**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**May 12, 2011**

**A. John Voelker**
**Acting Clerk of Court of Appeals**



**Appeal No. 2010AP2369** **Cir. Ct. No. 2009TR7009**

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

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**COLUMBIA COUNTY,**

**PLAINTIFF-RESPONDENT,**

**V.**

**FRED A. EDERER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Columbia County: JAMES MILLER, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] Fred A. Ederer appeals a judgment of conviction of operating a motor vehicle while under the influence, first offense, contrary to WIS. STAT. § 346.63(1)(a). Ederer was found guilty pursuant to a plea of no contest and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

received a forfeiture of $677.00, a six-month suspension of license and ordered to undergo an alcohol assessment. Prior to entering his plea, Ederer moved the circuit court for an order excluding evidence obtained as a result of the arrest on the basis that the officer lacked sufficient "reasonable articulate suspicion" to stop his vehicle. The court denied Ederer's motion and Ederer pled no contest to the charge. Ederer challenges the denial of his suppression motion.

## BACKGROUND

¶2 At approximately 1:00 a.m. on October 8, 2009, according to the testimony of Columbia County Deputy Sheriff Chad Steinle at the hearing on Ederer's motion to suppress. Ederer was traveling north on U.S. Highway 51 in the Town of Leeds in Columbia County when Steinle, who was also traveling north on U.S. Highway 51, began to follow him. Steinle "ran" the registration on the vehicle and noted that the address of the owner was in Sauk City. Steinle testified that he observed Ederer's vehicle turn into a driveway and stop. Steinle then turned around and parked in a nearby parking lot, where he made contact with another officer. When Ederer pulled out of the driveway, Steinle and the other officer followed Ederer. While they were following, Ederer "turned right onto Highway 22 from Highway 51 to travel northbound on Highway 22." Steinle testified that he "noticed that the vehicle failed to give a directional to turn right onto Highway 22 from Highway 51." When Ederer pulled into the parking lot of a tavern that appeared to be closed, Steinle activated his emergency lights and stopped Ederer's vehicle.

## DISCUSSION

¶3 Ederer argues on appeal that, because Highway 22 runs nearly straight off of a curve on Highway 51, Ederer was not required to signal the right

turn and, therefore, Steinle lacked sufficient grounds to stop his vehicle. This court, sua sponte, ordered both parties to brief whether Ederer "waived the right to appeal by entering a no-contest plea."

¶4 On the issue of waiver, Ederer argues that waiver is a rule of administration and not of power. I understand that Ederer intends "power" to refer to jurisdiction, meaning the power of this court to hear the cause, and that it is his position that despite his apparent waiver of the issue, this court should nevertheless review the alleged error. Ederer cites ***County of Ozaukee v. Quelle***, 198 Wis. 2d 269, 275-76, 542 N.W.2d 196 (Ct. App. 1995), for the proposition that this court should consider four factors in deciding whether to hear the case notwithstanding the apparent waiver. The four factors are: (1) the efficiencies resulting from the plea, (2) whether there is an adequate record, (3) whether the appeal appears motivated by the severity of the sentence, and (4) whether the nature of the potential issue dictates that we should hear the case. ***Id.*** Columbia County concedes that the first three factors are met, but disputes that the fourth factor applies.

¶5 Ederer acknowledges that ***Quelle*** was partially overruled on other grounds by ***Washburn County v. Smith***, 2008 WI 23, ¶64, 308 Wis. 2d 65, 746 N.W.2d 243, but argues as though the case were still authority for other propositions not specifically overruled by the supreme court. However, when a court of appeals case is overruled by the supreme court, it no longer possesses any precedential value. ***Blum v. 1st Auto and Cas. Ins. Co.***, 2010 WI 78, ¶46, 326 Wis. 2d 729, 786 N.W.2d 78. Thus, ***Quelle*** is no longer authority for anything.

¶6 In the absence of ***Quelle***, the rule remains that "a plea of [no contest], knowingly and understandingly made, constitutes a waiver of

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).

¶7 However, even if ***Quelle*** were still in effect, Ederer has not made a case for our addressing the substance of the appeal. Under the fourth factor, this court would need to have a reason to take the case, such as a need to explicate an area of the law or an apparent injustice. *See* ***Quelle,*** 198 Wis. 2d at 275-76. In this case, however, the outcome turns on a finding of fact by the circuit court. If the maneuver that Ederer executed is a turn, then he needed to signal. WIS. STAT. § 346.34(1)(b). In issuing its oral ruling on Ederer's motion, the circuit court specifically found: "When he *exited* Highway 51 and went to [Highway] 22, whether it's straight or not, it is still a turn on a highway which may affect other traffic." (Emphasis added.)

¶8 Findings of fact by the circuit court will be affirmed unless clearly erroneous. WIS. STAT. § 805.17(2). Although Ederer argues that the circuit court was incorrect, Ederer has not developed an argument from which I could find that the circuit court's finding was clearly erroneous. In fact, the court had adequate information on which to base its holding, even to the point of saying "I'm very familiar with this intersection."

¶9 Accordingly, for the reasons discussed above, I conclude that Ederer waived his right to appeal when he pled no contest and has given this court no reason to accept the appeal notwithstanding his waiver.

*By the Court.*— Judgment affirmed.

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