**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**May 13, 2003**

**Cornelia G. Clark**
**Clerk of Court of Appeals**

**NOTICE**

**This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.**

**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. 02-3154** **Cir. Ct. No. 02 FO 1154**

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

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**VILLAGE OF HALES CORNERS,**

**PLAINTIFF-RESPONDENT,**

**V.**

**BRUCE E. LARSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JOHN P. BUCKLEY, Judge. *Affirmed.*

¶1 FINE, J. Bruce E. Larson appeals from a circuit-court judgment convicting him of violating a Village of Hales Corners ordinance making it unlawful to harbor a barking dog. The circuit-court judgment was entered following its *de novo* review of a municipal-court judgment, which also found Larson guilty of violating the ordinance. *See* WIS. STAT. § 800.14 (governing appeals from the municipal court to the circuit court). The municipal court

dismissed, however, an obstructing-an-officer charge against Larson stemming from the barking-dog incident. We affirm.

**I**.

¶2 Sometime before 3 a.m. on March 14, 2002, one of Larson's neighbors called the police to complain that Larson's dog was barking incessantly. The neighbor testified at the trial, and told the trial court that she had complained about Larson's dog before.

¶3 Hales Corners police officer Eric Cera was sent to investigate the complaint. According to Officer Cera's testimony, he heard the dog bark for "perhaps two minutes" before he walked over to Larson's house. Larson admitted that the barking dog was his and explained that the dog was probably barking "because the raccoons were out." When Larson first refused to give Officer Cera his complete birth date, the officer arrested him and cited him for both obstructing an officer and for harboring a barking dog.

¶4 Larson testified that the dog was his, but complained that the officer had awakened him and was too quick to slap on the handcuffs:

> I stumbled out of bed, looked around in the dark for my bathrobe and a pair of socks, made my way downstairs to the front door where I turned on the light and saw Officer Cera in his uniform, short-sleeved shirt, standing on the stoop.
>
> I opened the door and stepped out. And he asked if I was the owner of the barking dog. I assured him that I was. He next asked for my name which I gave him, and my date of birth which I gave him the year. He asked for the date. I said I did not care to give that, and without further word of warning or explanation, he said then I am arresting you for obstruction, put your hands behind your back which I did as he went around behind me, and I then,

> in a voice loud enough for him to hear, gave him the complete date of birth that he had requested.

After keeping Larson in his squad car for some twenty minutes while he completed the paperwork, Officer Cera released him when he promised to come to the police station voluntarily for booking. When Larson complained to the officer that his treatment "all seemed rather extreme," the officer, according to Larson's testimony, replied that "I would have only given you a warning for the barking dog if you had not obstructed me."

¶5 During his cross-examination by Larson, Officer Cera explained why he issued the citations:

> I located the dog owner, I tried identifying the person who was the dog owner so I could issue a warning or a citation and I didn't receive full cooperation from the owner. Therefore, I had no reason to believe that the owner was going to cooperate in quieting the dog so I issued a citation.

As noted, the municipal court dismissed the obstructing-an-officer charge.

**II**.

¶6 Larson claims that the circuit court erred in five respects. We address Larson's contentions in turn.

¶7 1. Larson complains that after he filed his notice of appeal for *de novo* review in the circuit court, he received two notices of hearing, and that this, according to his brief, created "confusion and ambiguity." Larson did receive two notices. The first, dated August 1, 2002, told Larson that his *de novo* review in connection with the obstructing charge was scheduled for a pre-trial conference on August 26, 2002, in Room 623 of the Milwaukee County Courthouse before

Branch 12. The notice did not mention that the municipal judge had, in a six-page written decision dated July 31, 2002, dismissed the obstruction charge.

¶8 The second notice of hearing, dated August 12, 2002, told Larson that his *de novo* review in connection with the dog-barking charge was also scheduled for a pre-trial conference on August 26, 2002, in Room 623 of the Milwaukee County Courthouse before Branch 12. Larson complains that this led him to believe that "both charges" would be "combin[ed] ... into one trial, in which case [Larson] could have effectively raised the issue and defense of double jeopardy." The obstructing-an-officer charge was, however, no longer pending, and Larson does not show how the two notices prejudiced him because, as we discuss below, Larson's double-jeopardy challenge is without merit.

¶9 2. Larson claims that the trial court failed to follow the procedures in WIS. STAT. RULE 802.10(5), which permits the circuit court to use a pretrial conference in an attempt to shape and simplify issues to be tried. He claims that this was "unjust." WISCONSIN STAT. RULE 802.10, however, does not apply to "appeals taken to circuit court." WIS. STAT. RULE 802.10(1). Moreover, Larson does not show how he was prejudiced by the circuit court's failure to use a similar process to that envisioned by RULE 802.10(5).

¶10 3. Larson claims that the trial court erred in denying his motion to sequester the Village's witnesses. When Larson asked the circuit court to follow WIS. STAT. RULE 906.15, the circuit court responded: "This is a civil case, Mr. Larson. I don't see any reason in a case like this to exclude witnesses." Larson is correct when he asserts that he had a right to the sequestration order he requested. RULE 906.15 applies to civil as well as criminal cases, and is mandatory—"At the request of a party, the judge ... *shall* order witnesses excluded

so that they cannot hear the testimony of other witnesses." WIS. STAT. RULE 906.15(1) (emphasis added). Larson does not, however, show how he was prejudiced—he readily admitted that the barking dog was his. Thus, the error, although clear, was "harmless" as that term is defined in WIS. STAT. RULE 805.18.[1]

¶11 4. Larson claims that his constitutional right against being put twice in jeopardy was violated because: (1) he was acquitted of the obstructing-an-officer charge, and (2) Officer Cera testified that if he hadn't thought Larson was obstructing him, he would not have issued the barking-dog citation. Larson misapprehends what the double-jeopardy protection is all about.

> The double jeopardy language in the Fifth Amendment and art. I, sec. 8 of the Wisconsin Constitution is almost identical and declares that no person shall be placed twice in jeopardy of punishment for the same offense. The Double Jeopardy Clause is intended to provide three protections: protection against a second prosecution for the same offense after acquittal; protection against a second prosecution for the same offense after conviction; and

[1] WISCONSIN STAT. RULE 805.18 provides:

> **Mistakes and omissions; harmless error. (1)** The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.
>
> **(2)** No judgment shall be reversed or set aside or new trial granted in any action or proceeding on the ground of selection or misdirection of the jury, or the improper admission of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which the application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment, or to secure a new trial.

> protection against multiple punishments for the same offense.

***State v. Sauceda***, 168 Wis. 2d 486, 492, 485 N.W.2d 1, 3 (1992). Although Officer Cera testified that he would not have given a dog-barking citation to Larson if Larson had not refused to reveal his complete date of birth, that fact does not make Larson's conviction for harboring a barking dog a double-jeopardy violation.

¶12 First, Larson was not prosecuted for obstructing Officer Cera after Larson was acquitted on that charge in municipal court. Thus, the first prong of the protection against double jeopardy identified by ***Sauceda*** does not apply; the offenses are not the same.

¶13 Second, *Larson* was the one who sought *de novo* review of his conviction in municipal court on the dog-barking charge. Thus, the second aspect of the protection against double jeopardy identified by ***Sauceda*** does not apply.

¶14 Third, Larson is not being punished twice; Larson was fined just once, and that was for unlawfully harboring a barking dog. Thus, the third protection against double jeopardy identified by ***Sauceda*** also does not apply.

¶15 Although we understand that Larson sees a cause-and-effect relationship between the obstructing charge and the dog-barking charge, that connection is not, under the law, a violation of the double-jeopardy clauses of either the United States or Wisconsin Constitutions.

¶16 5. Larson claims that the judge presiding over his trial should have disqualified himself because he had, as mentioned by the judge during the trial, spent twenty-five years as a municipal attorney. This claim, too, is without merit.

The mere fact that a judge might have practiced in an area of law encompassed by a judicial proceeding does not, without a showing of bias or prejudice, disqualify that judge. *See* ***State v. Debra A.E.***, 188 Wis. 2d 111, 139–140, 523 N.W.2d 727, 738 (1994) (prior service as district attorney does not disqualify judge from hearing criminal cases). Larson has not shown that the judge who presided over the *de novo* review was anything other than impartial and fair.

¶17 Based on the foregoing, we affirm the judgment.

*By the Court*.—Judgment affirmed.

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