[Cite as *State v. Sferra,* 2016-Ohio-7161.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2016-L-013**
- vs -	:	
MATTHEW LAWRENCE SFERRA,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Painesville Municipal Court, Case No. 15 TRD 06446.

Judgment: Affirmed.

Ron M. Graham, 6988 Spinach Drive, Mentor, OH 44060 (For Plaintiff-Appellee).

Matthew Lawrence Sferra, pro se, 21 Everett Drive, Painesville, OH 44077 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Matthew Lawrence Sferra appeals from the judgment of the Painesville Municipal Court, finding him guilty of speeding at 53 miles per hour in a 35 mile per hour zone, fining him $25, and assessing court costs. We affirm.

{¶2} This matter was tried to the court January 5, 2015. Appearing for the state was Deputy Shane Hopp of the Lake County Sheriff's Office. Deputy Hopp testified he was on patrol December 7, 2015, heading north on Ravenna Road, when he noticed Mr. Sferra travelling south. He thought Mr. Sferra was going too fast, and used his

radar unit, a Python MPH, to clock him at 53 mph, well over the speed limit. Deputy Hopp testified he had calibrated the radar gun when commencing his shift, and midway through the shift. On cross examination, Deputy Hopp testified he was certified to operate a radar unit.

{¶3} Mr. Sferra maintained there was not a posted speed limit in the area. The trial court promised to check this out personally. In its judgment entry of January 7, 2016, finding Mr. Sferra guilty, the trial court noted the speed was posted.

{¶4} Mr. Sferra timely noticed this appeal, assigning two errors. The first reads: "The evidence was insufficient to support the conviction."

{¶5} "Sufficiency is a question of law dealing with adequacy of the evidence * * *. In evaluating the sufficiency of the evidence, we view the evidence in the light most favorable to the state and determine whether reasonable minds can reach different conclusions as to whether each element has been proven beyond a reasonable doubt." (Citation omitted.) *State v. Donkers*, 170 Ohio App.3d 509, 2007-Ohio-1557, ¶59 (11th Dist.)

{¶6} "In general, a velocity reading made by a speed detection device is authenticated by evidence of three specific things. First, the device '"must be accepted as dependable for the proposed purpose by the profession concerned in that branch of science(.)"' (Emphasis omitted) *East Cleveland v. Ferell* (1958), 168 Ohio St. 298, 301, * * * quoting Wigmore, The Science of Judicial Proof, 450. Second, the State must show that the device used was an accepted type and in good condition for accurate work. Id. Finally, the witness using the device must be qualified to operate the device through training and experience. (parallel citations omitted) Id." *State v. Jamnicky*, 9th

Dist. Wayne No. 03CA0039, 2004-Ohio-324, ¶7.

{¶7} At trial, no question was raised regarding the whether the Python MPH radar unit, used by Deputy Hopp, is of an accepted type. Therefore this issue is waived on appeal. *See, e.g.*, *State v. Brown*, 9th Dist. Medina No. 02CA0034-M, 2002-Ohio-6463, ¶4-8.

{¶8} Regarding the operating condition of the radar unit used by Deputy Hopp, the state elicited the following:

{¶9} Prosecutor: "All right. Before starting your shift, did you conduct any test on the radar unit to determine whether it was reliable that day?"

{¶10} Deputy Hopp: "Yes, I did."

{¶11} Prosecutor: "Would you tell us what you did?"

{¶12} Deputy Hopp: "Calibrated it with the tuning forks, as I do at the beginning of every shift and midway through, typically, to check."

{¶13} Prosecutor: "But when you did it at the beginning of your shift, was it operating properly?"

{¶14} Deputy Hopp: "Yes, it was."

{¶15} Prosecutor: "All right. And after making this stop, did you test it again?"

{¶16} Deputy Hopp: "Yes, sir."

{¶17} Prosecutor: "And when did you do that?"

{¶18} Deputy Hopp: "I believe it was at 1300, (inaudible), yeah 1300 hours."

{¶19} Prosecutor: "And, again, same test with the tuning forks?"

{¶20} Deputy Hopp: (Inaudible.)

{¶21} Prosecutor: "And did it show that your machine was reliable?"

{¶22} Deputy Hopp: "Yes."

{¶23} The foregoing establishes that Deputy Hopp's radar unit was in good working order at the time of the stop.

{¶24} On cross examination, Mr. Sferra established the following:

{¶25} Mr. Sferra: "And what certifications that go with the job of sheriff?"

{¶26} Deputy Hopp: "Certified in radar."

{¶27} Mr. Sferra: "Certified in radar?"

{¶28} Deputy Hopp: "Yep."

{¶29} On appeal, Mr. Sferra relies on authority from the Ninth Appellate District that testimony by a police officer that he or she was trained on radar units is insufficient to establish he or she can operate them. *Brown*, *supra*, at ¶12. Further evidence, such as a certificate of training is required. *Id. Accord Barberton v. Jenney*, 9th Dist. Summit No. 24423, 2009-Ohio-1985, ¶8.

{¶30} Initially, we note this argument was never made to the trial court, and is, therefore, waived on appeal. *Brown*, *supra*, at ¶8. We further do not agree with the reasoning. The state elicited the following at trial:

{¶31} Prosecutor: "All right. How did you come in contact with the defendant in that location? What was going on?"

{¶32} Deputy Hopp: "I actually just finished up the traffic detail. * * *. I observed a silver Saturn Vue at a high rate of speed. * * *. The radar indicated *it* was going 53 in a 35, quickly applied the brakes. He was going down the hill. I turned around, initiated a traffic stop."

{¶33} Prosecutor: "All right. Now, you indicated that your radar unit – Did it give

you an audible sound?"

{¶34} Deputy Hopp: "Yes."

{¶35} Prosecutor: "What was the audible sound like?"

{¶36} Deputy Hopp: "Consistent with the speed. It was matching."

{¶37} Prosecutor: "All right. And the digital readout was 53 and the posted speed in that area?"

{¶38} Deputy Hopp: "Thirty-five."

{¶39} We believe that Deputy Hopp's testimony established that he did know how to operate his radar unit. Consequently, the state introduced evidence on each element needed to establish that Mr. Sferra was speeding.

{¶40} The first assignment of error lacks merit.

{¶41} The second assignment of error reads: "Appellant's conviction was against the manifest weight of the evidence."

{¶42} Manifest weight of the evidence standard stated in *State v. Thompkins*, 78 Ohio St.3d 380 (1997), a criminal case, also now applies in civil cases. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶17-23. As stated in *Thompkins*:

{¶43} "'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.'" *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶44} On appeal, we must presume in favor of the finder of fact in its determinations. *Eastley* at ¶21.

{¶45} Applying this standard to the instant case, we cannot find the judgment of the trial court to be against the manifest weight of the evidence. The testimony of Deputy Hopp was of a quality to sustain the conviction. The second assignment of error lacks merit.

{¶46} The judgment of the Painesville Municipal Court is affirmed.

THOMAS R. WRIGHT, J., concurs,

TIMOTHY P. CANNON, J., concurs in judgment only with a Concurring Opinion.

TIMOTHY P. CANNON, J., concurring in judgment only.

{¶47} I concur with the judgment of the majority. I write to bring attention to the well-established law in this district that an officer's testimony with regard to his training to use a radar unit is sufficient to allow the fact finder to find that he is qualified to operate a radar unit.

{¶48} As in the present case, the appellant in *State v. Bayus*, 11th Dist. Geauga No. 2005-G-2634, 2006-Ohio-1684, argued that at trial the state did not establish the officer's qualification to use the radar unit because no documentation regarding the officer's training and certification was offered into evidence. *Id.* at ¶18. In *Bayus,* we found the officer's testimony of his extensive experience and training established that he was qualified to use the unit, stating "this court has held that the officer's testimony with

respect to his or her qualifications and experience, is sufficient to establish that he or she is qualified to use the radar device." *Id.* at ¶19, citing *State v. Schroeder,* 11th Dist. Geauga No. 95-G-1907, 1995 Ohio App. LEXIS 3910, *4 (Sept. 8, 1995). *See also State v. Kress*, 11th Dist. Trumbull No. 2007-T-0075, 2008-Ohio-1658, ¶¶31, 33.

{¶49} In *Kent v. Vesel,* 11th Dist. Portage No. 2011-P-0069, 2012-Ohio-530, the officer's certificate of training to operate the radar unit was admitted into evidence, but the officer also gave testimony regarding his knowledge of operating the device. *Id.* at ¶87-88. In *Kent,* even though a certificate of training was admitted into evidence, this court, citing *Bayus*, explicitly stated it is well-established in this district that an officer's testimony is sufficient to establish that he or she is qualified to use a radar unit. *Id.* at ¶88, citing *Bayus, supra,* at ¶19.

{¶50} In the present case, Officer Hopper gave testimony at trial that he was "certified in radar." His testimony further reflected that he knew how to operate the radar unit. Therefore, Officer Hopper's testimony is sufficient to allow the trial court to find, as a fact, that he was qualified to use the radar unit.