

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 18, 2006**

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. 2005AP1969**

**Cir. Ct. No. 2005FO474**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**CITY OF EAU CLAIRE,**

**PLAINTIFF-APPELLANT,**

**v.**

**CHRISTOPHER A. JERRAM,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Eau Claire County: LISA K. STARK, Judge. *Reversed and cause remanded with directions.*

¶1 HOOVER, P.J.<sup>1</sup> The City of Eau Claire appeals a judgment dismissing a citation for disorderly conduct against Christopher Jerram. The City contends that the court lacked the authority to dismiss the citation where it found

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

Jerram's conduct to be disorderly. This court agrees, reversing the judgment and remanding with directions to enter a judgment of conviction.

### FACTS

¶2 On March 20, 2005, Jessica Behrens backed her car out of her driveway on Monroe Street in the City of Eau Claire. Jerram was driving on Monroe Street at the time, and had to brake to avoid striking Behrens' vehicle. According to Behrens, Jerram was following her at an unsafe distance, and when Jerram then passed her, she gave him the finger; Jerram responded in kind. A few intersections later, he stopped his vehicle in a right-turn lane and Behrens stopped her vehicle behind him. Jerram exited his vehicle and approached Behrens, who remained in her vehicle and locked her doors.

¶3 According to Behrens, Jerram yelled that "[she] had better watch [her]self because he knew where [she] lived." Behrens also stated that Jerram struck her driver's side window with an open hand. After this confrontation, Behrens reported the incident to the police and gave them the license plate number of the vehicle Jerram was driving. An officer used the plate number to obtain an address, and when he arrived there, Jerram answered the door. After hearing Jerram's side of the story, the officer cited Jerram for disorderly conduct, contrary to CITY OF EAU CLAIRE, WIS. ORDINANCE § 9.56.010 (2005).

¶4 Jerram pled not guilty on April 20, and a court trial occurred on June 13, with Jerram defending his case pro se. The material facts were generally undisputed, except that Jerram asserted he never hit Behrens' window. After discussing the evidence, the trial transcript reads:

THE COURT: That's definitely disorderly conduct. He was screaming.

MR. NICK [City Attorney]: That's what he's charged with, Your Honor.

THE COURT: I understand, sir, but I also have to use a little common sense, and I'm sorry, but under the circumstances he should have used more prudence, he shouldn't have gotten out of his car, he shouldn't have screamed at her; but if she pulled out in front of him, flipped him off twice, which she testified to she did once, was going slowly and driving jerkily, under the circumstances I don't think its appropriate conduct, but I also don't think that I should punish him when apparently there were two bad actors here. So if you wish to charge both of them, Mr. Nick, I would be happy to find them both guilty .... [I]f you're not going to charge both, then I'm not going to convict either of them of it. I'm going to dismiss the citation.

¶5 The City then sought reconsideration of the court's judgment. The court denied the City's request with a letter, which characterized its original decision as finding that the City failed to prove Jerram was guilty of disorderly conduct.

#### DISCUSSION

¶6 The City argues that the court's dismissal of the citation amounts to a prohibited instance of judicial nullification. According to the City, the court disagreed with the City's exercise of its prosecutorial discretion and infringed upon the prosecutor's discretionary powers when dismissing the citation. Jerram, who defends this appeal pro se, relies on the court's characterization of its decision in the letter denying the City's request for reconsideration.

¶7 As a preliminary matter, this court must determine what the circuit court actually did. While the trial transcript indicates that the court dismissed the case on fairness grounds because the City failed to cite Behrens, the court stated on reconsideration that the City failed to prove Jerram's guilt. Upon this court's

review of the record, however, it is inescapable that the circuit court dismissed the case despite its finding that Jerram's conduct was disorderly. The court's characterization of its determination in response to the City's request for reconsideration is not supported by its unambiguous oral decision. If the court had indeed found the City's proof insufficient to convict Jerram, it would have entered a judgment of acquittal simply on that basis. Therefore, this court cannot ignore the circuit court's unambiguous statement at the conclusion of the trial, and we cannot embrace the court's explanation of its earlier decision, as relied upon by Jerram.

¶8 The question then becomes whether the court had statutory or inherent authority to dismiss the case. Ordinarily, where a defendant is found to have committed an offense, the court is required to enter a judgment of conviction. *See* WIS. STAT. § 972.13. While there are some statutes that provide limited authority to dismiss criminal cases, *see e.g.* WIS. STAT. §§ 968.03, 970.03(9) and (10), and 971.01(2), this court is aware of none that apply here.<sup>2</sup>

¶9 Next, this court addresses whether the circuit court had inherent authority to dismiss the City's case. A court's inherent powers extend only so far as necessary to enable that court to function properly. *State v Braunsdorf*, 98 Wis. 2d 569, 580, 297 N.W.2d 808 (1980). In *Braunsdorf*, our supreme court concluded that courts have no inherent authority to dismiss a criminal case with prejudice prior to the attachment of jeopardy, except where the defendant's right to a speedy trial is implicated. *Id.* at 570. We later extended the reasoning of

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<sup>2</sup> This court acknowledges that this is an ordinance violation, which our supreme court has previously described as "quasi-criminal." *See City of Janesville v. Wiskia*, 97 Wis. 2d 473, 481-82, 293 N.W.2d 522 (1980).

*Braunsdorf* to dismissals without prejudice in *State v. Clark*, 162 Wis. 2d 406, 409, 469 N.W.2d 871 (Ct. App. 1991). Therefore, the circuit court in this case did not have any inherent authority to dismiss because the dismissal was not premised upon a violation of Jerram’s right to a speedy trial.

¶10 This court also agrees with the City’s argument that the decision to charge Jerram, but not Behrens, was properly left solely to the discretion of the prosecuting attorney. While the court’s actions were understandably influenced by Behrens’ role in this incident, the charging decision was beyond the court’s control. As our supreme court stated in *Braunsdorf*, “the power to dismiss a criminal case ... regardless of how judiciously it is used by the trial courts, is too great an intrusion into the realm of prosecutorial discretion.” *Braunsdorf*, 98 Wis. 2d at 586.

¶11 Thus, this court concludes that the circuit court erred when dismissing Jerram’s citation. We have been shown no statutory or inherent authority for the court to do so, and the court’s actions interfered with the discretionary powers traditionally wielded by prosecuting attorneys. The court found Jerram’s conduct to be disorderly and was thereafter required to enter a judgment of conviction. *See* WIS. STAT. § 972.13. The judgment of dismissal is therefore reversed, and the case is remanded to the circuit court with direction to enter a judgment of conviction for disorderly conduct, contrary to CITY OF EAU CLAIRE, WIS. ORDINANCE § 9.56.010.

*By the Court.*—Judgment reversed and cause remanded with directions.

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



