COURT OF APPEALS
DECISION
DATED AND FILED

March 22, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1869

Cir. Ct. Nos. 2011TR569
2011TR570
2011TR571
2011TR572

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CATHERINE ANNE GOTTHARDT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Crawford County: JAMES P. CZAJKOWSKI, Judge. *Affirmed.*

¶1 BLANCHARD, J.[1] Catherine Gotthardt appeals pro se from an order of the circuit court requiring her to pay: one forfeiture in the amount of $10

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

for a violation of WIS. STAT. § 347.48(2m)(b) (vehicle operator failure to wear seat belt); two forfeitures in the amount of $10 each for violations of § 347.48(2m)(c) (vehicle operator failure to have passengers wear seat belts); and one forfeiture in the amount of $200.50 for a violation of WIS. STAT. § 344.62(1) (operating a motor vehicle without insurance), plus a witness fee of $16.50.[2] Gotthardt's arguments on appeal are in some respects difficult to discern, but they are summarized below as this court understands them. This court concludes that Gotthardt fails to develop any meritorious argument on appeal.

BACKGROUND

¶2 A Wisconsin State Patrol Trooper testified that on April 15, 2011, he stopped a vehicle that Gotthardt was driving because he saw that she was not wearing a seat belt. In the course of following her vehicle and stopping it, the trooper observed multiple passengers in the vehicle put on their seat belts. The trooper testified that, when he interacted with Gotthardt after the stop, she was unable to produce proof of insurance, and "seemed very confused why I was even asking about the insurance."

¶3 Gotthardt testified that before and during the stop she was wearing a seat belt and that she had no idea why the trooper stopped her vehicle. She testified that it was the normal practice of her passengers to buckle up promptly upon getting into the vehicle, but gave inconsistent answers on the topic of whether she was affirmatively aware that her passengers were buckled up on this occasion. On the topic of insurance, Gotthardt testified as follows: "And [the

[2] The court used a single Order to Pay and Notice of Hearing form to order Gotthardt to pay the four forfeitures after finding her guilty on each.

trooper] asked me for my driver[']s license and [proof of] insurance and I gave him the license and he asked about the insurance and I said he'd have to talk to my husband."

DISCUSSION

¶4 Gotthardt purports to identify two issues in her brief-in-chief. The first is that "the traffic stop was not supported by probable cause as the officer could not see well enough through his rear view mirror due to weather conditions as to whether or not seat belts were being worn, as his conflicting testimony shows." (Capitalization altered from original.)

¶5 The first problem with this suppression argument is that it was not presented to the circuit court and, therefore, is considered forfeited. Although Gotthardt elicited limited testimony from the trooper that may have been relevant to the trooper's ability to see inside Gotthardt's vehicle before stopping it, this was insufficient to alert the circuit court to the type of argument Gotthardt now makes for the first time on appeal. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997) (arguments raised for the first time on appeal are generally deemed forfeited); *see also* ***Zeller v. Northrup King Co.***, 125 Wis. 2d 31, 35, 370 N.W.2d 809 (Ct. App. 1985) ("Without a specific objection which brings into focus the nature of an alleged error, a party does not preserve its objections for review.").

¶6 The second problem is that Gotthardt's argument rests on the incorrect legal premise that an officer must have suspicion of a crime or offense rising to the level of probable cause in order to stop a vehicle. All that is required is a "reasonable suspicion," a *lower* standard that is more easily met than the comparatively higher standard of probable cause. *See* ***Alabama v. White***, 496

U.S. 325, 330 (1990) ("Reasonable suspicion is a less demanding standard than probable cause …."); ***State v. Colstad***, 2003 WI App 25, ¶11, 260 Wis. 2d 406, 659 N.W.2d 394 ("reasonable suspicion" is all that is needed for traffic stop).

¶7 The third problem is that, even if Gotthardt had argued to the circuit court that the traffic stop violated her constitutional rights because it was not based on reasonable suspicion under the totality of the circumstances, *see* ***State v. Post***, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634, the court made a specific factual finding, based on the trooper's testimony, that the trooper observed Gotthardt driving without a seat belt before the stop. This qualifies as a specific and articulable fact sufficient to constitute reasonable suspicion warranting the intrusion of a stop. We review the circuit court's findings of historical fact under the clearly erroneous standard. ***State v. Payano-Roman***, 2006 WI 47, ¶16, 290 Wis. 2d 380, 714 N.W.2d 548. Gotthardt fails to provide a reason to conclude that the circuit court clearly erred in making this dispositive finding, even if she had presented that court with her argument for suppression.[3]

¶8 The second issue Gotthardt purports to identify is that

> while the judge was willing to allow evidence of insurance as a defense, he refused to allow evidence regarding my sincerely [held] religious beliefs, i.e., if forced to contract with (or enter into a trust relationship with) an entity such as an insurance corporation to take responsibility for

[3] It may be that, in referring to evidence that would be offered by the State to justify the traffic stop had Gotthardt made a motion to suppress, Gotthardt means to argue that the evidence presented at trial was not sufficient to support the court's finding that the trooper observed her driving without a seat belt. If so, she has failed to persuade us that the court could not reasonably credit the testimony of the trooper as the court did. This was, for the most part, a credibility determination, which is "the sole province of the trial court sitting as the trier of fact." ***Sensenbrenner v. Sensenbrenner***, 89 Wis. 2d 677, 700, 278 N.W.2d 887 (1979) (citation omitted).

> liability, that would then conflict with those sincerely held religious beliefs, thereby forcing the choice between those beliefs or being able to drive.

(Capitalization altered from original.)

¶9 Additional facts are necessary to put this issue in context. After the close of evidence, and after the circuit court found Gotthardt guilty of all violations, Gotthardt stated that she "forgot to give [the court] something" and that, regarding the operating without insurance citation, "I lost track of what was being said and done." The circuit court responded by asking if she had proof of insurance to present. Gotthardt replied that she did not, but that she had brought an affidavit stating that she held sincere religious beliefs against contracting to carry personal liability insurance. The circuit court then stated, "Well, there was no evidence submitted on that. The Court has already found you guilty."

¶10 In her arguments on appeal, Gotthardt asserts that she believed that the insurance citation was going to be tried after the seat-belt citations, and she implies that she did not understand that she needed to offer evidence of her religious beliefs sooner. She also cites First Amendment case law that she failed to raise in the circuit court. This court is not persuaded by Gotthardt's arguments for the following reasons.

¶11 The record does not demonstrate the circuit court's purpose in responding to Gotthardt's statement about forgetting an item on the insurance issue by asking about proof of insurance. Gotthardt assumes that the court was expressing an interest in reopening the finding on the insurance violation to receive belated proof-of-insurance evidence. This is possible. It is also possible, however, that the court was simply trying to move the proceedings along by asking this question, and had no intention of reconsidering its finding even if that

is what she was offering. Or, in the alternative, the court may have been thinking of considering proof of insurance for its relevance only in setting the amount of forfeiture or conditions of its payment.

¶12 In any case, however, the fact remains that Gotthardt's First Amendment defense was untimely and insufficiently developed in the circuit court. The evidence was closed, the court heard the arguments of the parties, and the court had rendered its decisions. Only then, while the court was discussing details regarding Gotthardt's payment of the forfeitures, did Gotthardt for the first time raise her First Amendment defense, and she did so without citation to legal authority. Whether Gotthard forgot about her First Amendment evidence altogether or misunderstood when to submit it or both, Gotthardt points to no rule, and this court is aware of none, that required the circuit court to reconsider its decision at that point in the proceedings in light of Gotthardt's belated and legally unsupported First Amendment defense. *Cf.* ***Salveson v. Douglas County***, 2000 WI App 80, ¶¶41-43, 234 Wis. 2d 413, 610 N.W.2d 184 (court may exercise discretion to accept additional evidence upon motion for reconsideration), *aff'd*, 2001 WI 100, 245 Wis. 2d 497, 630 N.W.2d 182; *see also* WIS. STAT. § 805.17(3) (addressing reconsideration motions in trials to courts).

¶13 Assuming, without deciding, that Gotthardt misunderstood the need to raise her First Amendment defense and submit evidence in support of it sooner, this court is not persuaded that her misunderstanding was reasonable. The prosecutor elicited evidence regarding the insurance issue while examining the trooper as a witness. Then, during Gotthardt's cross-examination of the trooper, the court specifically explained to Gotthardt that "[a] little later you'll be given the opportunity to testify yourself," which Gotthardt did without bringing up her religious beliefs. Thus, the signals that Gotthardt received from the prosecutor and

the court pointed to Gotthardt's need to put in evidence of her defense sooner than she did. "While some leniency may be allowed, neither a trial court nor a reviewing court has a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law." ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

¶14 Gotthardt does not argue that, as a pro se litigant, the court gave her insufficient time or opportunity to explain a defense as well as she was able. To the contrary, Gotthardt acknowledges that "the Court and District Attorney in the lower Court were patient with me," which is consistent with how the record appears to this court. The record also reflects that the trial date was noticed well in advance and that Gotthardt was given clear and uninterrupted opportunities during the trial to present any evidence and argument she chose to present. There was no ambiguity about when she could present evidence and make arguments before the court considered the evidence presented by both parties and rendered its decisions.

¶15 Finally, even if Gotthardt had properly raised her First Amendment defense in the circuit court, it appears that reversal would not be merited, at least based on the defense as described by Gotthardt. The defense is, in effect, a challenge to the constitutionality of statutes requiring liability insurance. Such a challenge places a heavy burden on the challenger:

> A statute enjoys a presumption of constitutionality. To overcome that presumption, a party challenging a statute's constitutionality bears a heavy burden. It is insufficient for the party challenging the statute to merely establish either that the statute's constitutionality is doubtful or that the statute is probably unconstitutional. Instead, the party challenging a statute's constitutionality must "prove that the statute is unconstitutional beyond a reasonable doubt."

State v. Smith, 2010 WI 16, ¶8, 323 Wis. 2d 377, 780 N.W.2d 90 (citations omitted). Here, Gotthardt has not carried the heavy burden of showing the statute's unconstitutionality. Although she cites to First Amendment cases involving religious beliefs, none of those cases address a religion-based challenge to a legal requirement for obtaining automobile liability insurance as here. This court's non-exhaustive research readily revealed only cases in which such challenges were rejected. *See* ***Bissett v. State***, 727 P.2d 1293, 1295-96 (Idaho Ct. App. 1986); ***Commonwealth v. DeVoute***, 11 Pa. D. & C.3d 313, 316-18 (Pa. Com. Pl. 1978); *aff'd*, 395 A.2d 966 (Pa. Super. Ct. 1978); ***State v. Cosgrove***, 439 N.W.2d 119, 120-21 (S.D. 1989); *see also* ***Backlund v. Board of Comm'rs of King Cnty. Hosp. Dist.***, 724 P.2d 981, 982 (Wash. 1986) (involving professional liability insurance). While such case law may not be conclusive as to Wisconsin's particular statutory scheme and Wisconsin's constitution, it persuades this court that a litigant would, at a minimum, have needed to do more than Gotthardt did to present a non-frivolous argument that the insurance requirement interferes with religious practices under the free exercise clause of the First Amendment or corresponding state constitutional provision, even if she had preserved this argument.[4]

CONCLUSION

¶16 For these reasons, Gotthardt has failed to present an argument meriting reversal, and the circuit court's order is affirmed.

[4] Given the discussion in the text, this court need not reach the question of whether Gotthardt forfeited her First Amendment argument by failing to notify the attorney general of her challenge to the constitutionality of a statute both at the trial and appellate levels of this litigation. *See* ***William B. Tanner Co. v. Estate of Fessler***, 100 Wis. 2d 437, 443-44, 302 N.W.2d 414 (1981); ***Kurtz v. City of Waukesha***, 91 Wis. 2d 103, 117, 280 N.W.2d 757 (1979).

By the Court.—Order affirmed.

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