

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 20, 2002**

Cornelia G. Clark  
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. 01-0678**

**Cir. Ct. No. 00-TR-3475**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOHN D. EWASIUK,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Monroe County: STEVEN L. ABBOTT, Judge. *Affirmed.*

¶1 ROGGENSACK, J.<sup>1</sup> John Ewasiuk appeals his conviction for speeding following a jury trial and the circuit court's order denying his motion for

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). In addition, all references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

a new trial. We conclude that the circuit court did not erroneously exercise its discretion in admitting into evidence a photocopy of the radar log used by the officer who issued the traffic citation. We further conclude that in the absence of a constitutional or statutory right to counsel, Ewasiuk may not raise ineffective assistance of trial counsel as grounds for reversal on appeal. Accordingly, we affirm the judgment and order of the circuit court.

### **BACKGROUND**

¶2 On August 29, 2000, State Patrol Officer John R. LeGault issued a traffic citation to Ewasiuk after he observed Ewasiuk's truck traveling at seventy-one miles per hour in a fifty-five mile-per-hour zone. The citation charged Ewasiuk with driving in excess of the posted speed limit, contrary to WIS. STAT. § 346.57(4)(h). Ewasiuk retained counsel and requested a jury trial to contest the citation.

¶3 During LeGault's trial testimony concerning the radar equipment that he used to clock Ewasiuk's speed, the State sought to mark as an exhibit a photocopy of LeGault's "daily radar log," which purportedly tracked the timing and results of radar calibration tests that LeGault had performed on the day Ewasiuk received his citation. Ewasiuk's attorney objected to the exhibit on the basis that the photocopy failed to conform to the best evidence rule. In particular, Ewasiuk's attorney stated that the photocopy appeared to show that whiteout had been used on the original document. He argued that without being able to see the original, he was concerned about the accuracy of the copy and his ability to properly cross-examine the witness.

¶4 The court overruled Ewasiuk's objection, but it also ruled that Ewasiuk would be permitted to cross-examine LeGault as to the apparent use of

whiteout on the document. During cross-examination, Ewasiuk's attorney did not question LeGault about the whiteout marks. Following LeGault's testimony, the court admitted the radar log into evidence, but it was not sent to the jury.

¶5 The jury found Ewasiuk guilty of speeding as charged in the citation, and Ewasiuk was required to pay a forfeiture. On appeal, Ewasiuk argues that the circuit court erred in admitting the radar log into evidence and that the judgment of the circuit court should be reversed because his trial attorney was ineffective for failing to cross-examine LeGault on the use of whiteout on the radar log and for failing to question the accuracy of the radar log in closing argument.

## DISCUSSION

### **Standard of Review.**

¶6 We will sustain a circuit court's discretionary decision to admit evidence if the court logically interpreted the facts, applied the proper legal standard and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach. *See Crawford County v. Masel*, 2000 WI App 172, ¶5, 238 Wis. 2d 380, 617 N.W.2d 188.

### **Best Evidence Rule.**

¶7 Ewasiuk asserts that the circuit court committed reversible error when it admitted a photocopy of the radar log into evidence over defense counsel's objection that the photocopy failed to conform to the best evidence rule. The best evidence rule states: "To prove the content of a writing, recording or photograph, the original writing, recording or photograph is required, except as otherwise provided in chs. 901 to 911 or by statute." WIS. STAT. § 910.02. One of the exceptions to the rule is that "[a] duplicate is admissible to the same extent

as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” WIS. STAT. § 910.03.

¶8 Ewasiuk asserts that because “it was clear to defense counsel from a distance that the original had white-outs,” there was clearly a question as to the authenticity of the original. We disagree. A document is authenticated when the proponent offers “evidence sufficient to support a finding that the matter in question is what its proponent claims.” WIS. STAT. § 909.01. Here, the State’s claim was that the document was LeGault’s radar log. The State never argued that the document was a copy of a radar log that contained only original writing and no whiteout. Accordingly, the circuit court acted within its discretion when it implicitly determined that the photocopy was sufficiently authentic to the extent it purported to be a copy of a radar log that had been “whited-out” and written over in places.

¶9 We do agree that the presence of whiteout and additional writing over the whiteout on a document could raise questions as to the weight that should be given to the document. However, as the circuit court noted in its ruling, Ewasiuk was free to challenge the document on cross-examination.

### **Ineffective Assistance of Trial Counsel.**

¶10 Ewasiuk’s second issue on appeal is an allegation that he was denied his right to effective assistance of counsel. Although the circuit court held a hearing before denying Ewasiuk’s motion for a new trial, and although the State argues the merits of the ineffective assistance claim in its appellate brief, we conclude that Ewasiuk may not challenge the judgment on the grounds that counsel was ineffective.

¶11 Every criminal defendant who has a constitutional right to counsel also has the right to effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 686 (1984); *State v. Sanchez*, 201 Wis. 2d 219, 226-36, 548 N.W.2d 69, 72-76 (1996). The Wisconsin Supreme Court has also held that a statutory right to be represented by counsel includes the right to effective representation. *See A.S. v. State*, 168 Wis. 2d 995, 1003-04, 485 N.W.2d 52, 54-55 (1992). This case, however, involves a traffic citation. The only penalty Ewasiuk faced for the alleged violation of WIS. STAT. § 346.57(4)(h) was a civil forfeiture. *See* WIS. STAT. § 346.60. Because there is no constitutional or statutory right to counsel in a civil traffic case, Ewasiuk may not obtain a reversal of the judgment on the grounds of ineffectiveness of trial counsel. *See Village of Big Bend v. Anderson*, 103 Wis. 2d 403, 405-08, 308 N.W.2d 887, 888-90 (Ct. App. 1981).<sup>2</sup> Accordingly, we affirm the circuit court's denial of Ewasiuk's motion for a new trial.

## CONCLUSION

¶12 We conclude that the circuit court did not erroneously exercise its discretion in admitting into evidence a photocopy of the radar log used by the officer who issued the traffic citation. We further conclude that in the absence of a constitutional or statutory right to counsel, Ewasiuk may not raise ineffective assistance of trial counsel as grounds for reversal on appeal. Accordingly, we affirm the judgment and order of the circuit court.

---

<sup>2</sup> In *Village of Big Bend v. Anderson*, 103 Wis. 2d 403, 405-08, 308 N.W.2d 887, 888-90 (Ct. App. 1981), we discussed other remedies that are available to civil litigants who are dissatisfied with the representation provided by their attorney. We note that the issues raised concerning trial counsel's performance in this case do not warrant reversal of the judgment under WIS. STAT. § 752.35.

*By the Court.*—Judgment and order affirmed.

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

