[Cite as *State v. Packer*, 2021-Ohio-4636.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

GREGORY PACKER,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 21 MA 0063

Criminal Appeal from the
Mahoning County Court Area 4 of Mahoning County, Ohio
Case No. 2021 TRD 303

BEFORE:
Carol Ann Robb, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Martin S. Hume, Assistant Prosecutor, *Atty. Ralph M. Rivera,* Assistant Chief, Criminal Division, Office of the Mahoning County Prosecutor, 21 W. Boardman Street, 6 Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. Ronald D. Yarwood, *Atty. Edward A. Czopur,* DeGenova & Yarwood, Ltd., 42 North Phelps Street, Youngstown, Ohio 44503, for Defendant-Appellant.

Dated: December 16, 2021

Robb, J.

{¶1} Defendant-Appellant Gregory Packer appeals the decision of the Mahoning County Court Area 4 finding him guilty of speeding in violation of R.C. 4511.21(D)(3), a minor misdemeanor. Two issues are raised in this appeal. First, is whether the state established at trial that the speeding occurred in Austintown Township, Mahoning County. The second issue is whether there was sufficient evidence presented to admit the results of the laser speed-measuring device. For the reasons expressed below, both arguments lack merit, and the conviction for speeding is affirmed.

Statement of the Case

{¶2} Appellant was driving a 2013 Silver Land Rover SUV on I-80 non-turnpike eastbound in Austintown Township, Mahoning County on January 20, 2021. Trooper Brad Bucey from the Ohio State Highway Patrol was monitoring traffic on I-80 non-turnpike. Tr. 6. He visually detected Appellant speeding. Tr. 7. He then used his laser speed-measuring device to check Appellant's speed, which registered 91 miles per hour in a 65 miles per hour speed limit zone. Tr. 8. Trooper Bucey then proceeded to stop Appellant and cite him for speeding. Tr. 8-9.

{¶3} Appellant appeared, entered a not guilty plea, and waived his right to a speedy trial. 2/4/21 Written Plea of Not Guilty; 2/4/21 Waiver; 2/8/21 J.E. The matter proceeded to a bench trial.

{¶4} The only witness to testify at trial was Trooper Bucey. The trial court found Appellant guilty of speeding in violation of R.C. 4511.21(D)(3) and ordered him to pay a fine of $50.00 plus court costs. 6/2/21 J.E.

{¶5} Appellant timely appealed his conviction. 6/23/21 Notice of Appeal.

First Assignment of Error

"The trial court was without subject matter jurisdiction to hear the case as no evidence was introduced as to where the alleged events occurred."

{¶6} In this assignment of error, Appellant argues the trial court did not have jurisdiction over the matter because there was no testimony that the events occurred within "the jurisdictional boundaries of the court."

{¶7} Appellant cites to the following testimony and argues it was insufficient to establish jurisdiction:

> Q [Prosecutor]. Now, I'm going to draw your attention to January 20th, 20 – 2021, and the issuance of a traffic citation for speeding and – on I-80, non-turnpike, in the eastbound lane here in Austintown Township, Mahoning County, Ohio. Do you remember that time and date?
>
> A [Trooper Bucy]. Yes, sir.

Tr. 6.

{¶8} Appellant asserts the above question only asks about time and date, not location. Furthermore, the question, itself, cannot be evidence of jurisdiction. Therefore, according to Appellant, jurisdiction was not established.

{¶9} The state counters asserting this is a venue argument and venue was established. It argues the trial court has broad discretion in determining venue and venue can be determined by the facts and circumstances of the case. It asserts the reasonable and rational understanding of the answer was that the trooper issued a speeding citation in Austintown Township, Mahoning County, Ohio. Regardless, it also cites to the following testimony that speaks to location:

> Q. Did there come a time when you observed a silver-colored car in the eastbound lane here in Austintown Township, and did you visually observe it to be in excess of the posted speed limit?
>
> A. Yes.

Tr. 6-7.

{¶10} Appellant presents this argument as a subject matter jurisdiction argument, while the state presents it as a venue argument. The Third Appellate District has explained:

> Venue and subject-matter jurisdiction are distinct legal concepts. *State v. Wilson*, 5th Dist. Richland No. 14CA16, 2014-Ohio-3286, ¶ 14. R.C. 2901.11 grants jurisdiction to Ohio courts over criminal cases that occur in the State. "'Jurisdiction' means 'the courts' statutory or constitutional power to adjudicate the case.'" *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11, quoting *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89, 118 S.Ct. 1003 (1998) and citing *Morrison v. Steiner*, 32 Ohio St.2d 86, 87 (1972), paragraph one of the syllabus. The term encompasses jurisdiction over the subject matter or jurisdiction over the person. *State v. Williams*, 53 Ohio App.3d 1, 4-5 (10th Dist.1988).

State v. Bender, 3d Dist. Logan No. 8-20-64, 2021-Ohio-1933, ¶ 17.

{¶11} R.C. 2931.03 states Ohio common pleas courts have "original jurisdiction of all crimes and offenses, except in cases of minor offenses the exclusive jurisdiction of which is vested in courts inferior to the court of common pleas."

{¶12} Subject matter jurisdiction cannot be waived, however, venue is waived if it is not raised. *State v. Foreman*, __ Ohio St.3d ___, 2021-Ohio-3409, ____ N.E.3d ___, ¶ 13. Appellant did not object to the venue. Therefore, if it is a venue argument it is waived.

{¶13} Regardless, clearly, the trial court had subject matter jurisdiction over the speeding tickets and the above testimony established venue. The questions and the answers to the questions establish the speeding occurred in Austintown Township, which is the jurisdiction of Mahoning County Court Area 4. When Trooper Bucey answered yes to the questions, he established that speeding occurred on January 20, 2021 in Austintown Township, Mahoning County, Ohio. Trooper Bucey did not need to repeat the words Austintown Township to establish the location.

{¶14} This assignment of error is meritless.

Second Assignment of Error

"The conviction was based on insufficient evidence as the state failed to identify the type of speed measuring device, and/or as the trial court did not take judicial notice or hear expert testimony concerning the speed measuring device."

{¶15} Appellant's sufficiency argument is based on the premise that the result of the laser speed-measuring device is inadmissible and the only other evidence Appellant was speeding was Trooper Bucey's visual determination. Appellant contends expert testimony or judicial notice is required for the results of a speed-measuring device to be used as evidence of speeding. He asserts there was no expert testimony, nor was there judicial notice of the speed-measuring device. Further, he contends on direct examination, Trooper Bucey did not identify which laser device he used to measure Appellant's speed.

{¶16} The state counters citing the 2020 Ohio Supreme Court decision in *Brook Park* for the proposition expert testimony and judicial notice are not needed for the admissibility of the results of stationary laser speed-measuring devices. *City of Brook Park v. Rodojev*, 161 Ohio St.3d 58, 2020-Ohio-3253, 161 N.E.3d 511, syllabus and ¶ 19. It noted the fact-finder, i.e., trial court in a bench trial, is still required to determine if the evidence presented concerning the accuracy of the device used and the qualifications of the person using it was sufficient to support the conviction based on the device's results. *Id*. The state contends Trooper Bucey's testimony established he was qualified and properly checked the device's calibration.

{¶17} Whether the evidence is legally sufficient to sustain a conviction is a question of law dealing with adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Sufficiency involves the state's burden of production rather than its burden of persuasion. *Id*. at 390 (Cook, J., concurring). In reviewing the sufficiency of the evidence, the court views the evidence in the light most favorable to the prosecution to ascertain whether any rational trier of fact could have found the elements of the offense proven beyond a reasonable doubt. *State v. Goff*, 82 Ohio St.3d 123, 138, 694 N.E.2d 916 (1998). For a sufficiency review, the question is merely whether "any" rational trier of fact could have found the elements of the alleged offense satisfied beyond a reasonable doubt. *State v. Getsy*, 84 Ohio St.3d 180, 193, 702 N.E.2d 866 (1998), quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781 (1979).

{¶18} Appellant is correct he cannot be convicted of speeding under R.C. 4511.21 solely on Trooper Bucey's visual indication that he was speeding. R.C. 4511.091(C)(1). In this case, the evidence of speeding was Trooper Bucey's visual indication of speeding

and his use of a laser speed-measuring device indicating Appellant was driving his vehicle at 91 miles per hour in a 65 miles per hour speed zone. In order for the conviction to be supported by sufficient evidence, the result of the speed-measuring device had to be admissible.

{¶19} Trooper Bucey testified he is currently employed by the Ohio State Highway Patrol and has been in law enforcement for 21 years. Tr. 5. He indicated he has extensive training in the detection of motorists who operate motor vehicles in excess of the posted speed limit and he received extensive training in the operation of laser technology. Tr. 5. He testified he received his training through the State Highway Patrol Academy in Columbus and uses that training every work day. Tr. 5-6.

{¶20} Trooper Bucey was asked what he did to test the laser measuring device he used before putting it into service the day Appellant was cited for speeding:

> Q. Now, step by step, did you – did you test the laser technology prior to placing it in service that day?
>
> A. Yes sir. At the beginning of the shift (inaudible).
>
> Q. All right. Would you explain to the Court step by step how you are to check the laser technology to make certain that it is operating in accordance with the manufacturer's instructions?
>
> A. Yes. So there's a light test you go through and hit the function button on the laser, and it goes through and it shows that all the lights are currently working and everything is – is accurate.
>
> Then you also do a test of a premeasured – there's two sides [sic] that are premeasured at the patrol post in Canfield, and you measure the distance between them. The one is measured at 75. The other is measured – measured at 50. As long as they check out that they are registering 75 and 50, you know that the device is working accurately.
>
> Q. And did you find that the laser, in fact, was working in accordance with the manufacturer's instructions before you place it in service?

A. Yes, sir.

Q. All right. Is this the same laser, then, you had in your vehicle when you measured the speed of the motorist that was operating the silver vehicle on the highway that was previously disclosed?

A. Yes sir.

* * *

Q. Now, at -- Lieutenant, at the end of your shift, are you required, then, to test this laser technology to make sure that between the time – the first time that you tested it and put it in operation and you took it out of service, that it was still operating within the manufacturer's recommendations?

A. Yes, sir.

Q. And what procedure do you follow in order to make certain that it was functioning in accordance with the manufacturer's recommendations?

A. It would be the same as the beginning of the shift, and with this measurement – I'm sorry – (inaudible) with that distance and also the light test to make sure that it is still working properly.

Q. And did you find, then, that that laser technology used that date, January 20th, 2021, at 9:55 a.m., in the morning, was operating in accordance with the manufacturer's recommendations?

A. Yes, sir.

Tr. 7-8, 9-10.

{¶21} Admittedly, Trooper Bucey did not identify the make or model of the laser speed-measuring device on direct examination. The state, on redirect, did ask Trooper Bucey about the manufacturer of the laser speed-measuring device to which he responded that it was Laser Technologies. Tr. 16. Appellant objected to this testimony asserting it was outside the scope of redirect examination because the cross-examination

did not encompass any questions on that issue. Tr. 15. The trial court overruled the objection. Tr. 16.

{¶22} The question concerning the manufacturer of the laser speed-measuring device was outside the scope of the cross-examination. However, that does not mean it was error per se to allow the testimony:

> We acknowledge the general proposition that the scope of redirect examination is limited to the matters inquired into by the adverse party on cross-examination. *State v. Rucker*, 8th Dist. Cuyahoga No. 105628, 113 N.E.3d 81, 2018-Ohio-1832, ¶ 59, citing *State v. Thomas*, 8th Dist. Cuyahoga No. 101797, 2015-Ohio-3226, ¶ 41, and *State v. Wilson*, 30 Ohio St.2d 199, 204, 283 N.E.2d 632 (1972). Exceeding the scope of cross-examination in a redirect, however, is not per se error because the redirect is not necessarily limited to the subject areas discussed in cross-examination. *Id.*, citing *State v. Faulkner*, 56 Ohio St.2d 42, 381 N.E.2d 934 (1978), and *State v. Capko*, 8th Dist. Cuyahoga No. 56814, 1990 WL 37344 (Mar. 29, 1990). Further, a witness may be recalled for the purpose of correcting or changing testimony that the witness, through error, mistake, or oversight, has previously given in a trial before the proponent of the evidence rests his case in chief. *State v. McBride*, 5th Dist. Stark No. 2008-CA-00076, 2008-Ohio-5888, ¶ 33-35 (string citing authority); *State v. Bankston*, 8th Dist. Cuyahoga No. 92777, 2010-Ohio-1576, ¶ 16 (following *McBride*).

State v. Florencio, 8th Dist. Cuyahoga No. 107023, 2019-Ohio-104, ¶ 7.

{¶23} Therefore, any argument that the testimony should not have been admitted fails. The testimony could have been brought in through recall and/or it was permissible on redirect.

{¶24} It is also acknowledged that there was no expert testimony concerning the laser device and the trial court did not take judicial notice of the accuracy of the device. However, that is no longer required for results of the speed-measuring laser device to be

admissible. As the state points out, the Ohio Supreme Court has indicated that neither expert testimony nor judicial notice is needed to render the results admissible:

> We hold that the results of a speed-measuring device using either radar or laser technology are admissible in court without expert testimony establishing, or the court taking judicial notice of, the reliability of the scientific principles underlying that technology. However, the fact-finder is required to determine whether the evidence presented concerning the accuracy of the particular speed-measuring device and the qualifications of the person who used it is sufficient to support a conviction based on the device's results.

Brook Park, 161 Ohio St.3d 58, 2020-Ohio-3253 at ¶ 19.

{¶25} *Brook Park* is controlling. Thus, any argument that judicial notice or expert testimony was needed fails.

{¶26} That said, *Brook Park* does require the state to offer testimony concerning the qualifications of Trooper Bucey and the accuracy of the device:

> Other substantive challenges to the results of a laser speed-measuring device—including challenges involving the angle at which the officer held the device in relation to the targeted vehicle, the device's accuracy-validation algorithms, the device's calibration and maintenance schedule, and the officer's qualifications to use the device—implicate the sufficiency and weight of the evidence, not its admissibility. *See State v. Adams*, 103 Ohio St.3d 508, 2004-Ohio-5845, 817 N.E.2d 29, ¶ 80 (a court may admit DNA evidence without conducting a preliminary hearing; questions regarding the reliability of DNA evidence in a particular case go to the weight of the evidence, not its admissibility). Our decision today, that the results of a speed-measuring device using radar or laser technology are admissible in court without expert testimony establishing, or the court taking judicial notice of, the reliability of the scientific principles underlying that technology, leaves determinations involving the sufficiency and weight of the evidence to be made on a case-by-case basis.

Id. at ¶ 18.

{¶27} As quoted above, there was testimony Trooper Bucey was trained and proficient on the use of the laser device. Tr. 7-8. He also testified to the manner in which the device was checked for calibration and indicated he followed those procedures both before and after his shift. Tr. 9-10. He further testified on redirect examination that on the device there is a scope that can be looked through to make sure it is tracking the right vehicle and the laser beam is directed to the center front of the vehicle being tracked. Tr. 16-17. His testimony was adequate and legally sufficient to establish he was trained to use the device and the device was properly working.

{¶28} Consequently, for those reasons the sufficiency of the evidence argument fails. The result of the laser speed-measuring device was admissible and sufficient evidence of speeding. Expert testimony and judicial notice are no longer required for the admissibility of the results of a laser speed-measuring device. However, evidence is required concerning the accuracy of the device and the qualifications of the operator of the device. Here there was evidence introduced as to both. This assignment of error is meritless.

Conclusion

{¶29} Both assignments of error lack merit. The conviction for speeding is affirmed.

Donofrio, P J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Mahoning County Court Area 4 of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.