

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	William B. Hoffman, P.J.
	:	Julie A. Edwards, J.
Plaintiff-Appellee	:	Patricia A. Delaney, J.
	:	
-vs-	:	Case No. 09 CAC 04 0044
	:	
	:	
ANDRE J. BRADLEY	:	<u>OPINION</u>
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING:	Criminal Appeal from Delaware Municipal Court Case No. 09 TRD 03036-A
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	January 27, 2010
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APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
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ANDRE J. BRADLEY
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Edwards, J.

{¶1} Appellant, Andre J. Bradley, appeals a judgment of the Delaware Municipal Court convicting him of speeding in violation of R.C. 4511.21(D)(1) and fining him \$35.00. Appellee is the State of Ohio.

STATEMENT OF FACTS AND CASE

{¶2} On March 7, 2009, appellant was stopped by Trooper Upshaw Culp of the Ohio State Highway Patrol for driving 71 miles per hour in a 55 MPH zone in Berlin Township, Delaware County. The uniform traffic ticket charging appellant with speeding was filed in the Delaware Municipal Court on March 11, 2009. The case proceeded to bench trial on April 2, 2009. Following bench trial appellant was convicted as charged and fined \$35.00. He assigns four errors on appeal:

{¶3} “I. THE TRIAL COURT ERRED IN SUFFICIENCY OF EVIDENCE THERE WAS NO FOUNDATION LAID TO THE ACCURACY AND RELIABILITY OF THE LASER UNIT #728 AND TROPPER (SIC) CULP’S COMPETENCE AT USING THE SPEEDING-MEASURING DEVICE.

{¶4} “II. THE TRIAL COURT ERRED BY NOT REQUIRING THE PROSECUTING ATTORNEY TO PROVIDE DISCOVERY AS REQUIRED BY OHIO R. CRIM. P. 16, THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION, AND ARTICLE I, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION.

{¶5} “III. THE TRIAL COURT ERRED IN NOT PRESENTING EVIDENCE THAT THE LTI 20-20 (LASER UNIT #728) HAS MET THE CERTIFICATE OF CONFORMITY (YEARLY CALIBRATION CERTIFICATE) FROM AN OUTSIDE

INDEPENDENT AGENCY AND THE OPERATOR USED THE LTI 20-20 ACCORDING TO MANUFACTURERS SPECIFICATIONS.

{¶6} “IV. THE TRIAL COURT ERRED BY TAKING JUDICIAL NOTICE OF THE LTI 20-20 ACCURACY AND RELIABILITY WITHOUT REFERENCE TO A SPECIFIC CASE OR SCIENTIFIC TESTIMONY.”

I, III, IV

{¶7} Appellant’s first, third, and fourth assignments of error all rely for their validity on a transcript of the proceedings. However, no transcript of the proceedings has been filed in the instant case. On April 6, 2009, appellant filed a praecipe for a “CD transcript,” with the handwritten notation “I will pick-up” on the praecipe. On April 24, 2009, appellant filed a “request to file transcript” directed to the clerk of the court. However, App. R. 9(B) requires the transcript to be ordered from the court reporter. Appellant failed to properly order a transcript of the proceedings and accordingly, the record was transmitted to this court without a transcript of the proceedings. Absent a transcript, we must presume regularity in the proceedings in the trial court. *Knapp v. Edwards Laboratory* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384.

{¶8} Appellant’s first, third, and fourth assignments of error are overruled.

II

{¶9} In his second assignment of error, appellant argues that the state failed to fully comply with discovery. Crim. R. 16 provides in pertinent part:

{¶10} “(A) Demand for discovery. Upon written request each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that demand for discovery has been made and the discovery has not been provided. . .

{¶11} “(E)(3) Failure to comply. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.”

{¶12} The record reflects that appellant filed a discovery request on March 19, 2009. On the same day, the judge ordered the prosecutor to provide discovery to appellant within 15 days. The record does not reflect any further filings regarding discovery. While appellant now argues that the prosecutor failed to comply fully with his discovery demand, the record does not reflect that appellant brought this to the attention of the court as required by Crim. R. 16(E)(3), nor does the record reflect that appellant did not received discovery of materials to which he was entitled under Crim. R. 16.

{¶13} The second assignment of error is overruled.

{¶14} The judgment of the Delaware Municipal Court is affirmed.

By: Edwards, J.

Hoffman, P.J. and

Delaney, J. concur

s/Julie A. Edwards

s/William B. Hoffman

s/Patricia A. Delaney

JUDGES

JAE/r1124

[Cite as *State v. Bradley*, 2010-Ohio-309.]

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
ANDRE J. BRADLEY	:	
	:	
Defendant-Appellant	:	CASE NO. 09 CAC 04 0044

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Delaware Municipal Court is affirmed. Costs assessed to appellant.

s/Julie A. Edwards

s/William B. Hoffman

s/Patricia A. Delaney

JUDGES