

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 29, 2011**

A. John Voelker  
Acting 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. 2010AP1585**

**Cir. Ct. No. 2009CV1298**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**CITY OF WEST BEND,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DARIN R. NORMAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Washington County:  
DAVID C. RESHESKE, Judge. *Affirmed.*

¶1 REILLY, J.<sup>1</sup> Darin R. Norman appeals from an order of the circuit court affirming his municipal court conviction for speeding. Norman argues that

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

his conviction should be reversed as the speed limit sign was not official or in the proper position, and he therefore cannot be cited for speeding in excess of that posted sign.<sup>2</sup> We disagree and affirm his conviction.

## FACTS

¶2 At approximately 9:00 p.m. on November 9, 2008, Officer Jason Pollard of the West Bend Police Department clocked Norman's vehicle going sixty-one miles per hour (mph). The posted speed limit for the area is thirty-five mph. Pollard pulled over Norman and issued him a citation for exceeding the posted speed limit. The municipal court found Norman guilty of speeding.

¶3 Norman then appealed to the circuit court. During a bench trial, Norman argued the speed limit sign was not official because the City did not position it properly in compliance with the Manual on Uniform Traffic Control Devices (MUTCD), and he therefore could not be found guilty of speeding. The MUTCD is a set of standards established by the United States Department of Transportation and adopted by Wisconsin through WIS. STAT. §§ 84.02(4)(e) and 349.065. See *Harmann v. Schulke*, 146 Wis. 2d 848, 853-54, 432 N.W.2d 671 (Ct. App. 1988). It provides guidance on the installation and proper use of traffic control devices, and is primarily used for highway design, construction, maintenance, and operations. *Wisconsin MUTCD*, WISCONSIN DOT, <http://www.dot.wisconsin.gov/business/engrserv/wmutcd.htm> (last visited June 10, 2011). The circuit court found Norman guilty of speeding, as the posted speed

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<sup>2</sup> This court will not address every argument Norman presents in his *pro se* appeal. Arguments that are inadequately briefed and lack any merit will not be considered. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Also, this court will not consider any new arguments that Norman has raised in his reply brief. See *Northwest Wholesale Lumber, Inc. v. Anderson*, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995).

limit sign was in substantial conformance with the MUTCD and reflected the statutory speed limit of thirty-five mph for the area.

¶4 Norman appeals, arguing that the circuit court was wrong in ruling that the posted speed limit sign was official and in compliance with the MUTCD.

### STANDARD OF REVIEW

¶5 This court does not set aside the circuit court's factual findings unless they are clearly erroneous. WIS. STAT. § 805.17(2). It is for the circuit court, not this court, to resolve conflicts in testimony and to determine the credibility of witnesses. *Global Steel Prods. Corp. v. Ecklund*, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269. We will search the record for evidence to support the findings that the circuit court made, not for findings that the circuit court could have made but did not. *Id.*

### DISCUSSION

¶6 The facts in the record support the circuit court's conclusion that the officer accurately clocked Norman's vehicle going sixty-one mph in a posted thirty-five mph area. As Norman has not demonstrated that the circuit court's factual findings were erroneous, we affirm the circuit court's finding that Norman was speeding.

¶7 We reject Norman's argument that the City failed to prove that the speed limit sign in question was official and in conformance with the MUTCD. Norman claims that the thirty-five mph speed limit sign was improperly placed and therefore was not in strict or technical conformance with the MUTCD as the sign was not at the proper height and was not at the proper lateral set back from the highway. As the circuit court pointed out, Section 1A.07 of the MUTCD

states that “traffic control devices on all streets, highways, bikeways, and private roads open to public travel in each State shall be in *substantial conformance* with standards issued or endorsed by the Federal Highway Administrator.” (Emphasis added.) The circuit court found that the sign met the five-foot height requirement and that by using the fog line to delineate the shoulder of the roadway, the sign also substantially conformed to the lateral set back requirement. We therefore affirm the circuit court’s findings that the sign substantially conformed to the MUTCD.

¶8 We also reject Norman’s challenge to the credibility of the City’s expert witness, a city engineer who testified at trial that the sign in question substantially complied with the MUTCD. The circuit court found the city engineer to be a credible witness and his testimony sufficient as proof that the speed limit sign substantially complied with the MUTCD and was therefore official. We defer to the circuit court’s factual findings because Norman has not proven them to be erroneous. *See* WIS. STAT. § 805.17(2).

### CONCLUSION

¶9 As we hold that the sign in question was official and in substantial conformance with the MUTCD, we affirm the circuit court’s ruling that Norman is guilty of speeding in excess of statutory and posted limits.

*By the Court.*—Order affirmed.

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



