

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 8, 2011**

A. John Voelker  
Acting 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. 2010AP2193-FT**

**Cir. Ct. No. 2010CV66**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**CITY OF SHAWANO,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DARLENE F. SENSE,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Shawano County:  
THOMAS G. GROVER, Judge. *Affirmed; attorney sanctioned.*

¶1 PETERSON, J.<sup>1</sup> Darlene Sense was convicted of violating a municipal ordinance that prohibits refusal to permit inspection of premises that are

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

subject to a liquor license. Sense argues she could not be found guilty of the ordinance violation because: (1) she was cited for an action not contemplated by the ordinance; (2) there was insufficient proof she violated the ordinance; and (3) the citation was issued more than thirteen months after the alleged violation. We reject Sense's arguments and affirm.

## **BACKGROUND**

¶2 Sense was the agent for the liquor license at the Best Western hotel in Shawano during the licensing period from July 1, 2007 to June 30, 2008. On May 10, 2008, a social club rented the hotel for a private party, and the hotel and bar were closed to the public. At about 11:40 p.m., Shawano police officers Scott Ruen and Bradley Rabideau arrived at the hotel to conduct a compliance check to ensure the hotel bar was operating within the parameters of its liquor license. As the officers approached the bar, they observed that the windows were covered. However, they could see through a gap that there were people inside. The officers attempted to enter the hotel to conduct the compliance check, but both the main entrance and the bar entrance were locked.

¶3 As the officers were preparing to leave, Sense arrived at the hotel. Rabideau asked her if he "was going to get access to the bar for a premises check." According to Rabideau, Sense replied that she "had nothing to do with the bar." Sense testified she told Rabideau she did not have a key. The officers then left the premises.

¶4 The next morning, Ruen returned to the hotel and cited the manager on duty for violating Shawano municipal ordinance § 7.01(8), which states:

It shall be a condition of any [liquor] license issued hereunder that the licensed premises may be entered and

inspected at any reasonable hour by any police officer of the city without any warrant, and the application for a license hereunder shall be deemed a consent to this provision. *Any refusal to permit such inspection shall automatically operate as a revocation of any license issued hereunder and shall be deemed a violation of this section.*

See SHAWANO, WIS., CODE § 7.01(8) (2010) (emphasis added), available at [http://www.shawanowi.govoffice2.com/index.asp?Type=B\\_BASIC&SEC=%7B584F7ACA-086A-4337-967A-1CC7628463FD%7D](http://www.shawanowi.govoffice2.com/index.asp?Type=B_BASIC&SEC=%7B584F7ACA-086A-4337-967A-1CC7628463FD%7D). On April 9, 2009, the municipal court dismissed the citation after determining it had been issued to the improper person.

¶5 On June 22, 2009, the City re-issued the citation to Sense, as agent for the hotel’s liquor license. The citation alleged Sense had violated ordinance § 7.01(8), and under “Description of Violation” it stated, “[F]ailure to allow search of license[d] premises.” The municipal court found Sense guilty of the ordinance violation. After a bench trial, the circuit court affirmed the judgment of conviction. Sense now appeals.

## DISCUSSION

¶6 Sense first argues her conviction must be reversed because she was cited for an action not prohibited by the plain language of ordinance § 7.01(8). Specifically, Sense contends that ordinance § 7.01(8) prohibits “refusal” to permit a search of licensed premises, but she was cited for “failure” to permit a search of licensed premises. However, Sense did not raise this argument in the circuit court, and therefore she has forfeited her right to raise it on appeal. See *Kolupar v. Wilde Pontiac Cadillac, Inc.*, 2007 WI 98, ¶23, 303 Wis. 2d 258, 735 N.W.2d 93 (“Generally, arguments raised for the first time on appeal are deemed waived.”). In a related argument, Sense contends it is unconstitutional for the City to

prosecute her for “failure” to allow a search when the ordinance does not prohibit that action. Again, Sense has forfeited her right to raise this argument by failing to raise it in the circuit court. *See id.* Moreover, Sense’s constitutional argument is undeveloped, and we need not consider undeveloped arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶7 Sense next argues there was insufficient proof that she violated the ordinance because the City did not prove by a preponderance of the evidence that she refused to allow the search. *See City of Milwaukee v. Wilson*, 96 Wis. 2d 11, 21-22, 291 N.W.2d 452 (1980) (defendant’s guilt must be proved by a preponderance of the evidence in a civil forfeiture case, unless the ordinance violation involved acts that are also criminal offenses). However, the evidence adduced at trial amply supports the circuit court’s determination that Sense violated the ordinance.

¶8 Testimony at trial established that, when police arrived at the hotel to conduct a routine compliance check, the doors were locked and they were unable to enter. Rabideau asked Sense whether he could get access to the premises for a compliance check. There was conflicting testimony about Sense’s reply. Rabideau testified Sense responded that she had nothing to do with the bar, while Sense testified she told him she did not have a key. The circuit court did not resolve this conflict. Even accepting Sense’s version, though, the court could construe Sense’s actions as a “refusal.” As the agent for the liquor license, Sense had “full authority and control of the premises.” *See WIS. STAT. § 125.04(6)(a)2.* She knew the officers wanted to enter the hotel to perform a compliance check, and, as the person with full authority and control, she did not do anything to let them in. We agree with the circuit court that, under these circumstances, “Sense clearly denied access.”

¶9 Sense also contends the circuit court erroneously exercised its discretion by finding her guilty when the citation was issued more than thirteen months after the alleged violation.<sup>2</sup> Sense also has forfeited this argument by failing to raise it in the circuit court. *See Kolupar*, 303 Wis. 2d 258, ¶23. Further, Sense’s argument is undeveloped. *See Pettit*, 171 Wis. 2d at 646. The citation was apparently issued within the statute of limitations, and Sense does not cite any legal authority to support her argument that the thirteen-month delay should preclude the City from prosecuting it.

¶10 As a final matter, we address certain deficiencies in Sense’s appellate brief. First, Sense’s repeated references to “appellant” and “respondent” throughout her brief violate WIS. STAT. RULE 809.19(1)(i), which requires reference to the parties by name, rather than by party designation. Second, Sense cites an unpublished case as legal authority, in violation of WIS. STAT. RULE 809.23(3). Third, Sense’s appendix does not include “oral or written rulings or decisions showing the circuit court’s reasoning,” as required by WIS. STAT. RULE 809.19(2)(a). The appendix merely contains the court’s order affirming the judgment of conviction, which “tells us absolutely nothing about how the trial court ruled on a matter of interest to the appellant.” *See State v. Bons*, 2007 WI App 124, ¶23, 301 Wis. 2d 227, 731 N.W.2d 367. Fourth, Sense’s “Certification Regarding Appendix” is incomplete, in that it does not certify that the appendix meets the content requirements of RULE 809.19(2)(a). *See* WIS. STAT. RULE 809.19(2)(b).

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<sup>2</sup> Sense argues the court “abused its discretion.” We have not used the term “abuse of discretion” since 1992, when our supreme court replaced “abuse of discretion” with “erroneous exercise of discretion.” *See City of Brookfield v. Milwaukee Metro. Sewerage Dist.*, 171 Wis. 2d 400, 423, 491 N.W.2d 484 (1992).

¶11 Fifth and finally, Sense’s statement of facts contains several brazen assertions that are completely unsupported by the record. For instance, Sense states that the Best Western hotel’s parent company “has been targeted repeatedly with numerous complaints and false accusations and negative publicity because the president is from India.” Sense contends, “Local officials and specifically, [the] mayor of Shawano, ... have positioned themselves against [the parent company’s president] time after time and seek every opportunity to cause harm to any businesses in Shawano connected with [the parent company].” Sense also alleges the police’s routine compliance check was “a tactic to get into the facility during a private party to scare and intimidate guests who value their privacy ... so that they might cancel their contract with the hotel .... Cancellation of their contract would have delighted City officials[.]” Sense does not provide record citations for any of these allegations, presumably because they are completely unsupported by the record.<sup>3</sup>

¶12 Accordingly, we sanction Attorney Rebekah M. Nett and direct that she pay \$200 to the clerk of this court within thirty days of the release of this opinion.

*By the Court.*—Order affirmed; attorney sanctioned.

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

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<sup>3</sup> Sense should have been on notice against making these allegations, given that the circuit court specifically pointed out there was no evidence of harassment by police or local officials.

