COURT OF APPEALS
DECISION
DATED AND FILED

March 20, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP979

Cir. Ct. Nos. 2009CV2133
2010CV62

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

TOWN OF LEDGEVIEW,

PLAINTIFF-RESPONDENT,

V.

JOHN KNAUS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: SUE E. BISCHEL, Judge. *Affirmed*.

¶1 PETERSON, J.[1] John Knaus, pro se, appeals from a judgment of conviction, entered on a jury verdict, for thirteen municipal ordinance violations.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Knaus argues the trial was unfair, the evidence supporting his convictions was insufficient, and the Town engaged in discriminatory prosecution. He also contends his First Amendment right was violated and the forfeitures were excessive. We reject Knaus's arguments and affirm.

BACKGROUND

¶2 The Town of Ledgeview issued seven citations to Knaus for violating its ordinance against junked or hazardous vehicles, and six citations for littering. *See* TOWN OF LEDGEVIEW, WIS., ORDINANCES §§ 121-5, 41-5.[2] Knaus contested the citations and the municipal court found Knaus guilty. Knaus appealed to the circuit court and requested a jury trial.

¶3 At trial, Mark Roberts, the Town of Ledgeview's code enforcement officer, testified that he observed a van in Knaus's yard that did not have a license plate and could not be driven because it was up on blocks, rusted out and full of PVC pipes. Roberts sent two letters to Knaus—one in October 2008 and one in March 2009—warning him that his van was in violation of the Town's ordinance against junked vehicles. Roberts requested that Knaus come into compliance with the ordinance.

¶4 On April 7, 2009, Roberts wrote another letter to Knaus explaining he remained in violation of the Town's ordinance. This letter included a citation and warned Knaus that "for each week the violation is not taken care of another

[2] All references to chapter 121 of the Town of Ledgeview Code of Ordinances are to the February 18, 2009 version. All references to chapter 41 of the Town of Ledgeview Code of Ordinances are to the April 17, 2001 version.

citation will be issued." Roberts issued Knaus a total of seven citations. Knaus never moved the van.

¶5 After the Town started issuing citations, Knaus began changing the appearance of the van. Specifically, Roberts testified that Knaus put flat tires on the van, put a microwave on top of it, painted the windows red and blue, attached a flower box and wrought iron, and leaned a water softener and lawn mower against it. Knaus also posted a sign saying the van was now a lawn ornament.

¶6 Knaus then began putting other items in his yard. Roberts recalled seeing a hand golf cart, some pots, tires, and something that resembled a washing machine. He stated that these items appeared to be discarded. In July and August 2009, Roberts sent Knaus two warning letters, informing him that these additional items violated the Town's littering ordinance. Both letters requested Knaus to remove the materials and warned that failure to do so would result in a citation.

¶7 Knaus failed to remove these items from his yard. In September, Roberts began citing Knaus for littering. Roberts issued one citation per week for six weeks. During this time, Roberts testified that Knaus increased the number of items in his yard. Photographs of Knaus's van and yard were admitted into evidence and shown to the jury.

¶8 Knaus testified that he turned his van into a lawn ornament. He explained that the van and other items in his yard represented his depiction of a "red neck campground."

¶9 The jury found Knaus guilty of all violations. The court imposed the Town's mandatory forfeiture amount on each citation, and instructed Knaus that half of the amount could be worked off by doing community service.

DISCUSSION

¶10 Knaus raises five arguments on appeal. He contends: (1) the trial was unfair; (2) the evidence supporting his convictions is insufficient; (3) the Town's prosecution was improper; (4) his First Amendment right was violated; and (5) the forfeitures were excessive.[3]

I. Unfair Trial

¶11 Knaus first argues the trial was unfair because the court favored the Town. His unfairness argument appears to be based on certain evidentiary determinations the court made during the trial. For example, Knaus argues the court erred by prohibiting him from fully establishing his contentions that Roberts had criminally trespassed on his property to take photographs and that the citations were issued as a result of his refusal to have his residence inspected. Additionally, Knaus argues the court improperly refused to admit some of his photographs into evidence.

¶12 The decision to admit or exclude evidence lies within the discretion of the circuit court. ***Martindale v. Ripp***, 2001 WI 113, ¶28, 246 Wis. 2d 67, 629 N.W.2d 698. We "will uphold a decision to admit or exclude evidence if the circuit court examined the relevant facts, applied a proper legal standard, and, using a demonstrated rational process, reached a reasonable conclusion." ***Id.***

[3] We have identified and addressed all discernible arguments Knaus presented on appeal. Any argument that we do not address is rejected because it is undeveloped. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶13 Here, the court allowed Knaus to question Roberts about whether the Town wanted to inspect his residence and whether Roberts trespassed on Knaus's property to take the photographs. The court limited Knaus's questions on these issues because any inspection was outside the scope of trial and Knaus's questions turned argumentative after Roberts denied trespassing. *See* WIS. STAT. § 904.02 (irrelevant evidence is not admissible); *see also* ***Pagel v. Kees***, 23 Wis. 2d 462, 469, 127 N.W.2d 816 (1964) (no error in excluding argumentative questions). Further, the court refused to admit some of Knaus's photographs into evidence because a few were not taken in the Town and others were not relevant to determine whether Knaus violated the Town's ordinances. *See* WIS. STAT. § 904.02. The record shows the circuit court properly exercised its discretion. *See* ***Martindale***, 246 Wis. 2d 67, ¶28.

¶14 Knaus's unfairness argument also appears to contain an allegation of judicial bias. For instance, Knaus argues the court prompted the Town's objections during trial and told the jury "facts of guilt were proven" that the jury had to accept. Knaus's examples are overstated. In actuality, the court asked the Town if it had any objection to exhibits Knaus wanted to admit into evidence and instructed the jury that the parties had *stipulated* to certain facts that the jury was required to accept as true. This does not show judicial bias. *See* ***State v. McBride***, 187 Wis. 2d 409, 416, 523 N.W.2d 106 (Ct. App. 1994) (Judicial bias is established if objective facts show the judge treated a party unfairly.).

II. Sufficiency of the Evidence

¶15 Knaus next argues the Town failed to introduce any evidence supporting his convictions and Roberts' testimony was incredible. When reviewing the sufficiency of the evidence to support a conviction, we review the evidence in the light most favorable to the conviction. ***State v. Kimbrough***, 2001 WI App 138, ¶12, 246 Wis. 2d 648, 630 N.W.2d 752. The conviction will not be reversed unless the evidence is so lacking in probative value that no trier of fact, acting reasonably, could have found guilt. *See* ***State v. Watkins***, 2002 WI 101, ¶68, 255 Wis. 2d 265, 647 N.W.2d 244. Moreover, the credibility of the witnesses and the weight given to evidence are determinations made by the jury. ***State v. Poellinger***, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990).

¶16 TOWN OF LEDGEVIEW, WIS., ORDINANCES § 121-5 provides: "It shall be unlawful for the owner of a motor vehicle or the owner … of the real property upon which the motor vehicle is located to leave or allow to remain on the property any motor vehicle which is … [a] junked or hazardous motor vehicle." A junked motor vehicle is defined as:

> A vehicle that does not display a current and valid license plate lawfully upon that vehicle and that:
>
> A. Is partially dismantled, wrecked, nonoperational or discarded;
>
> B. Cannot be self-propelled or moved in the manner in which it originally was intended to move; or
>
> C. Is more than five years old and appears to be worth less than $500.

¶17 We conclude the evidence supports the jury's determination that Knaus's van was "junked" within the definition of the Town's code.[4] First, Roberts testified that when he first observed Knaus's van, it did not have a license plate and had no wheels. He testified the van could not be driven because it was full of PVC pipes, on concrete blocks, and rusted out. Although Knaus disputes most of Roberts' testimony and argues that Roberts is incredible, credibility determinations are for the finder of fact. *See* ***Poellinger***, 153 Wis. 2d at 504.

¶18 In regard to the littering citations, TOWN OF LEDGEVIEW, WIS., ORDINANCES § 41-5(A) provides, in relevant part:

> (6) Occupied private land. No person shall throw or deposit litter on any occupied private property within the Town, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized refuse or garbage containers ….
>
> (7) Maintenance of premises. The owner or person in control of any private property shall at all times maintain the premises free of litter; provided, however, that this section shall not prohibit the storage of litter in authorized refuse or garbage containers for collection.

Litter is defined as "[g]arbage, refuse and rubbish … and all other waste material which is thrown or deposited as herein prohibited tends [sic] to create a danger to public health, safety and welfare." ORDINANCE § 41-5(A)(1). Rubbish is defined as "Nonputrescible and solid wastes … such as [various types of paper materials],

[4] Because we conclude the evidence supports the jury's determination that Knaus's van was "junked" as defined by TOWN OF LEDGEVIEW, WIS., ORDINANCES § 121-3, we do not need to determine whether the evidence also supports the jury's determination that the van was "hazardous." *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (we decide cases on narrowest possible grounds).

cigarettes, cardboard, tin cans, yard clippings, leaves, wood, glass and other similar materials." ***Id.***

¶19 Here, the photographs of Knaus's yard, combined with Roberts' testimony, support the jury's determination that the remaining items in Knaus's yard constituted "litter" or "rubbish" as defined by the Town's code. The photographs depict a yard with numerous items placed and sometimes stacked between Knaus's van and his residence. Roberts testified the items in Knaus's yard appeared to be discarded and could attract insects, mosquitos, and rodents. The evidence supports the jury's determination. *See* ***Poellinger***, 153 Wis. 2d at 504.

III. Selective Prosecution

¶20 Knaus next argues the Town is "discriminat[ing]" against him by pursuing these ordinance citations. This argument appears to be premised on Knaus's assertion that there are other violators in the Town who have not been issued citations. Specifically, he references a commercial area in town called the "Old School Square" that apparently was given permission from the Town to display antiques.

¶21 "A prosecutor has great discretion in deciding whether to prosecute in a particular case." ***County of Kenosha v. C & S Mgmt., Inc.***, 223 Wis. 2d 373, 400, 588 N.W.2d 236 (1999) (citation omitted). To establish a claim of selective prosecution, a defendant has the burden of making a prima facie showing that he or she "has been singled out for prosecution while others similarly situated have not (discriminatory effect) and that the prosecutor's discriminatory selection was based on an impermissible consideration such as race, religion or another arbitrary classification (discriminatory purpose)." ***State v. Kramer***, 2001 WI 132, ¶18, 248

Wis. 2d 1009, 637 N.W.2d 35. If the defendant makes a prima facie showing, the burden shifts to the prosecutor to show that the charging decision reflects a valid exercise of prosecutorial discretion. ***Id.***, ¶15.

¶22 Here, Knaus has not made a prima facie showing that the Town engaged in selective prosecution. First, he has not presented any evidence showing he and the Old School Square are similarly situated or that other, similarly situated individuals have not received citations. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (unsupported arguments will not be considered). Second, he has not presented any evidence indicating Roberts issued the citations because of an impermissible consideration such as race or religion. *See* ***id.***

IV. First Amendment Violation

¶23 Knaus next argues the citations violate his First Amendment right because his van and surrounding items are expressive lawn ornaments. "[T]he right of free speech is not absolute at all times and under all circumstances." ***State v. Zwicker***, 41 Wis. 2d 497, 510, 164 N.W.2d 512 (1969). Knaus's legal argument in support of why his First Amendment right was violated is not adequately developed and we will not consider it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

V. Improper Forfeitures

¶24 Knaus next objects to the court's forfeiture impositions. This argument appears to be based on his contention that he should have received the same forfeitures as he did before the municipal court.

¶25 Knaus fails to develop any legal argument on this issue, and we will not consider it. *See* ***id***. Moreover, during sentencing, he told the court he had no position on what would be an appropriate forfeiture. He cannot now assert that he should have received the same sentence as in the municipal court. *See* ***Schonscheck v. Paccar, Inc.***, 2003 WI App 79, ¶10, 261 Wis. 2d 769, 661 N.W.2d 476 (We need not address arguments raised for the first time on appeal.). Nevertheless, we observe that the circuit court told Knaus it was imposing the mandatory forfeiture amount on each citation.

¶26 Finally, Knaus also argues the imposition of forfeitures should have been stayed while this case was on appeal. Once again, he develops no argument on this issue. We denied Knaus's motion for relief pending appeal by order dated September 30, 2011.

By the Court.—Judgment affirmed.

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