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DISTRICT III

January 14, 2025

To:

Hon. Maureen D. Boyle
Circuit Court Judge
Electronic Notice

John M. O'Boyle
Electronic Notice

Sharon Millermon
Clerk of Circuit Court
Barron County Justice Center
Electronic Notice

George Dell Dimmick
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Lake Elmo, MN 55042

You are hereby notified that the Court has entered the following opinion and order:

2022AP910

State of Wisconsin v. George Dell Dimmick
(L. C. No. 2021FO608)

Before Hruz, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

George Dell Dimmick, pro se, appeals a judgment of conviction for operating an all-terrain vehicle (ATV) or utility terrain vehicle (UTV) on a public highway, contrary to WIS. STAT. § 23.33(4)(b) and corresponding local ordinances. Dimmick argues, generally, that the evidence presented by the State was insufficient to support his conviction. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. RULE 809.21. For the reasons that follow, we summarily affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

On December 14, 2021, Barron County Sheriff's Deputy Jeffrey Wolfe issued the citation at issue to Dimmick for illegally operating an ATV or UTV on a highway. At the subsequent bench trial, Wolfe testified that he manages the County's ATV/UTV trail system and enforces the laws pertaining to it. Wolfe further testified that on December 14, he observed two UTVs operating on West Knapp Street in the City of Rice Lake, which is also a portion of State Highway 48. According to Wolfe, he approached these two vehicles while they were stopped at the Synergy Co-op located on West Avenue in Rice Lake. During this interaction, Wolfe identified Dimmick as the operator of a Yamaha Wolverine UTV and Dimmick's brother as the operator of a Can-Am Maverick UTV.²

Both Dimmick and his brother told Wolfe that they had come from the Wild Rivers Trail and that they were in the process of refueling at the Co-op. Wolfe testified that he was familiar with the location of the Wild Rivers Trail, and he was able to determine the route the Dimmicks would have taken from that location to arrive at the Co-op. In this regard, the State offered several photographs as exhibits, with Wolfe providing their foundation. One photo depicted a posting of a "notice," which included a map of Rice Lake showing the roads on which people were prohibited from operating ATVs and UTVs. This notice expressly listed both Knapp Street and "[c]ounty or [s]tate [h]ighways" as two of the five prohibited streets, and the Dimmicks would have passed the sign upon leaving the Wild Rivers Trail. Another photograph showed a stop sign where the trail ended and intersected with Knapp Street/Highway 48. Four additional photographs were admitted, all of which showed signs posted at various locations on Knapp

² Dimmick's brother was issued a companion citation, which was resolved during the same bench trial.

Street/Highway 48 between where the Dimmicks would have exited the Wild Rivers Trail and the Synergy Co-op. All four signs clearly noted that the operation of an ATV or UTV on that roadway was prohibited. Neither of the Dimmicks objected to the admission of any of the foregoing exhibits.

The State also introduced a copy of the City of Rice Lake’s ordinance regarding the operation of ATVs and UTVs within the City. Deputy Wolfe testified that he was familiar with this ordinance (as he was involved in its implementation), that he knew the ordinance was in effect on December 14, 2021, and that it prohibited the operation of an ATV or UTV on Knapp Street/Highway 48. Wolfe further testified as to the specifications—which were subsequently offered into evidence—of each of the four-wheel vehicles that the Dimmicks were driving. In particular, he testified regarding the nature of those vehicles as being consistent with UTVs, as defined in WIS. STAT. § 23.33(1)(ng), and “designed to primarily be used off-highway.”

The Dimmicks both testified at the trial. As relevant to this appeal, Dimmick testified that his UTV was “a legally licensed motorcycle” in South Dakota, which, he contended, meant it was lawful for him to drive it in other states just as he could in South Dakota under his license. He submitted a South Dakota “Motor Vehicles Detailed Receipt” for his UTV as supporting evidence. Dimmick also testified, and later argued, that he was “under the impression” that all the roads in Rice Lake were ATV and UTV routes “based [on] the maps [he] looked at before [he] traveled to that area,” and Dimmick’s brother submitted a “Barron County Snowmobile & ATV Trail Map” and a “Barron County ATV Routes and Trails” map as exhibits. Dimmick never disputed that he was operating a UTV on Knapp Street/Highway 48 on December 14, 2021, and he also did not present any evidence or argument that any of the limited exceptions to violating WIS. STAT. § 23.33(4)(b) were applicable. Dimmick also did not present any evidence

regarding either the validity of the signs shown in the photographs that the State submitted as trial exhibits or whether the signs complied with statutory regulations concerning ATVs and UTVs.

The circuit court found Dimmick guilty of the violation contained on the issued citation. The court began by noting that the violation at issue was one of strict liability. Regarding Dimmick's argument that his vehicle was a lawfully registered "motorcycle" that could be operated on any public roadway in Wisconsin, the court noted that "every state does have a different definition of vehicles." Here, based on Wolfe's testimony and the other evidence submitted by the State, the court found that Dimmick's vehicle clearly and convincingly met the statutory requirements for being a UTV. The court also determined that the notice (with the map), the road signs, and even the two maps regarding Barron County's ATV/UTV trails that Dimmick's brother submitted at trial all either clearly noted that ATV and UTV travel on Knapp Street/Highway 48 was prohibited, or did not state, either way, if such travel was lawful. The court found particularly compelling the fact that the trailhead from which Dimmick exited the Wild Rivers Trail onto Knapp Street/Highway 48 had a specific notice posted that listed the roadways in Rice Lake on which ATVs and UTVs were prohibited from operating, which included Knapp Street/Hwy 48.

The evidence presented by the State, as outlined above, was plainly sufficient for the fact finder—here, the circuit court—to determine that Dimmick unlawfully operated an ATV or UTV

on a highway in violation of WIS. STAT. § 23.33(4)(b).³ That provision states: “No person may operate an all-terrain vehicle or utility terrain vehicle on a highway except as authorized under [limited exceptions enumerated elsewhere in [§ 23.33] or as authorized by rules promulgated by the department [of natural resources] and approved by the department of transportation.” The violation at issue has clear elements and, as the court correctly noted, is a strict liability offense, meaning that an offender need not intend to violate the law and may be merely ignorant of the prohibition. *See State v. Jadowski*, 2004 WI 68, ¶44, 272 Wis. 2d 418, 680 N.W.2d 810 (defining “strict liability crimes” as “crimes defined without any culpable state of mind”).

Dimmick does not argue, at least insofar as we can discern, that the facts adduced at his trial were insufficient to show a violation of WIS. STAT. § 23.33(4)(b). He also does not assert that there is any issue with his conviction based on the statutory exceptions to compliance; none seem to apply, and he did not argue otherwise in the circuit court.

Rather, now on appeal, Dimmick contends that he could not be guilty of violating WIS. STAT. § 23.33(4)(b) because the circuit court “relied on flawed information” in two respects.

³ We note that the exact nature of Dimmick’s arguments on appeal is unclear. He may intend to challenge the sufficiency of the evidence, thus requiring this court to consider whether the evidence, when viewed most favorably to the State, is “so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably could have found” Dimmick liable beyond a reasonable doubt.” *See State v. Schutte*, 2006 WI App 135, ¶14, 295 Wis. 2d 256, 720 N.W.2d 469. Or, Dimmick may be intending to challenge whether his UTV meets the definition of a UTV found under WIS. STAT. § 23.33(1)(ng), thus requiring us to de novo consider the meaning and application of the language in § 23.33. *See Garcia v. Mazda Motor of Am., Inc.*, 2004 WI 93, ¶7, 273 Wis. 2d 612, 682 N.W.2d 365.

Whatever the nature of Dimmick’s intended challenge, our conclusions, as explained below, remain the same. Namely, the vehicle Dimmick was operating on the day at issue meets the definition of a UTV in WIS. STAT. § 23.33(1)(ng), § 23.33(4)(b) is a strict liability offense, and any defect in the applicable signage indicating that no person may operate an ATV/UTV on Knapp Street/Highway 48 does not prevent Dimmick’s guilt under § 23.33(4)(b).

First, he claims that the photographs admitted as exhibits by the State “[misled] the court about [the] correct size, wording and mounting of signs[] banning ATV/UTV traffic.” He summarily points to various State standards regarding traffic and trail signs, mostly regarding their design and appearance, which he contends the signs at issue did not satisfy. Second, Dimmick vaguely argues that the judgment improperly “overlooked [the fact that the] motor vehicle [he] was driving at the time is properly registered and legally licensed in a different jurisdiction for use on streets, roads and highways.” For both arguments, Dimmick also makes a few factual assertions without supporting citations to the record.

There are a number of problems with Dimmick’s appellate arguments. First, the record does not show that Dimmick advanced any concerns regarding the road signs in the circuit court, either by means of evidentiary submissions or argument and citation to legal authority. Dimmick certainly did not raise the State standards he now claims the signs failed to meet. The circuit court was not asked to make, and did not make, any factual findings regarding the validity of signs; it simply found that the signs were located as testified to and that they indicated that the operation of an ATV/UTV on Knapp Street/Highway 48 was prohibited. Under this procedural posture, Dimmick cannot advance on appeal his new arguments regarding alleged issues with the signs relied upon at trial as a basis for overturning his conviction, *see State v. Rogers*, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995), and he presents no argument that we should overlook his failure.

Second, both of Dimmick’s arguments are not sufficiently developed in his brief-in-chief.⁴ In addition to the foregoing deficiencies with his “invalid signs” argument, Dimmick develops no argument tied to the evidence at his trial, and he fails to explain how the State standards he cites would be a defense to his conviction in any event. Regarding his “legally licensed motor vehicle” argument, it consists merely of his declaring that his UTV was modified to meet “motor vehicle safety standards” in South Dakota and that it is considered a “motor vehicle” under Wisconsin law due to “reciprocity.” He does this all within a handful of vague sentences of undeveloped arguments, citing largely inapplicable statutes and no relevant legal authority. While we provide some leeway to pro se litigants, we will not abandon our neutrality to develop their arguments for them. *See State ex rel. Wren v. Richardson*, 2019 WI 110, ¶25, 389 Wis. 2d 516, 936 N.W.2d 587; *Industrial Risk Insurers v. American Eng’g Testing, Inc.*, 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82.

Third, even were we to reach the merits, none of Dimmick’s arguments provide any reason, under the law, to reverse his judgment of conviction. Dimmick’s complaint regarding the alleged information on the signs does nothing to undermine the illegality of his conduct or to make the evidence insufficient, as a matter of law, to support his conviction. At most, it would go to the weight of the evidence, which was offered for the purpose of showing, along with the city ordinance, the illegality of Dimmick operating a UTV on Knapp Street/Highway 48. The circuit court quite reasonably found that it was “pretty clear from all the evidence that Knapp

⁴ Dimmick did not file a reply brief. This omission is noteworthy inasmuch as the State, in its brief, argued that Dimmick’s appellate arguments improperly raised new issues on appeal that were not raised at trial and were fatally undeveloped, citing to numerous authorities in support of both propositions. Unrefuted arguments may be deemed conceded. *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

Street is prohibited” from UTV travel. Likewise, nothing Dimmick presents regarding “vehicle reciprocity” explains why he was improperly found guilty of unlawfully operating a UTV on a prohibited highway in Wisconsin under an application of the Wisconsin Statutes and local ordinances. Finally, to the extent that Dimmick’s arguments are asking us to resolve questions of fact, we are not permitted to do so, and Dimmick should have made those arguments in the circuit court. *See State ex rel. Coleman v. McCaughtry*, 2006 WI 49, ¶2 n.2, 290 Wis. 2d 352, 714 N.W.2d 900 (stating that “[t]he court of appeals is without jurisdiction to make factual findings”).

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals