COURT OF APPEALS
DECISION
DATED AND FILED

July 25, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0126-CR **Cir. Ct. No. 97-CT-134**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS J. WILDE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Green County: JAMES R. BEER, Judge. *Affirmed.*

¶1 LUNDSTEN, J.[1] Thomas J. Wilde appeals a judgment of the circuit court finding him guilty of operating a motor vehicle while intoxicated, second

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

offense. Wilde argues that his motion to suppress evidence should have been granted because the ordinance under which he was stopped is unconstitutionally vague. We affirm.

¶2 On October 26, 1997, a Monroe police officer heard the loud roar of a truck engine and observed a truck quickly accelerating through an intersection at a high rate of speed. The officer followed the truck to a parking lot. The officer approached the truck as the driver exited and asked the driver about his driving. The driver identified himself as Wilde. While talking with Wilde, the officer smelled alcohol on Wilde's breath, and observed that Wilde's eyes were droopy and his responses were slow and hesitated. The officer administered several field sobriety tests, which Wilde failed, and then arrested Wilde for driving while intoxicated.

¶3 Wilde moved to suppress the evidence, arguing that the officer had no reasonable suspicion to stop him and that the officer could not base his reasonable suspicion on a city noise ordinance because the ordinance was unconstitutionally vague. At the suppression hearing, the officer testified he was alerted to the truck when it turned a corner at a high rate of acceleration in violation of the city noise ordinance. The circuit court denied the motion to suppress, finding the ordinance constitutionally valid. The court also found that the officer had reasonable suspicion to initiate the traffic stop.

¶4 Wilde argues that his motion to suppress should have been granted because the City of Monroe noise ordinance is unconstitutionally vague.[2] The

[2] City of Monroe Ordinance 9-4-20(B) states: "No person shall make unnecessary and annoying noise with a motor vehicle in the City by squealing tires, excessive acceleration of engine or by emitting unnecessary and loud muffler noises."

constitutionality of an ordinance is a question of law which this court reviews *de novo*. *See* ***Wilke v. City of Appleton***, 197 Wis. 2d 717, 726, 541 N.W.2d 198 (Ct. App. 1995). The challenger of the ordinance must overcome a presumption that it is constitutional, and has the burden of showing beyond a reasonable doubt that the ordinance is unconstitutional. ***Id***. "A statute or ordinance is unconstitutionally vague if, because of some ambiguity or uncertainty in the gross outlines of the conduct prohibited, persons of ordinary intelligence do not have fair notice of the prohibition, and those who enforce the laws lack objective standards and may operate arbitrarily." ***County of Jefferson v. Renz***, 222 Wis. 2d 424, 434, 588 N.W.2d 267 (Ct. App. 1998), *rev'd on other grounds*, 231 Wis. 2d 293, 603 N.W.2d 541 (1999). When reviewing a statute or ordinance for vagueness, "'[i]mpossible standards of specificity are not required.'" ***State v. Zwicker***, 41 Wis. 2d 497, 508, 164 N.W.2d 512 (1969) (quoting ***Jordan v. De George***, 341 U.S. 223, 231 (1951)). The challenged ordinance "need not define with absolute clarity and precision what is and what is not unlawful conduct." ***State v. Hurd***, 135 Wis. 2d 266, 272, 400 N.W.2d 42 (Ct. App. 1986). A statute is not void for vagueness simply because "there may exist particular instances of conduct the legal or illegal nature of which may not be ascertainable with ease." ***State v. Courtney***, 74 Wis. 2d 705, 711, 247 N.W.2d 714 (1976).

¶5 Wilde argues that the ordinance fails to provide an objective standard properly warning citizens of illegal conduct. In addition, Wilde argues that the ordinance lacks language specifying an objective standard with which to compare prohibited behavior.

¶6 The State responds, and we agree, that the ordinance provides an objective standard when read as a whole. The ordinance prohibits "unnecessary and annoying" vehicular noise. City of Monroe Ordinance 9-4-20(B). We may

look to a dictionary to define common terms in an ordinance. ***Renz***, 222 Wis. 2d at 435. "Unnecessary" is defined as "not necessary"; "necessary" is defined as "absolutely required." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 2504, 1511 (unabridged ed. 1993). Thus, the ordinance prohibits vehicular noise that is not absolutely required. Implicit in this definition is that some noise is permitted, because operating an automobile necessarily creates some noise. The prohibited conduct is to be judged against the noise *required* to propel a vehicle forward safely in light of the conditions (residential area or rural highway) and posted speed limits.

¶7 Unnecessary noise must also be annoying to violate the ordinance. Not all annoying noise is prohibited; only annoying noise that is also unnecessary is banned. In the context of an ordinance that prohibits both unnecessary and annoying vehicular noise, a person of reasonable intelligence should know that they should avoid unreasonable disturbances while driving. *See* ***City of Madison v. Baumann***, 155 Wis. 2d 388, 399-400, 455 N.W.2d 647 (Ct. App. 1990), *rev'd on other grounds*, 162 Wis. 2d 660, 470 N.W.2d 296 (1991) (acknowledging that "[n]oise regulation poses special problems of draftsmanship and enforcement" making the use of "'broadly stated definitions and prohibitions not only common but difficult to avoid.'" (quoting ***People v. New York Trap Rock Corp.***, 442 N.E.2d 1222, 1226 (N.Y. 1982))). A reasonableness test is sufficient to satisfy the vagueness test "if the circumstances are sufficiently spelled out." ***Renz***, 222 Wis. 2d at 435-36.

¶8 In this case, the circumstances are detailed with specificity. Not all unnecessary and annoying noise is prohibited; the ordinance only regulates noise created "by squealing tires, excessive acceleration of engine or by emitting unnecessary and loud muffler noises." City of Monroe Ordinance 9-4-20(B).

Wilde challenges the officer's ability to stop him for excessive acceleration. "Excessive" is defined by ***Renz*** as "'exceeding a normal, usual, reasonable, or proper limit.'" ***Renz***, 222 Wis. 2d at 435 (quoting AMERICAN HERITAGE COLLEGE DICTIONARY 477 (3d ed. 1995)). Thus, excessive acceleration is an unreasonable acceleration. *See* ***Renz***, 222 Wis. 2d at 435. We conclude these circumstances are set out with sufficient specificity. The ordinance informs a reasonable person that producing noise from squealing tires, acceleration, or a loud muffler in an unreasonable manner, not required by the conditions, is prohibited. Therefore, the ordinance does not fail for vagueness.

¶9 We conclude that the ordinance is not unconstitutionally vague. Therefore, Wilde's conviction is affirmed.

By the Court.—Judgment affirmed.

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