[Cite as *Toledo v. Parra*, 2015-Ohio-2800.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo — Court of Appeals No. L-14-1143

Appellee — Trial Court No. TRD-14-10156

v.

Linda Parra — **DECISION AND JUDGMENT**

Appellant — Decided: July 10, 2015

* * * * *

David Toska, City of Toledo Chief Prosecutor, and
Henry Schaefer, Assistant Prosecutor, for appellee.

Alex J. Hale, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Toledo Municipal Court in which the trial court found appellant, Linda Parra, guilty of one count of exceeding the 20 m.p.h. speed limit in a school zone, in violation of Toledo Municipal Code 333.03(b)(2), a third degree misdemeanor. The trial court ordered appellant to pay a $100 fine, and

sentenced her to serve 60 days in jail with 30 days suspended, and one year of inactive probation.

{¶ 2} On March 31, 2014, appellant was driving in the outer eastbound lane of Heatherdowns Boulevard in Toledo, Ohio, at approximately 3:30 p.m., when her silver Jeep was stopped by Toledo Police Officer Tyson Phalen, who informed appellant that she was exceeding the posted speed limit of 20 m.p.h. in a school zone while students were entering or leaving the school. On June 17, 2014, a bench trial was held in Toledo Municipal Court, at which testimony was presented by Officer Phalen and appellant.

{¶ 3} Phalen testified at trial that appellant drove past the school at 3:30 p.m., while the school zone's warning lights were flashing as an indication that the normal 45 m.p.h. speed limit on Heatherdowns was reduced to 20 m.p.h. Phalen further testified that appellant's vehicle was going 40 m.p.h. as she passed the school. Phalen stated that, although the beginning of the school zone is marked by flashing lights, the end of the zone is not similarly marked; nevertheless, the boundaries of the school zone, which are marked on the roadway, are clearly visible to passing motorists. At the close of Phalen's testimony, the state rested.

{¶ 4} Appellant testified on her own behalf at the trial. On direct examination, appellant stated that the speed limit on Heatherdowns is normally 45 m.p.h., and she was past the school zone when Phalen pulled her vehicle over and accused her of speeding. Appellant also testified that "there were no kids around" when she drove past the school. Defense counsel then asked appellant if she had ever been pulled over for speeding

before, to which she answered "no." Thereafter, the following exchange took place between the trial court, defense counsel, and appellant:

Defense counsel: Have you ever had a speeding ticket before?

Appellant: No.

Defense counsel: Did you have insurance?

Appellant: Yes, I do.

Defense counsel: Okay.

Defense counsel: No further questions. I'm sorry? There are priors?

Trial court: Yes.

Defense counsel: Fabulous.

Trial court: Do you want to try again?

Defense counsel: You do have a prior record. May I approach?

Trial court: You've been stopped for speeding before?

Defense counsel: In Sylvania.

Trial court: And Maumee.

Defense counsel: And, I believe, Maumee in 2005.

Appellant: I don't remember about that in Sylvania.

Defense counsel: And Maumee.

Appellant: And Maumee?

Defense counsel: Correct.

Appellant: The summons says it was 2005.

Defense counsel: So you have a prior traffic history; is that correct?

Appellant: Yeah. That's – I don't remember that one.

Defense counsel: No further questions.

{¶ 5} On cross-examination, appellant testified that she was on her way to the University of Toledo when she was stopped by Phalen, she is "not too familiar" with that area, and there "were no kids around" at the time. At the close of appellant's testimony the trial court found her guilty of driving 40 m.p.h. in a school zone at a time when the speed limit was 20 m.p.h., and sentenced her as stated above. A timely notice of appeal was filed on June 30, 2014.

{¶ 6} On appeal, appellant sets forth the following assignment of error:

1. The trial court abused it's [sic] discretion when it introduced evidence of Appellant's prior driving record.

{¶ 7} Appellant argues on appeal that the trial court's attempt to "impeach" her testimony during direct examination with information that was not used by the state on cross-examination "shows a lack of impartiality and unfairness of the trial." Appellant further argues that the prosecution could have, but did not "[procure] a LEADS report on [her] driving record."

{¶ 8} The record shows that appellant did not object to the trial court's questions either during or immediately after the trial. Accordingly, she has waived all but plain error on appeal. *State v. Williams*, 51 Ohio St.2d 112, 364 N.E.2d 1364 (1977),

paragraph two of the syllabus. The Ohio Supreme Court has held that an alleged error "does not constitute a plain error * * * unless, but for the error, the outcome of the trial clearly would have been otherwise." *State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph two of the syllabus.

{¶ 9} Under Evid.R. 611, the trial court "has discretion to control the flow of the trial." *State v. Prokos*, 91 Ohio App.3d 39, 44, 631 N.E.2d 684 (4th Dist.1993). Pursuant to Evid.R. 614(B), the trial court "may interrogate witnesses in an impartial manner, whether called by itself or a party." The right to question witnesses pursuant to Evid.R. 614(B) rests within the sound discretion of the trial court." *Williams, supra*, citing *Prokos.*

{¶ 10} Generally, the trial court's questions must not indicate "its opinion on the evidence or on the credibility of the witness." *State v. Sloan*, 7th Dist. Belmont No. 04 BA 47, 2005-Ohio-2932, ¶ 14. However where, as here, the trial is to the bench and not to a jury, the trial court is "accorded greater flexibility in questioning witnesses * * * [because] there is no one to be prejudicially influenced by the judge's demeanor." *State v. Daugherty*, 11th Dist. Trumbull No. 2001-T-0024, 2002 WL 411105 (Mar. 15, 2002), quoting *Mentor v. Brancatelli*, 11th Dist. Lake No. 97-L-011, 1997 WL 772949 (Dec. 5, 1977).

{¶ 11} Finally, along with a criminal defendant's privilege to testify in his or her own defense comes an obligation not to commit perjury. *Harris v. New York*, 401 U.S. 222, 225, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971). In this case, although appellant disputes

the method by which her deception was revealed at trial, she does not challenge the accuracy of the trial court's information.

{¶ 12} On consideration, we find that appellant has not demonstrated that the evidence presented by the prosecution, absent the trial court's inquiry, was insufficient to support her conviction or that, but for the trial court's inquiry, the outcome of her trial would have been different. Appellant's sole assignment of error is not well-taken.

{¶ 13} The judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE