COURT OF APPEALS
DECISION
DATED AND FILED

May 23, 2019

Sheila T. Reiff
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. 2018AP2130 **Cir. Ct. No. 2017CV824**

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

VILLAGE OF MCFARLAND,

PLAINTIFF-RESPONDENT,

V.

DALE R. MEYER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: WILLIAM E. HANRAHAN, Judge. *Affirmed and cause remanded for further proceedings*.

¶1 LUNDSTEN, P.J.[1] Dale Meyer appeals the circuit court's judgment, entered following a jury trial, convicting him of operating a motor

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c). All references to the Wisconsin Statutes are to the 2017-18 version, unless otherwise noted.

vehicle while under the influence of an intoxicant as a first offense and improper stop at a stop sign. He also challenges an order finding that he unreasonably refused to submit to blood alcohol testing. As best I can tell, Meyer argues that the judgment of conviction and refusal order should both be vacated because, in both proceedings, the attorney for the Village of McFarland showed an altered version of the squad car video of the stop. I disagree and affirm.

Background

¶2 On May 26, 2016, Meyer was pulled over while driving a vehicle after failing to fully stop at a stop sign. This stop led to an arrest for OWI and Meyer's refusal to submit to blood alcohol testing and, later, municipal charges for the refusal and OWI. After a municipal adjudication with respect to both the refusal and the OWI, Meyer appealed the municipal court judgment to the Dane County Circuit Court.

¶3 The circuit court held a refusal hearing on the implied consent violation and found that Meyer had unreasonably refused to submit to alcohol testing, in violation of the implied consent law. The court then held a jury trial on the OWI, resulting in a conviction.

¶4 Pertinent here, at both the refusal hearing and at the trial, the attorney for the Village played the squad car video of the stop. To the extent Meyer makes a recognizable argument, it is directed at the playing of this video. I provide further details on that topic below.

Discussion

¶5 Meyer, pro se, has filed rambling appellate briefs that contain allegations that are unsupported by record cites, speculation that goes nowhere,

and information that has nothing to do with challenging either the refusal order or his OWI conviction. Although appellate courts make some allowances for the failings of parties who, as here, are not represented by counsel, "[w]e cannot serve as both advocate and judge." ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). Further, appellate courts have no obligation to scour the record to develop viable, fact-supported legal theories on the appellant's behalf. *See* ***State v. Jackson***, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Nonetheless, I have reviewed the entire record here and still find no arguable basis on which to challenge the proceedings below. Accordingly, I will limit my discussion to the only two arguments that Meyer actually makes that might possibly be a basis for a successful challenge to the refusal order and judgment. I address and reject both below, but first pause to make another observation about Meyer's briefing.

¶6 In his appellate briefs, Meyer focuses on his OWI conviction. He makes scant reference to his refusal adjudication. As to the refusal, Meyer requests an opportunity to "submit a follow-up" brief if I conclude that the OWI conviction should be affirmed. The implication seems to be that Meyer has held back an argument specific to his refusal to take a blood alcohol test. I reject the request. Nothing prevented Meyer from making all arguments in the current briefing. For that matter, it is well established that arguments made for the first time in reply briefs may be ignored because they are raised too late. *See* ***State v. Marquardt***, 2001 WI App 219, ¶39, 247 Wis. 2d 765, 635 N.W.2d 188 (an issue raised by the appellant for the first time in his reply brief was "too late"). So too, here, any argument made by Meyer for the first time in his reply brief comes too late. Finally, Meyer does not suggest, and I cannot conceive of, any reason why

an altered video would have a different effect on his refusal adjudication as compared with his OWI conviction.

A. Alleged Alteration of Video

¶7 Meyer alleges that during his OWI trial the attorney for the Village pretended to play an unaltered version of the squad car video of the stop, but actually played an altered version that distorted whether Meyer stopped at the stop sign. The allegedly altered version supposedly did this by playing at a faster speed during the stop sign portion of the video. Meyer does not point to record support for this factual assertion. Instead, he now provides in his appellate briefs, for the first time, what he contends are his own supporting observations regarding differences between the video played during the trial and the video played a second time when his jury asked to see the video during jury deliberations. The argument, from every standpoint, is frivolous.

¶8 Meyer (1) does not support his argument with any legal discussion of the pertinent standard of review or principles of law; (2) did not object to the video at any point during the circuit court proceeding; (3) does not point to any *record* support for his allegation that the attorney for the Village played an altered version of the video; and (4) does not explain how he was prejudiced, even assuming an altered version was played. I could expand on each of these failings, but that would further waste court resources on this frivolous appeal.

¶9 Both for purposes of his OWI conviction and the refusal order, it is sufficient to rely on the absence of an objection to the video. *See* ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) ("The general rule is that issues not presented to the circuit court will not be considered for the first time on appeal.").

B. Exclusion of Witness

¶10 Meyer seemingly contends that the circuit court erred by prohibiting him from calling as a witness at trial a McFarland police detective on the topic of whether the video evidence was "real and true." The argument is, once more, completely undeveloped. Meyer fails to provide legal argument and record cites and even fails to explain what the officer would have said if called as a witness. I address the argument no further. *See* ***Pettit***, 171 Wis. 2d at 646-47 (we generally do not address undeveloped legal arguments).

C. Motion to Declare Appeal Frivolous

¶11 The Village of McFarland has, in an appropriate motion separate from the appellate briefs, asked me to declare the appeal frivolous. For obvious reasons, I grant the motion. I conclude that Meyer "knew, or should have known, that the appeal ... was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law." *See* WIS. STAT. RULE 809.25(3)(c)2. Accordingly, I remand for the circuit court to determine "costs, fees, and reasonable attorney fees" pursuant to RULE 809.25(3).

Conclusion

¶12 For the reasons stated above, I affirm the judgment of the circuit court and remand for the circuit court to determine costs, fees, and reasonable attorney's fees.

By the Court.—Judgment affirmed and cause remanded for further proceedings.

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