

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 2003

Cornelia G. Clark
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. 03-0449
STATE OF WISCONSIN**

Cir. Ct. No. 02CV000846

**IN COURT OF APPEALS
DISTRICT II**

CITY OF ELKHORN,

PLAINTIFF-RESPONDENT,

v.

JANE ST. JOHN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County:
JAMES L. CARLSON, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ We do not reach the substantive issues raised by Jane St. John because her no contest plea to operating a motor vehicle while intoxicated (OWI), first offense, waives her challenge that the arresting officer

¹ This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(b) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

waited an unreasonable length of time to make a traffic stop. Therefore, we affirm her conviction for drunk driving.

¶2 The facts and history of this case are undisputed. After being charged with her first offense OWI, WIS. STAT. § 346.63(1)(a), and operating with a prohibited alcohol concentration, § 346.63(1)(b), St. John brought a motion seeking to dismiss the citations.² In her motion, she contended that the arresting officer's failure to immediately stop her after observing her make an unusual stop on a city street resulted in the evaporation of probable cause for a traffic stop. After an evidentiary hearing, the trial court denied her motion. St. John then entered a no contest plea to the charge of OWI and the court imposed a sentence consistent with the sentencing scheme for a first offense drunk driving.

¶3 On appeal, St. John acknowledges that her plea of no contest after losing her motion to dismiss would normally invoke the guilty plea waiver rule and prevent this court from considering her appeal. She urges us to use our discretion to consider her appeal, contending that the failure of the arresting officer to stop her immediately after observing her unsafe driving presents a sufficiently unique fact situation that is deserving of appellate review. Of course, the City of Elkhorn urges us to invoke the guilty plea waiver rule because this is very much "run of the mill."

¶4 It is a general principle of law that a "guilty plea, made knowingly and voluntarily, waives all nonjurisdictional defects and defenses, including alleged violations of constitutional rights prior to the plea." *State v. Aniton*, 183

² St. John was originally convicted in municipal court for the city of Elkhorn and filed for a new trial in circuit court. WIS. STAT. § 800.14.

Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). A no contest plea is the equivalent of a guilty plea, and waives the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *County of Racine v. Smith*, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984). In criminal cases, an exception exists for orders denying motions to suppress evidence or motions challenging the admissibility of a statement of a defendant. WIS. STAT. § 971.31(10). That exception, however, does not apply to civil forfeiture matters. *Smith*, 122 Wis. 2d at 436.

¶5 Waiver, however, is not a jurisdictional bar to an appeal, but rather a principle of judicial administration. In first offense OWI matters, this court may consider: (1) the administrative efficiencies resulting from the plea, (2) whether an adequate record has been developed, (3) whether the appeal appears motivated by the severity of the sentence, and (4) the nature of the potential issue. *County of Ozaukee v. Quelle*, 198 Wis. 2d 269, 275-76, 542 N.W.2d 196 (Ct. App. 1995).

¶6 St. John's argument for not applying the guilty plea waiver rule is unpersuasive. We acknowledge that the first three reasons might apply as well in the present case as they did in *Quelle*. The fourth reason, however, is simply not present here. St. John proposes that if an officer observes erratic driving that rises to the level of reasonable suspicion but waits to make an investigatory stop until the officer can insure the safety of the driver, the officer and the public, the reasonable suspicion to justify the stop evaporates. We have failed to find any support for St. John's proposition in our research. Further, such a proposition would seriously compromise Wisconsin's long running crusade against drunk drivers.

Drunk driving is indiscriminate in the personal tragedy of death, injury, and suffering it levies on its victims. It

may transform an innocent user of a highway into a victim at any time—with no advance notice and no opportunity to be heard. It is a tragedy where the intoxicated driver and the victim are often unwittingly the same person.

It is also a scourge on society: drunk driving exacts a heavy toll in terms of increased health care and insurance costs, diminished economic resources, and lost worker productivity. It is an affliction which produces no offsetting human or economic benefits; it engenders no positive human or economic incentive. It destroys and demoralizes personal lives and shocks society's conscience. It has no legitimate place in our society.

State v. Nordness, 128 Wis. 2d 15, 33-34, 381 N.W.2d 300 (1986).

¶7 The court of appeals is a fast-paced, high-volume, error-correcting court, *State ex rel. Swan v. Elections Board*, 133 Wis. 2d 87, 93, 394 N.W.2d 732 (1986), and is without the resources to ignore the guilty plea waiver rule when the issue presented does not tempt us or find support in the law. We conclude that to conserve our limited resources, St. John's no contest plea waives her right to seek appellate review of the trial court's denial of her motion to dismiss.

By the Court.—Order affirmed.

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

