[Cite as *State v. Riddle*, 2011-Ohio-1547.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio — Court of Appeals No. OT-10-040

Appellee — Trial Court No. TRD 1000672 A

v.

Loretta Riddle — **DECISION AND JUDGMENT**

Appellant — Decided: March 31, 2011

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
David R. Boldt, Assistant Prosecuting Attorney, for appellee.

Loretta A. Riddle, pro se.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from the Ottawa County Municipal Court wherein appellant, Loretta Riddle, was found guilty of speeding in violation of R.C. 4511.21(D)(1). For the reasons that follow, we reverse.

{¶ 2} On March 8, 2010, appellant received a citation for traveling 68 m.p.h. in a 55 m.p.h. zone. On March 15, 2010, appellant entered a not guilty plea to the charge. A trial before a magistrate commenced on July 16, 2010.

{¶ 3} Trooper Kent Jeffries of the Ohio State Highway Patrol testified that he was on duty the morning of March 8, 2010, when he saw appellant driving on State Route 2. Specifically, he noticed that appellant appeared to be driving over the speed limit. Using his Python radar device, he determined her speed to be 68 m.p.h. in a 55 m.p.h. zone. He then initiated a traffic stop and issued appellant a citation for speeding. Following this testimony, the magistrate found appellant guilty. Appellant now appeals setting forth the following assignments of error:

{¶ 4} "I. The trial court erred to the prejudice of the defendant in admitting testimony from a police officer regarding the speed of defendant's vehicle based on the radar observations made by the officer when there was no evidence presented as to the officer's certificate of training on the device.

{¶ 5} "II. The trial court erred, and abused its discretion, by basing defendant's conviction in part on evidence which was not sufficient for the state to prove its case beyond a reasonable doubt."

{¶ 6} In her first assignment of error, appellant contends that the testimony of Trooper Jeffries could not be used as evidence that appellant was speeding absent evidence that Jeffries was in possession of a "certificate of training" for the radar device he used.

{¶ 7} A trial court has broad discretion to admit or exclude evidence. *State v. Sage* (1987), 31 Ohio St.3d 173. Therefore, absent an abuse of discretion, an appellate court will not disturb a decision of a trial court. Id. at 182.

{¶ 8} "In order for a person to be convicted of speeding, evidence must be introduced that the device is in good condition for accurate readings and that the officer is qualified to administer the radar device. *State v. Wilcox* (1974), 40 Ohio App.2d 380, 384; *State v. Brown*, 9th Dist. No. 02CA0034-M, 2002-Ohio-6463, citing *East Cleveland v. Ferell* (1958), 168 Ohio St. 298, 303." *Middletown v. Yeager*, 7th Dist. No. 03MA104, 2004-Ohio-1549.

{¶ 9} Appellant contends that the city failed to show that Trooper Jeffries was qualified to administer the radar device he used to prove appellant's guilt. In support, appellant cites *State v. Everett*, 3d Dist. No. 16-09-10, 2009-Ohio-6714. Everett appealed his conviction on the basis that the city had failed to properly lay a foundation for the trooper's testimony that appellant was speeding. It was Everett's contention that the city had failed to establish that the trooper was properly trained and experienced in the radar device he had used to prove appellant's guilt.

{¶ 10} At trial, the trooper testified that he initially received radar training in the Patrol Academy. Additionally, he testified that he was required to have yearly training for purposes of updating. The trooper's Operator's Certificate of Training for "electronic speed measuring devices," issued in 1994, some fifteen years before Everett's citation, was admitted into evidence. It had last been updated in 2007, approximately two years before Everett's citation. The certificate showed training for three specific radar devices but no training was listed for the particular device the trooper was using when he stopped Everett, the Python II. When asked about the Python II, the trooper could not answer

questions regarding the parameters of the device and he testified that he had only briefly looked through the manual two or three years ago.

{¶ 11} Based on this evidence, the court found that the city provided insufficient evidence to prove that the trooper was trained and qualified to operate the Python II.

{¶ 12} In *Middletown v. Yeager*, supra, the Seventh District Court of Appeals reversed an appellant's conviction for speeding stating:

{¶ 13} "[T]he testimony as to the officer's qualifications to use the radar device * * * is nonexistent; the record is devoid of any evidence that the officer was trained and qualified to administer the radar device. Therefore, the radar device's reading as to [appellant's] speed cannot be used as evidence that [appellant] was speeding."

{¶ 14} Similarly, in *State v. Brown*, 9th Dist. No. 02CA0034-M, 2002-Ohio-6463, the court reversed an appellant's speeding conviction finding evidence that the deputy was trained on the radar unit he used to be insufficient evidence to prove he was qualified to operate the device. "Absent further evidence, such as a certificate of training, we cannot say that the State demonstrated that [the deputy] was qualified to operate the radar unit." Id.

{¶ 15} In this case, Trooper Jeffries testified that in 2001, he received "two weeks training with radar units" at the State Highway Patrol Academy. This training included training for the Python radar, the device Trooper Jeffries used on March 8, 2010. He testified that every year he is checked by a supervisor to make sure he is proficient with

the radar though he did not specify which radar devices were involved. He also testified that he is current with his training.

{¶ 16} While we agree with the trial court that a trooper is not required to present a certificate of training in order to prove he or she is qualified to administer a radar device, in this case we find Trooper Jeffries' generalized and vague testimony that he is qualified to be insufficient proof of his qualifications. He did not produce any evidence of that fact beyond his testimony. Testimony by a law enforcement officer that "he was trained on the radar unit" is insufficient to establish that he is qualified to operate it. *Brown*, 2002-Ohio-6463, at ¶ 12. Accordingly, appellant's first assignment of error is found well-taken.

{¶ 17} In a recent Supreme Court of Ohio case, the court held:

{¶ 18} "[A] police officer's unaided visual estimation of a vehicle's speed is sufficient evidence to support a conviction for speeding in violation of R.C. 4511.21(D) without independent verification of the vehicle's speed if the officer is trained, is certified by the Ohio Peace Officer Training Academy or a similar organization that develops and implements training programs to meet the needs of law-enforcement professionals and the communities they serve, and is experienced in visually estimating vehicle speed." *Barberton v. Jenney*, 126 Ohio St.3d 5, syllabus.

{¶ 19} In her second assignment of error, appellant contends that even without the radar evidence, her conviction cannot be supported based on Trooper Jeffries' visual observations. We agree.

{¶ 20} The officer in *Barberton* testified that he had been trained to visually estimate vehicle speed to within three to four m.p.h. of the vehicle's actual speed. He testified that he was certified by the Ohio Peace Officer's Training Academy in visually estimating speed and that he had performed hundreds of visual estimations since becoming a police officer in 1995. Based on his training and experience, he estimated that Jenney was traveling 70 m.p.h. in a 60 m.p.h. zone.

{¶ 21} Once again, we find the trooper's testimony to be lacking. Trooper Jeffries testified that at the Highway Patrol Academy he received training for "estimated speed." He did not explain what that entailed and he made no mention of certification. He did not discuss his experience in visual observation and his testimony regarding appellant was that he merely observed that she was "driving over the speed limit." We do not find this testimony sufficient to satisfy the *Barberton* standard. Accordingly, appellant's second assignment of error is found well-taken.

{¶ 22} On consideration whereof, we find that appellant was prejudiced or prevented from having a fair proceeding and the judgment of the Ottawa County Municipal Court is reversed and the matter is remanded for further proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _______________________________
JUDGE

Arlene Singer, J.
____

Thomas J. Osowik, P.J. JUDGE
CONCUR.
____
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.