

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 6, 2002

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 Nos. 01-1900
01-1901
STATE OF WISCONSIN**

**Cir. Ct. No. 01-TR-5181
01-TR-5182**

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF FOND DU LAC,

PLAINTIFF-RESPONDENT,

V.

KEVIN C. DERKSEN,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Fond du Lac County: ROBERT J. WIRTZ, Judge. *Affirmed.*

¶1 BROWN, J.¹ Twenty-five years ago, in *State v. Waste Management of Wisconsin, Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1977), Justice Robert

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version.

W. Hansen began the opinion with what has been cited by our appellate courts numerous times since:

An appellate court is not a performing bear, required to dance to each and every tune played on an appeal. Here appellant raises twenty-nine challenges to a judgment of conviction. However, we find the challenges to fit into five categories and will discuss each category. Any of the twenty-nine issues raised and not discussed in any of the five categories can be deemed to lack sufficient merit or importance to warrant individual attention.

As did Justice Hansen and the unanimous court in *Waste Management*, this court also declines to address every tune played on this appeal. We determine that all the issues Kevin C. Derksen raises derive from his erroneous understanding of the law. We therefore limit our discussion to consideration of his theory and, upon doing so, affirm the judgments.

¶2 Derksen's theory is as follows: He is a sovereign free man who lives in this country by free choice. With respect to the public highways of this country, he has not entered into any contract whereby he has given up his rights as a sovereign free man in exchange for a "license" and therefore continues to enjoy his rights "without interference of police power." There are only two instances where the government may exercise control over his person without a contract. First, the government may inhibit his freedom if he engages in some kind of penal act where he victimizes another person. Second, his right to travel may be regulated if he is "hauling for hire" because, then, his desire to engage in interstate commerce can be regulated by the government. Absent one of these two exceptions, the government has no control over his right to travel. He has a God-given and constitutionally recognized right to travel anywhere in this country and does not need a "license" to do so. The courts have no subject matter jurisdiction

to hear a traffic matter absent such contract, proof of a penal violation or proof that he was hauling for hire.

¶3 A corollary to Derksen's theory is that even if he is subject to traffic laws, he has a right to confront his accuser; the accuser must be a person—not a corporate body such as Fond du Lac County—and his citations must be dismissed on this basis.

¶4 Applying his theory to the facts of this case, Derksen complains that his convictions for operating a vehicle while his license was suspended and for speeding were obtained without the court having subject matter jurisdiction. In his view, the government has no right to demand that he obtain a license to drive as a condition precedent to his operating a vehicle on the highway. He also is apparently of the view that he can drive beyond the posted speed limit because the government has no right to regulate the speed of his vehicle unless he injures someone or drives in such a manner as to engage the penal statutes of this state.

¶5 We will not quarrel with Derksen's assumption that he has a "God given, constitutionally recognized right to travel." We agree that Derksen has a right to travel freely in this country. Be that as it may, there is nothing in the Constitution or in any of the cases in this state or in the United States Supreme Court allowing him to exercise this right of travel by a particular method of transportation. In other words, there is no "right" to travel about while operating a motorized vehicle on the highways of this country, and in particular as it relates to this case, upon the highways of this state.

¶6 There is a compelling basis for differentiating the right to travel from the means of travel. The automobile of today, with engineering emphasis on power and speed, can be a crippling if not lethal weapon in the hands of an

irresponsible driver. See *Steen v. State*, 85 Wis. 2d 663, 671, 271 N.W.2d 396 (1978). The roads upon which Derksen wants to drive an auto (and presumably speed upon) were built by human hands with money collected by the citizens for their common welfare. Since it is the citizens who paid to build the roads, these same citizens have the right to insist that everyone wishing to drive on the public highways be licensed. A good record-keeping system of driver licensing allows the citizens of this state to identify irresponsible drivers with less difficulty. This is why our supreme court wrote in *Steen* that “the granting of an automobile license to operate a motor vehicle is a privilege and not an inherent right.” *Id.* We recognize that Derksen has cited a couple of old cases from other jurisdictions from which he could argue in support of his theory. But we are not bound by those cases. We are bound by our supreme court and, in a constitutional sense, by the decisions of the United States Supreme Court. See *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997). We refuse to follow or even discuss the ancient cases from other jurisdictions cited by Derksen.

¶7 It is disturbing that Derksen seems to differentiate the County from its citizens. Apparently, Derksen views the County as an unseen and autocratic force composed of powerful but nameless persons bent on circumscribing his rights. That is not so. The body politic of Fond du Lac County is the product of our representative form of government. The citizens elect the persons who pass the ordinances and the citizens may un-elect them. While it is true that the County is “a corporation,” when the County is the plaintiff in a traffic code violation case, it is really the citizens of Fond du Lac County who are the complainants. The citizens do not want people driving vehicles in a manner that can lead to endangering them. That is why the citizens have voted for representatives who

have, in turn, voted to outlaw speeding on the roads that the citizens have had built with their own money.

¶8 Derksen cites *Hendrick v. Maryland*, 235 U.S. 610 (1915), apparently for the proposition that while the citizens may regulate persons driving a motor vehicle on their highways, such regulation may only be invoked when the user is engaged in interstate commerce. The reliance is misplaced. In that case, Hendrick argued that the state of Maryland was attempting to regulate interstate commerce when it insisted that automobiles be registered as a condition precedent to being driven on the highway. *Id.* at 621. The Supreme Court rejected that specific argument, reasoning that the registration was a method of collection by which the citizens of the state could finance the building of roads in return for Hendrick’s use of the roadway. *Id.* at 622-23. There is no hint in *Hendrick* that the Supreme Court was reaching beyond the issue raised in that case so as to rule that traffic laws are not enforceable against motor vehicle users not engaged in interstate commerce. No case coming out of the United States Supreme Court since *Hendrick* has ever reached that conclusion.

¶9 Therefore, we reject Derksen’s argument. There is no “right” to drive a motor vehicle upon a public highway and certainly no “right” to speed on the highway. Derksen is certainly free to travel on the highways of this country. He can take the bus. He can hire a driver. He can operate a bicycle on roads that allow bicycles. He can even walk on some highways. No one will stop him and claim that he has no right to travel. But he cannot operate a motor vehicle unless he passes a test showing that he is a responsible driver, pays his fees, and drives responsibly.

By the Court.—Judgments affirmed.

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

