

[Cite as *E. Liverpool v. Lawson*, 2014-Ohio-5858.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

CITY OF EAST LIVERPOOL,

)

)

PLAINTIFF-APPELLEE,

)

)

CASE NO. 13 CO 52

V.

)

)

OPINION

ALLEN R. LAWSON,

)

)

DEFENDANT-APPELLANT.

)

CHARACTER OF PROCEEDINGS:

Criminal Appeal from East Liverpool
Municipal Court of Mahoning County,
Ohio
Case No. 13-TRD-1970

JUDGMENT:

Reversed
Conviction Vacated

APPEARANCES:

For Plaintiff-Appellee

Robert Herron
Prosecutor
Timothy J. McNicol
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For Defendant-Appellant
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JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: December 30, 2014

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DONOFRIO, J.

{¶1} Defendant-appellant Allen Lawson appeals from the decision of the East Liverpool Municipal Court of Columbiana County finding him guilty of speeding, a minor misdemeanor, following a bench trial. On appeal, Lawson contends that the trial court erred when it accepted the reliability of the laser speed detection device used to measure the speed of his vehicle without expert testimony or judicial notice. As such, Lawson maintains that the evidence presented at trial was insufficient to uphold his conviction for speeding.

{¶2} On September 4, 2013, Patrolman Gregory Faulkner stopped Lawson's vehicle traveling north on Route 11 for speeding in the city of East Liverpool. (Tr. 6-7.) Patrolman Faulkner issued Lawson a ticket that stated that he clocked the vehicle Lawson was driving using a LTI 20/20 TruSpeed Laser Gun traveling 66 mph in a 50 mph zone. (Tr. 12.) On September 10, 2013, Lawson's attorney filed a written plea of not guilty.

{¶3} A bench trial occurred in the East Liverpool Municipal Court. At trial, Patrolman Faulkner was the only witness to testify. Faulkner stated that he was using a laser gun for speed detection purposes on the evening in question. (Tr. 7.) The particular model used by Faulkner, the LTI 20/20 TruSpeed Laser Gun, is a long-range unit. (Tr. 7-8.) He stated that he had been trained to operate that particular unit and his certification of training was admitted into evidence. (City's Exhibit 1.) Faulkner further testified that the device was working properly because he performed a Delta Distance laser calibration prior to placing it into service that evening. (Tr. 9-10.) Faulkner stated the Delta Test ensures the accuracy of the device. (Tr. 10.)

{¶4} On December 3, 2013, the trial court found Lawson guilty of speeding based on the evidence presented at trial. (Tr. 22.) It fined him \$133 and ordered him to pay court costs. (Tr. 23.) This appeal followed.

{¶5} Lawson's sole assignment of error states:

The court erred in finding the defendant guilty of Speed after it failed to take judicial notice of the scientific reliability of the speed detection device.

{¶16} Lawson contends that the trial court erred when it found that the LTI 20/20 TruSpeed Laser Gun to be an accurate and reliable device without hearing expert testimony concerning the accuracy and reliability of the device. As a result, Lawson argues that the evidence presented by the city was insufficient to convict him of speeding. Conversely, the city argues that the trial court properly took judicial notice of the accuracy of the laser device.

{¶17} Whether or not the state presented sufficient evidence is a question of law dealing with adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing a challenge to the sufficiency of evidence, an appellate court must view the evidence in a light most favorable to the prosecution and determine if 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).

{¶18} The state bears the burden of proving the guilt of a defendant charged with speeding beyond a reasonable doubt. See *State v. Neff*, 41 Ohio St.2d 17, 22, 322 N.E.2d 274, 277 (1975). In this case, the city chose to attempt to meet its burden of proving Lawson guilty of speeding beyond a reasonable doubt by introducing evidence generated by a laser speed detection device; in particular, what Patrolman Faulkner referred to as the “LTI 20/20 TruSpeed Laser Gun.” (Tr. 8.)

{¶19} For a person to be convicted of speeding based on laser-device evidence, evidence must be introduced that the laser device is scientifically reliable. See *East Cleveland v. Ferrell*, 168 Ohio St. 298, 301, 154 N.E.2d 630 (1958). “Where there is no testimony as to the construction and method of operation of a speed measuring device not the subject of judicial notice, the testimony of the user standing alone, is insufficient to sustain a conviction of speeding.” *New Middletown v. Yeager*, 7th Dist. No. 03-MA-104, 2004-Ohio-1549, ¶ 9, quoting *State v. Colby*, 14 Ohio App.3d 291, 470 N.E.2d 924 (3d Dist.1984) paragraph one of the syllabus.

{¶10} “This does not mean that in every case there must be scientific testimony as to the accuracy of the speed measuring device.” *New Middletown v.*

Yeager, 7th Dist. No. 03 MA 104, 2004-Ohio-1549, ¶ 10, citing *East Cleveland v. Ferrell*, 168 Ohio St. 298, 154 N.E.2d 630 (1958) (court may recognize the general reliability of the stationary radar speed meter as a device for measuring the speed of a moving vehicle and it may no longer be necessary to require expert testimony in each case as to the nature, function and scientific principles). As it regards the speed measuring device in this case, the scientific reliability of a laser device is the type of fact that a trial court may judicially notice. *Cincinnati v. Levine*, 158 Ohio App.3d 657, 659, 2004-Ohio-5992, 821 N.E.2d 613 (1st Dist.). A judicially noticed fact must not be subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Evid.R. 201(B).

{¶11} Where judicial notice is applicable, the method of proof involves establishing the reliability of a speed-measuring device by: “(1) a reported municipal court decision, (2) a reported or unreported case from the appellate court, or (3) the previous consideration of expert testimony about a specific device where the trial court notes it on the record.” *State v. Tulugu*, 7th Dist. No. 10-MA-77, 2011-Ohio-5134, ¶ 66, citing *Columbus v. Bell*, 10th Dist. No. 09AP-1012, 2010-Ohio-2908, ¶ 14.

{¶12} The reliability of the LTI 20/20 devices has been afforded judicial notice in other appellate districts in Ohio. *State v. Sapphire*, 2d Dist. No. 2000 CA 39, 2000 WL 1803852 (Dec. 8, 2000); *City of Columbus v. Dawson*, 10th Dist. No. 99AP-589, 2000 WL 271766 (Mar. 14, 2000); *State v. Dawson*, 12th Dist. No. CA98-04-021, 1998 WL 883802 (Dec. 12, 1998). “However, the fact that a court in one jurisdiction has taken judicial notice of a device’s accuracy cannot serve as the basis for a court in another jurisdiction to take judicial notice.” *Columbus v. Bell*, 10th Dist. No. 09AP-1012, 2010-Ohio-2908, ¶ 14; *Cincinnati v. Levine*, 158 Ohio App.3d 657, 659, 2004-Ohio-5992, 821 N.E.2d 613 (1st Dist.) Although the underlying principles of laser technology may be the same from one device to another, generally judicial notice as

to the reliability of the speed-measuring device is device-specific. *State v. Starks*, 196 Ohio App.3d 589, 593, 2011-Ohio-2344, 964 N.E.2d 1058 (12th Dist.2011). Therefore, testimony was required at trial to establish the accuracy of the LTI 20/20 TruSpeed Laser Gun.

{¶13} Further, in order for a person to be convicted of speeding, evidence must also be introduced to demonstrate that (1) the laser device is in good condition for accurate readings and (2) the officer is qualified to administer the laser device. *State v. Wilcox*, 40 App.2d 380, 384, 319 N.E.2d 615 (10th Dist.1974). As indicated, “[w]here there is no testimony as to the construction and method of operation of a speed measuring device not the subject of judicial notice, the testimony of the user standing alone, is insufficient to sustain a conviction of speeding.” *New Middletown v. Yeager*, 7th Dist. No. 03-MA-104, 2004-Ohio-1549, ¶ 9, quoting *State v. Colby*, 14 Ohio App.3d 291, 470 N.E.2d 924 (3d Dist.1984) paragraph one of the syllabus.

{¶14} In the present case, the city presented Patrolman Faulkner’s testimony that the laser device was in good working order and that he was certified to use this speed-measuring device. Faulkner testified that before his shift on the day in question, he verified the accuracy of the laser device using the “Delta distance test.” (Tr. 10.) He stated that he took two measurements from known distances for the purpose of this test. (Tr. 11.) He testified that the device determined the correct distances after performing this test. (Tr. 11.) Therefore, the record provides sufficient evidence to establish that the device Faulkner was using to clock Lawson’s speed that evening was operating properly.

{¶15} As to Faulkner’s qualifications, he was qualified to administer the laser speed detection device. At trial, he testified that he had been trained to operate this particular unit. (Tr. 9.) Evidence of his certificate of training was admitted into evidence. (City’s Exhibit 1.) And as to his execution of the laser test on appellant’s vehicle, the prosecution asked Faulkner:

Q And just for the record, when you use this type of device,
does it send out bands like a radar unit? Or what would you see when

you use this?

A It's a laser red dot. And you line it up between the headlights of vehicles is ideal and engage the trigger.

(Tr. 11-12.)

{¶16} This question and answer reflects that Faulkner placed the laser beam on Lawson's vehicle in the same area he places the beam on all other vehicles that he checks, that being between the headlights. Thus, the testimony indicates that the device was properly working at the time and that Faulkner was qualified to operate the machine used to clock the appellant's speed.

{¶17} As for the scientific reliability of the laser unit in question, the only reference to that in the trial transcript occurred immediately prior to the trial court finding Lawson guilty:

THE COURT: * * * I'm not aware of any factory calibration in the last year, requirement for a laser unit as well. For those reasons, I find that the machine was accurately being used on the occasion, and the Delta test had been satisfactorily performed in regards to this matter.

And laser technology is obviously state-of-the-art and an accepted scientific technology for many reasons.

(Tr. at 21-22.)

{¶18} Here, the city failed to introduce evidence that this particular laser device, the LTI 20/20 True Speed Laser Gun, is scientifically reliable. The trial court stated that laser technology in general is "state-of-the-art" and "accepted scientific technology for many reasons," but it did not go on to state those reasons on the record. Moreover, the city did not utilize any of the three methods that this court identified in *Tulugu* that would have given the trial court the opportunity to take judicial notice of the scientific reliability of this specific laser device. It did not reference any previous reported municipal court decisions where the scientific

reliability of this particular device had been established. It did not reference a reported or unreported case from this district. Nor did it reference evidence or a case in which the trial court had previously heard expert testimony concerning the reliability of this particular device and found it to be scientifically reliable.

{¶19} In sum, appellant's speeding conviction was based solely on the speed calculated by the LTI 20/20 laser gun being operated by Patrolman Faulkner. No other evidence was offered to establish that Lawson was in fact speeding. Moreover, the scientific reliability of the LTI 20/20 laser was never established through expert testimony or judicial notice. As such, the city did not present sufficient evidence, particularly in regard to the scientific reliability of the device, to convict appellant of speeding. Thus, viewing the evidence in the light most favorable to the city, this court finds that the trial court could not have found Lawson guilty of speeding beyond a reasonable doubt.

{¶20} Accordingly, Lawson's sole assignment of error has merit.

{¶21} The judgment of the trial court is reversed and Lawson's conviction for speeding vacated.

Waite, J., concurs.

DeGenaro, P.J., concurs in judgment only.