COURT OF APPEALS
DECISION
DATED AND FILED

September 9, 2009

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 No. 2009AP743 **Cir. Ct. No. 2008TR4945**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GERALDINE BOOKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County: MARY KAY WAGNER, Judge. *Affirmed*.

¶1 ANDERSON, J.[1] Geraldine Booker appeals pro se from a conviction for failing to stop at a red traffic light in violation of WIS. STAT.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

§ 346.37(1)(c)1. She raises two issues on appeal. First, she complains that she was denied legal counsel to represent her and second, she asserts that it was improper for her to receive a traffic warning citation for violating a yellow traffic light in violation of § 346.37(1)(b) and a uniform citation for running a red traffic light for the same incident. While we agree that two citations for the same incident would constitute "piling on" and result in a fifteen-yard penalty in the National Football League, http://www.nfl.com/rulebook/penaltysummaries (last visited 8/25/2009), we are constrained to affirm.

¶2 Booker first asserts that she was denied her right to a public defender: "So if I had prosecuting attorneys, states attorneys and district attorneys opposing me why wasn't I appointed a public defender or even asked do I want to speak to a public defender or legal personnel."

¶3 Whether Booker was deprived of her constitutional right to counsel is a question of constitutional fact that we review independently of the trial court. ***State v. Cummings***, 199 Wis. 2d 721, 748, 546 N.W.2d 406 (1996).

¶4 Booker was not entitled to a taxpayer paid attorney. Violation of WIS. STAT. § 346.37(1)(c)1. is a traffic forfeiture action and not a criminal action. ***State v. Folk***, 117 Wis. 2d 42, 46, 342 N.W.2d 761 (Ct. App. 1983). A person convicted of a traffic regulation cannot be imprisoned; therefore, he or she is not entitled to representation by a public defender. ***State v. Novak***, 107 Wis. 2d 31, 41, 318 N.W.2d 364 (1982).

¶5 Booker's second issue is, "I was given a double violation … and charged with the most damaging one (violation of red traffic signal) to me and my

record." Unfortunately, Booker did not arrange for a transcript of the court trial conducted on her citation for failure to obey a red traffic signal.[2] Because it is Booker's responsibility to provide us with a record adequate for review, in the absence of a transcript, we presume that every fact essential to sustain the circuit court's decision is supported by the record. *See* ***Butcher v. Ameritech Corp.***, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546 (Ct. App. 2006). From the meager information in the record, we know that on June 9, 2008, at 9:27 a.m., trooper W. Landree of the Wisconsin State Patrol issued Booker a "Traffic Warning/Equipment Violation Notice" for violating a yellow signal and a "Wisconsin Uniform Citation" for violating a red traffic signal at the intersection of 80th Street and 22nd Avenue in the city of Kenosha.

¶6 Under WIS. STAT. § 345.23 a law enforcement officer has discretion to issue a warning or arrest a motorist when he observes a violation of a traffic regulation. We review the issue raised by Booker for an abuse of discretion by trooper Landree. We cannot say that the trooper abused his discretion in issuing a warning and a uniform citation; he observed Booker fail to stop for a yellow traffic light and/or a red traffic light, either failure is in violation of WIS. STAT. § 346.37(1).

¶7 We note, Booker cannot appeal from the "Traffic Warning/Equipment Violation Notice" because she suffered no adverse consequences in court, neither a judgment of conviction nor dispositional order was issued. In order for Booker to appeal, the order or judgment must bear

[2] On March 30, 2009, we found Booker indigent and granted her petition to prosecute this appeal without payment of the filing fee.

directly and injuriously upon her interests; she must be adversely affected in some appreciable manner. ***Tierney v. Lacenski***, 114 Wis. 2d 298, 302, 338 N.W.2d 522 (Ct. App. 1983).

¶8 The only avenue of relief available to Booker is a discretionary reversal. Unfortunately, our discretionary reversal authority is limited to the two grounds set forth in WIS. STAT. § 752.35: (1) when the real controversy has not been fully tried or (2) when it is probable that justice has miscarried. Under the first ground, it is not necessary for the court to conclude that the outcome would be different on retrial. ***Vollmer v. Luety***, 156 Wis. 2d 1, 19, 456 N.W.2d 797 (1990). Neither of these grounds is present in this case. Without a transcript we must assume that the trial was error free and we have to conclude that the real controversy was fully tried. Further, there is nothing that leads us to conclude that there would be a finding of not guilty if a second trial was held.

¶9 This court has twelve years of experience as a circuit judge and nineteen years of experience as an appellate judge and has never encountered a law enforcement officer issuing a warning citation and a uniform citation for the same offense. Quite frankly, the trooper's actions are mystifying. The trooper's handling of his contact with Booker is counterintuitive. On several occasions our supreme court has commented:

> The traffic laws of this state are the citizen's primary exposure to law enforcement; for many citizens traffic law is the only area in which they have direct contact with law enforcement officers. Therefore it is particularly important in the enforcement of traffic laws that the public perceive a policy of even-handed and just law enforcement. If citizens are expected to deal fairly with the state and respect the laws, the state must deal fairly with its citizens and show respect for its citizens.

State v. Brown, 107 Wis. 2d 44, 55, 318 N.W.2d 370 (1982); ***State v. Hanson***, 85 Wis. 2d 233, 245-46, 270 N.W.2d 212 (1978) ("For the average law abiding American citizen, minor traffic offenses constitute the only contact such a person will have with the law enforcement and judicial systems. Public confidence rests upon the fairness of such proceedings.").

By the Court.—Judgment affirmed.

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