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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Case No. 2020AP001450CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
v.

JEFFREY S. CLEMONS,
Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN BARRON COUNTY CIRCUIT COURT,
THE HONORABLE JAMES C. BABLER PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF ISSUE

Is the evidence adduced at defendant-appellant's court trial sufficient to sustain the circuit court's finding that the defendant-appellant violated Barron County Ordinance 9.16, Obstructing an Officer?

STATEMENT ON PUBLICATION

The plaintiff-respondent does not request that the opinion in this appeal be published.

STATEMENT ON ORAL ARGUMENT

The plaintiff-respondent does not request oral argument of the issue presented in this case.

STATEMENT OF THE CASE

On June 5, 2019, the defendant-appellant, (hereafter "Clemons"), drove to the Barron County Sheriff's Department to report a restraining order violation. (R. 27:15)¹. Clemons was driving a newly purchased motorcycle. (R. 27:20).

Deputy Jon Fick, with the Barron County Sheriff's Department, was on duty on June 5, 2019 at approximately 5:54 PM, and spoke with three individuals who he identified as Clemons, Johanna Survila, and Lindsey Lundequam. (R. 27:19). Deputy Fick met with Clemons, Survila and Lundequam at the sheriff's office. (R. 27:20).

¹ The State generally cites to the document number assigned to each relevant document in the case index for the appeal. The citation "R" refers to the document number in the case index for the appeal.

Clemons informed Deputy Fick that he just purchased a new Harley earlier that day from Eau Claire Harley and that he had driven the motorcycle directly from Eau Claire to the sheriff's office. (R. 27:20-21). Clemons testified he told Deputy Fick that he was driving northbound on Hwy. 25 when Lundequam turned around and started following him. (R. 27:15). Clemons testified that Survila and Lundequam followed him to the sheriff's department. (R. 27:16). Clemons testified that Deputy Fick was in uniform, and that he believed Deputy Fick was a law enforcement officer who was investigating what happened. (R. 27:16).

Lundequam told Deputy Fick that she was traveling southbound on Hwy. 25, when she saw Clemons driving northbound on Hwy. 25. (R. 27:3-4). Lundequam told Deputy Fick she noticed Clemons behind her approximately 30 seconds after she saw him driving in the opposite lane of travel on Hwy. 25 and that he began to follow her. (R. 27:4). Lundequam told Deputy Fick that her daughter, Survila, was traveling in a separate vehicle ahead of her and that Clemons followed Lundequam all the way to Hillsdale. (R. 27:5). Lundequam told Deputy Fick that she and her daughter pulled over in Hillsdale. (R. 27:6). Survila told Deputy Fick a similar account of Clemons following them to Hillsdale. (R. 27:8-9).

At the sheriff's department, Clemons showed Deputy Fick the miles on his motorcycle to corroborate what he said happened and that he didn't go back and forth as Lundequam and Survila said he did. (R. 27:17-18). Deputy Fick observed and photographed the odometer reading on Clemons' motorcycle, which showed 56 miles. (R. 27:21); (R. 28). Deputy Fick then spent several hours following up on the information he

was provided, using Google Maps to search routes from the Lake Hallie Harley-Davidson Shop, which Deputy Fick knew was adjacent to the Eau Claire/Lake Hallie border, and a route that would place Clemons on Hwy. 25, and then to the sheriff's office. (R. 27:21, 25).

Deputy Fick marked out, physically drove and double-checked the additional mileage that, had Clemons turned around as Lundequam and Survila told him, Clemons would have driven. (R. 27:25-26). Deputy Fick determined it was impossible for Clemons to have turned around and followed Lundequam as Lundequam and Survila said he did, based on the information Clemons provided him and the speedometer reading on Clemons' motorcycle. (R. 27:26). Deputy Fick referred his report to the District Attorney's office and citations were subsequently issued to Lundequam and Survila. (R. 27:26).

At the court trial for Lundequam and Survila, Clemons testified that he purchased his motorcycle from Rice Lake Harley, and that he drove it to various places in Barron County. (R. 27:10-12). Deputy Fick testified that Clemons' testimony at Lundequam's and Survila's court trial was the first time he heard Clemons state that he purchased his motorcycle from Rice Lake Harley, and that his testimony at the court trial was very different than what Clemons told him on June 5, 2019. (R. 27:27-28).

The State filed a criminal complaint charging Clemons with one count of obstructing an officer. (R. 1). The State later amended the criminal charge to an ordinance violation for obstructing an officer, contrary to Section 9.16 of the Barron County Code of Ordinances. (R. 57).

Clemons contested the citation and a court trial was held on August 5, 2020 and August 18, 2020, the Honorable James C. Babler presiding. (R. 60-61). Clemons testified and cross examined Deputy Fick on both days that the court trial was held. (R. 60-61).

At his court trial, Clemons testified that he told Deputy Fick he purchased the motorcycle in Rice Lake and showed Deputy Fick paperwork that he said proved he purchased the motorcycle in Rice Lake. (R. 61:24-25); (R. 36). Deputy Fick testified that the only paperwork Clemons provided him was a single yellow piece of paper. (R. 61:35). Deputy Fick testified that the single document he observed did not contain any identifying information about where Clemons purchased the motorcycle. (R. 61:35).

Deputy Fick testified that he asked Clemons to provide him with documentation about where he had purchased the motorcycle. (R. 61:35-36). Deputy Fick testified that he maintained and reviewed the sheriff's department's case file for the obstructing case against Clemons and no documents identifying the motorcycle as having been purchased in Rice Lake were contained in the case file. (R. 61:36).

Deputy Fick testified that Clemons informed him on more than three occasions that he purchased the motorcycle at Eau Claire Harley. (R. 61:37). Deputy Fick testified that he told Clemons there is no Eau Claire Harley. (R. 61:36). Deputy Fick testified that at no point when he advised Clemons it wasn't Eau Claire Harley, but Lake Hallie Harley, did Clemons say he purchased the motorcycle in Rice Lake. (R. 61:37). Deputy Fick testified that the first time he heard Rice Lake Harley was when Clemons testified at Lundequam's and Survila's court trial. (R. 61:37).

In his decision, Judge Babler made the specific finding that he found the testimony of Deputy Fick more credible than the testimony of Clemons. (R. 61:62). Judge Babler then discussed the reasons why he found Deputy Fick's testimony more credible. (R. 61:62-63).

ARGUMENT

I. THE CIRCUIT COURT'S DECISION IS NOT CLEARLY ERRONEOUS AND IS SUPPORTED BY EVIDENCE THAT ESTABLISHES BY CLEAR, SATISFACTORY AND CONVINCING EVIDENCE THAT THE DEFENDANT-APPELLANT VIOLATED SECTION 9.16 OF THE BARRON COUNTY CODE OF ORDINANCES.

On review of a factual determination made by a trial court without a jury, and in cases which apply the "great weight and clear preponderance" test, the standard of review is essentially the same. Noll v. Dimiceli's Inc., 115 Wis.2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983) (citation omitted). An appellate court will not reverse unless the finding is clearly erroneous. Id. The Wisconsin Supreme Court explained the application of this test as follows:

The evidence supporting the findings of the trial court need not itself constitute the great weight or clear preponderance of the evidence; nor is reversal required if there is evidence to support a contrary finding. Rather, to command a reversal, such evidence in support of a contrary finding must itself constitute the great weight and clear preponderance of the evidence.

Cogswell v. Robertshaw Controls Co., 87 Wis.2d 243, 249-50, 274 N.W.2d 647 (1979).

Additionally, when the trial judge acts as the finder of fact, and where there is conflicting testimony, the trial judge is the ultimate arbiter of the credibility of the witnesses. Id. at 250.

Clemons does not argue that the false information he provided to Deputy Fick about where he purchased the motorcycle made it more difficult for Deputy Fick to perform his duties, or that Deputy Fick was acting in an official capacity and with lawful authority. The crux of Clemons' argument is that the evidence adduced at the court trial was insufficient to sustain the circuit court's finding that Clemons violated Section 9.16 of the Barron County Code of Ordinances.

The State respectfully disagrees with Clemons' argument that it did not prove by clear, satisfactory, and convincing evidence that he obstructed Deputy Fick. The State did meet its burden of proof before the circuit court which heard all of the testimony and evidence. The circuit court heard conflicting testimony and made the specific finding that the testimony of Deputy Fick was more credible than that of Clemons.

The circuit court's decision is supported by the testimony of Deputy Fick, who testified that Clemons never told him that he purchased the motorcycle in Rice Lake on any of the more than three occasions when Clemons stated he purchased the motorcycle at Eau Claire Harley. Furthermore, Deputy Fick testified that Clemons never provided him with documents showing where he purchased the motorcycle. On the day Clemons drove to the sheriff's department to report the restraining order violation, he showed Deputy Fick the odometer reading on his motorcycle to corroborate his version of what happened over what Lundequam and Survila said happened.

Clemons testified that he may have mistakenly told Deputy Fick that he purchased the motorcycle at Eau Claire Harley. The credibility of that explanation was properly within the circuit court's purview to decide. If believed, that explanation could have supported a contrary

finding. However, the circuit court was not bound to accept Clemons' explanation simply because he testified that he may have mistakenly told Deputy Fick where he purchased the motorcycle.

There is sufficient evidence in the record to support the circuit court's rejection of that explanation. The circuit court's decision that Clemons intentionally obstructed Deputy Fick by providing false information about where he purchased his motorcycle in order to convince Deputy Fick that Lundequam had violated the restraining order he had against her, and not the other way around, was not clearly erroneous.

CONCLUSION

For the foregoing reasons, the Court of Appeals should uphold the decision of the circuit court.

Dated this 23rd day of November, 2021.

Respectfully submitted,

Electronically signed by:

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief conforms to the rules contained in Wis. Stat. 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of the brief is 1,614 words.

Dated this 23rd day of November, 2021.

Electronically signed by:

Brian H. Wright

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 23rd day of November, 2021.

Electronically signed by:

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