

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 16, 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. 01-1418

Cir. Ct. No. 01-TR-861

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WILLIAM S. PURDY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Bayfield County:
THOMAS J. GALLAGHER, Judge. *Affirmed.*

¶1 CANE, C.J. William Purdy appeals from a conviction for speeding sixty-nine miles per hour in a fifty-five-mile-per-hour zone. He contends that he was improperly denied a jury trial, that he was denied a fair trial as evidenced by the trial court's rulings and comments, and that the evidence does not support the conviction. This court disagrees and affirms the conviction.

¶2 While on patrol, officer Mark Brandenburg observed Purdy's vehicle approaching from the opposite direction. By use of a radar device, Purdy's vehicle was registered as traveling at sixty-nine miles per hour. After their two vehicles passed each other, Brandenburg immediately turned around and, after following Purdy's vehicle for at least a quarter of a mile, again registered Purdy's speed at sixty-nine miles per hour. The speed limit on the highway is fifty-five miles per hour. Brandenburg stopped Purdy and issued him a citation for speeding.

¶3 The citation set forth Purdy's initial appearance for the citation in Bayfield County Circuit Court at 1:30 p.m. on April 2, 2001. Electing to not appear on that date in person, Purdy pled not guilty by a faxed letter and requested a jury trial. However, Purdy did not pay the jury fee until April 24, 2001, when he appeared for a status conference. At the status conference, the court concluded that because the jury fee was not paid within ten days of the initial appearance, the payment was untimely and Purdy was not entitled to a jury trial. Consequently, the matter was tried to the court on May 14, 2001.

¶4 Purdy does not dispute that the jury fee must be paid within ten days after pleading not guilty.¹ However, he argues that because he was not advised of

¹ WISCONSIN STAT. § 345.43 provides in part:

Jury trial. (1) If a case has been transferred under s. 800.04(1)(d), or if in circuit court either party files a written demand for a jury trial within 10 days after the defendant enters a plea of not guilty under s. 345.34 and immediately pays the fee prescribed in s. 814.61(4), the court shall place the case on the jury calendar of the circuit court. The number of jurors shall be 6. If no party demands a trial by jury, the right to trial by jury is permanently waived.

All references to the Wisconsin Statutes are to the 1999-2000 version.

the right and method of obtaining a jury trial, as he would have been advised had he appeared in person on the initial appearance date, he is still entitled to a jury trial. This same argument has been addressed and rejected by this court in *City of Fond du Lac v. Kaehne*, 229 Wis. 2d 323, 326-27, 599 N.W.2d 870 (Ct. App. 1999), where we held:

It is true that had he chosen to be present in court he would have been informed about his right to a jury trial. See § 345.34(1), STATS. He chose instead to plead not guilty by letter pursuant to § 345.34(3). That subsection does not require the court to provide the same information as does subsec. (1). The legislature apparently has determined that those who take the time to come to court, instead of pleading not guilty by mail, are afforded a right to additional information. It is not for us to second guess this decision.

¶5 Therefore, the circuit court correctly held that because Purdy elected to make his initial appearance by letter and plead not guilty without paying the appropriate jury fee within ten days of the appearance, the right to a jury trial was waived.

¶6 Next, Purdy argues that the court denied him a fair trial as evidenced by its rulings and comments during the trial. After reviewing the transcript of the trial, this court is not persuaded that the trial court denied Purdy a fair trial. The State presented its evidence through Brandenburg, who explained how he determined the speed of Purdy's vehicle through the use of moving radar. The record shows Purdy's attempt to ask Brandenburg a number of questions on cross-examination, many of which were simply not relevant. The trial court recognized that Purdy was appearing without an attorney, but after a series of Purdy's irrelevant questions, elected to restrict any further cross-examination and to allow Purdy to testify as to his version of events. Purdy's defense was that he had set his cruise control at fifty-five miles per hour and that he was traveling fifty-five miles

per hour. He cited his experience as a railroad engineer to bolster his claim that his speed was not close to sixty-nine miles per hour. Purdy also contends that Brandenburg could not have registered his speed a second time while following him in light of the time and distance it took Brandenburg to turn around and follow him. He concludes that the officer was mistaken when registering his speed at sixty-nine miles per hour.

¶7 As the State correctly observes, our supreme court has established the method required for proving a driver's guilt for speeding when based on radar, as in this case. In *State v. Hanson*, 85 Wis. 2d 233, 245-46, 270 N.W.2d 212 (1978), the supreme court held:

Consequently, in Wisconsin a *prima facie* presumption of accuracy sufficient to support a speeding conviction will be accorded to moving radar upon testimony by a competent, operating police officer that:

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 speed meter 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.

¶8 Here, Brandenburg testified to meeting each of these requirements. Purdy's questions concerning the accuracy of the radar unit were often irrelevant and redundant and ultimately tried the patience of the trial court. Consequently, the trial court restricted any further cross-examination. The trial court elected to control the proceedings in order to avoid undue delay and waste of time. This court has reviewed the trial court's rulings and cannot say that these rulings were incorrect. From reviewing the transcript of the trial, this court also notes that Purdy often attempted to revisit the trial court's earlier ruling denying him a jury trial. As the trial court correctly indicated to Purdy, none of this was relevant to the issue of whether Purdy was speeding.

¶9 Finally, Purdy contends that the evidence was not sufficient to support his conviction for speeding. This court disagrees. Brandenburg's testimony amply demonstrated that Purdy's vehicle was going sixty-nine miles per hour in a fifty-five-mile-per-hour zone. Brandenburg had more than adequate experience and training in operating the radar device. The radar device was in proper working condition at the time of the arrest. The radar was taken of Purdy's vehicle where the road conditions were such that there was a minimum possibility of distortion. The input speed of the patrol car was properly verified. And, finally, the speed meter was properly tested before and after the arrest. Purdy's testimony as to his perception of his speed and that he had activated the cruise control at fifty-five miles per hour was a matter for the trial court's determination of the credibility and weighing of the evidence. *See WIS. STAT. § 805.17(2).* Here, it was not unreasonable for the court to believe the officer's testimony and conclude that Purdy was speeding.

By the Court.—Judgment affirmed.

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

