

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 8, 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. 2006AP3122

Cir. Ct. No. 2005TR7523

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF SAUK,

PLAINTIFF-RESPONDENT,

V.

HORST W. JOSELLIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
GUY D. REYNOLDS, Judge. *Affirmed.*

¶1 BRIDGE, J. Horst W. Josellis appeals pro se from a judgment imposing a forfeiture on him for speeding in violation of Sauk County Ordinance 6.01 adopting WIS. STAT. § 346.57(4)(h) (2005-06).¹ Josellis contends that his

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

conviction was not supported by credible evidence. We disagree and therefore affirm.

¶2 On August 24, 2005, Josellis was cited for speeding for driving sixty-nine miles per hour in a fifty-five mile per hour zone on STH-33 in Sauk County. At trial, Deputy Sheriff Joshua Kowalke testified that on August 24, 2005 at approximately 10:18 p.m., he was traveling eastbound on STH-33 when he noticed a vehicle traveling towards him at what he believed was a higher rate of speed than the posted fifty-five mile per hour limit. The deputy activated the moving radar in his squad car and clocked the vehicle at sixty-nine miles per hour. After locking in the radar, the deputy turned his squad car around and pulled over the vehicle in the westbound lane of STH-33. The deputy identified Josellis as the driver of the stopped vehicle. The circuit court found Josellis guilty of driving nine miles per hour over the speed limit. Josellis appeals.

¶3 Josellis argues that his conviction was not supported by credible evidence. We review the record to determine whether the court's findings of fact 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).

¶4 A prima facie presumption of accuracy of a moving radar device to establish the speed of a vehicle arises if the prosecution establishes the *Hanson/Kramer* criteria. *See Washington County v. Luedtke*, 135 Wis. 2d 131, 133 n.2, 399 N.W.2d 906 (1987). The *Hanson/Kramer* test, (*State v. Hanson*, 85 Wis. 2d 233, 245, 270 N.W.2d 212 (1978), and later approved and explained in *State v. Kramer*, 99 Wis. 2d 700, 703, 299 N.W.2d 882 (1981)), requires that the prosecution establish five criteria:

1. The officer operating the device has adequate training and experience in its operation.
2. That the radar device was in proper working condition at the time of the arrest. This will be established by proof that suggested methods of testing the proper functioning of the device were followed.
3. That the device was used in an area where road conditions are such that there is a minimum possibility of distortion.
4. That the input speed of the patrol car must be verified, this being especially important where there is a reasonable dispute that road conditions may have distorted the accuracy of the reading (i.e., presence of large trucks, congested traffic and the roadside being heavily covered with trees and signs).
5. That the speed meter should be expertly tested within a reasonable proximity following the arrest and that such testing be done by means which do not rely on the radar device's own internal calibrations.

¶5 Josellis argues that the prosecution did not satisfy the third *Hanson/Kramer* criterion.² Josellis contends that he was on a curved portion of STH-33 at the time the deputy was operating the radar, and therefore the deputy's reading was distorted.³

² Josellis also argues that the tuning forks used to test the radar's accuracy were not properly calibrated. However, the record contains no evidence which demonstrates that the tuning forks were not in proper condition. In any event, the presumption of accuracy which *Hanson/Kramer* accords radar speed detection devices does not require proof of the accuracy of a tuning fork used to test them. See *State v. Kramer*, 99 Wis. 2d 700, 706, 299 N.W.2d 882 (1981).

³ Josellis also offers various mathematical calculations bearing on the time required of the deputy to make visual observations, activate his radar, and verify his squad car's speed. However, because Josellis makes these assertions for the first time on appeal, the calculations are not part of the trial record. On review, this court is limited to the record before it, and facts which are not in the record cannot be added to it. See *State ex rel. Irby v. Israel*, 95 Wis. 2d 697, 703, 291 N.W.2d 643 (Ct. App. 1980).

¶6 The deputy testified at trial that he had a clear, unobstructed radar audio signal of Josellis's vehicle. The deputy also testified that the portion of STH-33 where the deputy began tracking Josellis's vehicle had a slight curve. When asked whether the curve affected the reading of the radar, the deputy indicated that the radar was designed to accommodate for such conditions and his reading was not affected.

¶7 At trial, Josellis argued that the road conditions did not have a minimum possibility of distortion for the moving radar because he was in a curve with high embankments at the time the deputy obtained his radar reading. However, the circuit court was persuaded by the testimony of the deputy that the road conditions did not distort the radar reading and was not persuaded by Josellis's testimony regarding the road conditions. The weight of the evidence and the determination of witness credibility is in the circuit court's domain. *Blankenship v. Computers and Training, Inc.*, 158 Wis. 2d 702, 709, 462 N.W.2d 918 (Ct. App. 1990). We will not second-guess the circuit court's credibility determination. *See State v. Harvey*, 139 Wis. 2d 353, 377-78, 407 N.W.2d 235 (1987). Josellis has not shown that the circuit court's finding on this issue was clearly erroneous.

¶8 For the reasons set forth, the judgment of the circuit court is affirmed.

By the Court.—Judgment affirmed.

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

