

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 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. 2009AP2436

Cir. Ct. No. 2008TR5642

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COLUMBIA COUNTY,

PLAINTIFF-RESPONDENT,

V.

ROCHELLE ANN KASSENS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Columbia County: DANIEL GEORGE, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Rochelle Kassens appeals pro se a judgment imposing a forfeiture for speeding, and an order denying her motion for reconsideration. We affirm.

¶2 Kassens was issued a citation for speeding after radar detected she was driving 43 miles per hour in a 25 mile per hour zone on Highway 60 in the Village of Arlington. Kassens pled not guilty, and testified at trial that she was unsure of her exact speed, but estimated it to be between 24 and 25 miles per hour. Kassens cross-examined the investigating officer, Sergeant Brian Pulvermacher, about the reliability of the radar unit, and about whether the road signs in the vicinity of the stop conformed with state traffic regulations. Kassens argued to the court that a steady rain and the presence of other cars interfered with the radar reading, and that the speed limit signs and other traffic signs on this particular section of Highway 60 violate state regulations. The trial court rejected Kassens' arguments and found her guilty of speeding. Kassens filed a motion for reconsideration, which was denied by the trial court.

¶3 On appeal, Kassens renews her arguments regarding the reliability of the radar reading and the legality of the traffic signs in the area of the stop. We address each of these arguments in turn.²

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² Kassens also asserts in the "Statement of Issues" section of her brief that the trial court erred in preventing her from questioning Pulvermacher about traffic sign regulations. However, she fails to develop this argument in the body of her brief, and we therefore decline to address it further. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). To the extent that Kassens makes additional arguments, they are likewise insufficiently developed to warrant consideration.

¶4 First, Kassens contends that the radar reading of her speed was unreliable because it was raining and other cars were present in the area. This challenge requires us to review the trial court’s factual findings and credibility determinations supporting its judgment and order. We must uphold a trial court’s findings of fact and credibility determinations unless they are clearly erroneous. See *State v. Thiel*, 2003 WI 111, ¶23, 264 Wis. 2d 571, 665 N.W.2d 305; Wis. STAT. § 805.17(2).

¶5 The trial court heard competing testimony on the reliability of the radar reading from both Kassens and the sergeant who made the stop, and apparently found the sergeant’s testimony to be more credible. The sergeant testified that he had tested the radar unit and found it to be working properly at the time, and that neither the rain, which he described as “light,” nor other cars interfered with this reading. On cross-examination, the sergeant recognized that extraneous factors such as other cars may interfere with radar detection, but maintained that no interferences were present when he detected Kassens’ speed. The sergeant testified that he has ten years’ experience in traffic speed enforcement, and has been trained to visually estimate a vehicle’s speed within three miles per hour. He testified that his visual estimation of Kassens’ speed was consistent with the speed tracked by the radar unit. The court was free to rely on the sergeant’s testimony, and Kassens has failed to show that the court was clearly erroneous in its implicit determination that this testimony was credible.

¶6 We turn now to Kassens’ challenge to the legality of the traffic signs in the area of the stop. Traffic control signs on Wisconsin streets and highways must conform to the Manual on Uniform Traffic Control Devices (MUTCD), a set of standards established by the United States Department of Transportation and

incorporated into Wisconsin law by WIS. STAT. §§ 84.02(4)(e) and 349.065. *See Harmann v. Schulke*, 146 Wis. 2d 848, 854, 432 N.W.2d 671 (Ct. App. 1988).

¶7 The offense of speeding under WIS. STAT. § 346.57(4)(e) requires proof that: (1) the vehicle was driven on a highway; (2) at a speed that exceeded the established speed limit; and (3) the established speed limit was indicated by official signs.

¶8 Kassens argues that the State failed to prove the “official sign” element of the offense because the traffic control signs in the area do not conform to the MUTCD. Specifically, Kassens argues that the placement of the first speed limit sign in the area is not visible to the driver of a car turning left onto Highway 60, and is therefore contrary to MUTCD § 1A.04. Kassens also notes that this section of highway does not include a warning sign indicating a reduction in the speed limit, which she argues violates MUTCD §§ 2B.13 and 2C.38. Further, Kassens complains that the first sign sits at an angle and is not positioned at a straight vertical, contrary to MUTCD § 2A.20. Kassens also argues that there are too many road signs in the area, which is confusing to motorists and a violation of § 1A.04. Finally, Kassens notes that one of the speed limit signs on this stretch of highway is mounted on a single post with a “neighborhood watch” sign and is accompanied by two orange vinyl flags mounted between the speed limit sign and the neighborhood watch sign, which she argues violate MUTCD §§ 2A.16 and 1A.03, respectively.³

³ The pertinent parts of the sections of the MUTCD cited in the paragraph above provide as follows:

§ 1A.03 **Design of Traffic Control Devices**

(continued)

Guidance:

Devices should be designed so that features such as size, shape, color, composition, lighting or retroreflection, and contrast are combined to draw attention to the devices; that size, shape, color, and simplicity of message combine to produce a clear meaning; that legibility and size combine with placement to permit adequate time for response; and that uniformity, size, legibility, and reasonableness of the message combine to command respect.

§ 1A.04 Placement and Operation of Traffic Control Devices**Guidance:**

Placement of a traffic control device should be within the road user's view so that adequate visibility is provided....

Unnecessary traffic control devices should be removed....

§ 2A.16 Standardization of Location**Guidance:**

Signs should be individually installed on separate posts or mountings except where:

- A. One sign supplements another;
- B. Route or directional signs are grouped to clarify information to motorists;
- C. Regulatory signs that do not conflict with each other are grouped, such as Turn Prohibition signs posted with ONE WAY signs or a parking regulation sign posted with a Speed Limit sign; or
- D. Street Name signs are posted with a STOP or YIELD sign.

§ 2A.20 Orientation**Guidance:**

Unless otherwise provided in this Manual, signs should be vertically mounted at right angles to the direction of, and facing, the traffic that they are intended to serve.

(continued)

¶9 The problem with these arguments is that none of the MUTCD provisions Kassens cites are mandatory. They are “guidance,” which MUTCD § 1A.13B. defines as “a statement of recommended, but not mandatory, practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate.” Thus, even if, as Kassens argues, the signs in this area did not conform to the cited provisions of the MUTCD, they are nonetheless “official” signs. Accordingly, we reject Kassens’ contention that the State failed to prove each element of the offense.

By the Court.—Judgment and order affirmed.

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

§ 2B.13 **Speed Limit Sign**

Guidance:

A Reduced Speed Limit Ahead (W3-5 or W3-5a) sign (see Section 2C.38) should be used to inform road users of a reduced speed zone where the speed limit is being reduced by more than 10 mph, or where engineering judgment indicates the need for advance notice to comply with the posted speed limit ahead.

§ 2C.38 **Reduced Speed Limit Ahead Signs**

Guidance:

A Reduced Speed Limit Ahead (W3-5 or W3-5a) sign (see Figure 2C-7) should be used to inform road users of a reduced speed zone where the speed limit is being reduced by more than 10 mph, or where engineering judgment indicates the need for advance notice to comply with the posted speed limit ahead. [Note: The language of this section is identical to the language of the above-cited portion of § 2B.13]

