

[Cite as *State v. Duffy*, 2004-Ohio-6679.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JOHN C. DUFFY

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 04CAC06046

OPINION

CHARACTER OF PROCEEDING:

Criminal Appeal from the Municipal Court,
Case No. 04 TRD 02930

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 10, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

KYLE E. ROHRER
JUSTICE CENTER
70 North Union Street
Delaware, Ohio 43015

JOHN C. DUFFY
PRO SE
746 Oakmont
Avon Lake, Ohio 44012-2702

Wise, J.

{¶1} Appellant John Duffy appeals his conviction, for speeding, in the Municipal Court of Delaware County. The following facts give rise to this appeal.

{¶2} On March 10, 2004, Trooper Thomas Bee of the State Highway Patrol stopped appellant, for speeding on Interstate 71, in Delaware County. Appellant was traveling over the posted speed limit of sixty-five miles per hour. Trooper Bee issued appellant a citation. Appellant appeared, in court, on March 19, 2004, and entered a plea of not guilty.

{¶3} The trial court scheduled this matter for trial on April 7, 2004. Pursuant to Crim.R. 16, appellant filed a request for discovery on March 26, 2004. The state responded on April 2, 2004. The factual statement prepared by Trooper Bee indicated the existence of a videotape of the traffic stop. Appellant reviewed the videotape one day prior to the scheduled trial. Also on this date, appellant filed a motion for sanctions pursuant to Crim.R. 19(C)(5).

{¶4} On the day of trial, appellant raised the issue of his pending motion for sanctions. The trial court asked appellant to specifically address the alleged discovery violations. In response, appellant stated that nobody entered an appearance on behalf of the prosecutor; the discovery provided to him was not signed as required by the Rules of Criminal Procedure; and he received the discovery four days after the certificate of service was signed, which delayed his motion for sanctions. After listening to these alleged discovery violations, the trial court proceeded to swear-in witnesses.

{¶5} Trooper Bee testified on behalf of the state. During the course of Trooper Bee's testimony, appellant learned that the videotape he viewed the previous day did

not contain video of the offense. The state never introduced the videotape as evidence. Thereafter, the magistrate found appellant guilty of speeding. Appellant filed objections to the magistrate's decision. The trial court overruled appellant's objections on April 30, 2004.

{¶6} Appellant timely filed his notice of appeal and sets forth the following assignments of error for our consideration:

{¶7} "I. THE TRIAL COURT ERRED IN FAILING TO FIND THAT A MAGISTRATE MAY NOT CONDUCT A TRIAL ON THE MERITS WHEN A CRIM.R. 19(C)(5) MOTION FOR SANCTIONS IS PENDING.

{¶8} "II. THE TRIAL COURT ABUSED ITS DISCRETION IN OVERRULING DEFENDANT-APPELLANT'S CRIM.R. 19(C)(5) MOTION FOR SANCTIONS.

{¶9} "III. THE EVIDENCE BELOW DOES NOT SUPPORT A FINDING OF GUILTY BEYOND A REASONABLE DOUBT."

I

{¶10} In his First Assignment of Error, appellant contends the trial court erred when it determined the magistrate properly conducted a trial when a motion for sanctions was pending. We disagree.

{¶11} In *Lakewood v. Papadelis* (1987), 32 Ohio St.3d 1, the Ohio Supreme Court explained that:

{¶12} "* * * [A] trial court must inquire into the circumstances surrounding a discovery violation and, when deciding whether to impose a sanction, must impose the least severe sanction that is consistent with the purpose of the rules of discovery." *Id.* at 5.

{¶13} "The standard of review of a trial court's decision in a discovery matter is whether the court abused its discretion." *State ex rel. Denton v. Bedinghaus*, 98 Ohio St.3d 298, 305, 2003-Ohio-861, citing *Mauzy v. Kelly Serv., Inc.* (1996), 75 Ohio St.3d 578, 592. "Abuse of discretion" connotes an unreasonable, arbitrary, or unconscionable attitude. *State ex rel. Hamilton Cty. Bd. of Commrs. v. State Emp. Relations Bd.*, 102 Ohio St.3d 344, 347, 2004-Ohio-3122, quoting *State ex rel. Grady v. State Emp. Relations Bd.* (1997), 78 Ohio St.3d 181, 183.

{¶14} Appellant claims the magistrate failed to rule on his motion for sanctions which deprived him of his right to set aside an adverse ruling on his motion prior to proceeding with a trial on the merits. In our review of the record, we find the magistrate made an inquiry into appellant's motion for discovery sanctions. However, appellant was not able to explain how these alleged violations prejudiced his defense. Having failed to establish the existence of any discovery violation, the trial court proceeded to swear-in the witnesses.

{¶15} Accordingly, we find the magistrate complied with the requirements of the *Papadelis* case when it inquired into the circumstances surrounding appellant's motion for discovery sanctions. The trial court did not abuse its discretion when it determined the magistrate properly proceeded to conduct the trial in this matter.

{¶16} Appellant's First Assignment of Error is overruled.

II

{¶17} Appellant maintains, in his Second Assignment of Error, the trial court abused its discretion when it overruled his motion for sanctions pursuant to Crim.R. 19(C)(5). We disagree.

{¶18} Although appellant raises numerous alleged discovery violations, which we previously noted above, the most egregious violation, according to appellant, is the failure to include the videotape of the traffic offense as part of the discovery provided by the state. The record in this matter indicates that once the state learned of the existence of a videotape, it made arrangements, with the Ohio State Highway Patrol, for appellant to view the tape. In fact, appellant did view the videotape one day prior to trial.

{¶19} In *State v. Heinisch* (1990), 50 Ohio St.3d 231, the Ohio Supreme Court explained that undisclosed discovery may be admitted at trial if it can be shown that the failure to provide discovery was not willful, foreknowledge of the statement would not have benefited the defendant in the preparation of the defense, and the defendant was not prejudiced by the admission of the evidence. *Id.* at 236. This same test applies when determining whether a trial court has abused its discretion in admitting other evidence that was not disclosed, by the state, pursuant to Crim.R. 16.

{¶20} In the case sub judice, there is no evidence the state's failure to initially provide the videotape was willful. Further, there is no evidence that foreknowledge of the videotape would have assisted appellant, with his defense, as the traffic offense was not recorded on the videotape. Further, the state did not introduce the videotape as evidence.

{¶21} As such, we conclude the trial court did not abuse its discretion when it overruled appellant's motion for sanctions pursuant to Crim.R. 19(C)(5).

{¶22} Appellant's Second Assignment of Error is overruled.

III

{¶23} Appellant maintains, in his Third Assignment of Error, the evidence presented to the trial court does not support a finding of guilt beyond a reasonable doubt. We disagree.

{¶24} This assignment of error raises issues regarding the manifest weight and sufficiency of the evidence. On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259. On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine “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.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175. See also, *State v. Thompkins* (1997), 78 Ohio St.3d 380. The granting of a new trial “should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Martin* at 175.

{¶25} Appellant claims his conviction is not supported by the evidence because of a seven minute difference between the time the offense was committed, according to the citation, and the time indicated on the videotape. Appellant argues this discrepancy in time draws into question the accuracy of Patrolman Bee’s observations and the veracity of his testimony.

{¶26} At trial, Patrolman Bee testified that he visually estimated appellant’s speed to be in excess of the posted speed limit of sixty-five miles per hour. Tr. at 6.

Trooper Bee also testified that he has been trained to use and calibrate the laser device and that the laser device used to determine appellant’s speed was calibrated before the issuance of the citation to appellant. Id. at 4, 6-7. Prior to stopping appellant, Trooper Bee checked appellant’s speed six times, with the laser, which indicated appellant was traveling between seventy-five and seventy-nine miles per hour. Id. at 5. Finally, Trooper Bee noted that appellant admitted he was traveling seventy-four miles per hour. Id. at 14.

{¶27} Based upon the above evidence, we conclude the trial court’s finding of guilt is not against the manifest weight of the evidence and is supported by the sufficiency of the evidence.

{¶28} Appellant’s Third Assignment of Error is overruled.

{¶29} For the foregoing reasons, the judgment of the Municipal Court of Delaware County, Ohio, is hereby affirmed.

By: Wise, J.
Gwin, P. J., and
Farmer, J., concur.

JUDGES

