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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Winnebago County,
Plaintiff-Respondent,

Case No. 2023AP001808

v.

Thomas J Roberts,
Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON NOTICE OF APPEAL FROM THE CIRCUIT COURT FOR WINNEBAGO
COUNTY, THE HONORABLE TERESA BASILIERE, PRESIDING

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Cases Cited

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Statutes Cited

Wis. Stat. 345.45 3
Wis. Stat. 346.57 1
Wis. Stat. 809.23 1

I. Statement of Issue Presented for Review

1) Whether sufficient evidence supports the trial court's finding of guilt in this traffic matter.

Sufficient evidence supports the trial court's finding of guilt in this traffic matter.

II. Statement on Oral Argument and Publication

The County does not request oral argument, as this matter involves only the application of well-settled law to the facts of the case. Wis. Stat. 809.23(1)(b)1.

III. Statement of the Case

On April 4, 2024 Winnebago County Sheriff's Deputy Thomas Burn cited Mr. Roberts for speeding in violation of Wis. Stat. 346.57(4)(gm)2. R1. On August 31, 2023 a court trial was held in front of the Honorable Teresa Basiliere. Appendix to Brief of Appellant. (It does not appear that this part of the record was indexed and transmitted to the Court of Appeals by the Circuit Court. *See* R21, Index. For purposes of this Court's review, the County agrees Mr. Roberts' appendix is a verbatim record of the court trial held in this matter).

At that trial, Deputy Burns testified that on April 4, 2023 he was monitoring traffic on Interstate 41 in Winnebago County. 9 Appendix to Brief of Appellant. He testified he is trained in using a laser LT 20/20 speed measuring device, that the instrument was in proper working order, and had tested in good

order at the beginning of the shift. 9-10 Appendix to Brief of Appellant. He testified he obtained a reading of the defendant's vehicle, showing 82 miles per hour in a 70 zone. 11 Appendix to Brief of Appellant. He further testified he has been a police officer for 23 years, and that he can visually estimate speed with some precision, and he estimated the speed of the defendant's car at 80. *Id.*

The trial court found that Deputy Burns can visually identify speeding, and there was no evidence the laser device was nonfunctioning. The trial court found the county met its burden and found Mr. Roberts guilty of speeding. 22-23 Appendix to Brief of Appellant.

IV. Argument

“The standard for reviewing the sufficiency of the evidence is highly deferential to a [fact finder's] verdict, *572 and provides that an appellate court may not overturn a jury's verdict unless the evidence, viewed most favorably to sustaining the conviction is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt Accordingly, a defendant challenging the sufficiency of the evidence bears a heavy burden to show the evidence could not reasonably have supported a finding of guilt.” State v. Beamon, 2013 WI 47, ¶¶ 20-21, 347 Wis. 2d 559, 571–72, 830 N.W.2d 681, 688.

Traffic matters use an intermediate burden of proof – evidence of guilt must be clear, satisfactory, and convincing. Wis. Stat. 345.45. Applying that burden to the record in this matter, the evidence reasonably supports a correct speed measurement of the defendant driving 82 MPH in a 70 MPH zone, and the trial court’s finding of guilty.

V. Conclusion

Sufficient evidence supports the trial court’s finding of guilt in this matter, and the conviction should be affirmed.

Dated at Oshkosh, Wisconsin this April 30, 2024

Electronically signed By:

Adam J Levin 4/30/2024

Adam J. Levin
WSBA No. 1045816
Assistant District Attorney
Winnebago County, Wisconsin
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 527 words.

Dated at Oshkosh, Wisconsin this April 30, 2024

Electronically signed by:

Adam J Levin April 30, 2024

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