

[Cite as *In re K.S.F.*, 2015-Ohio-5592.]

STATE OF OHIO, COLUMBIANA COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

In the Matter of:
K.S.F.

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CASE NO. 15 CO 1

OPINION

CHARACTER OF PROCEEDINGS:

Juvenile Appeal from Court of Common
Pleas of Columbiana County, Ohio,
Juvenile Division
Case No. T14-0229

JUDGMENT:

Reversed and vacated

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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JUDGES:

Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: December 18, 2015

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DeGENARO, J.

{¶1} K.S.F., a minor, appeals the Columbiana County Juvenile Court's decision finding her to have operated a motor vehicle at a speed in excess of the posted limit and designating her as a juvenile traffic offender. As the State failed to produce sufficient evidence of the scientific reliability of the radar device, K.S.F.'s argument is meritorious and the decision of the juvenile court is reversed and vacated.

{¶2} Ohio State Highway Patrol Trooper Neal Everett was traveling south on State Route 7 and passed K.S.F. traveling northbound and operating a Ford F-150 truck. Trooper Everett visually estimated K.S.F. traveling at a high rate of speed in the upper seventies. Trooper Everett measured her speed by radar as 88 mph in a 50 mph zone, and cited her for speeding in violation of R.C. 4511.21(D)(1).

{¶3} At the adjudicatory hearing Everett testified that he had been a trooper for approximately six months on the date of this traffic stop. He was utilizing a Python II radar speed detection device for which he received a week-long training. Everett checked the device at the beginning of his shift to ensure it was working properly.

{¶4} On cross, Trooper Everett admitted that his visual estimation was wrong, and he was surprised by the recorded speed of 88 mph. He acknowledged that the calibration certificate indicated that the device was last calibrated in 2005 and that he had minimal scientific knowledge as to how the radar device operates.

{¶5} The defense presented the testimony of Mark Shaffer, a retired law enforcement officer and K.S.F. who maintained that she was going 55 mph.

{¶6} The juvenile court found K.S.F. violated R.C. 4511.21(D)(1) for traveling 88 miles per hour in a 55 mph zone, and designated K.S.F. a juvenile traffic offender under R.C. 2152.02.

{¶7} In her first of three assignments of error, K.S.F. argues:

The trial court erred in finding that the defendant violated Ohio's speeding statute (4511.21(D)(1) (a violation as a juvenile traffic offender) after the Court failed to take judicial notice or make a specific finding of the scientific reliability of the speed detection device.

{¶8} Whether or not the state presented sufficient evidence is a question of law dealing with adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. When reviewing a challenge to the sufficiency of the evidence, an appellate court must view the evidence in a light most favorable to the prosecution and determine if any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991).

{¶9} To convict an individual for speeding based on a radar device, the State must prove, among other things, that the device was accurate and reliable. *State v. Kirkland*, 3d Dist. No. 8-97-22, 1998 WL 126849, *3 (Mar. 2, 1998). The scientific reliability of a particular speed-measuring device can be established via expert testimony or judicial notice. *Cincinnati v. Levine*, 158 Ohio App.3d 657, 2004-Ohio-5992, 821 N.E.2d 613, ¶ 10.

{¶10} In *City of New Middletown v. Yeager*, 7th Dist. 03 MA 104, 2004-Ohio-1549, this Court stated:

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, 319 N.E.2d 615; *State v. Brown*, 9th Dist. No. 02CA0034-M, 2002-Ohio-6463, citing *East Cleveland v. Ferrell* (1958), 168 Ohio St. 298, 303, 154 N.E.2d 630. "Where there is no testimony as to the construction and method of operation of a speed measuring device not the subject of judicial notice, the testimony of the user, standing alone, is insufficient to sustain a conviction for speeding." *State v. Colby* (1984), 14 Ohio App.3d 291, 470 N.E.2d 924, paragraph one of the syllabus. Therefore, as to a measuring device not subject to judicial notice, there must be testimony from the officer as to the method of operation and the accuracy of the radar device.

In the case sub judice, scientific evidence of the machine's reliability was not provided, nor was the type of radar machine ever identified. Therefore, we cannot conclude that the reliability of the machine has already been recognized by courts within our district, or that of any other court. Accordingly, the unknown and unspecified radar device could not be used as evidence of Yeager's speed while operating a motor vehicle.

Yeager at ¶9, ¶11.

{¶11} Here, scientific evidence establishing the reliability of the radar was not introduced by the State. Trooper Everett conceded that he knew very little about the construction of the radar device and how it operated. While testimony was presented regarding Trooper Everett's education and his opinion that the radar device was working properly, the State failed to produce sufficient evidence of the device's scientific reliability through expert testimony. Further, the State did not request, nor did the juvenile court of its own accord, take judicial notice of the reliability of this particular radar device. As such, pursuant to *Yeager* supra, the juvenile court could not have found K.S.F. guilty of speeding beyond a reasonable doubt. See *East Liverpool v. Lawson*, 7th Dist. 13 CO 52, 2014-Ohio-5858.

{¶12} In her second of three assignments of error, K.S.F. argues:

The opinion evidence of the officer was not sufficient to support the conviction for speeding.

{¶13} 4511.091(C)(1) provides: "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." As an alternative theory on appeal, the State

suggested at oral argument that Trooper Everett's visual estimation of K.S.F.'s speed would be sufficient to sustain her conviction. Pursuant to the express dictates of R.C. 4511.091(C)(1) visual estimation of speed alone is not adequate. Accordingly K.S.F.'s second assignment of error is meritorious.

{¶14} In her final of three assignments of error, K.S.F. argues:

The trial court erred when it refused to allow the introduction of the defendant's expert testimony.

{¶15} Our favorable resolution of the first and second assignments of error render this remaining assignment of error moot and dispenses with our need to address it. See App.R. 12(A)(1)(c).

{¶16} As the State failed to produce evidence of the scientific reliability of the radar device through expert testimony or judicial notice, it was error for the juvenile court to adjudicate K.S.F. a juvenile traffic offender for speeding. Accordingly, the judgment of the juvenile court is reversed and vacated.

Donofrio, P. J., concurs

Waite, J., concurs