

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2010

A. John Voelker
Acting 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 Nos. 2010AP540
2010AP541
2010AP542**

**Cir. Ct. Nos. 2009TR6003
2009TR6004
2009TR6005**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROY C. DERKSEN,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

¶1 SHERMAN, J. Roy Derksen was cited for improperly transporting a building on a highway, contrary to WIS. STAT. § 346.924 (2007-08),¹ operating a

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

motor vehicle with an overall height in excess of 13 1/2 feet without a permit, contrary to WIS. STAT. § 348.06(1), and operating a vehicle having a total width in excess of 8 1/2 feet without a permit, contrary to WIS. STAT. § 348.05(1). Following a trial to the circuit court, Derksen was convicted of all three violations.

¶2 Derksen challenges the judgments of conviction on appeal. He contends the circuit court lacked subject matter jurisdiction over the proceeding. He also contends his due process rights were violated at the trial. We disagree and, therefore, affirm the judgments of conviction.

DISCUSSION

SUBJECT MATTER JURISDICTION

¶3 Derksen challenges the circuit court's subject matter jurisdiction. He claims that subject matter jurisdiction was lacking in this case because: (1) it was not proven by the State when challenged by him; (2) the record does not contain a sworn complaint; and (3) the charges against him were not "certified."

¶4 The question of whether a court has subject matter jurisdiction presents a question of statutory and constitutional interpretation. *In re Carlson*, 147 Wis. 2d 630, 635, 433 N.W.2d 635 (Ct. App. 1988). This presents a question of law reviewed *de novo* by this court. *See State v. Gavigan*, 122 Wis. 2d 389, 391, 362 N.W.2d 162 (Ct. App. 1984).

¶5 Subject matter jurisdiction is conferred upon a court solely by the constitution and state statutes. *See Thompson v. Thompson*, 129 Wis. 2d 348, 352, 384 N.W.2d 713 (Ct. App. 1986). WISCONSIN CONST. art. VII, § 8 provides in relevant part that "[e]xcept as otherwise provided by law, the circuit court shall

have original jurisdiction in all matters civil and criminal within this state.” WISCONSIN STAT. § 345.30 provides that “[j]urisdiction over actions for violation of traffic regulations ... is conferred upon circuit courts.” WISCONSIN STAT. §§ 346.924, 348.05(1), and 348.06(1) are “[t]raffic regulation[s]” as that term is defined in WIS. STAT. § 345.20(1)(b).² Accordingly, circuit courts, including the one in this case, have, as a matter of law, subject matter jurisdiction to hear any action involving alleged violations of §§ 346.924, 348.05(1), and 348.06(1).

¶6 Contrary to Derksen’s assertions on appeal, there was no obligation on the part of the state to “prove” the court’s subject matter jurisdiction over the proceeding, which was expressly granted by the Wisconsin’s constitution and by statute. Derksen also erroneously seeks to shift the burden on appeal from himself to the State. As the party challenging the judgments of conviction for lack of subject matter jurisdiction, Derksen bore the burden of proving its non-existence. *See State ex rel. R.G. v. W.M.B.*, 159 Wis. 2d 662, 668, 465 N.W.2d 221 (Ct. App. 1990). He has not done so. Furthermore, Derksen fails to cite this court to any legal authority supporting his contention that it was necessary for the charges against him to be certified and that a complaint must be made part of the record in order for the court to obtain subject matter jurisdiction over the proceeding. We

² WISCONSIN STAT. § 345.20(1)(b) defines a traffic regulation as “a provision of chs. 194 or 341 to 349 for which the penalty for violation is a forfeiture.” A violation of WIS. STAT. § 346.924 is a forfeiture. *See* WIS. STAT. § 346.95(9) (“Any person violating s. 346.924 may be required to forfeit not less than \$500 nor more than \$5,000.”) Violations of WIS. STAT. §§ 348.05 and 348.06 are also forfeitures. *See* WIS. STAT. § 348.11(2) (“Any person violating ss. 348.05 to 348.08 may be required to forfeit not less than \$50 nor more than \$100 for the first offense and may be required to forfeit not less than \$100 nor more than \$200 for the 2nd and each subsequent conviction within one year.”)

do not consider arguments unsupported by reference to legal authority. *Kruczek v. DWD*, 2005 WI App 12, ¶32, 278 Wis. 2d 563, 692 N.W.2d 286.

DUE PROCESS

¶7 Derksen claims his due process rights were violated because it was not made clear to him whether the proceeding was administrative, civil, or criminal. Derksen fails to cite to this court any legal authority which would indicate that a court's failure to make it clear to a defendant that the proceeding is administrative, civil, or criminal is a violation of the defendant's due process rights. *See id.* Furthermore, the circuit court very plainly explained that the proceeding concerned civil offenses. The following discussion took place at trial:

MR. DERKSEN: Judge, what we're looking at is more, you know, I don't understand the cause of the nature of things because, you know, I don't know, if it's administrative or if it's a judicial case. And—

THE COURT: Regardless if it's administrative or judicial—well, I mean the trial on a citation is to the court. I mean, that's judicial.

....

MR. DERKSEN: Is this a civil case?

THE COURT: Yeah, this is a civil case, not a crime, right?

ATTORNEY THOMPSON: Correct.

THE COURT: You're not charged with a crime. These are traffic tickets basically.

¶8 Derksen claims his due process rights were violated because the court did not fully explain to him the nature of the charges, resulting in a lack of preparedness at trial on his part. We disagree. At trial, the court reviewed the citations with Derksen and explained the essence of each charge. Derksen also

acknowledged that prior to trial, he was provided highlighted copies of the statutes he was charged with violating to help him better understand the charges against him.

¶9 Derksen claims further, without citation to legal authority, that because the State accused him and sought to punish him, the violations of WIS. STAT. §§ 346.924, 348.05(1), or 348.06(1) constituted criminal offenses, not civil offenses. He claims that because the violations constituted criminal offenses, he should have been, but was not, provided constitutional criminal protections, including certification of the charges against him and *Miranda* warnings. Derksen is not correct.

¶10 “[T]he Wisconsin Supreme Court has determined that the legislature clearly intended that violations of state traffic laws involving forfeitures be treated as civil offenses.” *State v. Naydihor*, 168 Wis. 2d 144, 156, 483 N.W.2d 253 (Ct. App. 1992). The penalty for violating WIS. STAT. §§ 346.924, 348.05(1), or 348.06(1) is a forfeiture, thus the violations at issue constitute civil, not criminal offenses.

By the Court.—Judgments affirmed.

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

