

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 16, 2017

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. 2016AP1814

Cir. Ct. No. 2015CV2730

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

VILLAGE OF DEFOREST,

PLAINTIFF-RESPONDENT,

V.

ALEXEI STRELCHENKO,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
NICHOLAS MCNAMARA, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ Alexei Strelchenko appeals from a judgment of conviction on two municipal citations issued by the Village of DeForest for disorderly conduct. Strelchenko contends that his convictions were for flying

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise indicated.

drone aircraft, and that the Village lacks jurisdiction over drone aircraft due to federal preemption. For the reasons discussed below, I affirm.

BACKGROUND

¶2 The record before this court on appeal is incomplete. Among other deficiencies, it contains no transcript of the proceedings before the circuit court. From the part of the record on appeal that is available, it is evident that the basis of this appeal is a jury trial in circuit court for Dane County on appeal de novo from municipal court for DeForest/Windsor. Verdicts for four separate citations were submitted to the jury. The jury found Strelchenko guilty on citations 1 and 2, each for disorderly conduct under a municipal ordinance that adopted WIS. STAT. § 947.01, and the jury acquitted Strelchenko on citations 3 and 4. Citation 3 was for disorderly conduct under that same ordinance, and citation 4 for was for “unlawful use of a drone,” a municipal ordinance that incorporated WIS. STAT. § 942.10. The disorderly conduct citations did not contain any narrative setting forth the factual basis for the citations.

DISCUSSION

¶3 Much of Strelchenko’s appellate brief is devoted to a discussion of his citation for illegal use of drone. However, Strelchenko was acquitted of that citation.

¶4 In order to have standing to appeal, a party must be “aggrieved by any appealable order or judgment.” WIS. STAT. § 879.27(1). *See also Mutual Serv. Cas. Ins. Co. v. Koenigs*, 110 Wis. 2d 522, 525, 329 N.W.2d 157 (1983). A party is not aggrieved if the judgment is in their favor. *See MacIntyre v. Frank*, 48 Wis. 2d 550, 553, 180 N.W.2d 538 (1970) (concluding that where a judgment

is in a party's favor, the party is not aggrieved and "may not appeal from [the] judgment in his [or her] favor") (quoted source omitted). Because Strelchenko was acquitted of the citation for illegal use of a drone, he is not aggrieved by that charge and cannot appeal that aspect of the judgment. See *Ziebell v. Ziebell*, 2003 WI App 127, ¶8 n.1, 265 Wis. 2d 664, 666 N.W.2d 107 (appellant could raise issue on appeal for which he was aggrieved, but could not raise an issue for which he was not aggrieved).

¶5 Turning to Strelchenko's challenge of his convictions for disorderly conduct, Strelchenko's failure to include in the appellate record a transcript of the trial proceedings is fatal to his appeal. The burden is on the appellant to provide an appellate record sufficient for me to review his issues. See *State Bank of Hartland v. Arndt*, 129 Wis. 2d 411, 423, 385 N.W.2d 219 (Ct. App. 1986). Where the record is not complete, I will assume that the missing portions support every fact essential to sustain the circuit court's award. *Id.*

¶6 In the present appeal, the record does not contain a transcript of the jury trial. The record contains only municipal citation forms that recite that Strelchenko is alleged to have committed disorderly conduct and that list the date and location of such conduct. The nature of the conduct itself is not explained. A transcript of the trial might have related the testimony of witnesses regarding the conduct at such times and places that formed the basis of the citations, but there is no trial transcript before this court.

¶7 In his appellant's brief, Strelchenko asserts that his disorderly conduct is based upon his having flown drone aircraft and that federal preemption deprives the Village of jurisdiction over such conduct. However, Strelchenko includes no record citations to point me to anything in the record that sets forth

any such factual basis for the disorderly conduct charges. My own examination of the record reveals no information whatsoever regarding the conduct which was alleged to have been disorderly.² See *Jenkins v. Sabourin*, 104 Wis. 2d 309, 313-

² The record does contain the jury instructions read to the jury by the court. I set forth the entire section on the disorderly conduct citations to demonstrate that no reference was made to the jury to drone aircraft or anything related to operation of a drone aircraft.

DISORDERLY CONDUCT — § 947.01

Statutory Definition of the Crime. Section 10.947.01 of the Village of DeForest Municipal Code, adopting § 947.01 of the Wisconsin Statutes, is committed by a person who, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud, or otherwise disorderly conduct under circumstances in which such conduct tends to cause or provoke a disturbance.

The defendant is charged with three separate counts of Disorderly Conduct.

The first citation alleges the defendant committed disorderly conduct at 309 Sunset Drive, Ian Ringstad residence, on Sunday[,], May 10, 2015.

The second citation alleges the defendant committed disorderly conduct at 409 Sunset Drive, Ed Schuette residence, on Sunday[,], May 10, 2015.

The third citation alleges the defendant committed disorderly conduct at 208 Cora Street, Kim Kriewaldt residence, on Sunday[,], May 10, 2015.

The defendant has entered a plea of not guilty to each citation which means the plaintiff must prove each and every element of each offense to a reasonable certainty by evidence that is clear, satisfactory and convincing.

Burden of Proof. Before you may find the defendant guilty of disorderly conduct, the Village of DeForest must prove by evidence which satisfies you to a reasonable certainty by evidence that is clear[,], satisfactory and convincing that the following two elements were present.

Elements of the Offense That the Village Must Prove. 1. The defendant engaged in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct.

2. The conduct of the defendant, under the circumstances as they then existed, tended to cause or provoke a disturbance.

Meaning of “Disorderly Conduct.” “Disorderly conduct” may include physical acts or language or both.

(continued)

14, 311 N.W.2d 600 (1981) (facts not included in the record before the circuit court will not be considered by this court). Consequently, any argument that the charges refer to conduct that is beyond the jurisdiction of the Village, the circuit court or this court, or that the nature of the charges imposes upon Strelchenko's exercise of his constitutional rights, is unsupported by the record and fails. *See Anic v. Board of Review of Town of Wilson*, 2008 WI App 71, ¶2 n.1, 311 Wis. 2d 701, 751 N.W.2d 870 (an appellant has the burden to direct the court's attention to portions of the record that support a claim).

The general phrase "otherwise disorderly conduct" means conduct having a tendency to disrupt good order and provoke a disturbance. It includes all acts and conduct as are of a nature to corrupt the public morals or to outrage the sense of public decency, whether committed by words or acts. Conduct is disorderly although it may not be violent, abusive, indecent, profane, boisterous, or unreasonably loud if it is of a type which tends to disrupt good order and provoke a disturbance.

The principle upon which this offense is based is that in an organized society a person should not unreasonably offend others in the community. This does not mean that all conduct that tends to disturb another is disorderly conduct. Only conduct that unreasonably offends the sense of decency or propriety of the community is included. It does not include conduct that is generally tolerated by the community at large but that might disturb an oversensitive person.

Meaning of "Tend to Cause or Provoke a Disturbance." It is not necessary that an actual disturbance must have resulted from the defendant's conduct. The law requires only that the conduct be of a type that tends to cause or provoke a disturbance, under the circumstances as they then existed. You must consider not only the nature of the conduct but also the circumstances surrounding that conduct. What is proper under one set of circumstances may be improper under other circumstances. This element requires that the conduct of the defendant, under the circumstances as they then existed, tended to cause or provoke a disturbance.

Jury's Decision. If you are satisfied to a reasonable certainty by evidence that is clear, satisfactory and convincing that both elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

CONCLUSION

¶5 For the reasons discussed above, I affirm.

By the Court.—Judgment affirmed.

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

