

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF ADRIAN,

Plaintiff-Appellant,

v

RICKERD DAVID STRAWCUTTER,

Defendant-Appellee.

FOR PUBLICATION

October 21, 2003

9:05 a.m.

No. 241098

Lenawee Circuit Court

LC No. 01-000613-AR

Updated Copy

December 19, 2003

Before: Whitbeck, C.J., and Jansen and Markey, JJ.

PER CURIAM.

The city of Adrian appeals by leave granted the circuit court order reversing the district court's finding that defendant Rickerd Strawcutter was responsible for a speeding ticket. We reverse.

I. Basic Facts And Procedural History

Deputy Sheriff Carl Polan cited Strawcutter on October 23, 2001, for traveling forty miles an hour in a thirty-mile-an-hour zone. At a formal hearing, Strawcutter elicited testimony from Officer Polan, who had been certified as an expert, indicating that the radar speedmeter had not been serviced for approximately thirteen months and that he was not aware of any manufacturer servicing guidelines. On appeal, the circuit court reversed on the ground that Officer Polan did not know what the manufacturer's service requirements were and therefore failed to comply with the requirements of *People v Ferency*.¹ The circuit court denied reconsideration, and this Court granted leave to appeal.

¹ *People v Ferency*, 133 Mich App 526; 351 NW2d 225 (1984).

II. Meeting The *Ferency* Requirements

A. Standard Of Review

This appeal concerns interpretation of a guideline that this Court set forth in *Ferency*, as well as certain conclusions of law based on essentially uncontested facts. All issues on appeal are, therefore, legal in nature and we review them de novo.²

B. Servicing The Speedmeter

Ferency imposes certain requirements on the admission of radar speedmeter readings into evidence. One of those requirements is that "the speedmeter be serviced by the manufacturer or other professional as recommended."³ The district court concluded that, because Officer Polan had followed the recommendations of the Michigan Speed Measurement Task Force, this requirement was met. However, the circuit court disagreed. Because Officer Polan did not know what the manufacturer's requirements were, the circuit court reversed the district court's finding of responsibility.

Unlike other requirements imposed by *Ferency*, the requirement at issue here does not mandate any specific actions. For example, *Ferency* also requires "that the speedmeter be retested at the end of the shift in the same manner that it was tested prior to the shift."⁴ That is an affirmative requirement. The requirement at issue here only mandates service *as recommended*. This does not preclude the possibility that *no* service may be recommended. Further, servicing recommendations are not limited to those of the manufacturer. We explained in *Ferency* that these guidelines

can be met by a showing that the issuing officer followed the recommendations contained in the Interim Guidelines and other recommendations issued by the Office of Highway Safety Planning. We recognize, also, that there may exist other agencies or organizations with a demonstrable expertise in this area which promulgate similar guidelines that may be used to show that the above guidelines have been met.^[5]

The Michigan Speed Measurement Task Force is an agency with demonstrable expertise. Officer Polan testified that, on the basis of his training and instruction, the Michigan Speed Measurement Task Force did not recommend any servicing for the speedmeter unit. Therefore,

² *People v Watkins*, 468 Mich 233, 238; 661 NW2d 553 (2003).

³ *Ferency*, *supra* at 544.

⁴ *Id.*

⁵ *Id.*

we conclude that Officer Polan complied with the relevant servicing requirements under *Ferency*: no servicing was recommended and no servicing was performed.

Reversed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Jane E. Markey