

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 31, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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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. 2005AP2831**

**Cir. Ct. No. 2005FO1011**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**CITY OF SHEBOYGAN FALLS,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JAMES B. HODGELL,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Sheboygan County: TERENCE T. BOURKE, Judge. *Affirmed.*

¶1 NETTESHEIM, J.<sup>1</sup> James B. Hodgell appeals pro se from a forfeiture judgment of conviction for disorderly conduct following a trial to the court.<sup>2</sup> We affirm the judgment.

¶2 On appeal, Hodgell challenges the sufficiency of the evidence. However, he has failed to provide us with a transcript of the trial court proceedings. The lack of a transcript limits our review to those parts of the record that are before us. *See Jocius v. Jocius*, 218 Wis. 2d 103, 119, 580 N.W.2d 708 (Ct. App. 1998). Moreover, in the absence of a trial transcript, we assume that every fact essential to sustain the trial judge's ruling is supported by the record. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979).

¶3 The minimal portions of the record that are before us do not assist on the sufficiency of evidence question raised by Hodgell. The record is limited to the citation, scheduling documents, minute sheets, a letter from the court reporter setting out the terms for providing Hodgell a transcript, and pretrial and posttrial correspondence from Hodgell to the trial court setting out his theory of defense.

¶4 The appendix to Hodgell's brief-in-chief includes a copy of the police report regarding the incident. However, we have nothing which indicates that this report was received into evidence during the trial court proceedings. Nonetheless, the City allows that the police report essentially captures the evidence presented at the trial. Therefore, we will discuss the report measured against Hodgell's challenge to the sufficiency of the evidence.

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

<sup>2</sup> An accompany charge of "loitering and standing in the roadway" was dismissed.

¶5 On May 27, 2005, at approximately 3:30 p.m., Hodgell was caught up in traffic congestion in the area of Broadway Avenue and Monroe Avenue in the City of Sheboygan Falls. This was normal for the intersection at this time of the day. Hodgell exited his vehicle and took it upon himself to begin directing traffic at the intersection. Hodgell's efforts, however, apparently did more harm than good. Within a matter of minutes, Hodgell's intervention produced six calls to the police department from drivers in the area complaining about a person yelling and screaming at the vehicles in the area of the intersection. Some of the calls reported that the person was "drunk." One driver reported that she had signaled her wish to make a turn at the intersection, but that Hodgell instead directed her to proceed through the intersection. When this driver questioned Hodgell's authority to direct traffic, he responded, "Don't argue just drive through." When this same driver again arrived at the intersection after picking up her son at a nearby school, Hodgell was still in the intersection. Again the driver challenged Hodgell's authority, to which Hodgell responded that the driver should "be quiet" and "just go through."

¶6 On appeal, Hodgell contends that his intervention was warranted to "avert a severe threat to the public safety or possible bodily harm or vehicle harm, ignored by incompetent policemen." But there is nothing in the police report that supports this assessment of the situation. This was traffic congestion and nothing more.

¶7 Hodgell also points to his prior experience driving farm equipment on farm roads and highways in Colorado and herding sheep down a roadway. He also states that he has many times assisted motorists in many states and "knows that it is a responsible right to do so...." He complains that while he was directing the traffic in this case, some of the drivers were themselves disorderly when they

heckled him and tried to start an argument in the intersection. It appears from Hodgell's brief that some of these hecklers were the drivers who complained to the police about his conduct.

¶8 In finding Hodgell guilty of disorderly conduct, the trial court explained to Hodgell that he should have summoned the police instead of taking on the responsibility of traffic control himself. By doing so, the court explained that Hodgell invited a mishap by the manner in which he was allowing vehicles to proceed through the intersection. The court also noted that Hodgell did not present the appearance of authority over the scene that would be communicated by a uniformed police officer. Finally, the court held that Hodgell's conduct, while well intended, created a disturbance, a finding substantiated by the police report. We uphold the court's findings.

*By the Court.*—Judgment affirmed.

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