COURT OF APPEALS
DECISION
DATED AND FILED

January 9, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1359 **Cir. Ct. No. 01-TR-144**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AMANDA A. RINGLER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County: HENRY B. BUSLEE, Judge. *Affirmed.*

¶1 NETTESHEIM, P.J.[1] Amanda A. Ringler appeals from an order revoking her operating privilege based upon her improper refusal to submit to a

[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 unless otherwise noted.

chemical test following her arrest for operating while intoxicated (OWI).[2] Ringler contends that the arresting officer did not have reasonable suspicion to stop her vehicle. We disagree and affirm the revocation order.

¶2 Ringler argues that the testimony of the arresting officer, Ryan Waldschmidt, regarding his reason for pursuing her vehicle was inconsistent and contradictory and therefore not worthy of belief. On direct examination, Waldschmidt testified that Ringler pulled out from a parking lot in front of his squad car requiring him to slam on his brakes and causing his brakes to lock up and his tires to squeal. On cross-examination, Waldschmidt testified that he was operating a 2000 Ford Interceptor equipped with anti-lock brakes. Ringler contends that this cross-examination debunks Waldschmidt's direct testimony because the brakes of a well-maintained 2000 vehicle equipped with anti-lock brakes would not lock up and the tires would not squeal in a sudden-stop situation. Because Waldschmidt's testimony is inherently incredible and because Waldschmidt offered no other reason for stopping her vehicle, Ringler contends that Waldschmidt did not have reasonable suspicion to detain her under WIS. STAT. § 968.24.

¶3 We begin by noting that while Ringler argued to the trial court that Waldschmidt did not have sufficient cause to stop her vehicle, the particular argument she makes on appeal was not made to the trial court.[3] Therefore,

[2] The parties refer to the refusal hearing as a "reasonableness" hearing. The reasonableness of a refusal was once the test. *See* WIS. STAT. § 343.305(2) (1975). However, the test under current law is whether a refusal was due to a physical inability to submit to a chemical test. WIS. STAT. § 343.305(9)(a)5.c. We now use the words "proper" or "improper" when assessing a refusal.

[3] In the trial court, Ringler's argument on this point consisted of the following brief statement:

(continued)

Ringler's criticism that the trial court was "blinded to truth" is an unfair accusation and an uncivil swipe at the trial court. For the same reason, Ringler's following statement is equally inappropriate: "Nothing could be more absurd—or more an affront to the dignity of our adversarial system of justice—than to ask a trier of fact to believe that the event at issue could have occurred as this officer described it." Both of these statements constitute a violation of SCR 62.02 of the Standards of Courtesy and Decorum For the Courts of Wisconsin, which reads, in part, as follows:

> (1) Judges, court commissioners, lawyers, clerks and court personnel shall at all times do all of the following:
>
> (a) Maintain a cordial and respectful demeanor and be guided by a fundamental sense of integrity and fair play in all their professional activities.
>
> (b) Be civil in their dealings with one another and with the public and conduct all court and court-related proceedings, whether written or oral, including discovery proceedings, with civility and respect for each of the participants.
>
> (c) Abstain from making disparaging, demeaning or sarcastic remarks or comments about one another.

¶4 While Ringler's counsel is entitled to advocate with fervor, counsel is obliged to do so with a civil tongue. We caution Ringler's counsel to bear these principles in mind in the future.

> Number one, is there probable cause to arrest? I submit to the Court that we have two witnesses in the car that say that there was no danger of an accident, that there was significant amount of distance between them and the officer's car, and there was no reasonable suspicion to stop.

This argument makes no mention of any contradictory testimony by Waldschmidt.

¶5 Despite our misgivings about Ringler's appellate manner, we will nonetheless address the issue as she poses it. Ringler reasons that a well-maintained 2000 model police vehicle equipped with anti-lock brakes would not "lock up" and cause a squeal when the brakes were suddenly applied at a speed of twenty-five miles per hour. We reject this argument for two reasons. First, Ringler offers no citation to the record for her statement that Waldschmidt's speed was twenty-five miles per hour. And our reading of the entire transcript of the refusal hearing reveals no such evidence.

¶6 Second, we reject Ringler's contention that Waldschmidt's testimony contradicted his direct examination. When asked on cross-examination about his direct testimony that his brakes locked up, Waldschmidt said:

> They - - well, the way anti-lock brakes is, they lock up and release, and lock up and release, and lock up and release real rapidly, and that's basically what happened with my vehicle. The tires still can squeal in that instance.[4]

We do not view this testimony as contradictory or incredible as a matter of law. Rather, Waldschmidt was explaining his direct examination testimony in light of the challenge represented by Ringler's cross-examination. If Ringler desired to establish that Waldschmidt's vehicle could not operate in the fashion Waldschmidt had testified, it was her obligation to present such evidence, expert or otherwise. She did not do so.

¶7 We affirm the revocation order.

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[4] Ringler argues that this answer reveals hesitancy and a "stall tactic" by Waldschmidt in framing his answer. Not surprisingly, the trial court made no such assessment of this answer since Ringler never made this argument to the court. And we as an appellate court—not a fact-finding court—will not presume to adopt Ringler's spin on this testimony.

By the Court.—Order affirmed.

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