

15AP0800

State of Wisconsin IV district Court of Appeals

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City of Madison,  
Plaintiff-Respondent,  
v.  
Jeffrey K. Crossfield,  
Defendant-Appellant.

Case -  
2015 AP 800

On appeal from the 9th circuit Court of  
Dane County, case 2014 CV 2637.  
The Honorable Judge Niers, Presiding

This is the brief of Jeffrey K. Crossfield, defendant

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cc: City

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## Statement of Issues - (3)

1. If a road sign must be official to support a prosecution is it wise for society to give road crews the option to follow recommended safety standards? (Or not as they see fit?) When the WMUTCO's gives an out for engineers to modify signs, is it wise to let county road crews ~~support~~ decide what procedure to follow? Without the support of engineers as prescribed by regulation? Is it wise for society (Wisconsin) to adopt a federal highway regulation as WMUTCO's with the legally definitive directive of "shall conform" and still let county road crews decide if they feel like following the regulations or not?

2. Does a citizen have a right to high quality consideration once a case has been assigned to a court? Here a circuit court judge has ruled by "reading" a municipal court record. Circuit court branch 9 even asked for briefs from both parties, but only stated that he "read" them. Once asked for isn't Judge Niers responsible for understanding and considering this (or any other) case? The app. court is correct that Judge Niers could have considered the missing 13 pages from No. 9. But there is indication that he has considered or even understands the issues of this case from No. 34

page 2

3. A subset of issue 2 again concerns the ruling of Circuit Court bench 9. On rec(~~33~~) (34) (end of page 2 and 3. The ruling is incorrect that the sign in question is "official" (part 2)

On rec 34 page 3 the circuit court ruling states "The official sign" can not be confirmed in testimony. A prosecution witness who testified that "Right lane closed ahead" was not in position to see the sign - He was at least  $\frac{1}{4}$  mile down the road!

Point 4 seems unjustifiable since I was exiting the roadway and I am allowed to use the shoulder to the left of the white line.

### Statement of Case

~~These~~ points 2 and 3 above are important, both municipal Judge Koul and the circuit review make errors by accepting Harned testimony of Seid Truck even though he was  $\frac{1}{4}$  mile farther down the road! (Rec 14) page 1 As a statement of case I have no major complaints as far as process or procedure or to the disposition of this case (at this time), however how can I ~~report~~ <sup>report</sup> decisions as rational that seem largely irrational? I cannot.

Point 1 above is the lynchpin of this appeal. How can a municipal judge ask for briefs specifically concerning MUTCD (Transcript page 89 line 9-10-11) and then make no consideration in that area?

At the circuit court again significant effort again went into the question of official signs. Multiple briefs concerning WMUTCO's, close issue guidance of appeals court decisions have resulted in no consideration, no progress in this legal dispute. How can I chronologically relate a total lack of process.

### Statement of facts

my Issue ~~of~~ 2 and 3 will be addressed here. Though simple they have been not clearly addressed. Rec 14 page 1 Judge Koval concludes that "Harris (SIC) testified the sign said "right lane closed ~~ahead~~-merge left." In the same paragraph Judge Koval bases his decision on - "Sied (SIC) testified the sign said the same thing" Ah, really? Are these reliable facts?

In the transcript page 35 line 8 and 9 - ... Herried states - our message truck a quarter mile back - yet yet Herried he also testified that he was driving a "crash truck" near the workers. The only conclusion is that Eric Herried was not in a position to see any message on Sied's sign truck and his testimony is incompetent (at best).

This may be ambiguous, ~~to~~ (I only got to view the transcript once for about 45 hours) but ~~in~~ the ~~on~~

Page 58 line (about) 13 and 14, and line 22 does witness Seid testify that his message sign said right lane closed ahead or right lane closed ahead - merge left? I recall no testimony that Seid's message truck was actually being used as a two part sign.

With Hamrick's sign testimony discounted and Seid either confirming or contradicting Crossfield's testimony (on rec 14, big paragraph) don't we have the situation where one witness is contradicting another - that no conclusion is possible? How can both judges Kaval and Nier (rec 34) base their decisions on singular contradicting testimony when the standard of conviction remains, clear, convincing, and satisfactory. Are there some new legal principles at work here - ones I don't know about?

The next six pages are most related as a statement of facts (and arguments) made at an earlier time. I'm sorry if they (or all of this document) wander, are obtuse, or go off on tangents - it was the best I could do at the time.

I will add one fact to this section from the transcript - page 54 (line 5(?)) witness Seid testifies that his message truck is between Old Seuk road and Greenway Cor. (blvd). This position proves that with road topograph already covered that his message could not have been viewable for the required  $\frac{1}{2}$  mile (MUTCD



This is the brief of appellant defendant Jeffrey K. Crossfield. Sorry for the delay but in early preparation I realized that the circuit court, in omitting the final 13 pages of the cities municipal court brief (rec 9) [please note the Dane Counties Notice of appeal for Inspection of 4-27-15 this document is mistitled as a correspondence. Referencing (rec-9) title page it will be clearly seen that this document is indeed a brief.]

In late preparations for this brief I realized that by not including complete information for the municipal court brief, but including a circuit court document that has a ~~is~~ different length - all my page numbers documenting my defense were wrong! The realization that circuit court Judge Neiss could not have considered this decision are included in my triple motion of 9-8-15 I will add here that by not even being able to check my briefs, Judge could not even have understood the issues of this case. I accept judge Neiss's ruling where he states he has "read" materials for his consideration - but - is that enough? Does a <sup>Rec 34</sup> defendant ~~not~~ have a right to have his argument understood, considered and commented on in the decision? I hope so.



(X)

It may be that the IV district court of appeals may want to take (what I call) original jurisdiction of this case. Since I have not had any response to my triple motion of 9-8-15 I must make some preparation on a brief.

Does anyone see the dangers here?

If appeals courts are forced to function as circuit courts, what of justice? What of citizens deprived of justice because of time and expense? What happens to appeals court workloads? Rec 34 page 2 point 2. The sign at issue was an official traffic sign ... has been proven wrong by city support materials, city and defendant briefs, and statutes.

But the judge could not fully consider my defense because he was using materials with different page numbers. I submit that I have a right to have my brief understood and to have that brief's points discussed and considered by the circuit court judge.

Despite other problems with 34 (the record should show that the warning truck only displayed a message of "Right Lane Closed Ahead" [in letters too small, with a sight distance too short to be considered as an official sign] I am going to let all consideration go for this appeal - except

page 6



for the point that the violation is not citable because the signs alleged to be disregarded - ~~it~~ because they <sup>it</sup> were not officials.

The basis for this alleged violation is St. St. 346.04(2) which requires that signs be official. St St ~~349~~ 349.065 and St St. 84.02(4)e require local authorities to conform with the Manual of Uniform Traffic Control Devices (MUTCD)

Pages 12 through 20 of the original municipal court brief of the city of Madison (the court now has this as it was submitted with my triple motion of 9-8-15) contain significant and relevant points from the manual of Uniform traffic devices. I will go over 2 main issues with guidance noncompliance of this situation. These have already been covered in briefs. I am going to discount the arrow Trucks because they seem to have been dropped from this consideration maybe because they displayed no clear message and they were not visible for the required  $\frac{1}{2}$  mile. See Cities original municipal Court Brief, page 10. This document (COMCBrief) is supplied as part of my triple motion of 9-8-15. Scale on map is 556 ft per inch.

My first point concerning the signs in this consideration being out of compliance with MUTCD guidance



is covered in briefs.

An error seems to have been inserted into the Comc Briefs at the bottom of page 5 and Top of page 6 - Here Eric Harried has been reported as testifying that the sign said - "Right Lane Closed Ahead, Merge Left" is incompetent. Mr Harried testimony was he was driving a "arrow" trash truck close to the workers. His sign displayed a static arrow. Mr Harried could have no direct knowledge of the sign on the message truck that Mr Seid had parked (by policy) 1/4 mile back along the bottleneck. Mr Crawford, and (I believe Mr Seid's testimony was that the only message on Seid's truck was "Right Lane Closed Ahead". How can a witness statement that cannot be supported end up as a fact on Judge Niess's decision? Rec. 34 page 3 part 4.

Letter size on signs is covered in the manual of Uniform Traffic control devices (MUTCD). On (rec 9 page 5) in the last paragraph the madison city attorney claims a 12" letter height for Mr. Seid's sign. Mr Seid's sign does not qualify for small letters under 6F.60(15) since it is not a service patrol truck or emergency response vehicle. Proof that Mr. Seid's truck could not have had even 12" letters is found in the original ~~brief~~ <sup>municipal</sup> ~~and~~ brief of the city of Madison (page 22 and in my brief ~~page 28~~ (rec 12 page 7 final 5 line and page 8 most all. The MUTCD require 18" letters on roadways of 55 mph in their guidance of 6F.60(14) on page 13 of the city of Madison True municipal court brief page 8



In another point concerning these signs non compliance with recommended guidelines of the MUTCD's. This is covered in rec 33 page 2 bottom half. To recap that-by policy Seids truck was  $\frac{1}{4}$  mile back from the work crew, the work crew was before Old Sade Road. <sup>exit</sup> Seids truck was in view of the work crew (Seid testified he saw the work crew). Since Eastbound Hwy 1278 rises in altitude it ~~was~~ not possible to see the Old Sade exit until the entrance ramp from Greenway blvd has almost joined the beltline (see map on the True city of Madison municipal court brief [supplied with my Triple motion of 9-8-15] on page 10. This sight viewing distance thing is not clear on the map but is illustrated by Crossfield testimony and is confirmed by the Madison ACA in his brief (REC-9 page 3) middle paragraphs on the True city of Madison municipal court brief of June 4, 2014. The final paragraph of this same page and document illustrate the  $\frac{1}{4}$  mile set back of Seids truck. Adding up these facts it is clear that Seids truck could not have been visible for the required  $\frac{1}{2}$  mile required by MUTCD 2L.03(04) Guidance. ~~Judge Higginbotham's~~

It is time to consider judge Higginbotham's guidance case listed as appeal No. 2009AP2436 and included in the city of Madison true municipal court brief supplied with my triple motion of 9-8-15 on pages 28-33. Though I think it would be wise to debate a ruling that lets public agencies direct the safety of their citizens with approximate signs, I feel we do not have to here. Either in briefs or rulings, a major point seems to have been missed.

MUTCD's 1A.13B guidance is listed as recommended procedure with deviations ~~from~~ allowed (only) if engineering judgement or engineering study indicates a deviation is appropriate.



Since St St 349.065 and 84.02(4)(e) dictate that local authorities must conform with the ~~man~~ MUTCD's and since neither city witness was acknowledged as an engineer there was no one present at this alleged violation scene who was qualified to adopt the MUTCD - required or recommended. There was no testimony of engineers making any decisions concerning these signs and their use.

My final main consideration (I hope) is guidance offered by the second district court of appeals judge Mettesheim in case 2005AP74. We know that the federal MUTCD has been adopted by St St and that rule set is known as the WMUTCD. This case (like mine) centered on the Wisconsin adoption of MUTCD where the word "shall" (St. St. 349.065) conform to the manual justified a ruling that all MUTCD statements, both requirements and recommended are required, in this state for signs to be official.

HN7 on page 36 of the true City of Madison municipal court brief explain court rational better than I can. In the same document page 36 footnote P10 (please consider the whole paragraph) states 349.065 provides that "all traffic control devices placed and maintained by local authorities shall conform to the manual, we conclude that the MUTCD requirements are mandatory. According to this ruling MUTCD requirements and guidance are mandatory in Wis by the wording of the WMUTCD's.

## Argument -

Since much of my brief was done before I could be organized (at all) my Arguments (such as they are) are mixed in with my earlier sections. I have no time or energy to reformulate this document - Sorry, my brain doesn't seem to work that well as easily as before.

Some of my arguments are so ~~simple~~ simple I have not felt the need to mention them. I suppose this would include the Constitution (the right to a fair and impartial Trial, for example.) The court imposing equitable power so that public institutions are not allowed to impose a will on citizens that they themselves do not merit by actions or standing. That the standard of conviction actually means something and are not just words thrown out to support fund raising schemes of bureaucracies at the expense of their citizens.

## Conclusion

The appeals court knows I am not happy with this case, decision and handling at both the municipal court and circuit court. It is at the circuit court, where a full briefing schedule was ordered and then not even considered. There are indications that my brief's references could not even be checked out. That testimony was written into the decision that was discredited by the witness' other testimony. So for this circuit court case I request the appeals court award me circuit court costs, what ever the overall decision is for this case.

Because both the municipal court and circuit court have ruled the message on the sign incorrectly or at least their rulings are not justifiable because one witness contradicts another I ask that this case be partially to completely overturned. It is not supportable that a road worker 4 mile down the road can competently testify about the message on a sign that was facing the other way.

That in two ways the sign in question did not meet the MUTCD's recommended standards. I ask that this conviction be overturned.

Since neither highway workers were Engineers, and there was no testimony or even a reference in a brief that Engineers were involved in this sign's deviation from standards, I ask that this conviction be overturned.

While the manual of Uniform Traffic Control devices has mandatory and recommended procedures for signage the Wisconsin adopted version (W MUTCD) has structurally used the term - "shall comply ..." as its authority. Since the word "shall" has legal meaning and direction that (I propose) means all the MUTCD is required, and since two ways have been proven that this situation did not comply with a regulation guideline I ask the appeals court to dismiss (or overturn) this case.

Thank you,

Off. of K. Cooper

9-17-2015

## Form and length certification

I certify that this brief is a lot less than 11,000 words and is less than 10-12 pages long.

Spacing and font requirements are irrelevant to this brief since it has been hand printed. I would have liked to have written this more formally but the functions of our cloud computer and printer still elude me. Sorry, I'm doing the best I can. I have not had the capability to formally print this brief.

## Appellants Brief Appendix certification and appendix

I certify that this appendix fulfills ~~the~~ my understanding of the needs of this court. Most simply, the record already contains information for the courts consideration and I do not feel that redundancy will help anyone. ~~Offy 92 Amfs 9-11-15~~

I am including the document list from (rec 36) as an index. Please be aware that document 9, listed at 27 pages actually contained 40 pages. Since my briefs alluded to page numbers in this original brief I have kept using it. My briefs refer to this original correct brief as the original city of Madison municipal court brief (or similar). I would consider putting this document in the Appendix but it has already been supplied by my triple motion of 9-8-2015

Appendix Table of contents -

Page A-1 and A-2 a list of documents already in the record. page 13