

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

CITY OF MADISON

Plaintiff-Respondent,

v.

Appeal No. 2015-AP-000800

JEFFREY K. CROSSFIELD,

Defendant-Appellant.

On Appeal from the Honorable Richard G. Niess
Dane County Circuit Court Judge
Dane County Circuit Court Case No. 2014CV2637
Order and Judgment dated March 4, 2015

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF ISSUES

1. Did Crossfield disobey an “official traffic sign”?

City of Madison Municipal Court: Yes

Dane County Circuit Court: Yes

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

There is no need for oral argument because it would not add to the arguments presented by the parties in their briefs. The opinion should not be published in this case, which has been designated a one-judge appeal. Wis. Stat. § 809.23(1)(b) 4.

STATEMENT OF THE CASE

This is an appeal of a traffic citation. On February 25, 2014, a City of Madison police officer issued a citation to Jeffrey Crossfield for failing to obey an official traffic sign, in violation of Wisconsin Statute § 346.04(2). R. 1. After a municipal court trial on the matter, the parties submitted briefs at the request of Madison Municipal Court Judge Daniel Koval. R. 25 at 89:6-17; R. 9, 12, 13. On July 30, 2014, Judge Koval found Crossfield guilty of failing to obey an official traffic sign. R.14. Pursuant to Wis. Stat. 800.14(5), Crossfield requested a circuit court appeal based on a review of the municipal court proceedings. R. 17. On March 4, 2015, Dane County Circuit Court Judge Richard Niess affirmed the municipal court’s

decision finding Crossfield guilty of failing to obey an official traffic sign. R. 34.

STATEMENT OF THE FACTS

On February 25, 2014 around 9:45am, the Dane County Highway Department ran a maintenance operation to patch potholes on highway 12 (“the Beltline”) between Greenway Boulevard and Old Sauk Road. R.25 at 26:17-27:10; 56:9-10. The moving operation used standard operating procedure for a rolling lane closure operation on a multilane road. R. 25 at 36:10-13. The operation included several vehicles, two of which were operated by county employees John Seid and Eric Harried. The first truck in the operation was a “message truck” operated by Seid with a portable message sign that read “right lane closed - merge left.” R. 25 at 27:16-18; 56:10-11.

Next came two vehicles called “crash trucks” placed to protect the county employees on the road. R.25 at 28:1-2. The first crash truck was located on the right shoulder of the road with an arrow pointing left. R.25 at 27:20-22; 56:15-18. The second crash truck, operated by Harried, was in the right lane of traffic with an arrow pointing left. R.25 at 27:20-22; 56:15-18. Ahead of the second crash truck was a truck with the patch for repairing potholes. R. 25 at 56:15-18. Crew members were

working on the road in the right lane and shoulder of the road in between Harried's crash truck and the patch truck. R.25 at 28:6-21; 30:11-13.

Even though Seid's truck had a sign instructing, "right lane closed - merge left," Seid saw a van drive pass his truck and continue driving in the right lane of traffic. R.25 at 56:10-11; 57:2-4. Seid radioed his co-workers to warn them about a van coming up the right side of the road. R. 25 at 57:2-4. The driver of the van was later identified as Jeffrey Crossfield. R. 25 at 32:15-18; R. 1. Seid and Harried both observed Crossfield drive around the first crash truck on the right, so far right he was driving off the shoulder of the road. R. 25 at 29:13-14; 57:17-20. As Crossfield continued to approach on the right of the operation, Harried angled his truck to block Crossfield from potentially endangering the road workers. R. 25 at 29:14-16; R. 25 at 58:2.

Harried successfully blocked Crossfield's van, parked his truck, approached Crossfield, and contacted law enforcement. R. 25 at 31:1-18. Instead of waiting for law enforcement, Crossfield again drove around the right-hand side of the maintenance vehicles, even driving into the ditch to get around them to exit the highway. R. 25 at 31:22 to 32:1-6.

Madison Police Officer Chad Joswiak responded to Crossfield's reported location. R. 25 at 69:16-17. Crossfield admitted to the officer that he had been in a hurry for an appointment, that he was driving down the Beltline by Old Sauk, and that the left lane was backed up. R. 25 at 70:2-5. Crossfield admitted that he drove on the shoulder on the right side of the road to reach the exit he wanted to take for his appointment. R. 25 at 70:5-6. Since the message sign stated "right lane closed - merge left" and Crossfield admitted to driving around the maintenance operation on the right, the officer issued Crossfield a citation for failing to obey an official sign. R. 25 at 70:22 to 71:1-5; R. 1.

ARGUMENT

I. CROSSFIELD'S ARGUMENTS SHOULD NOT BE CONSIDERED SINCE THEY ARE CONCLUSORY AND UNSUPPORTED BY THE RECORD OR RELEVANT LEGAL AUTHORITY.

Due to the nature of Crossfield's brief which includes mixing arguments and broad conclusions throughout all sections with little to no accurate citations to the record or legal authority, Crossfield's arguments are insufficiently developed to warrant consideration. The Court may decline to address the merits of Crossfield's claim because his appellate brief is

inadequate and does not comply with the rules of appellate procedure. *See* Wis. Stat. § 809.83(2). Crossfield’s statement of issues does not reflect how (or whether) the trial court decided the issues, in violation of Wis. Stat. § 809.19(1)(b). Several “facts” throughout Crossfield’s brief are not supported by citations to the record, in violation of Wis. Stat. § 809.19(1)(d). The “argument” section of Crossfield’s brief contains no record citations and does not meet the requirements of Wis. Stat. § 809.19(1)(e).

The Wisconsin Supreme Court requires *pro se* litigants to satisfy all of the procedural requirements that govern appeals. *See Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16, 20 (1992). Compliance with the rules is required because a high-volume intermediate appellate court is an error-correcting court that cannot take time either to sift the record for facts that might support an appellant’s contentions or develop legal argument on behalf of the appellant. *See Keplin v. Hardware Mut. Cas. Co.*, 24 Wis. 2d 319, 324, 129 N.W.2d 321, 323 (1964); *State v. Shaffer*, 96 Wis. 2d 531, 545, 292 N.W.2d 370, 378 (Ct. App. 1980). The Court does not need to address amorphous and insufficiently developed arguments. *See Block v. Gomez*, 201 Wis. 2d 795, 811, 549 N.W.2d 783, 790 (Ct. App.

1996). The Court may decline to address arguments that violate appellate rules, or those that are inadequately briefed. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992). For these reasons, the Court may reject Crossfield’s arguments. While Crossfield’s arguments are unclear, the City will attempt to address what it perceives to be his arguments in the event the Court considers them.

A. *Findings of Fact Regarding the Language on the Sign Should Not Be Set Aside.*

The municipal court found credible evidence that a message board sign stating “right lane closed-merge left” was present at the time and location Crossfield drove on the right lane and right shoulder of the Beltline. R. 14 at 1-2. At the court trial, both county highway workers testified that this sign was present and testified the language of the sign was “right lane closed-merge left.” R. 25 at 27:16-18; 56:10-11.

Crossfield appears to argue that the construction workers’ testimony is unreliable. App. Br. 2, 4. Crossfield argues in his “statement of facts” that Harried’s testimony is “incompetent” and that he could not have had knowledge of the sign.

Appellant’s Br. 8.

Harried explained the maintenance operation in detail including the language on the sign. R. 25 at 27-28. Crossfield himself agrees that the sign was present and read “right lane closed ahead.” R. 25 at 58:18-19. He only seems to disagree that it also read “merge left.” Regardless of whether that distinction matters, it is the task of the trial court to assess credibility of the witnesses.

Findings of fact of the municipal court should not be set aside by the circuit court unless clearly erroneous and due regard should be given to the opportunity of the municipal court to judge the credibility of the witnesses. *Vill. of Williams Bay v. Metzl*, 124 Wis. 2d 356, 361, 369 N.W.2d 186, 189 (Ct. App. 1985). The court of appeals reviews a municipal court record under Wis. Stat. § 800.14(5) using the same standard of review as the circuit court and searches the record for evidence to support the municipal court's decision. *Id.* at 362. The municipal court found the construction workers' testimony to be credible, and the circuit court appropriately did not set aside the municipal court's findings. R. 14, R. 34. There is no reason for this Court to set aside findings of fact based on Crossfield's unsupported argument that a witness is unreliable.

B. *The Circuit Court Adequately Considered Crossfield's Case.*

The Honorable Judge Richard Niess issued a Decision and Order on Crossfield's appeal from the municipal court decision. R. 34. Crossfield seems to argue that the circuit court erred by only "reading" the record, but not "understanding" or "considering" it. Appellant's Br. 1, 5.

The circuit court Decision and Order states that the court "read the transcript from the municipal court trial, examined the exhibits and read the briefs submitted to both courts" and that the court found Crossfield guilty "based upon that review." R. 34 at 2. Crossfield has presented no concrete arguments showing that either the municipal or circuit court erred in this case. As such, any arguments regarding the court not fully "considering" his case should be disregarded by this Court.

II. THE SIGN AT ISSUE IN THIS CASE IS AN "OFFICIAL TRAFFIC SIGN".

The sign that County maintenance workers displayed to instruct drivers that the right lane of the highway was closed and that drivers needed to merge left qualifies as an "official traffic sign." Crossfield is charged with violating Wis. Stat. § 346.04(2) which states:

No operator of a vehicle shall disobey the instructions of any official traffic sign or signal unless otherwise directed by a traffic officer. Wis. Stat. § 346.04(2) (2011-12)¹

The only element of the charge that Crossfield disputes is whether the sign was an “official sign.” In his brief, Crossfield explicitly stated: “I am going to let all consideration go for this appeal – except for the point that the violation is not citable because the signs alleged to be disregarded – because they/it were not official” Appellant’s Br. 7.

There is no dispute that Crossfield was operating a vehicle. He testified that he drove his vehicle on the Beltine before he passed the county maintenance trucks. R. 25 at 16:17-17:1-14. Harried identified Crossfield in the courtroom as the person he contacted after using his truck to block Crossfield’s path. R. 25 at 32:15-18. There is no dispute that Crossfield disobeyed the instructions on the message board sign. Both county highway workers testified that the sign read “right lane closed-merge left.” R. 25 at 27:16-18; 56:10-11. Crossfield admits to seeing the message board sign instructing that the right lane was closed ahead. R. 25 at 17:6-8; 18:1; 58:18-19. However, Crossfield disobeyed the sign by driving to the right

¹ All Wisconsin state statutes cited in this brief refer to the 2011-12 edition.

and passing the highway workers on the right shoulder of the road. R. 25 at 18:22-19:1; 29:8-16; 57:2-20. There is no evidence that a traffic officer instructed Crossfield to disobey the sign. Therefore, this section of the City's brief focuses on how the sign Crossfield disobeyed qualifies as an "official traffic sign."

A. *The Sign Meets the Statutory Definition of an "Official Traffic Sign" in Wis. Stat. 340.01(38).*

Wis. Stat. ch. 346 expressly incorporates the definition of an "official traffic sign" found in Wis. Stat. § 340.01(38):

"Official traffic control device" means all signs, signals, markings and devices, not inconsistent with chs. 341 to 349, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic; and includes the terms "official traffic sign" and "official traffic signal." Wis. Stat. § 340.01(38); *See* Wis. Stat. § 346.01.

While this highway operation included one message sign stating "right lane closed-merge left" and two separate arrow signs with left facing arrows, Crossfield's appeal focuses on the message board sign. This sign is not inconsistent with chs. 341 to 349. The sign was placed by employees of the Dane County Highway Department as part of a rolling maintenance operation fixing potholes on the highway. R. 25 at 26:17-27:10-18. The

purpose of the sign was to warn traffic about a lane closure and guide traffic to move left. R.25 at 27:16-18; 47:8-11; 56:10-11. The message sign at issue in this case meets the statutory requirements of Wis. Stat. § 340.01(38) to qualify as an “official traffic sign.”

B. *The Sign is Consistent with the Manual on Uniform Traffic Control Devices.*

Traffic control signs on Wisconsin highways must conform to the Manual on Uniform Traffic Control Devices (MUTCD), pursuant to Wis. Stat. §§ 84.02(4)(e) and 349.065:

The department shall adopt a manual establishing a uniform system of traffic control devices for use upon the highways of this state. The system shall be consistent with and, so far as practicable, conform to current nationally recognized standards for traffic control devices. Wis. Stat. § 84.02(4)(e).

The sign in this case can be classified by the MUTCD as a “portable changeable message sign” since it was a temporary sign used in a moving maintenance operation. R. 25 at 27. The MUTCD covers “portable changeable message signs” under Section 6F.60 and in most cases as “changeable message signs” under Section 2L.04. MUTCD 598-601; 326-7 (2009).²

² All citations to the Manual on Uniform Traffic Control Devices refer to the 2009 edition.

Portable changeable message signs are temporary signs that advise drivers of unexpected situations, including where a change in road pattern occurs. MUTCD 598 at ¶ 1; 599 at ¶ 4-5. In this case, the sign was used by the Dane County Highway Department to warn drivers that the right lane of the Beltline was closed and that drivers should merge left. R.25 at 27:16-18; 47:8-11. While the sections of the MUTCD labeled as “guidance” are not mandatory, the sign instructing Crossfield to move to the left lane still follows the guidelines for a portable changeable message sign.

1. “Guidance” from the MUTCD is not mandatory.

Sections labeled as “guidance” in the MUTCD are not mandatory and do not need to be followed for a sign to be considered “official.” In the MUTCD, the bolded sections labeled “standard” are the rules. MUTCD 10, ¶1(A). The sections labeled as “guidance” are suggestions. MUTCD 10, ¶1(B). The MUTCD explains that guidance “is a statement of recommended, but not mandatory, practice in typical situations...” *Id.*

Statutory language should be interpreted in the context in which it is used and in a way that avoids absurd or unreasonable results. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004

WI 58, ¶ 46, 271 Wis. 2d 633, 663, 681 N.W.2d 110, 124. In order to avoid unreasonable results, courts should interpret the statutes mandating the use of the MUTCD while considering that the MUTCD itself distinguishes between its requirements and suggestions. The word “shall” in Wis. Stats. §§ 349.065; 84.02(4)(e), requires adopting the MUTCD, but should be interpreted to keep non-mandatory suggestions in the MUTCD as non-mandatory suggestions in Wisconsin. Since the MUTCD has distinguished which sections of the manual are mandatory and which sections are recommended, it is logical that the MUTCD be applied in the same way when used by the state and local authorities. There is nothing in the statutes that suggests that by mandating use of the MUTCD, the suggestions or recommendations in the manual suddenly switch to mandatory requirements in Wisconsin.

In *Columbia County v. Kassens*, the Wisconsin Court of Appeals held that “guidance” from the MUTCD is only recommended, not mandatory. *Columbia Cnty. v. Kassens*, 2011 WI App 27, ¶ 9, 331 Wis. 2d 729, 795 N.W.2d 492 (unpublished opinion). The court held that even if a sign did not conform to “guidance” provisions of the MUTCD, it could still be an official sign since “guidance” is not required. *Id.* at ¶ 9. A

reasonable and logical interpretation of the statutes supported by the MUTCD's own language and the persuasive value of *Kassens* shows that the sign in this case did not need to comply with non-mandatory "guidance" from the MUTCD.

2. Even though "guidance" is not mandatory, the sign is still consistent with recommendations.

Although following "guidance" from the MUTCD is not required, the sign is still consistent with MUTCD recommendations. First, it is undisputed that Crossfield saw the sign. R. 25:17:6-7; 18:1. Crossfield appears to argue in his "statement of facts" that the sign could not be seen from a recommended distance. Appellant's Br. 4,6. First, there is nothing in statutes or case law that suggests that the City must prove every detail about a sign in order to prove it to be an "official sign." The City is not required to prove the visibility distance at the time Crossfield drove past it. If anything, visibility might be an affirmative defense with the burden shifted to Crossfield. However, Crossfield admits to seeing the sign, and he makes no claim that he disobeyed the sign based on the sign's visibility. R. 25:17:6-7; 18:1. Since it is undisputed that Crossfield saw the sign, it is an unreasonable expectation that

the City be required to prove the distance at which a temporary sign could be seen at a specific point during a moving operation.

The sign complied with MUTCD's suggestions for letter height. In his "statement of facts," Crossfield argues that the sign is not official due to the height of the letters on the sign. Appellant's Br. 8. The MUTCD gives an option for signs on service patrol trucks to have a letter height as short as 10 inches. MUTCD 599 at ¶ 15. Suggestions for other signs have a recommendation, but not requirement, of an 18 inch letter height. *Id.* at ¶ 14. The sign in this case had a letter height of 12 inches, which complies with the MUTCD. *Id.* at ¶14-15; R.9 at 5, 24-7.

The sign was consistent with additional MUTCD recommendations for portable changeable message signs. First, the sign was used for an appropriate purpose as a means of roadway control in accordance with Sections 6F.60, 2L.01, 2L.02. MUTCD 325-26; 599-601. The colors of the sign meet the standards of 2A-5 because the legend was in yellow with a black background. MUTCD 33; R. 9 at 22. The sign was an appropriate height as it was mounted on top of a service truck. MUTCD 600 at ¶ 26; R. 9 at 6, 22-3. The sign substantially

complied with MUTCD recommendations and did not violate any MUTCD requirements.

For these reasons, neither lower court erred by finding that the sign stating “right lane closed – merge left” placed by the Dane County Highway Department as part of a maintenance operation was an official sign. Neither court erred by deciding that evidence was clear, satisfactory, and convincing to a reasonable degree of certainty that Crossfield was guilty of failing to obey an official traffic sign.

CONCLUSION

For the above reasons, the City of Madison asks this Court to affirm the circuit court’s decision which affirmed the municipal court’s decision finding Crossfield guilty of failing to obey an official traffic sign.

Respectfully submitted this 19th day of October, 2015.

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CERTIFICATIONS

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief and appendix conforms to the rules contained in s. 809.19 (8)(b) and (c) for a brief produced in a proportional serif font.

The length of this brief is 3,227 words, exclusive of the caption, Table of Contents and Authorities and the Certifications.

Dated this 19th day of October, 2015.

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ELECTRONIC FILING CERTIFICATION

I hereby certify that I have submitted an electronic copy of this brief, which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date. A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 19th day of October, 2015.

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