[Cite as *Gahanna v. Young*, 2013-Ohio-3012.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Gahanna,	:	
Plaintiff-Appellee,	:	
		No. 12AP-890
v.	:	(M.C. No. 2012 TRD 170910)
Michael J. Young,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on July 11, 2013

Ray Mularski, City of Gahanna Prosecuting Attorney, and *David M. Kennedy*, for appellee.

Michael J. Young, pro se.

APPEAL from the Franklin County Municipal Court

CONNOR, J.

{¶ 1} Defendant-appellant, Michael J. Young ("appellant"), appeals from a judgment of the Franklin County Municipal Court denying his motion to dismiss for failure to commence his trial within the time constraints of the speedy trial provisions of R.C. 2945.71 et seq., and finding him guilty of speeding in violation of Gahanna City Code 333.03(B). Because (1) the trial court properly denied appellant's motion to dismiss, as the court commenced trial within the time parameters of R.C. 2945.71 et seq., and (2) the trial court's judgment finding appellant guilty of speeding is not against the manifest weight of the evidence, we affirm.

I. HISTORY

{¶ 2} On July 23, 2012, Officer Darren Price of the Gahanna Police Department issued a citation to appellant charging him with speeding for driving 40 miles per hour in

a 25 mile per hour zone in violation of Gahanna City Code 333.03(B). The complaint against appellant was filed in Gahanna's Mayor's Court on July 24, 2012, arraignment was scheduled for August 2, 2012, and trial was set for August 16, 2012.

{¶ 3} At arraignment, appellant entered a not guilty plea and demanded that his case be tried within speedy trial time constraints. On the scheduled trial date of August 16, 2012, appellant requested a court reporter. Because the mayor's court is not a court of record, a court reporter was not available. Accordingly, a judgment entry was signed on August 16, 2012, transferring the matter to the Franklin County Municipal Court pursuant to R.C. 1905.032. Appellant was ordered to appear in the Franklin County Municipal Court on August 31, 2012 at 9:00 a.m.

{¶ 4} On August 22, 2012, the transferred mayor's court case was entered on the docket of the Franklin County Municipal Court, and the next day appellant filed a motion to dismiss pursuant to R.C. 2945.71(A). Appellant entered a not guilty plea in the Franklin County Municipal Court on August 31, 2012, and again demanded that his case be tried within the time constraints set forth in R.C. 2945.71(A) et seq. The matter was scheduled for trial on September 13, 2012. On the day of trial, the court heard arguments concerning appellant's motion to dismiss. Concluding the matter was timely, pursuant to R.C. 1905.032, the court denied the motion. After hearing testimony from Officer Price and appellant, the court determined appellant violated Gahanna City Code 333.03(B) and fined appellant $150 plus costs.

II. ASSIGNMENTS OF ERROR

{¶ 5} Appellant assigns two errors:

> [I.] The Franklin County Municipal Court trial judge's failure to grant appellant's motion for dismissal of the complaint and case per the provisions as set forth in section 2945.71 (A) of the Ohio revised code as to time allowed for a speedy trial for a minor misdemeanor.
>
> [II.] A finding of guilty by the Franklin county municipal court trial judge upon the complaint and testimony, wherein the testimony of appellant and appellee contradicted each other, and because of no further proof by appellee or the challenge by appellee of appellant's defense, that the testimony did not

> give rise to the standard of "guilty beyond a reasonable doubt."

III. FIRST ASSIGNMENT OF ERROR—SPEEDY TRIAL

{¶ 6} Appellant's first assignment of error asserts the trial court erred in denying his motion to dismiss based on the time constraints set forth in R.C. 2945.71 et seq. Appellant contends the mayor's court could have tried the case by rescheduling it to a date when a court reporter was available. Failing that, appellant contends the court exceeded the 30 days allowed for bringing a minor misdemeanor traffic offense to trial.

{¶ 7} Pursuant to R.C. 2945.71(A), "a person against whom a charge is pending in a court not of record, or against whom a charge of minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after the person's arrest or the service of summons." *State v. Azbell*, 112 Ohio St.3d 300, 2006-Ohio-6552, syllabus. A person charged with an offense shall be discharged, upon his or her motion made at or prior to the commencement of trial, if he or she is not brought to trial within the time required by R.C. 2945.71. R.C. 2945.73(B). The time to bring an accused to trial can be extended for the reasons enumerated in the statute, including for "[a]ny period of delay necessitated by a removal or change of venue pursuant to law." R.C. 2945.72(F). When reviewing a speedy trial issue, an appellate court must calculate the number of days chargeable to either party and determine whether the accused was properly brought to trial within the time limits set forth in R.C. 2945.71. *State v. Riley*, 162 Ohio App.3d 730, 2005-Ohio-4337, ¶ 19 (12th Dist.), citing *State v. DePue*, 96 Ohio App.3d 513, 516 (4th Dist.1994).

{¶ 8} Here, appellant unquestionably was not tried within 30 days of Officer Price's issuing him a citation. The issue then is whether the time for bringing appellant to trial was extended under R.C. 2945.72. The Supreme Court of Ohio answered that question in *Brecksville v. Cooke*, 75 Ohio St.3d 53 (1996), relying on R.C. 1905.032. Pursuant to R.C. 1905.032(A), "[i]f a person who is charged with a violation of a law or an ordinance is brought before a mayor's court and the violation charged is within the jurisdiction of the court, as set forth in section 1905.01 of the Revised Code, the mayor, at any time prior to the final disposition of the case, may transfer it to the municipal court * * * with concurrent jurisdiction over the alleged violation." Appellant, on being brought

to trial in mayor's court within the speedy trial time constraints, demanded that a court reporter be present for the trial. Because mayor's courts are not courts of record, a court reporter was not available. The mayor, or magistrate, appropriately exercised discretion and transferred the case to the municipal court for trial where a record could be made.

{¶ 9} Pursuant to R.C. 2945.72(F), the transfer extended the time for bringing appellant to trial within the 30 days allowed under R.C. 2945.71(A). As the *Brecksville* syllabus explained, transferring a case from mayor's court to municipal court is a removal under R.C. 2745.72, and "the period of delay necessary to the removal is the time from arrest or summons to the date the mayor's court certifies the case to the municipal court." Here, the record indicates a judgment entry was signed on August 16, 2012 to transfer the case, pursuant to R.C. 1905.032, ending the period of excused delay. The Franklin County Municipal Court conducted a trial on appellant's charge on September 13, 2012, less than 30 days after the period of delay the removal caused. Accordingly, appellant's speedy trial rights were not violated. Although appellant contends such an interpretation of R.C. 2945.72(F) violates the spirit of requiring a minor misdemeanor trial to occur within 30 days of summons or arrest, the Supreme Court in *Brecksville* considered that argument and rejected it. Moreover, to the extent appellant suggests the result here violates the plain language of R.C. 2945.71(A), *Brecksville* likewise rejected that argument.

{¶ 10} In the final analysis, appellant initiated the necessary transfer from mayor's court to municipal court by demanding a court reporter. The mayor's court, within the discretion allowed under R.C. 1905.032, transferred the matter to the Franklin County Municipal Court. Consistent with *Brecksville* and R.C. 2945.71, the municipal court tried appellant within 30 days of the matter being certified to that court and within the time constraints of R.C. 2945.71(A). Accordingly, the trial court correctly overruled appellant's motion to dismiss.

{¶ 11} Appellant's first assignment of error is overruled.

IV. SECOND ASSIGNMENT OF ERROR—MANIFEST WEIGHT OF THE EVIDENCE

{¶ 12} Appellant's second assignment of error challenges the trial court's judgment finding him guilty of speeding. Appellant asserts that his own radar detector did not discern radar from Officer Price, indicating the officer failed to lodge the radar beam on appellant's vehicle, and as a result failed to accurately clock appellant's speed.

{¶ 13} When presented with a manifest weight argument, we weigh the evidence in a manner to determine whether sufficient, competent, credible evidence supports the jury's verdict to permit reasonable minds to find guilt beyond a reasonable doubt. *State v. Conley*, 10th Dist. No. 93AP-387 (Dec. 16, 1993); *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997) (noting that "[w]hen a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony"). Determinations of credibility and weight of the testimony remain within the province of the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. The trier of fact thus may take note of the inconsistencies and resolve them accordingly, "believ[ing] all, part, or none of a witness's testimony." *State v. Raver,* 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶ 21, citing *State v. Antill*, 176 Ohio St. 61, 67 (1964).

{¶ 14} At the trial of September 13, 2012, Officer Price testified he began his shift at 2:00 p.m. on July 23, 2012, was in uniform, and was in a marked cruiser. At approximately 8:30 p.m., Officer Price was on routine patrol heading northbound on the inside lane of Morrison Road near the S curve. Appellant, also on the inside lane, was traveling southbound. Officer Price initially visually observed appellant and, based on his training and experience, believed appellant to be exceeding the 25 mile per hour speed limit. Officer Price then used a Stalker Dual Radar to clock appellant's speed.

{¶ 15} According to his testimony, Officer Price checked the calibration of the unit at the beginning of his shift or shortly thereafter, using a combination of "internal self-checks and tuning forks to check the radar antenna and make sure everything is working properly." (Tr. 18.) He concluded it was in proper, working order. Following the visual determination regarding appellant's vehicle, Officer Price activated the radar and the radar indicated the vehicle was traveling at 40 miles per hour. When asked how he knew the radar was tracking appellant's car, Officer Price responded that "[t]he device makes a

tone. If it's not tracking well or tracking something stationary, it doesn't make a good tone." (Tr. 19.) As a result, if "something intervened" between the officer and the object he was tracking, "[t]he tone would drop out and possibly come back if you were passing another object." (Tr. 19.) Those circumstances did not occur in appellant's case.

{¶ 16} Nor were any other vehicles in close proximity to appellant's vehicle according to Officer Price. The closest vehicle was over 300 yards behind appellant's vehicle, while Officer Price was less than 200 yards from appellant's car. Officer Price testified it was not yet dark, he had good visual observation, he could not see anything intervening between him and appellant's vehicle, and he did not receive any indication that the radar jumped to some other object. After recording appellant's speed, Officer Price activated a lock button that locked in the speed, displayed it on the radar unit, and allowed appellant to view the unit and to see the speed locked in at 40 miles per hour.

{¶ 17} Appellant also testified, stating he did not exceed the 25 mile per hour posted speed limit. He further testified the officer's radar unit could not have been operating properly, as appellant had a radar detector within his vehicle that did not alert to the officer's unit but to a vehicle near him. According to appellant's testimony, a car was within 50 feet to the front of him, and another car was in front of that one. He also testified he thought two cars were behind him; the "one car was probably 50, 70 feet behind [him]," but he was unable to ascertain how far the second car may have been behind him. (Tr. 33.) Appellant testified that, based on his reading concerning radar units, the radar beam was not narrow, but "kind of broad." (Tr. 29.) After leaving Officer Price, he "encountered several radar interceptions from at least one police vehicle, maybe two * * * [j]ust in short distance, long distance, [his] detector went off. [He] figured out Officer Price really didn't shoot [him]. He got another vehicle." (Tr. 30.)

{¶ 18} At the conclusion of the case, the court explained its decision. The court noted the officer testified the radar was in proper working condition. The officer further testified to a visual estimation consistent with what the radar detected. As to other vehicles in the roadway, the court adopted the city's evidence, noting the testimony indicated the nearest vehicle to be approximately 300 feet away and further pointing to the officer's testimony that the tone was consistent and did not indicate interference. The

court found unpersuasive appellant's testimony that his commercial radar detector did not note the radar or Doppler effect.

{¶ 19} The testimony from Officer Price supports the trial court's determination. According to Officer Price, he checked the radar before he used it, activated it on appellant's vehicle, and checked it thereafter. In both checks, the device was working properly and confirmed his visual estimation. Although appellant attempted to suggest interference resulted in an inaccurate recording of his speed, the court rejected his testimony concerning the proximity of the nearest vehicles and adopted Officer Price's testimony that the nearest vehicle was at least 300 feet away and that the radar detected no interference. In effect, the resolution of appellant's charge reduced to a credibility issue. The trial court found the officer's testimony more credible than appellant's testimony, and we cannot say the trial court lost its way in so concluding.

{¶ 20} Appellant's second assignment of error is overruled.

V. DISPOSITION

{¶ 21} Having overruled appellant's two assignments of error, we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

DORRIAN and McCORMAC, JJ., concur.

McCORMAC, J., retired, of the Tenth Appellate District,
assigned to active duty under authority of Ohio Constitution,
Article IV, SECTION 3(C).

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