

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 17, 2012

Diane M. Fremgen
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. 2012AP516
STATE OF WISCONSIN**

Cir. Ct. No. 2011TR10684

**IN COURT OF APPEALS
DISTRICT II**

FOND DU LAC COUNTY,

PLAINTIFF-RESPONDENT,

V.

JEFFREY L. MANKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: DALE L. ENGLISH, Judge. *Affirmed.*

¶1 REILLY, J.¹ Jeffrey L. Manke appeals a judgment finding him guilty of speeding. WISCONSIN STAT. § 346.57(4)(h) provides that no person shall

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

drive a vehicle at a speed in excess of fifty-five miles per hour. Manke's main argument is that the speeding statute is unconstitutional as applied to him as, according to his religion, he is a "man" and not a "person." We affirm; Manke as a "man" meets the meaning of a "person," and Manke's other arguments are unpersuasive.

BACKGROUND

¶2 Manke was cited for speeding, in violation of WIS. STAT. § 346.57(4)(h). Manke moved for dismissal on the grounds that the statute is unconstitutional. Manke did not contest that he had driven in excess of the speed limit. The court denied Manke's motion and found him guilty at a court trial. Manke appeals.

STANDARD OF REVIEW

¶3 As Manke challenges the constitutionality of the speeding statute as a violation of his religious freedom, we use the compelling state interest/least restrictive alternative test to analyze whether the state's traffic laws violate the Wisconsin Constitution's guarantees of freedom of religious exercise and conscience for certain religious adherents. See *State v. Miller*, 202 Wis. 2d 56, 66, 549 N.W.2d 235 (1996). A statute that can survive this test can also survive the less rigorous test employed to protect an individual's freedom of religion under the United States Constitution. See *Coulee Catholic Sch. v. LIRC*, 2009 WI 88, ¶60, 320 Wis. 2d 275, 768 N.W.2d 868. The compelling state interest/least restrictive alternative test puts the burden on the challenger of the law to prove "that he or she has a sincerely held religious belief" and that belief "is burdened by application of the state law at issue." *Miller*, 202 Wis. 2d at 66. If the challenger has met that burden, the burden shifts to the state to prove "that the law is based on

a compelling state interest” and that interest “cannot be served by a less restrictive alternative.” *Id.*

¶4 A facial attack on the constitutionality of Wisconsin’s traffic laws presents a question of law that we review de novo. *Dane Cnty. v. McGrew*, 2005 WI 130, ¶8, 285 Wis. 2d 519, 699 N.W.2d 890. We presume the statute is constitutional, and “[t]he party challenging the statute bears the heavy burden of proving that the statute is unconstitutional beyond a reasonable doubt.” *Id.*

DISCUSSION

¶5 Wisconsin’s speeding statute prohibits any “person” from driving over fifty-five miles per hour in the absence of posted speed limits allowing a higher speed. WIS. STAT. § 346.57(4)(h). Manke argues that, according to “the holy Bible that [Manke studies] from,” he is a “man” and not a “person” and that, therefore, his conviction as a “person” violates his religion and denies him his due process rights. Manke does not explain how or why being a “person” for purposes of the speeding statute is a burden upon his religious beliefs.

¶6 We accept Manke’s argument that he is a man. We also accept that, as a man, he is a “person” under WIS. STAT. § 346.57(4)(h). The statutes do not expressly provide a definition for what constitutes a “person” for the purposes of speed regulation. *See* WIS. STAT. §§ 340.01, 346.01. When the ordinary definition of a term is clear, we may rely on dictionary definitions. *See Adams v. State Livestock Facilities Siting Review Bd.*, 2012 WI 85, ¶43, 342 Wis. 2d 444, ___ N.W.2d ___. A man is a person. *See* WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1369 (1993). The court did not err in finding that Manke, as a “man,” met the definition of “person” for purposes of § 346.57(4)(h).

¶7 Manke’s authority for his constitutional claims consists of little more than random quotations from cases and religious documents accompanied by unsupported assertions. Manke does not develop any argument for how defining him as a “person” denies him due process of the law or how it burdens his exercise of his religion. Manke has not met his burden to show how Wisconsin’s traffic laws are unconstitutional either facially or as applied to him.²

¶8 Manke also challenges whether his Mazda constitutes a “vehicle” under WIS. STAT. § 346.57(4)(h). His argument is based on a conflation of the statutory definitions for “vehicle,” “motor vehicle,” and “commercial motor vehicle,” from which he decides that only vehicles used in the course of commercial activity are subject to the statute. Manke asserts he was not engaged in commerce while he was speeding, and therefore he cannot be convicted for violating § 346.57(4)(h). Manke’s Mazda is a vehicle regardless of the purpose for which it is employed. We affirm.

By the Court.—Judgment affirmed.

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

² Manke also appears to challenge the statute as a violation of his “right to travel.” It is unclear to whom this argument is addressed as it comes in the form of a six-page letter written to the Fond du Lac county sheriff that is reproduced in the middle of Manke’s brief without explanation. Regardless, we decline to review this challenge and reject it for the same reasons as his other constitutional challenges.

