COURT OF APPEALS
DECISION
DATED AND FILED

August 18, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0266-FT

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

CITY OF MILWAUKEE,

PLAINTIFF-RESPONDENT,

V.

SAMUEL L. REED,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: ROBERT C. CRAWFORD, Judge. *Affirmed.*

SCHUDSON, J.[1] Samuel L. Reed appeals from the judgment for a violation of MILWAUKEE CODE OF ORDINANCES § 90-5-2, "Truth of Statements and Affidavits," following a bench trial. He argues that the trial court erred in finding that he intended to deceive when he made a false entry on his "Renewal

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

Alcoholic Beverage License Application." This court rejects his argument and affirms.

The facts are undisputed. Milwaukee Police Officer Leonard Gauer, the only trial witness, testified that he does background investigations on applications for renewals of Class B tavern licenses. He did such an investigation of Reed's 1997 application for renewal of the license for his tavern, "Sammie's Place." Question 5.b. asked, "Are there any criminal charges (other than traffic unrelated to alcohol beverages) presently pending against such persons since previous application? **If yes, explain fully on reverse side**." Reed answered by marking "X" in the "No" box. Reed's answer was false, however, because at the time he completed his application, he had a state criminal charge of Battery pending in circuit court in Milwaukee County.

MILWAUKEE CODE OF ORDINANCES § 90-5-2 provides:

> TRUTH OF STATEMENTS AND AFFIDAVITS; PENALTY. a. All matters submitted in writing to the city by any applicant or licensee pertaining to an intoxicating liquor or fermented malt beverage license shall be true. Any person who submits in writing any untrue statement or affidavit to the city in connection with any such license or application shall be fined not to exceed $500 or in default of payment thereof shall be imprisoned in the county jail or house of correction of Milwaukee county for not more than 90 days; and that license, if granted, shall be subject to revocation and no intoxicating liquor or fermented malt beverage license of any kind or nature whatsoever shall thereafter be granted to such a person for a period of one year from the date of such revocation.

Reed does not dispute that his answer to question 5.b. was an "untrue statement." He argues, however, that the evidence was insufficient to support the trial court's inference that he intended to make an "untrue statement" and, therefore, that he was not guilty of violating the ordinance.

The City does not concede that "intent" is an element of the offense but acknowledges that the trial court concluded that it is. The City responds, therefore, that the evidence clearly and convincingly established the basis for the trial court's reasonable inference that Reed intended to make an "untrue statement" when he answered question 5.b. The City is correct.

"Intent is by its very nature rarely susceptible to proof by direct evidence." ***Clark v. State***, 62 Wis.2d 194, 197, 214 N.W.2d 450, 451 (1974). Thus, intent, if proven, is almost always proven by circumstantial evidence. *See* WIS J I—CRIMINAL 923.1 ("You cannot look into a person's mind to find out his intent. You may determine such intent directly or indirectly from all the facts in evidence concerning this offense.").

In this case the trial court, stating its factual findings following the trial, specifically "infer[ed] that [Reed] did have the state of mind to act with intent to deceive [and] induce the City to act upon his renewal application based on the false statement." The evidence provided an overwhelming factual basis for the trial court's inference.

Officer Gauer testified that, in 1996, Reed's tavern license had been suspended and "Sammie's Place" had been closed for ten days as a result of his criminal and tavern record. He also testified that, generally, license renewal applicants lie about pending criminal charges in order to protect their licenses. The evidence also established that Reed signed his renewal application on May 23, 1997, not long after making two appearances on his pending criminal charge – on March 3 and 24, 1997.

If, somehow, Reed had had any doubt about or misunderstanding of the status of his pending criminal charge, the application provided him the

opportunity to say so, and warned him of possible consequences for failing to answer truthfully. Not only did question 5.b. explicitly allow for the option to "**explain fully on reverse side**," but the entry just above the line where Reed signed stated, in part: "**READ CAREFULLY BEFORE SIGNING**: Under penalty provided by law, the applicant states that each of the above questions has been truthfully answered to the best of the knowledge of the signers."

Reed concedes that he "has no dispute with any of [Officer Gauer's] testimony." He contends, however, that "[t]he mere fact that [he] was suspended in the past for criminal convictions does not mean he is one of those persons who 'could possibly have been hoping' to deceive the City when filling out his tavern license renewal application.'" He further contends that, in order to find the requisite intent, "one must assume that on May 23, 1997 he knew that there was presently a 'criminal charge' that was 'presently pending' against him." He fails, however, to offer any other reasonable assumption one might make. Indeed, he offers no reply to the City's argument "that Reed stayed away from the trial, so that he could not be called as a witness." *See* ***Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.***, 90 Wis.2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (unrefuted arguments deemed admitted).

This court applies "the reasonable standard of review to inferences by a trial court from undisputed or established facts." ***Pfeifer v. World Service Life Ins. Co.***, 121 Wis.2d 567, 570, 360 N.W.2d 65, 67 (Ct. App. 1984). "If more than one reasonable inference may be drawn, an appellate court must accept the one chosen by the trial court." ***C.R. v. American Standard Ins. Co.***, 113 Wis.2d 12, 15, 334 N.W.2d 121, 123 (Ct. App. 1983).

In this case, it is difficult to locate any possible inference other than the one drawn by the trial court. Reed's experience with a prior suspension based on his record, his two recent appearances in criminal court on the pending Battery charge, and his unequivocal response to the unambiguous question contained in 5.b., together with his obvious motive to protect his license, led to the logical inference that Reed intended to make an "untrue statement" in order to conceal information that would have resulted in the denial of his renewal application.

By the Court.—Judgment affirmed.

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