

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2070**

State of Minnesota,
Respondent,

vs.

Ayodele Mayowa Ojo,
Appellant.

**Filed August 10, 2020
Affirmed
Florey, Judge**

Martin County District Court
File No. 46-VB-19-681

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Terry Viesselman, Martin County Attorney, Adam L. Hinz, Assistant County Attorney, Fairmont, Minnesota (for respondent)

Karen V. Bryan, KB Law Firm, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Worke, Judge; and Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

In this appeal from an order finding him guilty of speeding, appellant argues that the district court erred by admitting evidence and testimony of the accuracy of the trooper's

radar and that the evidence was insufficient to prove that he was traveling at 85 miles per hour in a 70-mile-per-hour zone. We affirm.

FACTS

On May 7, 2019, appellant Ayodele Mayowa Ojo was traveling east on Interstate 90 in Martin County when he was stopped for speeding. Trooper Turitto of the Minnesota State Patrol was traveling west on Interstate 90 when she observed Ojo's vehicle traveling at a high speed, passing vehicles while in the left lane.

Trooper Turitto clocked Ojo's speed at 85 miles per hour using her squad car's radar. Trooper Turitto did a u-turn and caught up to Ojo's vehicle which was still traveling at a high speed passing a vehicle while in the left lane. The trooper again measured Ojo's speed at 85 miles per hour using her radar. The speed limit on that portion of Interstate 90 is 70 miles per hour. Trooper Turitto pulled Ojo over and issued him a speeding citation.

Following a court trial, the district court found Ojo guilty of the petty-misdemeanor offense of speeding and imposed fines totaling \$145. This appeal follows.

D E C I S I O N

Admission of evidence

Ojo first asserts that the district court erred by admitting: the certificate of accuracy for the radar antennae on Trooper Turitto's squad car, the certificates of accuracy for the two tuning forks used to calibrate Trooper Turitto's radar, and Trooper Turitto's testimony regarding her use of her radar to measure Ojo's speed. Ojo objected to the admission of the certificate of accuracy for the radar antennae, but did not object to the admission of any of the other evidence or testimony.

Ojo objected to the admission of the certificate of accuracy for the radar antennae on the basis that Trooper Turitto did not provide sufficient foundation regarding the authenticity of the certificate. “Evidentiary rulings rest within the sound discretion of the district court, and [this court] will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014).

“Records of tests made of [radar speed-measuring] devices and kept in the regular course of operations of any law enforcement agency are admissible in evidence without further foundation as to the results of the tests.” Minn. Stat. § 169.14, subd. 10(b) (2018). Therefore, the district court did not err by admitting the certificate of accuracy for Trooper Turitto’s radar antennae over Ojo’s objection.

Ojo did not object to the admission of the certificates of accuracy for the two tuning forks used by Trooper Turitto to calibrate her radar, or her testimony regarding her radar measurements of his speed. Plain-error review applies when a defendant fails to object to the state’s introduction of evidence. *State v. Vasquez*, 912 N.W.2d 642, 650 (Minn. 2018). “[B]efore an appellate court reviews an unobjected-to error, there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights.” *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). “An error is plain if it is clear and obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted).

Ojo argues that the certificates of accuracy for the tuning forks also lacked foundation, and because the supporting documents should not have been admitted, Trooper

Turitto's testimony also should have been excluded.¹ As discussed above, the certificates of accuracy for the tuning forks are admissible as to the results of the radar test without further foundation. *See* Minn. Stat. § 169.14, subd. 10(b). Therefore, the district court did not err by admitting the certificates of accuracy for the two tuning forks. Because the certificates were properly admitted, the district court did not err by admitting Trooper Turitto's testimony that she measured Ojo's speed at 85 miles per hour using her radar.

Sufficiency of the evidence

Ojo next argues that the state did not present sufficient evidence that he was driving 85 miles per hour in a 70-miles-per-hour zone. "When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts . . . would permit the [fact finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). When an element of an offense is supported by direct evidence, this court's review is limited to a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the finding of guilt, is sufficient to allow the fact finder to reach the verdict that they did. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016).

Evidence of the speed of a motor vehicle as measured by a radar device is admissible when:

¹ Ojo also asserts that the admission of the certificates violated his rights under the Confrontation Clause, but this again only goes to the admissibility of the certificates, and Ojo does not identify any out-of-court statements admitted by the district court at trial.

- (1) the officer operating the device has sufficient training to properly operate the equipment;
- (2) the officer testifies as to the manner in which the device was set up and operated;
- (3) the device was operated with minimal distortion or interference from outside sources; and
- (4) the device was tested by an accurate and reliable external mechanism, method, or system at the time it was set up.

Minn. Stat. § 169.14, subd. 10(a) (2018); *see also State v. Dow*, 352 N.W.2d 125, 126-27 (Minn. App. 1984). Here, Trooper Turitto testified to: (1) her radar training; (2) her manner of operation of her radar; (3) the fact that even if there were interference from the vehicle Ojo was passing when she clocked his speed, she visually observed that he was traveling faster than the other vehicles in his immediate vicinity; and (4) her use of two external tuning forks to calibrate her radar on the date of the incident. Therefore, the two radar measurements of Ojo's speed at 85 miles per hour in a 70-mile-per-hour zone properly supported the district court's conclusion that Ojo was guilty of speeding.

Ojo asserts that Trooper Turitto's radar was not tested by an accurate and reliable external method. First, Ojo asserts that because the tuning forks' certificates of accuracy were dated May 16, 2019—after he was cited for speeding—and the radar antennae's certificate of accuracy is dated October 11, 2016—three years before his citation—the state did not introduce sufficient evidence to satisfy the requirement that the radar was accurately tested. However, Trooper Turitto testified that there is no expiration on the radar antennae's certificate and that she regularly calibrates the radar unit. Trooper Turitto also testified that if the tuning forks are ever found to be inaccurate, they are disposed of, and

thus if the tuning forks were accurate on May 16, 2019, they were accurate on May 7 when Ojo was cited for speeding.

Related to this argument, Ojo next contends that because the tuning forks' certificates of accuracy should not have been admitted into evidence, there was insufficient evidence that the radar unit was checked by an external method. *See State v. Gerdes*, 191 N.W.2d 428, 431 (Minn. 1971) ("To test the [radar] machine by the machine itself seems to be bootstrapping.") As discussed above, because the certificates of accuracy were properly admitted, the state introduced sufficient evidence that Trooper Turitto tested her radar unit with an accurate and reliable external mechanism.

Affirmed.