

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
Appeal No. 2015AP1014

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

RONALD MARSHALL JEWETT,

Defendant-Respondent.

ON APPEAL FROM A JUDGMENT OF CONVICTION,
ENTERED IN THE CIRCUIT COURT FOR ST. CROIX
COUNTY, HONORABLE ERIC J. LUNDELL,
PRESIDING

PLAINTIFF-APPELLANT'S BRIEF AND APPENDIX

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STATEMENT OF THE ISSUE

Did the trial court err in finding that a certified driving record from the Wisconsin Department of Transportation was insufficient evidence to establish two prior convictions for Operating While Intoxicated?

The trial court essentially ruled that the certified driving record was insufficient evidence to prove prior convictions.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The parties' briefs will adequately address the issue presented, and oral argument will not significantly assist the court in deciding this appeal.

The State takes no position on publication of this Court's decision and opinion.

STATEMENT OF THE CASE

Ronald M. Jewett (hereinafter "Jewett") was charged with third offense Operating a Motor Vehicle While Under the Influence of an Intoxicant (hereinafter "OWI") and third offense Operating a Motor Vehicle with a Prohibited Alcohol Concentration (hereinafter "PAC") from an offense that occurred on February 5, 2014. The Honorable Eric J. Lundell heard a court trial on April 7, 2015 in St. Croix County circuit court. The court found Jewett guilty of OWI as a first offense. The State appeals the Judgment of Conviction.

On February 5, 2014, Wisconsin State Trooper Jody Wood exited the Kwik Trip located on Highway 128, Township of Cady, St. Croix County, Wisconsin. (R. 24, 7:25, 8:3-10). A semi-truck driver "flagged down" Trooper Wood and informed him that he observed a vehicle driving the wrong way down Interstate 94. (R. 24, 8:12-19). Trooper Wood drove to Interstate 94 and observed a red Oldsmobile driving eastbound in the westbound lane of Interstate 94, near milepost 31, in St. Croix County. (R. 24, 9:7-12). The Oldsmobile then crossed into Dunn County, driving the wrong way onto exit ramp 32. (R. 24, 9:14-22). The vehicle made a U-turn on Highway Q and drove westbound. (R. 24, 10:2-3).

Trooper Wood was able to conduct a traffic stop on Highway Q. (R. 24, 10:16-18). Trooper Wood estimated that the vehicle had been travelling the wrong way on Interstate 94 for approximately one and one-half miles. (R. 24, 10:12-13). Trooper Wood identified the driver as Ronald M. Jewett.

(R. 24, 10:23-25). Jewett informed Trooper Wood that he drove the wrong way on the interstate because “he got all turned around.” (R. 24, 11:4-5). During this conversation, Trooper Wood smelled an odor of intoxicants emanating from Jewett, and Jewett stated that he had been drinking. (R. 24, 11:8-11). Trooper Wood administered field sobriety tests, and Jewett exhibited signs of impairment. (R. 24, 12-16). Trooper Wood then arrested Jewett for OWI. (R. 24, 16:23-25).

At the court trial on April 7, 2015, the State offered a certified driving record from the Wisconsin Department of Transportation (hereinafter “DOT”) as evidence of Jewett’s OWI repeater status. (R. 24, 30:21-23). The driving record indicates that Jewett has two previous OWI convictions from Minnesota. (R. 31). Jewett objected to this exhibit, arguing that Wisconsin “has no authority, no duty, no jurisdiction, over the State of Minnesota so that it can’t certify anything relative to accuracy or anything else,” and that the record was “not a record that was in fact compiled in the State of Wisconsin under some duty thereby making it some certified record or public record.” (R. 24, 31:4-11). The court, however, admitted the State’s record into evidence. (R. 24, 37:3-4).

Jewett then offered a letter from the Ramsey County Clerk of Court which indicated that the Minnesota OWI records had been destroyed. (R. 24, 32:15-17). Jewett argued that, because the records were no longer kept by Minnesota, his first two OWI convictions should not be counted. (R. 24, 33:18-22). The court questioned Jewett’s attorney, “Is this a collateral attack motion or something?” to which he responded, “Right.” (R. 24, 33:23-25). The State objected to the defense’s exhibit as to relevance, and also noted that under Wisconsin law, a Wisconsin DOT certified driving record is admissible and sufficient to establish a defendant’s OWI repeater status. (R. 24, 32:19, 35:6-18).

The court admitted the defense’s exhibit and concluded that, without records from the original case, defendants do not have a means of challenging prior convictions. (R. 24, 35:19-25, 36:1-2). The court indicated

that it would have preferred to hear this motion before trial, but ultimately held that “under the collateral attack cases and rules I have to throw out the old – the two old 1992 Minnesota convictions because there’s no way this defendant can adequately challenge those because there’s no records left.” (R. 24, 38:20-25, 39:1-3).

The State argued that if Jewett was bringing a collateral attack motion, the State is entitled to an Ernst hearing upon a finding that Jewett made a prima facie showing. (R. 24, 40:7-11). The court stated, “I agree. I can’t disagree. . . But this is beyond a reasonable doubt is your burden. And they have submitted exculpatory evidence to me. I am exercising my discretion to eliminate the two Minnesota convictions.” (R. 24, 40:12-17). The court then convicted Jewett of OWI as a first offense. (R. 24, 40:16-17). The court did not address the PAC charge. The State appeals the circuit court’s finding that Jewett was guilty of only a first offense OWI.

ARGUMENT

THE TRIAL COURT ERRED IN FINDING THAT A CERTIFIED DRIVING RECORD FROM THE WISCONSIN DOT WAS INSUFFICIENT TO PROVE JEWETT’S TWO PRIOR OWI CONVICTIONS.

A. STANDARD OF REVIEW.

Questions of law are reviewed *de novo*. State v. Hemp, 2014 WI 129, ¶ 12, 359 Wis. 2d 320, 329, 856 N.W.2d 811, 815. This Court owes no deference to the trial court’s decision. State v. Wills, 193 Wis. 2d 273, 277, 533 N.W.2d 165, 166 (1995). Because the decision at issue is a legal decision, the appropriate standard of review is *de novo*.

B. JEWETT’S CERTIFIED DRIVING RECORD FROM THE WISCONSIN DOT WAS SUFFICIENT TO PROVE THAT JEWETT HAD TWO PRIOR OWI CONVICTIONS.

The circuit court, in “throw[ing] out the old . . . Minnesota convictions,” essentially deemed Jewett’s Wisconsin DOT certified driving record insufficient proof of his prior OWIs. (*See* R. 24, 38:20-25, 39:1-3).

Well-established case law, and squarely on point here, was decided by this Court in 2003 in State v. Van Riper, 2003 WI App 237, 267 Wis. 2d 759, 672 N.W.2d 156. In fact, this case is an annotation to Wisconsin Statute § 346.63, the statute regarding OWIs, which the State noted to the circuit court. (R. 24, 38:8-9). In Van Riper, this Court held that a certified driving record from the Wisconsin DOT is admissible to prove a defendant’s repeater status beyond a reasonable doubt. *Id.* ¶ 21. In Van Riper, the defendant had two prior OWI convictions: one from Minnesota and one from Wisconsin. *Id.* ¶ 5. The State offered the Wisconsin certified DOT driving record, which showed these convictions, as proof of prior OWIs. *Id.* This Court found that the trial court properly admitted this evidence and that “such evidence established Van Riper’s repeater status as an element of the offense beyond a reasonable doubt.” *Id.* ¶ 21. The Court stated that “. . . certainly a *certified* DOT driving record is admissible and sufficient to prove the status of an alleged repeat offender in a PAC prosecution.” *Id.* ¶ 16.¹ “Here, a certificate bearing the State of Wisconsin DOT seal and the signature of the DMV administrator accompanies Van Riper’s DOT driving record. Both Wisconsin case law and statutes support the admission of this certified document as proof of Van Riper’s prior convictions at trial.” *Id.* ¶ 18. Moreover, “[t]hat one of Van Riper’s convictions occurred in Minnesota does not change our decision.” *Id.* ¶ 19.

¹ Notably, Van Riper dealt with proof of a PAC charge at trial. The issue at hand here, however, is focused on proof of the OWI and/or the PAC; the same standard would apply to either charge here because Jewett was charged with only a third offense and thus only subjected to a .08 PAC standard. Although not clear from the Record, the issue presented is really one applicable to the sentencing portion of the case. *See State v. Matke*, 2005 WI App 4, 278 Wis. 2d 403, 692 N.W.2d 265 (holding that number of prior OWI convictions should be determined at sentencing). Therefore, the issue of priors in this case was one for the trial court to decide at sentencing.

Similarly, here, the State offered, and the circuit court accepted into evidence, Jewett's certified Wisconsin DOT driving record into evidence. (R. 24, 30:21-23, 37:3-4). As in Van Riper, the record contains the official seal of the Wisconsin DOT and the signature of the administrator. (R. 31). This certified record shows that Jewett has two prior OWIs from Minnesota. Id. Despite the defense's argument in the circuit court, it is irrelevant that these convictions are from Minnesota. See Van Riper at ¶ 19. The circuit court disturbed well-settled law when it "threw out" Jewett's prior OWI convictions and ruled the driving record was insufficient evidence. The circuit court erred by failing to follow the law as established by Van Riper.

CONCLUSION

For the reasons stated above, the State respectfully requests that this Court reverse the decision of the circuit court and remand for further proceedings.

Dated this ____ day of October, 2015.

Respectfully submitted,

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CERTIFICATION AS TO FORM AND LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1,397 words.

Dated this ____ day of October, 2015.

Signed:

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**CERTIFICATE OF COMPLIANCE
WITH RULE 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this ____ day of October, 2015.

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