

FILED**04-11-2024****CLERK OF WISCONSIN
COURT OF APPEALS****STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT** 2County of Winnebago)(party designation) Plaintiff)

-vs-)

Thomas J Roberts)(party designation) Defendant-Appellant)**Brief
Cover**Circuit court case number
2023TR003433

Appeal Case No. 2023AP001808

ON APPEAL FROM THE CIRCUIT COURT FOR Winnebago COUNTY,
THE HONORABLE (Name of Judge) TERESA BASILIERE, PRESIDINGBRIEF OF Appellant

*

Name: Thomas J Roberts

State Bar No. (if applicable): _____

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Table of Authorities

85 Wis.2d 233 (1978)

270 N.W.2d 212

STATE v. HANSON

Supreme Court of Wisconsin.

Argued September 6, 1978.

Decided October 3, 1978.

6 N.E.3d 188 (2015)

2015-Ohio-4402

STATE of Ohio, Plaintiff-Appellee

v.

Michael HELKE, Defendant-Appellant.

No. 26672.

Court of Appeals of Ohio, Second District, Montgomery County.

October 23, 2015.

Ohio Traffic Law Section 4511.091

Statement of the issues

By itself, an officer's visual estimate of speed, alone, is insufficient to support a conviction.

The primary evidence in this case is a speed/laser gun which was last professionally calibrated in 2008. The speed/laser gun itself is never checked against any other devices to confirm its accuracy. There are no records of its testing of any kind, calibration history, nor it's repair history, other than a single document (App., p. 3-5), indicating a repair, approx. a year after being purchased. Deputy Thomas Burns doesn't possess a manual for the device, and has never read it. His training on it took place in 2004. (App., p. 14) The way it's tested is questionable, and likely doesn't meet its specs. (App., p. 10)

Statement as to whether oral argument is necessary

No, I don't believe that oral arguments are necessary.

I take no stance on whether or not, it should be published.

Statement of the case

On April 4th, 2023, as I (Thomas Roberts) was driving back from Appleton to Fond du Lac and passing through Oshkosh on Highway 41, I was pulled over by Thomas Burns, who claimed I was speeding. During the Interaction, because of the position on this highway, it was very noisy; because of the level of noise, I and Thomas Burns struggled to hear each other. The overall talk could be summarized as; he claimed I was driving excessively fast, which was shocking to me, and my response was I'm driving normally, I couldn't be going that fast. He took that as admission (App., p. 16-17). I was issued a ticket for speeding 1-10 Miles over, going 80 in a 70 zone.

In between, receiving the ticket and the trial on August 31, 2023; I was instructed, to email Adam Joseph Levin with any questions on the case. I emailed him for all the evidence available, for the history of the speed gun/laser device used to estimate my speed. The only documentation of any kind showing calibration, testing, servicing or more is (App., p. 3-5). I responded back if there was literally anything else and he said no.

In the trial on August 31, 2023, Thomas Burns testified that he saw me on highway 41 on said date; and after visually estimating my speed at 80, he used a laser speed gun to estimate the speed at 82. The majority of the court trial revolved around the speed laser and his training and understanding of it. The trial concluded with TERESA BASILIERE, stating (paraphrasing) that Thomas Burns was experienced and saying that there is no evidence the speed laser wasn't working properly, the state has met its burden of spoof. (App., p. 22-23)

Argument

By itself, an officer's visual estimate of speed, alone, is
insufficient to support a conviction.

This has already been made law in Ohio Section 4511.091.

It was used previously in 6 N.E.3d 188 (2015) STATE of Ohio Michael
HELKE.

Dane County v. Nancy A. Baxter Appeal No. 2006AP2342

Visually estimating speed is simply too inaccurate, especially when done at
night, when it's dark. People don't always count at the same speed and
there are far too many human variables involved.

The accuracy of the laser/speed gun is never properly established.

Thomas Burns doesn't possess a copy of the manual and neither can he or we determine, whether the instructions he received to learn how to properly use and test the laser/speed gun are accurate. (App., p. 9-10) (App., p. 14) STATE v. HANSON condition 2 for testing accuracy of a speed gun, states there must be proof that it was working, not proof that it wasn't malfunctioning (App., p. 22). Thomas Burns doesn't know the repair history of the device "No, I don't deal with that at all" (App., p. 15) . There are no records of it being tested, repaired, or calibrated since 2008 (App., p. 3-5). The speed gun was 905.9 feet away when giving its reading, its questionable whether the accuracy holds up at this range (App., p. 17) The accuracy of the laser/speed gun model in question, is also never established. It was also never stated that the speed/laser gun was tested after being used on April 4, 2023. The device uses C disposable batteries (App., p. 17-18)., we don't know if they were low or not, and whether or not that could have affected the readings. The device is supposed to prevent you from using it, if the battery level is too low, but we have no way of actually judging the device to be working properly.

Conclusion

I am asking the court of appeals to overturn the ruling of guilty by TERESA BASILIERE on August 31, 2023 in the circuit level court of WINNEBAGO COUNTY, case 2023TR003433.

Thomas Davis

April 9, 2024