

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 29, 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. 2006AP2442

Cir. Ct. No. 2006CV314

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF HORICON,

PLAINTIFF-RESPONDENT,

V.

CAROLYN M. KNIGHT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dodge County:
ANDREW P. BISSONNETTE, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, P.J.¹ Carolyn Knight appeals a trial court's guilty verdict of speeding forty miles per hour in a twenty mile-per-hour zone in

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.

the City of Horicon. The sole issue in this appeal is whether there was sufficient evidence to support the court's verdict. We affirm.

¶2 Knight was issued a citation on November 8, 2005, for driving nineteen miles over the speed limit in the City of Horicon, in violation of City of Horicon Ord. § 10-1-1A, adopting WIS. STAT. § 346.57(5). She was found guilty of the charge following a trial to the Horicon Municipal Court. Knight requested a new trial to the circuit court. She was found guilty by the Dodge County Circuit Court, Honorable Andrew P. Bissonnette presiding, of the same charge. Knight appeals.

¶3 Without specifically saying so, Knight appears to argue that there was insufficient evidence to support the court's guilty verdict of speeding. Specifically, Knight seems to suggest that the physical evidence is such that the arresting officer's testimony regarding his observations of her vehicle and the measurements taken by his moving radar unit are not credible. In her view, Horicon police officer Robert J. Korth could not have observed her speeding and that the readings from his radar unit could not be accurate. These arguments lack merit.

¶4 We first observe that Knight refers to a plethora of evidence throughout her brief in support of her assertions that are not part of the record. We do not consider assertions of fact that are not part of the record. *See Jenkins v. Sabourin*, 104 Wis. 2d 309, 313-14, 311 N.W.2d 600 (1981). Thus, we do not consider Knight's assertions regarding her expertise in the operations of a moving radar unit, the facts she relies on in her brief regarding geography/topography not presented to the trial court, and the skills she obtained as an over-the-road truck driver that are not part of the record. We also do not consider the several maps she

included with her appellate brief because they are not part of the record created in the trial court, as well as the “Tangent Table” Knight included in her appendix.

¶5 In considering the sufficiency of the evidence on appeal, “we view the evidence in the light most favorable to the ... verdict, and we will sustain the ... verdict if there is any credible evidence ‘under any reasonable view, that leads to an inference supporting the [court’s] finding.’” *Western Wis. Water, Inc. v. Quality Beverages of Wis., Inc.*, 2007 WI App 188, ¶13, ___ Wis. 2d ___, 738 N.W.2d 114 (quoting *Morden v. Continental AG*, 2000 WI 51, ¶¶38-39, 235 Wis. 2d 325, 611 N.W.2d 659). Our task is to search the entire record for credible evidence to sustain the court’s verdict. *Id.*

¶6 We conclude there was sufficient evidence to support the circuit court’s guilty verdict. The court considered testimony from both Korth and Knight as well as photos submitted by Knight of the area where Korth first observed Knight and eventually stopped her. Korth testified that when he first observed Knight’s vehicle it appeared to be moving in excess of the posted speed limit, that he then activated his mobile radar unit posted on the dashboard of his squad car which showed that Knight was traveling at forty-four miles per hour, and that he stopped Knight’s vehicle for speeding. Knight attempted to impeach Korth’s testimony by revealing certain discrepancies in his testimony relative to her view of what occurred. After considering this testimony, the court found Knight guilty of driving forty-four miles per hour in a posted twenty-five-mile-per-hour zone.

¶7 Knight argues that, based on her calculations of where Korth said he was at the time he first observed her vehicle, of the geography/topography of the area where she was driving, and of her calculated speed, the court erroneously

relied on Korth's testimony in reaching its guilty verdict.² Whether the court reasonably relied on Korth's testimony is a matter of credibility. In Knight's view, that is the sole issue in this appeal. However, credibility determinations by a trial court acting as a fact finder are not reviewable by this court, unless we conclude, as a matter of law, that no finder of fact could believe the testimony. *See State v. Oswald*, 2000 WI App 3, ¶47, 232 Wis. 2d 103, 606 N.W.2d 238. As the finder of fact, the circuit court was best positioned to determine the credibility of each witness and to weigh their testimony accordingly. The evidence Knight relies on in arguing that Korth's testimony is unbelievable does not persuade us that the circuit court erred in rendering its guilty verdict. Moreover, to the extent Siciliano is challenging the court's findings of fact, we do not reverse a circuit court's factual findings unless they are clearly erroneous. WIS. STAT. § 805.17(2). Siciliano has not demonstrated that the court's factual findings are clearly erroneous.

¶8 In sum, Knight gives us no reason to reverse the court's guilty verdict. We therefore affirm the court's judgment.

By the Court.—Order affirmed.

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

² In her appellate brief, Siciliano presents a number of calculations to bring into question Korth's testimony regarding his observations. Those calculations were not presented to the court at trial and we therefore do not consider them. *See Jenkins v. Sabourin*, 104 Wis. 2d 309, 313-14, 311 N.W.2d 600 (1981).

