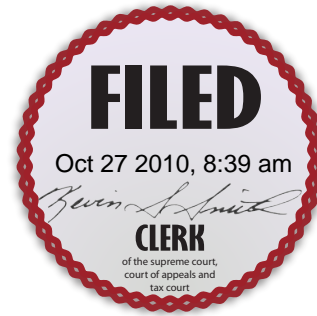


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DANIEL B. SCHUETZ
Franklin, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DAVID M. HOLMQUIST,

Appellant,

vs.

STATE OF INDIANA,

Appellee.

)
)
)
)
)
)
)
)
)
)

No. 03A01-1001-IF-2

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Kathleen Tighe Coriden, Judge
Cause No. 03D02-0809-IF-9878

October 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

David Holmquist appeals the judgment entered, following a bench trial, for speeding, a class C infraction.

We affirm.

ISSUE

Whether there is sufficient evidence to support the trial court's judgment.

FACTS

The facts most favorable to the judgment reveal that, on September 8, 2008, at 3:52 a.m., Indiana State Trooper Matthew Powell was northbound in the emergency crossover of Interstate 65, just south of mile marker sixty-three in Bartholomew County, when he saw a semi-truck driving southbound “visually fast.” (Tr. 3). The semi was driven by Holmquist. Trooper Powell “activated the front radar antenna on [his] python radar” and determined the semi was going seventy-two miles per hour, which was in excess of the maximum speed limit of sixty-five miles per hour for trucks. *Id.* Trooper Powell turned around in the median, followed the semi, and then stopped it. After the trooper told Holmquist why he had stopped him, Holmquist “admitted to seventy (70) miles per hour but stated his semi would not go seventy-two (72).” *Id.*

The State filed a citation against Holmquist for driving seventy-two miles per hour in a sixty-five mile per hour area. A bench trial was held on September 2, 2009. At trial, Holmquist testified that the top speed of his semi-truck was seventy miles per hour, and

he introduced a mechanic's printout as an exhibit to show that the maximum vehicle speed was seventy miles per hour. The trial court reduced Holmquist's alleged driving speed to seventy miles per hour, found Holmquist guilty of speeding, and ordered him to pay \$119.50.

DECISION

Holmquist argues that the evidence was insufficient to support the judgment that he was speeding.

Traffic infractions are civil, rather than criminal, in nature, and the State must prove the commission of the infraction by only a preponderance of the evidence. *Preston v. State*, 735 N.E.2d 330, 332 (Ind. Ct. App. 2000). When reviewing a challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Rather, we look to the evidence which best supports the judgment and all reasonable inferences to be drawn therefrom. *Id.* If there is substantial evidence of probative value supporting the trial court's judgment, it will not be overturned. *Id.* (citations omitted).

To prove that Holmquist was guilty of speeding, the State was required to prove by a preponderance of the evidence that Holmquist was driving a vehicle on a highway in excess of the maximum speed limit of sixty-five. *See* Ind. Code § 9-21-5-2.

At trial, Trooper Powell testified that he saw Holmquist driving his semi-truck "visually fast" and that he used his radar to determine that Holmquist was driving seventy-two miles per hour. (Tr. 3). The trooper also testified that he had checked his radar the day of the incident and that it was working properly. This evidence supports a

finding that Holmquist was driving in excess of the maximum speed limit of sixty-five mile per hour. Indeed, Holmquist acknowledges that “[t]aken in light favoring the trial court’s ruling, the judgment would stand.” Holmquist Br. at 4.

Nevertheless, Holmquist asks this Court to review the trooper’s testimony against his testimony that his truck’s maximum speed was seventy miles per hour and the testimony of another witness who estimated that Holmquist was driving slower than seventy miles per hour. Holmquist’s argument is nothing more than a request to reweigh the evidence and reassess the credibility of the witnesses, which we cannot do. Accordingly, we conclude there is sufficient evidence to support the trial court’s judgment that Holmquist drove in excess of the sixty-five mile per hour maximum speed limit and was guilty of speeding.

Affirmed.

BRADFORD, J., and BROWN, J., concur.