COURT OF APPEALS
DECISION
DATED AND FILED

August 20, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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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. 2025AP1228 **Cir. Ct. No. 2024TR12495**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMY KRIS POOL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: DAVID D. CONWAY, Judge. *Modified and, as modified, affirmed; cause remanded with directions.*

¶1 BLANCHARD, J.[1] Jeremy Pool appeals an adjudication of guilt on a speeding violation in this civil forfeiture case, raising two issues.

¶2 Pool contends first that the circuit court erred when it amended the charge mid-trial to reflect a violation of a posted 55-mph speed limit, as opposed to a violation of the default 55-mph limit that applies when no limit is posted on a rural highway. I conclude that the court did not err in amending the alleged violation during trial.

¶3 Second, Pool argues that there was insufficient evidence to justify the circuit court's determination that he was driving 20 or more miles per hour over 55, which would result in additional demerit points against his driver's license. I conclude that there was insufficient evidence to support the court's determination that he was driving more than 20 miles per hour over the applicable limit of 55.

¶4 Accordingly, the adjudication of guilt for speeding stands, but the judgment must be modified in part and remanded with directions that the circuit court notify the Wisconsin Department of Transportation that the demerit points applied here should not reflect a speeding violation of 20 or more miles per hour in excess of the limit.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

BACKGROUND

¶5 A state trooper driving a fully marked squad vehicle on a rural highway noticed a van approaching from the opposite direction. On this stretch of the highway, there was a posted speed limit of 55 mph.

¶6 The trooper testified that he observed this van "create distance from a vehicle that was behind it at a high rate of speed. [The van] was moving pretty quickly." While the van was still approaching the trooper's vehicle, the trooper visually estimated that it was traveling faster than 55 mph. The trooper activated a radar device and pointed it in the direction of the van. The radar gave three readings over the course of three seconds. Each reading indicated that the van was traveling at 88 mph.

¶7 The trooper stopped Pool. Pool told the trooper that he had been attempting to distance himself from a vehicle that had nearly struck him from behind. Pool admitted that he had been driving "way too fast" and that he had exceeded the speed limit. Pool also told the trooper, and again testified at the trial, that he could not imagine that he had been driving faster than 62 mph.

¶8 The case was tried to the circuit court. At the beginning of trial, the court asked the parties whether they agreed that WIS JI–CRIMINAL 2674 provides the applicable legal standards. That jury instruction addresses violations of WIS. STAT. § 346.57(3), which requires drivers to reduce speed when encountering certain enumerated potential hazards such as railway grade crossings, curves, hillcrests, and the like. Pool's counsel suggested that WIS JI–CRIMINAL 2677 is better suited to the case. That instruction is based on § 346.57(4)(h), which prohibits driving faster than 55 mph on a highway not located within a city or village or certain other developed areas, and where no speed limit is posted.

§ 346.57(1), (4)(f), (g), and (h). The court agreed to apply the law as stated in WIS JI–CRIMINAL 2677.

¶9 After the State rested, Pool moved to dismiss the case. He pointed out that the evidence showed that the stretch of highway at issue had a posted speed limit of 55 mph, and based on this argued that the requirements of a violation of WIS. STAT. § 346.57(4)(h) could not be established. The prosecutor argued that § 346.57(4)(h) applies here, despite the fact that there was a posted speed limit of 55, but added that if the circuit court was "stuck on" that issue, the State would "be happy to" make a motion for the court "to amend to … [§ 346.57(5)]," which prohibits driving in excess of any posted speed limit. Pool opposed the proposed amendment on the ground that the case had been pending for 10 months, and suggested that it was "too late" for the court to recognize the State's assertion that § 346.57(5) applies.

¶10 The circuit court explained in the following terms why it would apply the legal standards in § 346.57(5):

> I … looked to Wisconsin Statute 802.09 which governs the amendment of pleadings in civil matters. This being a forfeiture case, the civil rules apply, and that statute says that "A party may amend a pleading only by leave of Court. Leave shall be freely given at any stage of the action when justice so requires."
>
> Here, you know, we've gotten to the middle of [trial]. This is a purely technical issue. The [S]tate has put sufficient evidence of a violation under the jury instructions for either of these statutory subdivisions, and at the end of the day, what we're trying to determine is whether Mr. Pool was driving over the speed limit on the date and time in question.
>
> … [W]hat I'm going to do is … grant the [S]tate's motion to amend because justice does require, even at this late stage of the case, that the amendment be allowed, and that way, we can grant the defense's request to apply the

> correct law which [the defense] believes is subparagraph (5). I'm going to therefore apply, at the conclusion of this trial, the law set forth in jury instruction 2678 which is applicable to Wisconsin Statute [§] 346.57(5). The motion to dismiss is denied therefore.

¶11 Pool then presented a defense. He was the sole witness. As previously noted, he admitted that he had been driving faster than 55 mph, but testified that he did not drive faster than 62 mph.

¶12 After hearing closing arguments, the circuit court explained its decision that the evidence showed by clear and convincing evidence that Pool had been driving faster than 55 mph, noting that Pool had admitted this fact both during the traffic stop and in his trial testimony.

¶13 The circuit court then said that it was obligated to determine Pool's highest speed. The court noted that the trooper's radar device had measured Pool's speed at 88 mph. But the court agreed with Pool's argument that the State had not shown that the radar readings satisfied the five criteria contained in ***State v. Hanson***, 85 Wis. 2d 233, 245, 270 N.W.2d 212 (1978), which are quoted in discussion below. In accord with ***Hanson***, the court concluded that it could not rely on the radar readings in determining whether Pool drove faster than 55 mph. The court continued:

> That leaves us with a question of how do we determine how fast Mr. Pool was traveling at the time? I think certainly he himself admitted to the trooper … that he was traveling I think his exact phrase was way too fast. Mr. Pool testified that day that he couldn't imagine he was going faster than 62 miles [per] hour, but that's not credible in light of what he said in the video. We do have a radar reading that I can't rely on because it hasn't been established but that showed 88 miles [per] hour … and we also have [the trooper]'s testimony, based on his training in the academy, that he observed the vehicle to be moving quite quickly, and that's what caused him to pull on his radar.

> I will conclude, based on that evidence, that a reasonable estimation of how fast Mr. Pool was traveling was 75 miles [per] hour at the time of the incident, and that will be the judgment of the Court.

¶14 Pool appeals.

DISCUSSION

I. The circuit court properly amended the charge to conform to the evidence at trial.

¶15 The proposed amendment of the alleged violation of a state statute in a traffic case is governed by the rules of civil procedure. ***State v. Peterson***, 104 Wis. 2d 616, 621, 312 N.W.2d 784 (1981). As the circuit court here recognized, the relevant statute is WIS. STAT. § 802.09. That statute permits a party to amend a pleading "by leave of court," and provides that leave "shall be freely given at any stage of the action when justice so requires." § 802.09(1).[2] Whether to allow the amendment of pleadings is a discretionary decision for the circuit court. ***Gustavson v. O'Brien***, 87 Wis. 2d 193, 205, 274 N.W.2d 627 (1979).

¶16 On appeal, Pool does not renew the argument he made in the circuit court that the State made its request to amend the pleadings "too late" during the progress of the case. Nor does he contend that he was prejudiced by the court's decision to grant the State's request to amend. The State's request did not involve either Pool's undisputed conduct (driving faster than 55 mph), nor the rule of law

[2] The following subsection, WIS. STAT. § 802.09(2), controls the amendment of pleadings to conform to the evidence by "express or implied consent of the parties" or when a party objects that evidence sought to be introduced is not relevant to the pleadings. *See* ***State v. Peterson***, 104 Wis. 2d 616, 629-35, 312 N.W.2d 784 (1981) (expounding on the meaning of this provision). The parties dispute whether § 802.09(2) applies here, but I need not resolve that dispute because I conclude that the alleged violation was properly amended under § 802.09(1).

that made this a violation (the 55-mph speed limit). Instead, the request involved only the source of the rule of law that he was prohibited from driving faster than 55 mph: whether it arose from the posted speed limit or was instead a default in the absence of a posted speed limit.

¶17 Rather, Pool's argument is that the circuit court erred in amending the pleadings because, he contends, WIS. STAT. § 802.09(1) permits such an amendment only at the request of a party, and here, the State made no such request. Assuming without deciding that § 802.09(1) does not permit amendment of pleadings without a request from a party, I conclude that the State made such a request here.

¶18 To recap, the circuit court and the parties began, mid-trial, to discuss whether the pertinent violation would be of WIS. STAT. § 346.57(4)(h), of § 346.57(5), or of both. The prosecutor contended that § 346.57(4)(h) applies, but the prosecutor also noted that pleadings can be amended during trial. The prosecutor then made a contingent proposal: if the court thought that the only possible violation could be of § 346.57(5), then the State "would be happy to move to amend" the alleged violation to be of § 346.57(5). That is, *if* the court concluded that the law as stated in § 346.57(5) is the applicable law, *then* the State would request that the court apply it. In its subsequent remarks, the court made clear that it viewed § 346.57(5) as fitting the facts of the case, and this satisfied the contingency under which the State would make the motion to amend. Consistent with this, the court granted what it referred to as "the [S]tate's motion to amend because justice [did] require" that the court do so. Moreover, after the court announced this decision, the State did nothing that would suggest that the court had misinterpreted the State's intent but instead proceeded on the legal theory that the court determined applies here.

¶19 Pool argues that the statements of the prosecutor cannot be construed as a request to amend the pleadings, because "[n]o party would move to amend its complaint to encompass a statute it did not believe was applicable." This argument, framed in terms of the "belief" of a party, is difficult to process. As best I can tell, the argument seems to be premised on the proposition that the prosecutor argued to the circuit court that WIS. STAT. § 346.57(5) could not apply here. But this premise is false. The transcript reveals that the prosecutor said that the court could apply either § 346.57(5) or § 346.57(4)(h). This was a logical position to take, given that the court had signaled its view that amendment would better support the State's case.

¶20 In sum on this issue, I reject Pool's only challenge to the circuit court's decision to allow the violation to be amended because the transcript demonstrates that the State made a motion, albeit a contingent one.

II. There was insufficient evidence to support the circuit court's finding that Pool was driving 75 mph or more.

¶21 Pool does not dispute that the trial evidence—including his own statements to the trooper and his trial testimony—provided clear and convincing evidence that he drove faster than 55 mph. *See* WIS. STAT. § 345.45 (setting standard of proof in traffic regulation cases at the middle "clear, satisfactory and convincing" burden). Instead, Pool contends that there was insufficient evidence to support the circuit court's specific conclusion that he hit a speed of 75 mph or faster. I agree that there was not sufficient evidence when the moving radar readings are ignored, as they must be, and therefore the court's determination on this point does not rest on a reasonable inference.

¶22 In a trial to the circuit court, the court's "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [circuit] court to judge the credibility of the witnesses." WIS. STAT. § 805.17(2). "Under the clearly erroneous standard, 'even though the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a reasonable person to make the same finding.'" ***Royster-Clark, Inc. v. Olsen's Mill, Inc.***, 2006 WI 46, ¶12, 290 Wis. 2d 264, 714 N.W.2d 530 (quoted source omitted).

¶23 When the circuit court acts as the trier of fact, the court "is the ultimate arbiter of the credibility of witnesses." ***Stevenson v. Stevenson***, 2009 WI App 29, ¶14, 316 Wis. 2d 442, 765 N.W.2d 811.

¶24 Reviewing courts will not reject a reasonable inference drawn by the trier of fact. ***Global Steel Prods. Corp. v. Ecklund Carriers, Inc.***, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. The appellate court searches the record for evidence to support findings made by the circuit court, and "not for findings that the [circuit] court could have made but did not." ***Id.*** Circuit court findings are sustained "unless they are inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts." ***Id.***

¶25 Bearing those review standards in mind, I clarify at the outset on this issue that, although the circuit court identified a precise number—75 mph—as its estimate of Pool's speed, proof of a precise speed was not required for Pool to face the additional consequences that were imposed on him. *See* WIS. ADMIN. CODE § Trans 101.02(1)(j) (through July 2026) (imposing six demerit points for those found guilty of driving at 20 or more miles per hour over the speed limit). Thus,

the court's finding on this point can reasonably be interpreted as an assessment that there was clear and convincing evidence that Pool drove 75 mph or faster, such that the additional penalty applied, rather than a determination that Pool drove exactly 75 mph or any specific higher number. In cases in which a motorist's speed affects the consequences to be imposed on the motorist, "the exact rate of speed found need not conform to the rate of speed stated in the ticket," but a court's estimate of the actual speed "is important in determining the punishment and points and must be proved." ***State v. Zick***, 44 Wis. 2d 546, 550, 171 N.W.2d 430 (1969).

¶26 With those clarifications, I conclude that the record does not support a reasonable inference that Pool traveled 75 mph or faster. Put differently, the evidence would not permit a reasonable person to make the same finding as the circuit court. This is because the State did not demonstrate that the moving radar readings satisfied all five of the criteria established in ***Hanson***, 85 Wis. 2d at 245, and, absent the radar readings, there is not sufficient evidence that could support a determination that the van reached any particular rate of speed, except that it was greater than 55 mph by some appreciable amount. I now explain my conclusion on this issue further.

¶27 When it came to deciding whether the State introduced sufficient evidence to show that Pool drove faster than 55 mph, the circuit court properly concluded that the State's failure to meet the ***Hanson*** criteria prevented the court from considering the 88-mph radar reading. Instead, the court explicitly relied only on the trooper's visual observations and Pool's admissions in deciding the speeding-or-not issue.

¶28 Similarly, the circuit court was also prohibited by ***Hanson*** from taking into account the radar readings in addressing the degree to which Pool drove faster than 55 mph. Therefore, if the court took the radar readings into account to any degree, this would have run contrary to ***Hanson*** and ***Zick***, 44 Wis. 2d at 549-50. The State does not argue that there is an exception to the ***Hanson*** rule when it comes to determining a motorist's speed for penalty purposes. This calls for a more detailed discussion of ***Hanson***.

¶29 Police use of "moving radar" was new in Wisconsin at the time of the arrest in ***Hanson***. 85 Wis. 2d at 239. As the labels suggest, moving radar and stationary radar differ based on whether the device is in motion or still at the time of the reading. Moving radar makes two speed measurements: the apparent speed of the targeted vehicle from the perspective of the law enforcement officer's moving vehicle, and the speed of the law enforcement officer's vehicle. The device arrives at a speed for the target vehicle by adding or subtracting the measured speed of the officer's vehicle, depending on whether the measurement occurs, as here, with the two vehicles approaching each other, or instead when both vehicles are traveling in the same direction. ***Id.*** In contrast, stationary radar is to be deployed when the device may attribute the speed of 0 mph to the person taking the reading of the target vehicle.

¶30 The ***Hanson*** court determined that the underlying principles of radar speed detection—relying on the Doppler effect—were sufficiently well established at the time of ***Hanson*** that courts could take judicial notice of their reliability. For this reason, the court stated, expert testimony was not necessary for a radar reading to be admissible. ***Id.*** at 244-45. However, the court also stated that the "accuracy of any speed radar device is another matter." ***Id.*** at 245. The "application of any virtually undisputed scientific fact to the immediate

surrounding conditions must be explained in ascertaining its accuracy." ***Id.*** The court went on to direct that "in Wisconsin a prima facie presumption of accuracy sufficient to support a speeding conviction will be accorded to moving radar" only in those cases in which a "competent, operating police officer" is able to supply testimony establishing each of five criteria:

> 1. The officer operating the device has adequate training and experience in its operation.
>
> 2. That the radar device was in proper working condition at the time of the arrest. This will be established by proof that suggested methods of testing the proper functioning of the device were followed.
>
> 3. That the device was used in an area where road conditions are such that there is a minimum possibility of distortion.
>
> 4. That the input speed of the patrol car must be verified, this being especially important where there is a reasonable dispute that road conditions may have distorted the accuracy of the reading (*i.e.*, presence of large trucks, congested traffic and the roadside being heavily covered with trees and signs).
>
> 5. That the [radar device] should be expertly tested within a reasonable proximity following the arrest and that such testing be done by means which do not rely on the radar device's own internal calibrations.

Id.

¶31 In this case, the circuit court observed that the trooper's testimony satisfied the first three ***Hanson*** criteria, but that there had been no evidence given that the "input speed" of the patrol car had been verified, as required under the

fourth ***Hanson*** criterion.[3] In the absence of this verification, the accuracy of the radar device's measurement of Pool's speed depends entirely on the unverified accuracy of the device's measurement of the squad vehicle's speed.[4] ***Hanson*** established that courts may not assume the accuracy of this measurement. The effect of the fourth criterion is to deny a "presumption of accuracy sufficient to support a speeding conviction" when the input speed of the patrol car has not been verified. ***Id.*** Notably for current purposes, this is framed in ***Hanson*** as an all-or-nothing proposition: if the criteria are not met, then moving radar readings cannot be relied on at all in a speeding case. ***Id.*** It would be for our supreme court or the legislature to change this rule.

¶32 Bearing in mind all of this regarding ***Hanson***, the transcript in this case is ambiguous in reflecting the circuit court's reasoning about how ***Hanson*** applies to the issue of evidence that the court could rely on in determining Pool's maximum speed. The court said that it recognized that it was not permitted under ***Hanson*** to "rely on" the 88-mph radar readings to "support a speed[ing] conviction." Yet, in turning to the specific rate-of-speed issue, the court might have fallen back on the radar readings, at least to some extent. The court said, "We do have a radar reading that I can't rely on because it hasn't been established

[3] The circuit court also concluded that the fifth criterion was not satisfied, even though the trooper testified that he tested the radar device using tuning forks at the beginning and end of every shift. At least on its face, this testimony would seem to satisfy the fifth criterion as expounded in ***State v. Kramer***, 99 Wis. 2d 700, 705, 299 N.W.2d 882 (1981). But the court's conclusion that the fourth criterion was not satisfied appears sound, and the State does not argue otherwise. Therefore, it makes no difference to the analysis whether the fifth criterion was satisfied.

[4] The ***Hanson*** discussion suggests that such "verification" may be accomplished by comparing the radar device's measurement of the squad's speed to that indicated by the squad's speedometer. ***State v. Hanson***, 85 Wis. 2d 233, 244, 270 N.W.2d 212 (1978). As the circuit court noted, here the trooper's testimony did not describe using this or any equivalent procedure.

but that showed 88 miles [per] hour." (Emphasis added.) The "but" could signal that the number 88 is so large that, even if the moving radar could not be relied on heavily or in a granular sense, it supported pushing up the speed estimate. In other words, it could be that the court weighed the radar readings to a slight degree, trying to avoid heavily relying on them. But there is an alternative interpretation. The court may have taken note of the radar readings simply to emphasize that they could not play any role in the court's estimate of Pool's highest speed. Whatever the court meant to convey, I conclude that the totality of the evidence that the court could properly rely on was insufficient to estimate Pool's speed at or above 75 mph.

¶33 To repeat, the circuit court correctly recognized that, since the moving radar readings did not comply with ***Hanson***, they could not establish that Pool exceeded 55 mph. Nevertheless, there were other facts in the record—including both the trooper's observations and Pool's consistent admissions that he drove faster than 55 mph—that permitted the court to conclude that a speed greater than 55 mph was proved by clear and convincing evidence. As I now explain further, the same cannot be said of the court's conclusion that the van was moving at least 75 mph.

¶34 The trooper made a visual observation that the van was "moving pretty quickly" and opening the distance between itself and the vehicle behind it at a "high rate of speed." So far as the record reveals, there is no basis to conclude that "pretty quickly" and "high rate of speed" could not have been, say, 70 mph. "Pretty" and "high" could be described as relatively mild adjectives, and in any case they are vague.

¶35 The trooper testified that he had been trained on making a visual estimation of a vehicle's speed. Asked directly if he had visually estimated the van's speed, the trooper replied that he "estimated it going faster than the posted speed limit," a statement he later repeated. The trooper's testimony is thus evidence that, to the trooper's trained eye, the van was traveling appreciably faster than 55 mph. But the trooper did not give any testimony that the van was moving at any particular speed faster than 55 mph, or any testimony showing clearly and convincingly that it went 75 mph or faster.

¶36 Similarly, while Pool both told the trooper on the scene and testified that he had been going faster than 55 mph, he did not give any testimony that could justify a factual finding that he was going 75 mph or faster. He admitted he had been driving "way too fast" but estimated his own speed at 62 mph. As Pool points out on appeal, this was the only concrete approximation offered by either side at trial for Pool's maximum speed. The circuit court was free to—and did—find that Pool's approximation was not credible. But, the court's rejection of the 62-mph estimate does not constitute evidence that Pool's speed was actually 75 mph or greater. *See* ***State v. Nichelson***, 220 Wis. 2d 214, 223-24, 582 N.W.2d 460 (Ct. App. 1998) ("negative inference" based on incredibility of testimony not sufficient to find contrary proposition by clear and convincing evidence). That is, the court's finding that Pool was deceptive, or at least inaccurate, when he testified that he drove no faster than 62 mph could mean only that he actually drove faster than 62 mph. This deception or inaccuracy could not in itself support a finding that he drove at any particular speed faster than 62 mph.

¶37 As for Pool's "way too fast" statement, this is too indefinite and subjective to support a conclusion that he was exceeding the speed limit by any particular amount, such as 20 mph. *See* ***City of Milwaukee v. Berry***, 44 Wis. 2d

321, 324, 171 N.W.2d 305 (1969) (noting that a characterization of a vehicle as moving "real fast" is not sufficiently probative to support a determination of speed). The phrase "way too fast" certainly conveys the idea of traveling solidly over the speed limit. But it could not reasonably be given numerical content beyond some number meaningfully or noticeably above 55 mph.

¶38 The State asserts that there was other evidence supporting the circuit court's conclusion that the van was traveling 75 mph or faster, but its argument on this point consists of simply reciting the ***Hanson*** criteria that were satisfied by the trooper's testimony. And, as the State acknowledges, under ***Hanson*** all five criteria must be satisfied in order for the radar readings to be deemed accurate, and thus permissible to use in determining speed. The satisfaction of some, but not all, the criteria does not permit some residual or slight reliance on the radar readings. ***Hanson*** prevented the court from relying on the radar readings even slightly. And, what remained simply did not support a reasonable inference that the van was going 75 mph or greater. Therefore, the court's finding that there was clear and convincing evidence that Pool exceeded the speed limit by 20 mph or more cannot stand.

¶39 The outcome here might well have been different if the trooper had given a well-supported estimate of 75 mph, based on his observations and training, in testimony credited by the circuit court. *See* ***Berry***, 44 Wis. 2d at 324 (stating that "if there is a reasonable basis upon which speed can be judged, the weight or probative value of the opinion will depend upon the factors of position, length of observation, existence of reference points, the experience of the witness in judging speed and other relevant facts"). The court in ***Berry*** explained that, when "the testimony of the police officer on speed [is] probative, [the appellate court] will not quarrel with the weight given it by the trier of the fact." ***Id.*** at 325. But here,

the trooper gave no speed estimate of the van at all, apart from testifying to the opinion that it was traveling appreciably over 55 mph.[5]

By the Court.—Judgment modified and, as modified, affirmed; cause remanded with directions.

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

[5] For relief, Pool asks that the judgment of the circuit court "be reversed, and this action should be remanded to the Circuit Court with instructions to dismiss or, in the alternative, to determine a rate of speed consistent with the evidence provided at trial." Given my decision on the first issue, however, dismissal of the speeding violation would not be appropriate. As for Pool's alternative request for relief, no further proceedings regarding the rate-of-speed issue are called for. I have explained my conclusion that the State failed at trial to introduce evidence regarding Pool's maximum speed beyond raising a reasonable inference that he traveled an appreciable amount over 55 mph, and the State on appeal does not argue that it should have another opportunity to prove to the circuit court that Pool drove any particular speed over 55.