

COURT OF APPEALS
PERRY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
COURTNEY L. CARNES	:	Case No. 14-CA-00029
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the County Court, Case No. TRD 1401212

JUDGMENT: Reversed

DATE OF JUDGMENT: April 27, 2015

APPEARANCES:

For Plaintiff-Appellee

NANCY RIDENOUR
111 North High Street
New Lexington, OH 43764

For Defendant-Appellant

D. SCOTT RANKIN
FREDERICK A. SEALOVER
45 North Fourth Street
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Farmer, J.

{¶1} On September 13, 2014, appellant, Courtney Carnes, was cited for driving in excess of 55 m.p.h. in violation of R.C. 4511.21(D)(1). Appellant's speed was determined with the use of the Python II radar speed-detecting device.

{¶2} A bench trial commenced on October 23, 2014. By judgment entry filed October 29, 2014, the trial court found appellant guilty as charged, and fined him \$100.00 plus court costs.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶4} "THE TRIAL COURT ERRED BY TAKING JUDICIAL NOTICE OF THE SCIENTIFIC RELIABILITY AND ACCURACY OF A MOBILE RADAR DEVICE AND PERMITTING THE INTRODUCTION OF RADAR EVIDENCE OF THE DEFENDANT-APPELLANT'S SPEED WITHOUT THE LAYING OF A SUFFICIENT FOUNDATION AND THEN FINDING THE DEFENDANT-APPELLANT GUILTY OF SPEEDING AT TRIAL."

I

{¶5} Appellant claims the trial court erred in taking judicial notice of the Python II radar speed-detecting device used to determine speed, permitting evidence from the device without a sufficient foundation, and then finding appellant guilty of speeding. We note on March 6, 2015, the state filed a notice of conceded error. After careful review of the transcript, we agree with both appellant and the state.

{¶6} Appellant was convicted of speeding in violation of R.C. 4511.21(D)(1) which states the following:

(D) No person shall operate a motor vehicle, trackless trolley, or streetcar upon a street or highway as follows:

(1) At a speed exceeding fifty-five miles per hour, except upon a two-lane state route as provided in division (B)(9) of this section and upon a highway, expressway, or freeway as provided in divisions (B)(12), (13), (14), and (16) of this section;

{¶7} R.C. 4511.091(C) provides the following:

(C)(1) No person shall be arrested, charged, or convicted of a violation of any provision of divisions (B) to (O) of section 4511.21 or section 4511.211 of the Revised Code or a substantially similar municipal ordinance based on a peace officer's unaided visual estimation of the speed of a motor vehicle, trackless trolley, or streetcar. This division does not do any of the following:

(a) Preclude the use by a peace officer of a stopwatch, radar, laser, or other electrical, mechanical, or digital device to determine the speed of a motor vehicle;

(b) Apply regarding any violation other than a violation of divisions (B) to (O) of section 4511.21 or section 4511.211 of the Revised Code or a substantially similar municipal ordinance;

(c) Preclude a peace officer from testifying that the speed of operation of a motor vehicle, trackless trolley, or streetcar was at a speed greater or less than a speed described in division (A) of section 4511.21 of the Revised Code, the admission into evidence of such testimony, or preclude a conviction of a violation of that division based in whole or in part on such testimony.

{¶8} Evid.R. 201(B) governs the trial court's ability to take judicial notice of adjudicative facts: "A judicially noticed fact must be one not 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." The scientific reliability of a speed-measuring device can be established 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. Yaun*, 3rd Dist. Logan No. 8-07-22, 2008-Ohio-1902, ¶ 12.

{¶9} During the testimony of the ticketing officer, Ohio State Highway Patrol Officer Nathan Smith, defense counsel objected to his testimony on the Python II device, citing the lack of expert testimony as to its scientific reliability and accuracy. T. at 9. The trial court overruled the objection, finding it had taken judicial notice of the

device in 1995. *Id.* The trial court failed to cite to the previous case in which it had taken judicial notice of the Python II device, either on the record or in its judgment entry filed October 29, 2014. This court cannot find a case from this appellate district concerning the scientific reliability of the Python II device.

{¶10} Without the admission of the results of the Python II device, there is no evidence to support the allegation of speeding. Although Trooper Smith testified through visual observation he determined appellant's vehicle seemed to be going well above the posted speed limit of 55 m.p.h. (T. at 8), "unaided visual estimation of the speed of a motor vehicle" is insufficient under R.C. 4511.091(C).

{¶11} Upon review, we find the trial court improperly took judicial notice of the Python II device, and erred in finding appellant guilty of speeding.

{¶12} The sole assignment of error is granted.

{¶13} The judgment of the County Court of Perry County, Ohio is hereby reversed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

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