

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP793

Cir. Ct. No. 2013TR2193

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

COUNTY OF BARRON,

PLAINTIFF-RESPONDENT,

V.

DANIEL E. ADAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Barron County:
MAUREEN D. BOYLE, Judge. *Affirmed.*

¶1 HRUZ, J.¹ Daniel Adams, pro se, appeals a judgment convicting him of exceeding a speed limit in violation of WIS. STAT. § 346.57(5). Adams

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 versions unless otherwise noted.

argues: (1) the relevant speed limit sign was unofficial because there was not an established thirty-five miles-per-hour speed limit where he was stopped; (2) the circuit court lacked impartiality; and (3) he was prejudiced by the circuit court's decision not to grant a continuance. We affirm.

BACKGROUND

¶2 On August 25, 2013, Adams was driving south on 19th Street, which is the boundary between the Town of Rice Lake and the City of Rice Lake. Barron County sheriff's deputy Shane Jilek stopped and cited Adams for driving fifty-four miles per hour in violation of the posted, thirty-five miles-per-hour speed limit.

¶3 Adams pleaded not guilty and proceeded to a bench trial before Reserve Judge Benjamin Proctor. Adams and Jilek each testified at the October 29, 2013 trial. The case was continued, after which Adams was found guilty of speeding in violation of WIS. STAT. § 346.57(5). Section 346.57(5) reads: "**Zoned and posted limits.** In addition to complying with the speed restrictions imposed by subs. (2) and (3), no person shall drive a vehicle in excess of any speed limit established pursuant to law by state or local authorities and indicated by official signs." However, the court subsequently vacated the conviction for reasons explained below.

¶4 A second bench trial was held on March 4, 2014, before Judge Maureen Boyle. Adams protested the de novo nature of the new proceeding, asserting he had prepared for a continuation. Judge Boyle explained she notified both parties by a February 25 letter that the upcoming proceeding would be a new trial. She further clarified:

I think that Judge Proctor has explained that he believed that he originally made an error in accepting the case law that you had submitted; because it was actually unpublished case law, and he felt that he had cut you off because of that case law; and he wanted to ensure that you had the opportunity to have a complete trial So because this will involve a determination of credibility, I do have to hear all the testimony, which is why we have to start over today.

¶5 Jilek and Adams each testified again. Jilek testified that he obtained a radar reading of fifty-four miles per hour from Adams' vehicle, and that the speed limit where Adams was driving was thirty-five miles per hour, as marked by a speed limit sign. Jilek testified that Adams admitted to driving approximately fifty-five miles per hour and said he slowed down upon seeing the posted thirty-five miles-per-hour sign. Jilek stated that Adams' speed "dropped really rapidly" when he activated his radar unit, and that he noticed during the traffic stop that Adams had a radar detection unit on his dashboard. During Adams' cross-examination, he objected to a line of questioning concerning the radar detection unit. The court overruled his objection, explaining, "I think it goes to your intent—well, not your intent, but it goes to your knowledge Knowledge of speed. It also goes to your credibility a little bit"

¶6 Adams argued the posted speed limit sign was not official because there was no law, ordinance, or regulation in the City of Rice Lake or the Township of Rice Lake that set a thirty-five miles-per-hour speed limit at that location. As a result, Adams asserted, the applicable speed limit was fifty-five miles per hour, pursuant to WIS. STAT. § 346.57(4)(h), which states: "[N]o person shall drive a vehicle at a speed in excess of the following limits unless different limits are indicated by official traffic signs: ... In the absence of any other fixed limits or the posting of limits as required or authorized by law, 55 miles per hour."

¶7 In support of his argument, Adams offered the meeting minutes from a “Joint Information Session for the Purpose of Discussing the Speed Limit on 19th Street.” Upon the County’s objection, Adams argued he would have brought a witness to testify to the document’s contents if he had known the trial was not going to be a continuation of the original proceeding. Adams directed the court to his letter requesting dismissal, which concluded, “Failing that I would request more time since I would need to subpoena witnesses to the speed limits [sic] illegality which I have not done so far, since I assumed that the laws spoke for themselves and I would not have to prove a negative.” The court reviewed Adams’ letter and allowed the meeting minutes into evidence. Adams relied on a portion of the document in which the meeting participants agreed to recommend changes to the speed limit at different parts of 19th Street—but only up to 22nd Avenue, which is where Adams was stopped. Adams alleged that, based on this portion of the minutes, the speed limit defaulted to fifty-five miles per hour in accordance with WIS. STAT. § 346.57(4)(h).

¶8 At the conclusion of the trial, the circuit court determined Adams was traveling at fifty-four miles per hour in a thirty-five miles-per-hour zone when he was stopped. The court addressed a Town of Rice Lake ordinance Adams had offered to show 19th Street was not included under the heading of streets with a thirty-five miles-per-hour limit. The court determined the ordinance itemized those streets whose speed limits had been modified, but did not display the speed limits for each of the Town’s roadways.

¶9 With respect to the meeting minutes, the court was not persuaded by the portion of the document on which Adams relied, but it found relevant an earlier part of the document stating, “The town then worked with Mark Bauker from the Dept. of Transportation in Superior who approved the town’s ordinance

setting the speed limit at 35 mph.” The court also determined the meeting minutes did not state that the Township was not allowed to reduce the speed limit to thirty-five miles per hour as Adams argued, but rather:

A commonsense reading of this document indicates that the speed limit at the time of this meeting was 35 miles an hour; that there were some people who thought it should go up to 45 miles an hour; and that after discussion and questioning, including questions of the Sheriff, who would be required to enforce that speed limit, that the parties agreed to recommend to the Town Board and to the City Council to follow the State’s recommendations So I don’t see anything in here, Mr. Adams, that indicates that ever happened. We have no documentation from a Council meeting after the fact, even by the Rice City Council or the Township indicating that they did indeed raise it to 45 miles an hour.

The court determined the posted sign was “official” and held that the County proved by clear, satisfactory, and convincing evidence that Adams was traveling nineteen miles per hour over the speed limit. This appeal follows.

DISCUSSION

¶10 On appeal, Adams sets forth three primary arguments. First, he challenges the sufficiency of the evidence to support his conviction. Second, Adams argues the court demonstrated a lack of impartiality during his second bench trial with its statement overruling his objection to testimony about his radar detection unit. Third, Adams contends he was prejudiced by the circuit court’s decision not to grant a continuance to procure witnesses before his second trial.

¶11 In considering the sufficiency of the evidence, “our task as a reviewing court is limited to determining whether the evidence presented could have convinced a trier of fact, acting reasonably, that the appropriate burden of proof had been met.” *City of Milwaukee v. Wilson*, 96 Wis.2d 11, 21, 291

N.W.2d 452 (1980). Whether the evidence presented at trial is sufficient to support the conviction is a question of law we review de novo, *see State v. Booker*, 2006 WI 79, ¶12, 292 Wis. 2d 43, 717 N.W.2d 676; however, the circuit court’s findings of fact will not be disturbed unless they are clearly erroneous, WIS. STAT. § 805.17(2).

¶12 A conviction for speeding in violation of WIS. STAT. § 346.57(5) requires clear, satisfactory, and convincing evidence that: (1) the defendant drove a vehicle on a highway; (2) the defendant drove the vehicle at a speed which exceeded the speed limit established by law; and (3) the established speed limit was indicated by official signs. WIS JI—CRIMINAL 2678 (2010); *see also* WIS. STAT. § 345.45.

¶13 Adams contests the second two elements, arguing that he did not exceed the speed limit because:

The evidence presented at trial showed that no local ordinance nor state statute authorized the 35 MPH Speed limit sign on 19th Street. Therefore, it does not conform to the requirements of the [federal Manual of Uniform Traffic Control Devices] ... thus the sign was not an official sign as required for a conviction under WIS. STAT. § 346.57(5).

¶14 Adams’ arguments fail. Our supreme court has instructed that “[t]he posting of state speed-limits signs makes applicable the common-law presumption that state authorities properly performed their official duties in establishing such speed limits.” *State v. Zick*, 44 Wis. 2d 546, 551, 171 N.W.2d 430 (1969). It further noted “[t]his common-law presumption that public officials have complied with all statutory requirements in performing their duties is well established in this state.” *Id.*

¶15 None of Adams’ arguments overcome the presumption that public officials complied with all statutory requirements in performing their duties such that the posted speed limit at issue was established pursuant to law. The circuit court observed that City and Town officials discussed changing 19th Street’s speed limit. The court determined the meeting participants agreed to recommend raising the limits at various parts of 19th Street. However, it found no evidence that the City or Town had acted beyond agreeing to make a recommendation. The court made a finding of fact that, instead, the meeting minutes referred to a thirty-five miles-per-hour speed limit that had been set by town ordinance.

¶16 Further, Adams’ argument ignores what makes a sign “official.” WISCONSIN STAT. § 340.01(38), which WIS. STAT. ch. 346 expressly incorporates, *see* WIS. STAT. § 346.01(1), defines “Official traffic control device” as “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.’” Thus, an official traffic sign is one erected by the proper authority. There is no evidence in the record that the proper authority did not erect the speed-limit sign at issue such that it was not an official sign. There also is no evidence that the sign at issue deviated from the design and installation requirements mandated by the Manual on Uniform Traffic Control Devices, pursuant to WIS. STAT. § 349.065.

¶17 In addition, the circuit court, acting as the fact finder, found Jilek’s testimony credible. *See Gehr v. City of Sheboygan*, 81 Wis. 2d 117, 122, 260 N.W.2d 30 (1977) (when acting as the fact finder, the circuit court is the ultimate arbiter of a witness’s credibility). Jilek testified that his radar detected Adams driving at a speed of fifty-four miles per hour. Jilek also testified that Adams was

driving in a thirty-five miles-per-hour speed limit zone, marked by a posted speed-limit sign. We are satisfied there was clear, satisfactory, and convincing evidence presented at trial that could have convinced a trier of fact, acting reasonably, that Adams exceeded a speed limit in violation of WIS. STAT. § 346.57(5).

¶18 Regarding Adams' arguments that the court lacked impartiality and erred in denying his request for a continuance, both arguments are wholly undeveloped and lack citation to legal authority. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we may decline to review issues inadequately briefed; arguments unsupported by references to legal authority will not be considered).² Furthermore, decisions to grant or deny an evidentiary motion or a motion for a continuance are committed to the court's discretion, and we are not persuaded that the court erroneously exercised its discretion. *See Rechsteiner v. Hazelden*, 2008 WI 97, ¶128, 313 Wis. 2d 542, 753 N.W.2d 496 (citations omitted).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

² Pro se litigants are “bound by the same rules that apply to attorneys on appeal.” *Waushara Cnty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992).

