COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

Nos. 97-0802 and 97-0803

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANIEL C. CLUSSMAN,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Portage County: JOHN V. FINN, Judge. *Affirmed.*

ROGGENSACK, J.[1] Daniel Clussman appeals two forfeiture judgments issued against him for speeding and failing to stop for an emergency vehicle, arguing that the evidence fails to support his convictions. However, the

[1] This opinion is decided by one judge pursuant to § 752.31(2)(c), STATS.

record reveals credible evidence sufficient to sustain both judgments. Therefore, we affirm.

BACKGROUND

On November 18, 1995, the radar device of Wisconsin State Patrol Officer Laurie Grote showed Clussman's vehicle traveling at 71 to 73 mph in a 55 mph zone. The officer activated her red and blue flashing emergency lights just before the two cars passed, and then activated her flashing headlights and siren as she turned around to pursue Clussman. However, Clussman did not stop or pull over until he reached his parents' house nearly two miles down the road.

During a trial to the court, held August 28, 1996, Clussman testified that he had sped up while passing because he was facing oncoming traffic, and the car which he was passing did not slow down to let him into the right lane. He further testified that he never noticed the patrol car following him because he had no rear view mirror attached to his vehicle. However, Grote testified that the vehicle Clussman passed was a half-mile behind Clussman when she clocked Clussman at 73 mph and that she had observed Clussman braking after she first activated her emergency lights.

DISCUSSION

Standard of Review.

Because the circuit court is in the best position to judge the credibility of witnesses, the circuit court's findings of fact will not be set aside unless they are clearly erroneous. Section 805.17(2), STATS. Furthermore, in reviewing the sufficiency of the evidence to support a conviction, this court will not reverse unless the evidence, viewed most favorably to the State and the

conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt. ***State v. Holtz***, 173 Wis.2d 515, 518, 496 N.W.2d 668, 669 (Ct. App. 1992).

Sufficiency of the Evidence.

Clussman does not contest that he was driving in excess of the posted speed limit as he made his pass. Rather, he contends that the maneuver was legal, given the circumstance of oncoming traffic. However, the circuit court was entitled to credit Grote's testimony that Clussman's car was half a mile ahead of the vehicle he had passed when the speeding was clocked. Therefore, the evidence supports the speeding conviction.

Similarly, the trial court's finding that Clussman should have realized that he was being pulled over by a marked state patrol vehicle with flashing lights within a few seconds of pursuit was not clearly erroneous, and the resulting conviction for failing to stop for an emergency vehicle is also supported by credible evidence.

By the Court.—Judgments affirmed.

This opinion will not be published in the official reports. *See* RULE 809.23(1)(b)4, STATS.