

[Cite as *Kettering v. Stachler*, 2010-Ohio-5289.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

CITY OF KETTERING	:	
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Plaintiff-Appellee	:	C.A. CASE NO. 23697
vs.	:	T.C. CASE NO. 09TRD8771
	:	
HERBERT G. STACHLER	:	(Criminal Appeal from Municipal Court)
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 29th day of October, 2010.

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GRADY, J.:

{¶ 1} Defendant, Herbert G. Stachler, appeals from his conviction, following a bench trial, of the offense of speeding, in violation of Section 434.03 of the Kettering Municipal Traffic Code.

FIRST ASSIGNMENT OF ERROR

{¶ 2} "THE TRIAL COURT ERRED IN FINDING DEFENDANT-APPELLANT 'GUILTY' BEYOND A REASONABLE DOUBT."

SECOND ASSIGNMENT OF ERROR

{¶ 3} "THE TRIAL COURT ERRED IN ACCEPTING INTO EVIDENCE A 'READING' FROM AN UNIDENTIFIED SPEED MEASURING DEVICE ABSENT EVIDENCE OF CONSTRUCTION, METHOD OF OPERATION, OR SCIENTIFIC RELIABILITY."

THIRD ASSIGNMENT OF ERROR

{¶ 4} "THE GUILTY VERDICT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

FOURTH ASSIGNMENT OF ERROR

{¶ 5} "THE APPELLANT WAS DENIED A FAIR TRIAL AND HIS RIGHT TO DUE PROCESS."

{¶ 6} On August 6, 2009, Stachler was cited by Kettering Police Officer Ronald Roberts on a charge of driving forty miles per hour in a posted twenty-five mile per hour zone. Officer Roberts was the sole witness who testified at Stachler's trial. He testified that the radar device in his cruiser indicated that Stachler's speed was forty miles per hour, a speed which the officer also opined was unsafe for the prevailing conditions.

{¶ 7} Officer Roberts testified that he is trained and experienced in using radar devices to determine a vehicle's speed.

He further testified that he verified the calibration of the unit he used, both before and after Stachler's violation, using tuning forks supplied by the unit's manufacturer for that purpose. When asked, Officer Roberts testified that he was unaware of the serial number of the radar unit and the serial numbers of the tuning forks he used. He testified that he had not performed the calibration, which requires a trained technician.

{¶8} Stachler moved to dismiss the speeding charge at the close of the evidence. He argued that Officer Roberts' testimony was insufficient to prove the speed at which Stachler's vehicle was traveling, in reliance on the officer's reading of his radar device, for three reasons. First, because the officer had not explained how the device works. Second, because the officer had not testified to the serial number of the device and the tuning forks he used to verify its calibration. And, third, because the prosecution failed to produce "logs" of the calibration checks Officer Roberts performed. The court overruled Stachler's motion to dismiss. In these related assignments of error, Stachler argues that the trial court erred in so doing.

{¶9} Stachler's motion to dismiss, and the error he assigns on appeal, go to the issue of "authentication," a requirement as a condition precedent to admissibility, which is satisfied by evidence sufficient to support a finding that the matter in question

is what its proponent claims. Evid.R. 901(A). With respect to a process or system, including radar devices, evidence of the speed readings they produce is authenticated by evidence describing the process or system and showing that the process or system produces an accurate result. Evid.R. 901(B)(9).

{¶ 10} In a prosecution for speeding based on a reading from a radar device, "it is sufficient to show that the meter was properly set up and tested by a technician trained by experience to do so, and that at that time it was functioning properly; and it is not essential to the admissibility of such evidence to show, by independent expert testimony, the nature and function of or the scientific principles underlying such speed meter." *City of East Cleveland v. Ferrell* (1958), 108 Ohio St. 298, syllabus. "Once the dependability of the radar unit is established, its accuracy may be shown by testimony indicating that the unit has been properly calibrated according to the manufacturer's instructions." *State v. Doles* (1980), 70 Ohio App.2d 35, 40.

{¶ 11} Stachler did not object that the State failed to offer evidence showing that the radar device Officer Roberts used had been properly calibrated by a technician trained and experienced in performing that task. Any error in not excluding the evidence for that reason is therefore waived. Instead, Stachler objected that Officer Roberts failed to support his testimony concerning

the calibration checks he said he performed with "logs" showing he had done that. That was not necessary, however. Officer Roberts' own testimony concerning his use of tuning forks that day is the "[t]estimony of a witness with knowledge," which is sufficient authentication per Evid.R. 901(B)(1).

{¶ 12} Neither was it necessary for Officer Roberts to testify to the serial number of the radar device that was in Officer Roberts' cruiser or the serial numbers of the tuning forks he said he used to check its calibration. The serial numbers concerned are not probative of any fact in issue. It appears that Stachler wished to have that information in order to challenge Officer Roberts' testimony concerning the speed his device reported. Stachler could have sought that information through pretrial discovery. Crim.R. 16(B)(3). Stachler's self-representation does not relieve him of the duty to know and use the means available to him in preparing his defense.

{¶ 13} Finally, it was not necessary for Officer Roberts or any other witness to testify concerning the nature and function or the scientific principles underlying the radar device Officer Roberts used. *City of East Cleveland v. Ferrell*.

{¶ 14} The first, second, third, and fourth assignments of error are overruled.

FIFTH ASSIGNMENT OF ERROR

{¶ 15} "OFFICER'S VISUAL ESTIMATION OF VEHICLE SPEED, BY ITSELF, WITHOUT PROOF OF SUCH ABILITY, ABSENT SCIENTIFIC CONSTRUCTION AND METHOD, IS NOT SUFFICIENT TO SUSTAIN A 'GUILTY' VERDICT."

{¶ 16} "A police officer's unaided visual estimation of a vehicle's speed is sufficient evidence to support a conviction for speeding in violation of R.C. 4511.21(D) without independent verification of the vehicle's speed if the officer is trained, is certified by the Ohio Peace Officer Training Academy or a similar organization that develops and implements training programs to meet the needs of law-enforcement professionals and the communities they serve, and is experienced in visually estimating vehicle speed." *City of Barberton v. Jenney*, 126 Ohio St.3d 5, 2010-Ohio-2420, syllabus.

{¶ 17} Officer Roberts testified that when he saw Stachler's vehicle he concluded that it was "traveling . . . at a high rate of speed" (T. 6), and because of that the officer activated his radar device. Officer Roberts also testified that he was trained to determine a vehicle's speed through visual observation, but he declined to estimate a specific speed at which Stachler's vehicle was traveling, relying instead on the reading his radar device provided.

{¶ 18} Stachler's offense was charged and proved on the basis

of the independent verification of his vehicle's speed the radar device reported, not on the basis of a visual estimation of a specific speed to which Officer Roberts testified. The holding in *City of Barberton* has no application on these facts.

{¶ 19} The fifth assignment of error is overruled.

SIXTH ASSIGNMENT OF ERROR

{¶ 20} "DEFENDANT WAS DENIED HIS RIGHT TO A SPEEDY TRIAL."

{¶ 21} Stachler complains that he was cited on August 6, 2009, but was not tried until September 9, 2009, a difference of thirty-four days. Persons charged with minor misdemeanors must be tried within thirty days following their arrest or citation.

R.C. 2945.71(A). A person must be discharged on his motion if he is not brought to trial within the statutorily prescribed time.

R.C. 2945.73. However, if the accused fails to make such a motion prior to trial he is barred from raising the issue of a violation of his statutory speedy trial right on appeal. *State v. Trummer* (1996), 114 Ohio App.3d 456; *State v. Tucker* (Dec. 14, 1983), Hamilton App. No. C-830161.

{¶ 22} Stachler failed to move for a discharge pursuant to R.C. 2945.73, or otherwise object in the trial court to a violation of his speedy trial right. The failure waives the error for purposes of appeal.

{¶ 23} The sixth assignment of error is overruled. The

judgment of the trial court will be affirmed.

FAIN, J. And FROELICH, J., concur.

Copies mailed to:

John D. Everett, Esq.

Herbert G. Stachler

Hon. Robert L. Moore