COURT OF APPEALS
DECISION
DATED AND RELEASED

February 28, 1996

No. 95-2954

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

OZAUKEE COUNTY,

Plaintiff-Respondent,

v.

MICHAEL C. BLOECHER,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Ozaukee County: JOSEPH D. MC CORMACK, Judge. *Affirmed*.

SNYDER, J. Michael C. Bloecher appeals from a judgment finding him guilty of disorderly conduct contrary to OZAUKEE COUNTY, WIS., ORDINANCE 8.02.[1] Bloecher makes four claims on appeal: (1) the trial court erred when it allowed the County to amend the citation at the time of trial, (2) the evidence presented was insufficient to support the conviction, (3) the trial

[1] Bloecher was originally issued a citation for harassment contrary to OZAUKEE COUNTY, WIS., ORDINANCE 8.10. This was amended at the start of the trial.

court erred when it allowed the County to present improper rebuttal evidence, and (4) the conviction was a miscarriage of justice. Because we conclude that Bloecher agreed to proceed under the amended citation, that the evidence presented was sufficient, that the introduction of the rebuttal evidence was not improper and there was no miscarriage of justice, we affirm.

The underlying incident leading to the citation occurred at Bloecher's home. Ozaukee County Deputy Sheriff Brian Glocke was on routine patrol when he observed a pickup truck that was tipped on its side near a farmhouse. When he stopped to investigate, two small boys appeared and told Glocke that their mother had been driving. They also said that they had been in the truck and that their heads hurt. In response to Glocke's questioning, the boys stated that their parents were fighting.

Glocke then called for assistance. During this time, the boys ran back into the house. When Glocke approached the house and announced his presence, Bloecher and his wife, Kalee, came to the door. They invited Glocke inside. Kalee then told the deputy that she and Bloecher had had a physical confrontation and that each of them had been hitting the other.

An ambulance, summoned because of the boys' possible head injuries, and a squad car with two additional officers arrived. Their arrival was followed almost immediately by the arrival of six of Kalee's relatives, including her brother.[2] Subsequently, Bloecher's parents arrived. Glocke testified that at

[2] During the altercation with Bloecher, Kalee had telephoned her brother and asked him to come and pick her up. He came but also brought additional family members with him.

this point the officers were "having problems containing [all of the family members]." He further testified, in reference to Bloecher and his wife, that "[b]oth individuals, based on my observations, were intoxicated."

During Glocke's continuing interview with Kalee, Bloecher demanded to see how his boys were doing. Glocke informed Bloecher that he still needed to talk to him, and Bloecher stated that he was going to look out the front window. Bloecher walked into the next room, and within five to ten seconds, Glocke heard glass shattering. When he got up to investigate, he saw Bloecher walking toward the kitchen, bleeding profusely. Bloecher told the deputy that he had been pointing at his brother-in-law and had accidentally broken the glass. He was then transported by ambulance to the hospital.

Bloecher was issued a citation for harassment, contrary to OZAUKEE COUNTY, WIS., ORDINANCE 8.10, and he pled not guilty. At the start of a bench trial, the County moved to amend the citation to disorderly conduct. Bloecher, appearing pro se, did not object. He was found guilty and this appeal followed.

Bloecher's first claim of error is based upon the trial court's allowing the amendment of the citation at the start of the trial. This is governed by § 802.09(2), STATS., which states that amendments to the pleadings "may be made upon motion of any party at any time." This section goes on to state, "The court may grant a continuance to enable the objecting party to meet such evidence." ***Id.***

A review of the record shows that the County moved to amend the citation from a charge of harassment to a charge of disorderly conduct.[3] Although Bloecher initially expressed confusion with the County's request, he raised no objection to the amendment. The trial court explained the meaning of the County's motion and Bloecher responded, "Yes, your Honor. I guess I can go ahead with that." Lacking an objection by Bloecher, we conclude that there was no error.

Bloecher next contends that there was insufficient evidence to support the conviction. On reviewing a claim of insufficient evidence, this court may not overturn the conviction unless the probative value of the evidence presented is so insufficient that "no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger,*** 153 Wis.2d 493, 501, 451 N.W.2d 752, 755 (1990). If more than one reasonable inference can be drawn from the evidence, this court must adopt the inference which supports the conviction. ***State v. Hamilton,*** 120 Wis.2d 532, 541, 356 N.W.2d 169, 173-74 (1984).

The county ordinance for disorderly conduct Bloecher was cited as violating reads in relevant part:

(1) Whoever does any of the following ....

(a) In a public or private place engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct in which such conduct tends to cause or provoke a disturbance.

[3] The disorderly conduct citation carried lesser penalties than the original harassment citation.

OZAUKEE COUNTY, WIS., ORDINANCE 8.02. Evidence was presented at trial that the crowd of relatives gathered outside of the house presented a problem for the officers. The officers had already threatened to arrest Kalee's brother because he kept trying to get into the house. Although three officers were present, in the words of Glocke, this was "[n]ot enough," and every one of the relatives represented a "potential problem." Glocke testified that after Bloecher put his hand through the glass, Bloecher told him that some words had been said, that he had pointed at his brother-in-law, and that was when his arm went through the window.

Based on our review of the record, we conclude that there was sufficient evidence presented to the trial court that Bloecher's actions tended to "cause or provoke a disturbance." *See* ***id***. As the court noted, "aggravating a disturbance might be a better way of putting it because there was practically a disturbance under way already." The situation outside was such that the trial court could infer that Bloecher's actions in breaking the window would provoke the disturbance, making it more difficult to control the family members. The trial court was presented with sufficient evidence to find that Bloecher was engaged in disorderly conduct when he put his hand through the window.

Bloecher next argues that the trial court improperly admitted evidence during rebuttal. The general rule is that the plaintiff may meet any new facts put in by the defendant. ***Karl v. Employers Ins.,*** 78 Wis.2d 284, 296, 254 N.W.2d 255, 260 (1977). However, this rule is not inflexible, and the court may exercise discretion. ***Id.*** at 284, 254 N.W.2d at 260-61. An exception is

generally made when the evidence is necessary to achieve justice. ***Id.*** at 284, 254 N.W.2d at 261.

In this case, Bloecher had testified that breaking the window was a complete accident. He stated that when he struck the window it was an unintentional slap meant to get the attention of his wife's family. He claimed that he hit the window "just [to] tell them to leave."[4] He also testified that when he was looking out the window, his wife's family was standing outside and made "gestures and looks as I was looking at them."

In rebuttal, Glocke's testimony clarified some of Bloecher's statements and contradicted others. Glocke testified that after the window was broken, Bloecher told him that he had been pointing at his brother-in-law. Bloecher also told Glocke that he did not get along with his brother-in-law, that some words were said, and when he pointed at his brother-in-law his whole arm went through the window. Glocke's testimony merely responded to Bloecher's contention that the entire episode was accidental. We conclude that there was no misuse of discretion in permitting the rebuttal testimony.

Bloecher's final claim is that the citation should be dismissed because justice has miscarried. He bases this upon his previous three claims of error. Because we have concluded that those arguments are without foundation, there is no basis upon which to reverse the judgment. *See* ***Vollmer v. Luety,*** 156 Wis.2d 1, 15, 456 N.W.2d 797, 803-04 (1990).

[4] Bloecher testified that when he hit the window, "[M]y arm just went through it and cut it up to the point where I needed at least 30 to 40 some stitches in my arm."

By the Court. – Judgment affirmed.

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