



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

April 8, 2019

To:

Hon. Wendy J.N. Klicko
Circuit Court Judge
Sauk County Courthouse
515 Oak Street
Baraboo, WI 53913

Carrie Wastlick
Clerk of Circuit Court
Sauk County Courthouse
515 Oak St.
Baraboo, WI 53913-0449

Micheal D. Hahn
Axley Brynelson, LLP
P.O. Box 1767
Madison, WI 53703-1767

Lori M. Lubinsky
Axley Brynelson, LLP
P.O. Box 1767
Madison, WI 53701-1767

Gary Lee Meyer
1625 Locust Ln.
Prairie du Sac, WI 53578

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

2018AP1250

Village of Prairie du Sac v. Gary Lee Meyer
(LC # 2017TR7137)

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 an order of conviction for operating a motor vehicle while under the influence of an intoxicant (OWI), contrary to WIS. STAT. § 346.63(1)(a).² Meyer contends

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

that there was no reasonable suspicion to stop his vehicle because he did not, in fact, cross the centerline. 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.

Meyer was stopped by Sauk Prairie police officer Joshua Rider on May 14, 2017, at approximately 4:00 a.m. Officer Rider testified that he observed Meyer crossing a 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 two more times 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 contends that Officer Rider lacked reasonable suspicion to stop his vehicle because the squad car video does not show that he crossed the centerline.

At trial, the prosecutor requested that the jury be instructed that the issue of whether Officer Rider had probable cause to stop Meyer's vehicle was not an issue for the jury to decide because that issue had already been determined in the affirmative by the circuit court. The court ruled that the issue of whether Officer Rider had probable cause to stop Meyer's truck was

² Meyer was charged in a separate citation and was convicted in a separate circuit court case, case number 2017TR7136, of deviating from a designated lane, contrary to WIS. STAT. § 346.13(3). That case was tried before the circuit court with the present case. However, Meyer has not appealed the order convicting him of deviating from a designated lane. A challenge of that conviction is, therefore, not before this court on appeal. Thus, I do not address any arguments relating to any such challenge.

decided in a prior refusal hearing in the same case and the court would not permit the issue to be raised again in this case, but the court saw no need to so instruct the jury. Meyer did not object to that ruling and did not challenge the court's ruling after trial. The failure to raise a specific challenge before the circuit court forfeits the right to raise that challenge on appeal. See *State v. Rogers*, 196 Wis. 2d 817, 826, 539 N.W.2d 897 (Ct. App. 1995).³

Meyer also appeals on the ground that the roadway was not clearly marked. This issue was also not raised before the circuit court and is, consequently, forfeit on that basis as well. See *id.* However, even if Meyer's challenge was not forfeit, it is without basis. There was substantial testimony before the circuit court, including the squad car video, showing that the roadway was indeed marked.

Meyer argues that his OWI conviction is "void" because "it was procured by fraud," specifically false testimony by Officer Rider. Meyer's argument is without merit. The argument merely calls into question the credibility of Officer Rider, which is exclusively a question for the jury. See *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979) (the circuit court is the ultimate arbiter of a witness's credibility).

Because Meyer has not raised any meritorious issues before this court, I summarily affirm.

³ If the issue was not forfeit, I would still determine that there was reasonable suspicion for the stop, based upon the same reasoning as in my previous summary opinion in *Village of Prairie du Sac v. Meyer*, No. 2017AP2050, unpublished op. and order (WI App Sept. 4, 2018) which was the appeal of the refusal hearing.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to Wis. Stat. Rule 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals