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DISTRICT IV

September 4, 2018

To:

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Gary Lee Meyer
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You are hereby notified that the Court has entered the following opinion and order:

2017AP2050

Village of Prairie du Sac v. Gary Lee Meyer
(LC #2017TR7135)

Before Sherman, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Gary Lee Meyer appeals a judgment of the circuit court revoking Meyer's operating privileges for one year on account of his refusal to comply with WIS. STAT. § 343.305. On

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2015-16).

appeal, as at the refusal hearing, Meyer contends that there was no reasonable suspicion to stop his vehicle and there was no probable cause to arrest him. Based upon my review of the briefs and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).²

Meyer was stopped by Sauk Prairie police officer Joshua Rider on May 14, 2017, at approximately 4:00 a.m. Officer Rider testified at the refusal hearing that he observed Meyer crossing a double yellow centerline on Prairie Street in the village of Prairie du Sac at approximately Lone Tree Lane. Officer Rider testified that he followed Meyer's vehicle and observed Meyer cross the centerline a second time and that he then activated his emergency lights to stop Meyer's vehicle. Officer Rider further testified that his vehicle's dash camera was activated when he turned on the emergency lights and that his first observation of Meyer crossing the centerline was not caught by the dash camera because it occurred more than thirty seconds before he activated the emergency lights.

Meyer argues that Officer Rider's testimony is not credible because the video taken by the dash camera, which was introduced into evidence at the hearing, shows his driving at the time he passed Lone Tree Lane and does not show him crossing the centerline at that point. Based upon this discrepancy, he asserts that the circuit court's finding that Officer Rider had reasonable suspicion to stop his vehicle is clearly erroneous.

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

I will affirm a circuit court's factual findings unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). The circuit court is the ultimate arbiter of a witness's credibility. *Global Steel Prods. Corp. v. Ecklund Carriers, Inc.*, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. I will not overturn credibility determinations on appeal unless the testimony upon which they are based is "inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts." *Id.*

The circuit court found Officer Rider's testimony to be credible based upon his observation of Meyer's driving. The court rejected Meyer's argument about the conflict between Officer Rider's testimony and the dash camera video, stating "by definition, it would not be on the tape." This is supported by Officer Rider's testimony that the dash camera only records from thirty seconds prior to activation of the emergency lights. The lights were only activated when Officer Rider observed Meyer cross the centerline a second time. Officer Rider's testimony that the dash camera only records from thirty seconds prior to activation of the emergency lights is not challenged by Meyer. It is, therefore, not inherently incredible, nor is it in conflict with the uniform course of nature or the established facts. I therefore accept, as I must, the circuit court's determination that the testimony of Officer Rider is credible. Although the incident did not occur at the exact intersection of Prairie Street and Lone Tree Lane, there is no inherent conflict with Officer Rider's testimony that it occurred at approximately that location.

Meyer has not established that any factual finding of the circuit court is clearly erroneous. Accordingly, I reject his argument and affirm.

Upon the foregoing,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT
RULE 809.21.

Sheila T. Reiff
Clerk of Court of Appeals