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DISTRICT III

August 5, 2008

To:

Hon. Eugene D. Harrington
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John Francis Klos
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You are hereby notified that the Court has entered the following opinion and order:

2008AP235

City of Spooner v. John Francis Klos
(L. C. #2007CV267)

Before Brunner, J.¹

John Klos, pro se, appeals a forfeiture judgment for speeding in violation of SPOONER, WIS., ORDINANCE § 74-1 (1996), adopting the statutory provisions in WIS. STAT. § 346.57(5). Based upon our review of the briefs and record, we summarily reverse the conviction. *See* WIS. STAT. RULE 809.21.

Klos pled not guilty to speeding, arguing that the City of Spooner failed to properly post the speed limits. At trial, captain Jerry Christman testified that Klos was traveling thirty-seven miles per hour on River Street in a posted twenty-five mile-per-hour zone. Christman testified

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

that he captured Klos' speed on radar. Klos does not contest the measurement of his speed. On cross-examination, Christman stated he never determined whether the twenty-five mile-per-hour signs on River Street complied with the requirements in the Wisconsin Manual on Uniform Traffic Control Devices (2005) (WMUTCD).

Klos testified that he measured the signs and that every sign on River Street failed to comply with the WMUTCD requirements. He stated the signs were either too short in violation of WMUTCD § 2A.18 or too close to the road in violation of WMUTCD § 2A.19, or both.

The court concluded that the requirements did not apply to the City of Spooner and, even if they did, any minor deviations in posting did not affect Klos' notice. The court therefore found Klos guilty of speeding.

Both sides agree that the City of Spooner had to prove three elements under WIS. STAT. § 346.57(5): (1) Klos drove a vehicle on a highway; (2) at a speed exceeding the established limit; and (3) official signs indicated the established speed limit. WISCONSIN STAT. § 346.02(7) states that the provisions of chapter 346 are not enforceable if "an official sign is not in proper position...."

Klos contends the signs were not official signs because they were not in the proper position as required by §§ 2A.18 and 2A.19 of the Federal Highway Administration's Manual on Uniform Traffic Control Devices (2003). Wisconsin law requires the Department of Transportation to "adopt a manual establishing a uniform system of traffic control devices for use upon the highways of this state. The system shall be consistent with and, so far as practicable, conform to current nationally recognized standards for traffic control devices." WIS. STAT. § 84.02(4)(e). Wisconsin has adopted the latest edition of the Federal Highway

Administration's Manual and has added a supplement to make the standards applicable to Wisconsin. *See* WMUTCD, 2.

The City does not contend that Klos' measurements are inaccurate or that he has misinterpreted the Federal manual. Rather, the City argues Wisconsin's Manual does not adopt the height and lateral offset requirements of the Federal Manual and the Federal Manual does not apply. The City points to the modifications to §§ 2A.18 and 2A.19, the mounting height and lateral offset sections, found in the Wisconsin Manual. The Wisconsin Manual contains "Guidance" and "Option[s]" for certain types of signs listed in these sections of the Federal Manual. There is no indication that these options apply to the specific types of signs Klos contends were improperly located in Spooner. There is also no support for the City's contention that the "Guidance" and "Option[s]" listed in the Wisconsin Manual overrule the mandatory provisions of the Federal Manual. The City has not developed its argument or explained how the language in the Wisconsin Manual in any way applies to the types of signs at issue in this case and we will not develop the City's arguments for it. *See State v. Gulrud*, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987). Because the City has not refuted Klos' measurements² or demonstrated how the measurements were inaccurate for the types of signs at issue, we reverse.³

² In fact, the City never addresses Klos' actual measurements or how they apply to the federal manual. There is some indication in the record that the measurements may have only been off by a matter of inches. If this were the case, the City could have made a convincing argument that the signs merely shifted after being placed in the proper location and it is unreasonable to read the statute to relieve an offender of responsibility simply due to the natural shifting that may result from the elements. Unfortunately the City does not make this argument and we will not conduct an exhaustive search of the record to relieve the City of its obligation to fully brief the issues.

³ The City also argues that Klos was guilty of speeding under a separate statutory offense and that the "trial court always has the ability in civil cases to amend the pleadings to conform to the evidence at trial." However, the City has provided no evidence that the trial court did amend the pleadings. We are
(continued)

Therefore,

IT IS ORDERED that the judgment is summarily reversed. *See* WIS. STAT. RULE 809.21.

David R. Schanker
Clerk of Court of Appeals

constrained to reviewing whether Klos was guilty of the offense he was convicted of: WIS. STAT. § 346.57(5).