

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
PORTAGE COUNTY, OHIO**

CITY OF KENT,	:	<b>O P I N I O N</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2011-P-0069</b>
RICHARD W. VESEL, JR.,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Municipal Court, Kent Division, Case No. K 11 TRD 1100.

Judgment: Affirmed.

*James R. Silver*, City of Kent Law Director, 215 East Summit Street, Kent, OH 44240 (For Plaintiff-Appellee).

*Richard W. Vesel, Jr.*, pro se, 408 Oldham Way, Hudson, OH 44236 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Richard W. Vesel, Jr., appeals his conviction for speeding in the Portage County Municipal Court, Kent Division. The issues before this court are whether the municipal court erred in its questioning of a witness about his calibration of a radar unit, and whether there was sufficient evidence to uphold a conviction for speeding where the officer was not trained on a particular model of radar equipment. For the following reasons, we affirm the decision of the court below.

{¶2} On March 26, 2011, Vesel was issued a citation for speeding, in violation of Kent Codified Ordinances 333.03.

{¶3} On July 28, 2011, a bench trial was held.

{¶4} Officer Martin L. Gilliland of the Kent Police Department testified on behalf of the city as follows:

{¶5} Prosecutor: And how long have you been employed there?

{¶6} Gilliland: Twenty-one years.

{¶7} \* \* \*

{¶8} Prosecutor: And were you certified to use radar?

{¶9} Gilliland: Yes.

{¶10} Prosecutor: And when was that?

{¶11} Gilliland: That was back in 1991 through the State Highway Patrol Academy.

{¶12} \* \* \*

{¶13} Prosecutor: And at the beginning of your shift that day, March 26th, 2011, did you have a chance to run a calibration of your vehicle's radar unit?

{¶14} Gilliland: Yeah. I checked the calibration using the tuning forks that were provided with the device.

{¶15} Prosecutor: Can you tell the Court how you checked the calibration that day?

{¶16} Gilliland: In the stationary mode you have a sixty-five and thirty-five mile an hour tuning fork. I checked both speeds. Initially when you turn it on it goes through all of the checks, all of the lights and all that stuff, and it goes through and it turns on. You're good. You use the tuning forks. Should get the reading -- speed reading of sixty-five and a speed reading of thirty-five.

{¶17} Prosecutor: Did you do that that day?

{¶18} Gilliland: Yes. And then you do it in the moving mode. Using both tuning forks the same time you get a split reading between thirty and thirty-five.

{¶19} Prosecutor: Is that what you received that day?

{¶20} Gilliland: Yes.

{¶21} Prosecutor: All right. And then what does that tell you?

{¶22} Gilliland: That the device is functioning properly.

{¶23} Prosecutor: Is there also an audio component on that device?

{¶24} Gilliland: Yes.

{¶25} Prosecutor: Was that working that day?

{¶26} Gilliland: Yes, it was.

{¶27} Prosecutor: And what does the audio component do? What does it tell you when it's working?

{¶28} Gilliland: Depending on the \* \* \* intensity of the sound, it tells you basically how fast -- well, it indicates that the vehicle is moving or the target is moving at a high rate of speed if the audio gets higher and louder.

{¶29} Prosecutor: All right. After you ran the calibration at the beginning of the shift, did you have an opinion as to whether or not your radar unit was in proper working order?

{¶30} Gilliland: Yes, it was in proper working order.

{¶31} \* \* \*

{¶32} Prosecutor: Can you tell the court how it is that you came in contact with Mr. Vesel that day?

{¶33} Gilliland: Yeah. I was on routine patrol on Haymaker Parkway in the City of Kent, Portage County, State of Ohio. I was running moving radar, heading eastbound from [the] West Main and Longmere area, and Mr. Vesel was heading westbound on 59 or Haymaker Parkway going towards West Main Street in the car strips.

{¶34} Prosecutor: All right. And what called your attention to Mr. Vesel?

{¶35} Gilliland: Well, I visually saw the vehicle coming towards me at a high rate of speed and I tried to do the best I can to estimate the speed so you have kind of an accurate idea, you know. It gets you in the habit of targeting the proper vehicle and all that stuff. And I estimated his speed to be between fifty and fifty-five miles an hour. And when I turned on my radar, which was in the moving mode, I got a clock on his vehicle being fifty-five miles an hour.

{¶36} \* \* \*

{¶37} Prosecutor: All right. And what is the posted speed limit on Haymaker Parkway in that area?

{¶38} Gilliland: It's thirty-five miles an hour.

{¶39} \* \* \*

{¶40} Prosecutor: All right. So you indicated the laser unit clocked him at fifty-five miles an hour?

{¶41} Gilliland: It wasn't the laser. \* \* \* It was the Python. M.P.H. Python radar. It's a doppler radar.

{¶42} Prosecutor: But that locked him in at fifty-five miles an hour?

{¶43} Gilliland: Yes.

{¶44} Prosecutor: Did you have an audio signal that corresponded with that speed?

{¶45} Gilliland: Yes.

{¶46} Prosecutor: During your training or any subsequent seminars or anything you attended, and during the course of your job over twenty-one years, have you had opportunity then to guess what speed a vehicle is traveling and then compare it to your radar or laser reading?

{¶47} Gilliland: Yes.

{¶48} Prosecutor: O.K. And is that something you still continue to do obviously?

{¶49} Gilliland: Yes. Yes. During the school we had to do it and we had to be proficient. And they wanted to make sure we were within plus or minus five miles an hour of the target speed. So we practiced that quite a bit during the week we were down there, and I try to keep that up when I run the radar.

{¶50} \* \* \*

{¶51} Mr. Vesel: Have you ever read this operator's manual [for the MPH Python III]?

{¶52} Gilliland: Yes.

{¶53} Mr. Vesel: You read it cover to cover?

{¶54} Gilliland: No. I glanced through it when I needed to.

{¶55} Mr. Vesel: Are you familiar with a section titled Range and Radar Placement from the manual? This section deals with placement of the radar unit within your vehicle to best avoid interference from the compounds in your vehicle.

{¶56} Gilliland: Uh-huh. Uh-huh.

{¶57} Mr. Vesel: What do you recall about that section?

{¶58} Gilliland: I can't recall anything off the top of my head. However, if there is any kind of radio interference or anything like that, that would come up at the calibration check at the beginning of the shift and at the end of the shift. And if I did have R.F.I. interference and it didn't check properly out, then I wouldn't use the device. And that ticket I issued you would have been voided.

{¶59} \* \* \*

{¶60} Mr. Vesel: O.K. So you were trained in the use of traffic radar in 1991?

{¶61} Gilliland: Yes.

{¶62} Mr. Vesel: Was the Python-3 included in that training?

{¶63} Gilliland: No, it was not.

{¶64} \* \* \*

{¶65} The Court: Officer, the Court has a question or two. You calibrated this machine prior to the start of your shift, correct?

{¶66} \* \* \*

{¶67} Mr. Vesel: Your Honor, I would object to you acting as prosecutor in this case, the prosecution, if the prosecutor has no questions.

{¶68} The Court: The Court always has the option of asking any questions that I want to ask. [To Officer Gilliland:] You also mentioned that at the end of the shift that you also calibrated it?

{¶69} Gilliland: I check it at the end of the shift, too, your Honor.

{¶70} The Court: And your testimony was that it was working and was in proper working order on that day?

{¶71} Gilliland: Yes, your Honor.

{¶72} A copy of Officer Gilliland's May 24, 1991 Certificate of Training was admitted into evidence. The Certificate provides that Officer Gilliland has "satisfactorily complet[ed] course requirements in the theory, technical aspects, and practical use of traffic radar."

{¶73} At the conclusion of the trial, the municipal court found Vesel guilty of speeding and imposed a fine of one hundred dollars plus court costs.

{¶74} On August 12, 2011, Vesel filed a Notice of Appeal. On appeal, Vesel raises the following assignments of error:

{¶75} "[1.] The trial court abused its discretion in asking the prosecution's witness leading questions."

{¶76} "[2.] The ruling of the trial court was against the manifest weight of the evidence."

{¶77} In his first assignment of error, Vesel asserts the municipal court erred by asking Officer Gilliland a leading question to obtain information necessary to prove the city's case. Specifically, the court asked Officer Gilliland if he calibrated the radar at the end of his shift. Vesel maintains that, "for radar evidence to be substantiated in court, the radar unit should be calibrated at the beginning and end of a shift." Officer Gilliland,

however, did not testify on direct examination that he calibrated the radar at the end of his shift. Appellant's Brief at 4-5.

{¶78} The Ohio Rules of Evidence expressly provide that “[t]he court may interrogate witnesses, in an impartial manner, whether called by itself or by a party.” Evid.R. 614(B). Pursuant to this Rule, a trial court has discretion to question “participants and the witnesses in a search for truth.” *State v. Prokos*, 91 Ohio App.3d 39, 44, 631 N.E.2d 684 (4th Dist.1993).

{¶79} The municipal court in the present case did not abuse its discretion in its questioning of Officer Gilliland. Prior to the court's questioning, Officer Gilliland, on cross-examination, alluded to the practice of calibrating the radar after a shift, admitting that Vesel's citation would have been voided if the calibration “didn't check properly out.”

{¶80} The first assignment of error is without merit.

{¶81} In the second assignment of error, Vesel argues that his conviction is against the manifest weight of the evidence, in that there was insufficient evidence that Officer Gilliland was trained in the use of the particular radar used to measure his speed, and/or evidence that Officer Gilliland received up-to-date training in the use of traffic radar. Appellant's Brief at 6.

{¶82} The manifest weight of the evidence and the sufficiency of the evidence are distinct legal concepts. *State v. Elmore*, 111 Ohio St.3d 515, 2006-Ohio-6207, 857 N.E.2d 547, ¶ 44. With respect to the sufficiency of the evidence, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991),

paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

{¶83} Whereas “sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, \* \* \* weight of the evidence addresses the evidence’s effect of inducing belief.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 25, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). “In other words, a reviewing court asks whose evidence is more persuasive -- the state’s or the defendant’s?” *Id.* An appellate court considering whether a verdict is against the manifest weight of the evidence must consider all the evidence in the record, the reasonable inferences, the credibility of the witnesses, and whether, “in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶84} “Since there must be sufficient evidence to take a case to the jury, it follows that ‘a finding that a conviction is supported by the *weight* of the evidence necessarily must include a finding of sufficiency.’” (Emphasis sic.) *Willoughby v. Wutchiett*, 11th Dist. No. 2002-L-165, 2004-Ohio-1177, ¶ 8, quoting *State v. Roberts*, 9th Dist. No. 96CA006462, 1997 Ohio App. LEXIS 4255, \*5 (Sept. 17, 1997); *Thompkins* at 388 (“[a] reversal based on the weight of the evidence \* \* \* can occur only after the State both has presented *sufficient evidence* to support conviction and has persuaded the jury to convict”) (emphasis sic), quoting *Tibbs v. Florida*, 457 U.S. 31, 41, 102 S.Ct. 2211, 72 L. Ed.2d 652 (1982). Accord *State v. Munoz*, 10th Dist. No. 11AP-



475, 2011-Ohio-6672, ¶ 7, fn. 1; *State v. Johnson*, 12th Dist. No. CA2011-05-049, 2011-Ohio-6352, ¶ 6; *State v. Robinson*, 8th Dist. No. 96463, 2011-Ohio-6077, ¶ 15.

{¶85} “In order for a person to be convicted of speeding based on radar evidence, evidence must be introduced that the radar device is scientifically reliable \* \* \*[,] that the device is in good working condition, as well as accurate, and that the officer who used the device is qualified to administer it.” *State v. Bayus*, 11th Dist. No. 2005-G-2634, 2006-Ohio-1684, ¶ 14, citing *East Cleveland v. Ferrell*, 168 Ohio St. 298, 301, 154 N.E.2d 630 (1958). “[T]his court has held that the officer’s testimony with respect to his or her qualifications and experience, is sufficient to establish that he or she is qualified to use the radar device.” *State v. Kress*, 11th Dist. No. 2007-T-0075, 2008-Ohio-1658, ¶ 33, citing *State v. Schroeder*, 11th Dist. No. 95-G-1907, 1995 Ohio App. LEXIS 3910, \*4 (Sept. 8, 1995).

{¶86} Officer Gilliland testified that he read the Python III’s operator’s manual, but he qualified this testimony by stating that he only “glanced through it as \* \* \* needed.” When asked about a particular section of the manual, Officer Gilliland was unable to recall the content of the manual.

{¶87} The city counters that Officer Gilliland’s Certificate of Training was admitted into evidence and that “[r]adar theory has not changed since its discovery.” Appellee’s Brief, at 10.

{¶88} There was sufficient evidence of Officer Gilliland’s qualifications and experience with the Python III. Officer Gilliland testified that he was trained in the operation of radar and his Certificate of Training was admitted into evidence. Officer Gilliland demonstrated his familiarity with the actual use of the Python III through his detailed testimony regarding its calibration, the functioning of the audio component, and

the possible effects of radio interference. As noted above, it is well-established in this district that an “officer’s testimony with respect to his or her qualifications and experience, is sufficient to establish that he or she is qualified to use the radar device.” *Bayus*, 2006-Ohio-1684, at ¶ 19; *Kress*, 2008-Ohio-1658, at ¶ 33.

{¶89} Vesel’s arguments concerning Officer Gilliland’s training on the Python III and his level of familiarity with the operator’s manual do not render the municipal court’s verdict contrary to the weight of the evidence, i.e., they do not demonstrate that verdict to be a manifest miscarriage of justice. In light of Officer Gilliland’s experience in the operation of the Python III, his lack of formal training does not convincingly demonstrate that he was unqualified to use it.

{¶90} The second assignment of error is without merit.

{¶91} For the foregoing reasons, Vesel’s conviction for speeding is affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.