

**FILED**  
**05-15-2024**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

**STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT** 2

County of Winnebago )  
 )  
 )  
(party designation) Plaintiff )  
 )  
 )  
-vs- )  
 )  
Thomas J Roberts )  
 )  
 )  
(party designation) Defendant-Appellant )

**Reply 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, PRESIDING

BRIEF OF Appellant - Reply Brief \*

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# Table of Authorities

## Cases Cited

## Statutes Cited

Ohio Traffic Law Section 4511.091

## Statement of the issues

On Page 3 of BRIEF OF PLAINTIFF-RESPONDENT, it incorrectly states I was driving 83MPH.

No Evidence to support conviction/Burden of Proof

## Argument

On Page 3 of BRIEF OF PLAINTIFF-RESPONDENT, it incorrectly states I was driving 83MPH.

On Page 3 of the BRIEF OF PLAINTIFF-RESPONDENT, it incorrectly states I was driving 83MPH. This is contradicted by Page 2 of the BRIEF OF PLAINTIFF-RESPONDENT. And (App., p. 6) and the original conviction of driving at 80MPH.

### No Evidence to support conviction/Burden of Proof

As stated in the Appellant Brief, *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. 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. Additionally, Over Time, if a speed gun is*

malfunctioning this will certainly influence, its users ability to accurately estimate speed.

Winnebago County was unable to produce any evidence of any kind that the speed gun was ever professionally inspected or calibrated in over a decade, no testing records are available, and it's unclear if the way Deputy Thomas Burns and the Winnebago County Department tests the speed guns is correctly done, and he doesn't possess the manual. An average user of a speed gun likely won't notice whether or not a speed gun is accurate, if it isn't widely off. Like any computer/electronic device, it can give out inaccurate data, while appearing to function normally, and can behave inconsistently.

In order to support a verdict of guilty in this case, it first must be determined whether or not, visual estimation alone, is sufficient evidence to support a guilty verdict, and whether or not a faulty speed gun could influence their speed estimates. As for who the burden of proof falls onto, the burden of proof always falls on the prosecution to prove guilt.

Winnebago County was unable to provide any evidence of any kind, that the speed gun was functioning properly or that its model is ever accurate. As these 2 pieces of correlated evidence, are their only evidence, they can't support a verdict of guilty without them.

## 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 Palm*

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*May 15, 2024*

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