COURT OF APPEALS
DECISION
DATED AND FILED

September 23, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP459-CR **Cir. Ct. No. 2008CF53**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ARLIE I. GRENIE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Richland County: WILLIAM D. DYKE, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Arlie Grenie appeals his conviction for operating a motor vehicle while under the influence of an intoxicant as a second offense. He

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

challenges the denial of his motion to suppress evidence, arguing that there was no basis for his initial stop. Grenie's specific contention is that the evidence does not support the circuit court's finding that Grenie's Jeep had blue lights lit on its front, which, if true, would have been a valid reason to stop him. I affirm.

Background

¶2 On May 16, 2008, at approximately 12:20 a.m., a police officer watched a Jeep driven by Arlie Grenie pass his parked squad car. The officer testified that he observed blue lights lit on the front of the Jeep. The lit blue lights violated WIS. STAT. § 347.07(2)(a).[2] The officer pulled behind Grenie and made attempts to stop him, but Grenie continued driving for "a couple of miles" until he pulled up to his residence. At this point, the Jeep's blue lights were not lit, and the officer was unable to activate them. The officer testified to observing melting around a fuse hanging near the Jeep's dashboard and that it was hot to the touch.

¶3 The stop led to evidence of intoxication, Grenie's arrest, and a charge of operating a motor vehicle while under the influence of an intoxicant as a second offense. Grenie filed a motion to suppress the evidence, arguing that the stop was invalid because the Jeep's blue lights were never lit. After a suppression hearing, the court denied Grenie's motion, Grenie pled no contest, and the court

[2] WISCONSIN STAT. § 347.07(2)(a) states:

> **(2)** Except as otherwise expressly authorized or required by this chapter, no person shall operate any vehicle or equipment on a highway which has displayed thereon:
>
> (a) Any color of light other than white or amber visible from directly in front ….

found him guilty. Grenie appeals, challenging the denial of his motion to suppress.

Discussion

¶4 Grenie's sole argument on appeal is that the circuit court's finding that his blue lights were lit was clearly erroneous because it was against the "overwhelming weight of credible evidence." More specifically, Grenie argues that testimony by his two witnesses showed that the lights were never operational, including on the night of the stop, and, thus, could not have been lit.

¶5 A finding is clearly erroneous if "unsupported by the record." ***Royster-Clark, Inc. v. Olsen's Mill, Inc.***, 2006 WI 46, ¶11, 290 Wis. 2d 264, 714 N.W.2d 530. Also, "[w]hen the trial court acts as the finder of fact, it is the ultimate arbiter of the credibility of the witnesses and of the weight to be given to each witness's testimony." ***Lessor v. Wangelin***, 221 Wis. 2d 659, 665, 586 N.W.2d 1 (Ct. App. 1998).

¶6 Grenie essentially asks this court to credit testimony by his two witnesses suggesting that the blue lights were "never" operational over the officer's testimony that he saw the lights lit when Grenie's Jeep passed him. This I may not do. Rather, I defer to the circuit court's determination that the officer's testimony was more credible. *See* ***id.*** In its suppression hearing findings, the circuit court clearly credited the officer's "unshaken" statements that the blue lights were lit. And, the court specifically stated that it did not "buy" Grenie's brother's testimony suggesting that there were no bulbs in the lights. In other respects, the court's rejection of testimony that the lights were never operational is implied by the court's explicit reliance on the officer's testimony. *See* ***Derr v. Derr***, 2005 WI App 63, ¶40, 280 Wis. 2d 681, 696 N.W.2d 170 (when an express

factual finding is not made, appellate courts normally assume the circuit court made findings in a manner that supports its final decision).

¶7 Grenie finds significant a statement in the court's order denying his motion to reconsider, where the court states that Grenie's two witnesses were "credible people." These witnesses were a repair shop owner, whom Grenie knew and who "helped [Grenie] work on [the Jeep] on many different occasions," and Grenie's brother, with whom Grenie lived. Grenie suggests that the court credited these witnesses' testimony even when it was inconsistent with the officer's version of events. Grenie, however, takes the "credible people" comment out of context. In context, the court tempers this comment by stating that it was "not bound to accept" these witnesses' testimony, that "[t]he tip of the credibility hat goes to the [officer]," and that the officer's testimony "is not overcome [by these witnesses]." In other words, in this order and in its findings, it is apparent that the court found the officer *more* credible than Grenie's witnesses.

¶8 It may be that Grenie is arguing that the evidence did not support the court's finding because the lights being lit "conflicts with the laws of nature." *See*, *e.g.*, ***State v. Tarantino***, 157 Wis. 2d 199, 218, 458 N.W.2d 582 (Ct. App. 1990) (addressing sufficiency of the evidence, and stating that the "court will only substitute its judgment for that of the trier of fact when the fact finder relied upon evidence that was inherently or patently incredible—that kind of evidence which conflicts with the laws of nature or with fully-established or conceded facts"). Grenie, however, does not demonstrate that the officer's version of events is patently incredible.

¶9 Instead, Grenie points to his witnesses' statements providing that, to their knowledge, the steps had "never" been taken to hook up the lights. Yet, even

putting aside that the court gave greater weight to the officer's testimony, Grenie's witnesses did not specify that they inspected the lights on the night of the stop. And, the record supports the notion that, generally speaking, the lights could be made to operate. For example, the repair shop owner testified that "most of the time [these types of lights are] run directly to a fuse linked to the battery." Additionally, there are numerous possible reasons that the lights might have then ceased working during the time Grenie did not respond to the officer's attempt to stop Grenie's Jeep, such as a melted fuse or some other technical issue or, perhaps, through some act by Grenie.

¶10 In sum, the record supports the circuit court's finding that blue lights were lit on Grenie's Jeep when he drove past the officer. Grenie does not otherwise challenge the stop or his conviction.

Conclusion

¶11 For the reasons stated above, I affirm the circuit court.

By the Court.—Judgment affirmed.

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