

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 2007

David R. Schanker
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. 2006AP1681

Cir. Ct. No. 2006TR510

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

VILLAGE OF WESTFIELD,

PLAINTIFF-RESPONDENT,

v.

ROGER G. DUBBLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marquette County: RICHARD O. WRIGHT, Judge. *Affirmed.*

¶1 BRIDGE, J.¹ Roger Dubble appeals pro se from a judgment and an order imposing a forfeiture for speeding in violation of WIS. STAT. § 346.57(4)(gm). Dubble argues that the circuit court erred in not granting his

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

motion to dismiss. He contends that the officer failed to use audible and visual signals while pursuing him and that the officer's alleged violation of the law invalidates the citation which the officer issued to Dubble.² Dubble also contends that there is insufficient evidence to support the circuit court's judgment. We disagree and affirm.

BACKGROUND

¶2 The following facts are taken from trial testimony and the circuit court's findings. On January 15, 2006, Officer John Bitsky, a patrol officer for the Village of Westfield Police Department, was operating stationary radar on I-39, observing the southbound traffic lanes. The officer observed Dubble's vehicle proceeding southbound on I-39 and locked in a radar reading of eighty-three miles per hour in a sixty-five mile per hour zone. The officer performed a traffic stop on Dubble's vehicle and cited him for speeding. At the trial, the officer testified that he tested the radar unit prior to beginning his shift and again when his shift ended; both tests indicating that the unit was operating correctly. He testified further that after he pulled Dubble over, Dubble admitted that he was driving in excess of the speed limit. Dubble plead not guilty to speeding, and filed a motion to dismiss the citation. The circuit court denied Dubble's motion and, after a trial to the court, imposed a forfeiture for violating the speeding laws.

² Dubble also argues that the circuit court did not know or abide by the law, and that the Village failed to properly train its officers. Dubble fails to provide any case law, statute or record cite in support of these arguments, and therefore we will not address them. We generally do not develop the parties' arguments for them or consider issues that are inadequately briefed. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

DISCUSSION

¶3 A circuit court’s decision on a motion to dismiss is discretionary, and will not be disturbed on appeal unless it is established that the court erroneously exercised its discretion. *Johnson v. Allis Chalmers Corp.*, 162 Wis. 2d 261, 273, 470 N.W.2d 859 (1991). An appellate court will sustain a discretionary decision if the circuit court examined the relevant facts, applied the proper standard of law, and used a rational process to reach a reasonable conclusion. *Id.*

¶4 Dubble based his motion to dismiss on his interpretation of WIS. STAT. §§ 346.03(2) and (3), which together provide that an emergency vehicle may exceed the speed limit when the vehicle is giving both visual and audible signals.³ He argues that the officer failed to use visual and audible signals until turning on his lights when he was three car lengths behind Dubble. From this, Dubble derives two conclusions. The first is that the officer was speeding, and the second is that the officer’s speeding should invalidate his speeding citation. We disagree with both of these conclusions.

¶5 First, Dubble has not established that the officer exceeded the speed limit prior to using audible and visual signals. To the extent that Dubble raised this issue at trial, the circuit court was free to disbelieve him, and this court will not second-guess credibility determinations made by that court. *See Rohl v. State*,

³ WISCONSIN STAT. § 346.03(2) provides that “[t]he operator of an authorized emergency vehicle may: ... (c) [e]xceed the speed limit....”

WISCONSIN STAT. § 346.03(3) provides that “[t]he exemptions granted by sub. (2) ... (c) ... apply only when the operator of the emergency vehicle is giving both such visual signal and also an audible signal by means of a siren or exhaust whistle....”

65 Wis. 2d 683, 695, 223 N.W.2d 567 (1974). Second, and more importantly, the officer's alleged violation has no bearing on the validity of Dubble's citation. If the legislature had intended a violation of WIS. STAT. § 346.03(3) to void any action by the offending officer, including citations and arrests that are otherwise valid within the scope of the officer's authority, such intent would have been expressed in the statute. See *State v. Brown*, 107 Wis. 2d 44, 49, 318 N.W.2d 370 (1982). The statutes do not provide that a traffic citation is invalidated when an officer fails to utilize visual and audible signals in pursuit of the offender, and Dubble has offered no case law which stands for this proposition. In the absence of such an expression of legislative intent, we conclude that a violation of § 346.03 would not invalidate the otherwise valid citation issued to Dubble. Therefore, the circuit court did not erroneously exercise its discretion in denying Dubble's motion to dismiss on this basis.

¶6 Dubble also relies on *Estate of Cavanaugh v. Andrade*, 191 Wis. 2d 244, 528 N.W.2d 492 (Ct. App. 1995), in support of his argument that the officer operated his vehicle negligently, and therefore should be held liable for the civil forfeiture that Dubble was required to pay. We disagree. As noted above, the circuit court did not find that the officer violated the law or acted negligently in his pursuit of Dubble. Even if the court had so found, in *Cavanaugh* the officer's conduct caused the ensuing accident and resulted in his liability. Here, the alleged negligence did not cause Dubble's citation. Again, the circuit court properly exercised its discretion in denying Dubble's motion to dismiss on this theory.

¶7 Dubble also asserts that there was insufficient evidence to uphold the circuit court's decision. We disagree. The officer testified that he had clear steady audio on Dubble's vehicle and locked in the vehicle's speed at eighty-three miles per hour in a sixty-five mile per hour zone. The officer testified that the radar was

in proper working order. A prima facie presumption of accuracy applies to stationary radar. *City of Wauwatosa v. Collett*, 99 Wis. 2d 522, 523-24, 299 N.W.2d 620 (Ct. App. 1980). Dubble did not argue that the radar was inaccurate. The officer testified that Dubble told him that he was following a semi-trailer at seventy miles per hour and sped up to pass the vehicle. Dubble denied making this statement. He also testified that there were six vehicles surrounding the incident, rather than two vehicles as the officer testified. It is for the trier of fact and not this court to assess witness credibility and the weight to be accorded conflicting testimony. *Rohl*, 65 Wis. 2d at 695. The circuit court was free to believe the officer and disbelieve Dubble with respect to the speed at which Dubble was traveling prior to the traffic stop. We uphold the circuit court's findings of fact unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2); *see also Ozaukee County v. Flessas*, 140 Wis. 2d 122, 130-31, 409 N.W.2d 408 (Ct. App. 1987). Because the court's findings are not clearly erroneous, we conclude that the record supports Dubble's conviction.

¶8 Finally, Dubble argues that the circuit court erred in not accepting testimony of a passenger in his vehicle who was not available to testify the day of the trial. Acceptance or rejection of evidence is discretionary with the circuit court, and our review is generally confined to whether the court erroneously exercised its discretion. *State v. Hubanks*, 173 Wis. 2d 1, 21, 496 N.W.2d 96 (Ct. App. 1992). We conclude that the circuit court did not err in limiting the testimony to that of Dubble and the officer involved.

¶9 In sum, Dubble attempts to escape responsibility for his speeding violation by alleging misconduct on the part of the officer. However, under Wisconsin law, the relevant inquiry for the circuit court was whether Dubble was speeding, not whether the officer acted inappropriately. The court found that he

did. Therefore, we conclude the circuit court did not erroneously exercise its discretion in denying the motion to dismiss and affirm the judgment and order.

By the Court.—Judgment and order affirmed.

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

