

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 7, 2008

David R. Schanker
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 Nos. 2006AP2539
2006AP2540
2006AP2541**

**Cir. Ct. Nos. 2006TR4424
2006TR4425
2006TR4426**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF PLATTEVILLE,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER L. AMBORT,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Grant County:
GEORGE S. CURRY, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, P.J.¹ Christopher L. Ambort appeals pro se judgments against him for reckless driving and failure to stop at a stop sign,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

contrary to city traffic ordinances, and requiring him to pay costs to the City of Platteville. We affirm.

BACKGROUND

¶2 The following facts were established at trial. Shortly after 2 a.m. on July 1, 2006, Ambort drove his silver and white 1993 Ford Taurus to a Kwik Trip store in Platteville. Once inside, Ambort purchased a pack of cigarettes with his credit card. Jane Middendorf, the Kwik Trip cashier, asked for and was provided Ambort's identification. After purchasing the cigarettes, Ambort left the store and entered his car. Ambort squealed his car tires while backing up, then exited the lot at a high rate of speed. Fearful that Ambort's driving might harm someone, Middendorf called the Platteville Police Station.

¶3 At the same time, Platteville Police Officer Ben Gavinski, who was parked near the Kwik Trip, heard the squealing of tires and saw a silver Ford Taurus come from the direction of the convenience store at a high rate of speed. Gavinski followed the vehicle. He observed the Taurus fail to stop or slow down at two stop signs. Gavinski activated his emergency lights and siren. The Taurus sped up, and Gavinski followed the vehicle traveling at speeds of up to sixty miles per hour, well over the posted speed limits of twenty-five and thirty-five miles per hour. Gavinski eventually discontinued the high-speed pursuit for safety reasons.

¶4 Gavinski went to the Kwik Trip store and spoke with Middendorf to determine the identity of the driver of the Taurus. Middendorf gave Gavinski a copy of Ambort's credit card receipt and informed Gavinski that Ambort was the only one in the store at the time of the purchase, and that his was also the only vehicle in the parking lot. Ambort was later located and subsequently received

three citations for violating City of Platteville ordinance 38.01, which adopts WIS. STAT. § 346.46 (1) and (2), failure to stop at a stop sign and reckless driving, respectively.

¶5 Ambort contested the citations. After a trial, the circuit court found that the City had proved by clear and convincing evidence that Ambort twice failed to stop at a stop sign and drove recklessly. The court ordered Ambort to pay a forfeiture of \$375 on the reckless driving citation and \$160.80 on each failure to stop at a stop sign citation. Ambort appeals.

DISCUSSION

¶6 Ambort's brief is often difficult to follow. Ambort fails to cite a single case or statute to support any of his arguments. Instead, he broadly invokes his rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. While we often make certain allowances for pro se litigants, "neither a trial court nor a reviewing court has a duty to walk *pro se* litigants through the procedural requirements or to point them to the proper substantive law." *Waushara County v. Graf*, 166 Wis. 2d 442, 451-53, 480 N.W.2d 16 (1992).

¶7 Ambort's brief attempts to raise fourteen issues in the span of five pages. We address only those issues that are not wholly undeveloped, and deem the rest waived. *See Associates Fin. Servs. Co. of Wis., Inc. v. Brown*, 2002 WI App 300, ¶4 n. 3, 258 Wis. 2d 915, 656 N.W.2d 56 (appellate courts generally do not consider conclusory assertions and undeveloped issues); *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").

¶8 Ambort contends that the circuit court should have suppressed the Kwik Trip credit card receipt at trial because it was obtained by an unconstitutional search and seizure. We conclude that Ambort lacks standing to raise this claim. The question of whether a party has standing to challenge the constitutionality of a search and seizure based upon a given set of facts is a question of law and therefore is reviewed *de novo*. *State v. Bruski*, 2007 WI 25, ¶19, 299 Wis. 2d 177, 727 N.W.2d 503. Here, Kwik Trip possessed the credit card receipt. Ambort chose to provide his name to Kwik Trip by paying for the cigarettes by credit card. The transaction generated a merchant’s copy of the receipt. Ambort did not possess the merchant’s copy, and therefore lacks standing to challenge the admission of the credit card receipt in court. *Cf. State v. Rhodes*, 149 Wis. 2d 722, 725, 439 N.W.2d 630 (Ct. App. 1989) (relevant consideration in determining a legitimate expectation of privacy is whether one has complete dominion and control and the right to exclude others).

¶9 Ambort notes that that the circuit court did not rule on his motion to suppress the receipt, and argues that failure to do so violated his due process rights. We disagree. As we have explained, Ambort lacked standing to challenge the admission of the receipt. Under these circumstances, we conclude that the court’s failure to rule on the motion was harmless error because the motion itself was without merit. *See State v. Mayo*, 2007 WI 78, ¶47, 301 Wis. 2d 642, 734 N.W.2d 115 (error is harmless when it is clear beyond a reasonable doubt that rational fact finder would have found defendant guilty absent the error).

¶10 Ambort alleges that his “right to discovery” was violated when the City failed to inform him that Middendorf had called dispatch. If Ambort is alleging merely a civil discovery violation against the City, we note that nothing in

the record indicates that Ambort ever requested such information. If he is alleging that the City violated his due process rights by failing to provide exculpatory evidence, *see State v. Harris*, 2004 WI 64, ¶12, 272 Wis. 2d 80, 680 N.W.2d 737, we note that there is nothing in Middendorf's testimony regarding her phone call to dispatch that could remotely be classified as exculpatory. Further, Middendorf testified and was available to be cross-examined at trial on what she told dispatch. Therefore, this argument also fails.

¶11 Ambort next argues that the evidence at trial was insufficient to prove by a clear and convincing standard of proof that Ambort was the driver of the Taurus. While sufficiency of the evidence is a question of law, this court must defer to the trial court's findings of fact. *Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 249-50, 274 N.W.2d 647 (1979). Based upon the circuit court's findings of fact,² we agree that the City proved by clear and convincing evidence that Ambort was the driver of the Taurus.

¶12 Ambort next argues that the circuit court violated his due process rights by refusing to admit Gavinski's police report and Middendorf's police statement into evidence. We conclude that Ambort did not make a proper request to admit either document into evidence; the only time he requested admission of these documents was during closing arguments, after all evidence had been received. We therefore reject this claim.

² The circuit court found that Middendorf's testimony placed Ambort as the only individual at Kwik Trip shortly after 2 a.m. Middendorf also testified that upon leaving, Ambort entered the driver side of the Taurus and proceeded to squeal his tires before exiting the lot at a high rate of speed. The circuit court also found that Gavinski followed Ambort shortly after Ambort left the Kwik Trip lot and that Gavinski personally observed Ambort twice fail to stop at stop signs and drive at a speed significantly above the speed limit.

¶13 Next, Ambort maintains that the circuit court improperly considered his invocation of his right to remain silent under the Fifth Amendment when reaching its decision. Nothing in the record supports Ambort’s claim that the circuit court used Ambort’s invocation of his Fifth Amendment rights against him. Regardless, it would have been within the circuit court’s power to draw a negative inference had it in fact done so. *See Grognet v. Fox Valley Trucking Serv.*, 45 Wis. 2d 235, 239, 172 N.W.2d 812 (1969) (an inference of guilt may be drawn from a witness’s invocation of the Fifth Amendment in a civil case). We therefore reject this argument.

¶14 Finally, Ambort argues that the circuit court failed to swear in any of the witnesses at trial and therefore he was denied his right to confront his accusers under oath. Our review of the transcripts shows that all witnesses were duly sworn. Ambort also argues that the circuit court improperly suggested that he was acting “weird” inside of Kwik Trip because he had been drinking. Nowhere in the record does it appear that the circuit court ever made such a statement regarding Ambort.

By the Court.—Judgments affirmed.

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

