COURT OF APPEALS
DECISION
DATED AND FILED

April 8, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-2128

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

COUNTY OF CALUMET,

PLAINTIFF-RESPONDENT,

v.

DENNIS P. RAGEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Calumet County: DONALD A. POPPY, Judge. *Affirmed.*

NETTESHEIM, J. Dennis P. Ragen appeals from a forfeiture judgment of conviction for littering pursuant to a Calumet county ordinance adopting § 287.81, STATS. Ragen contends on appeal that the State failed to provide sufficient evidence to support the trial court's finding of guilt. We reject Ragen's argument and affirm the judgment.

On April 19, 1997, Kenneth Theimer was working in his yard when he and his wife observed the driver of a brown Jeep wagon stop and unload some refuse in a field to the west of their home. Theimer testified that the driver appeared to be a male. Theimer got into his truck and followed the Jeep until he was able to get its license number which he recorded as RUB-661. When Theimer returned to his residence, he called the Calumet County Sheriff's Department and reported the littering incident to Officer Mary Nicolais.

Nicolais testified that after she spoke with Theimer she went to the area of the littering and observed two boxes and two pieces of wood along the side of the road. Nicolais photographed the litter and ran the license plate number reported by Theimer. The license plate was registered to Ragen. Nicolais contacted Ragen by telephone from her squad car and told him she was calling regarding the litter. Nicolais informed Ragen that she would be issuing him a citation for littering and would be at his residence in approximately one-half hour. Nicolais did not arrive at Ragen's residence within one-half hour because she was responding to another call. However, when she arrived at his residence later that day, she observed a Jeep Wagoneer in Ragen's driveway with a license plate number RUB-661. Nicolais issued Ragen a citation for littering contrary to § 287.81(2)(a), STATS.

Ragen pleaded not guilty to the citation and the matter was tried to the court without a jury. At the trial, Ragen testified that he did not recall driving the Jeep on April 19 or loaning the Jeep to anyone for use on that date. In addition, he testified that no one else had keys to the vehicle. After hearing testimony from Theimer, Nicolais and Ragen, the trial court found Ragen guilty of littering. Ragen appeals.

In ordinance cases, the prosecution is required to prove by clear, satisfactory and convincing evidence that the defendant has committed the offense. *See* ***City of Milwaukee v. Christopher***, 45 Wis.2d 188, 191, 172 N.W.2d 695, 697 (1969). "'[U]nless the findings of the trial court are against the great weight and clear preponderance of the evidence they will not be set aside on appeal even though contrary findings might have been made with evidence in their support.'" ***Id***. (quoted source omitted). To meet this test, however, the trial court's findings "'must at least be supported by evidence sufficient to meet the burden of proof ....'" ***Id***. (quoted source omitted). On review of a factual determination made by a trial court without a jury, an appellate court will not reverse unless the finding is clearly erroneous. *See* ***Noll v. Dimiceli's, Inc.***, 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct. App. 1983).

Ragen's primary contention on appeal is that the trial court should have dismissed the citation for lack of evidence.[1] Ragen contends that the State's evidence was insufficient because Theimer was unable to identify the driver of the Jeep. However, Ragen's argument fails to recognize the doctrine of circumstantial evidence. It is well established that a finding of guilt may rest upon evidence that is entirely circumstantial and that such evidence is oftentimes stronger and more satisfactory than direct evidence. *See* ***State v. Poellinger***, 153 Wis.2d 493, 501-02, 451 N.W.2d 752, 755 (1990). Circumstantial evidence does not have to remove every possibility before a conviction can be sustained. *See* ***State v. Eberhardt***, 40 Wis.2d 175, 178, 161 N.W.2d 287, 289 (1968). This is especially

[1] We note that Ragen has several criticisms regarding the trial court's and district attorney's handling of this case. However, Ragen does not support these criticisms with evidence or develop any arguments relating to them. We therefore limit our discussion to Ragen's challenge to the sufficiency of the State's evidence.

so where there is no evidence at all on which to base any reasonable alternative hypothesis as to what happened. *See* ***id***.

At the close of the hearing, the trial court made the following statement:

> [T]he proof here, Mr. Ragen, shows that the vehicle registered to your name was at this site, and the owner of the property, Mr. Theimer, saw a male person deposit some refuse alongside the highway. Mr. Theimer then followed the car and got the license number, which turned out to be yours. You don't offer any reason why that car was not there, or that anybody else, other than yourself, was driving it that day.

We have reviewed the transcript of the hearing and agree with the trial court's assessment of the evidence.

Ragen's testimony does not refute Theimer's observations. Although Theimer was unable to identify Ragen, he was able to identify the vehicle involved and report the license plate number which was registered to Ragen. According to Ragen's own testimony, he did not loan the vehicle to anyone on the day in question and no one else had keys to the vehicle. Presumably, Ragen's alternative theory is that someone else operated his vehicle without his knowledge or consent and committed the offense. However, there is no evidence which supports this alternative hypothesis. *See* ***id***.

Since the trial court's factual findings are not clearly erroneous and since those facts circumstantially established that Ragen committed the offense, we uphold the judgment.

By the Court.—Judgment affirmed.

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