisconsin check with the customer's forged signature for the sale. ***Id.*** at 565-67. The court concluded that none of the circumstantial evidence led to a reasonable inference that the offense of forging

[3] Ford does not argue that the streets and landmarks identified by Pilling were not in Mineral Point, Iowa County. He argues only that those locations in Iowa County would not be well known to an Iowa County juror.

the check or possessing the forged check occurred in Richland County. ***Id.*** at 567-69. Furthermore, there was testimony that directly contradicted the circumstantial evidence that the defendant committed the offense in Richland County. ***Id.*** at 566. Here, Pilling testified that the traffic violation occurred on or near particular streets and near particular landmarks, and there was no contradictory evidence.

¶15 Finally, Ford contends that the trial court erred in taking judicial notice of the fact that the streets and landmarks in Pilling's testimony are located in Mineral Point, Iowa County, Wisconsin. Ford frames this argument as an appeal from the court's denial of his motion for a judgment notwithstanding the verdict. However, our review of a motion for judgment notwithstanding the verdict is de novo, and thus we need not reach the trial court's reasoning. Moreover, Ford has not advanced any argument as to why he is entitled to judgment notwithstanding the verdict, and we therefore decline to address this issue further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Because we have concluded that the City presented sufficient evidence of venue, and Ford has only argued that he was entitled to dismissal based on the insufficiency of that evidence, we need not address any other possible error in the court's taking judicial notice of venue following the jury verdict. Accordingly, we affirm.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.