

[Cite as *State v. Jackson*, 2010-Ohio-2137.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23368
Plaintiff-Appellee	:	
	:	Trial Court No. 2008-TRD-05370
v.	:	
	:	
YVONNE JACKSON	:	(Criminal Appeal from Montgomery County Court Area #2)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 14th day of May, 2010.

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RINGLAND, J.

{¶ 1} Defendant-appellant Yvonne Jackson appeals from her conviction and sentence for speeding, driving under a suspension and seat belt violation.

{¶ 2} The record indicates that on November 15, 2008, Riverside Police Officer Michael Ruchel was on duty in a marked cruiser sitting in the area of Airway

Road and Doolittle Drive when he observed Jackson operating a motor vehicle on Airway Road. Jackson utilized a stationary radar device to measure Jackson's speed which was clocked at forty-eight miles per hour in a thirty-five mile per hour zone.

{¶ 3} Ruchel initiated a traffic stop and cited Jackson for speeding in violation of Riverside Ordinance 333.03, driving with a suspended license in violation of R.C. 4510.11 and failure to wear a safety belt in violation of Riverside Ordinance 337.27. Jackson entered a plea of not guilty and the matter proceeded to a bench trial.

{¶ 4} At trial the State presented Ruchel as its sole witness. Following Ruchel's testimony, Jackson made a motion for acquittal pursuant to Crim.R. 29 which was denied by the trial court. Thereafter, Jackson testified on her own behalf. She admitted that she was driving under a suspension and that she was not wearing a seatbelt.

{¶ 5} The parties waived closing argument and the trial court stated that it found Jackson guilty of all three charges "based upon the evidence presented." Jackson was sentenced accordingly. She has filed a timely appeal in which she asserts the following two assignments of error:

{¶ 6} "THE TRIAL COURT ERRED WHEN IT OVERRULED APPELLANT'S CRIMINAL RULE 29 MOTION FOR ACQUITTAL AT THE CLOSE OF THE STATE'S CASE."

{¶ 7} "THE TRIAL COURT ERRED WHEN IT CONVICTED THE APPELLANT OF SPEEDING WHEN THE STATE FAILED TO PROPERLY LAY THE FOUNDATION FOR THE ACCURACY AND RELIABILITY OF THE RADAR UNIT

USED TO CALCULATE THE SPEED OF APPELLANT'S VEHICLE.”

{¶ 8} In her first argument, Jackson contends that the trial court erred when it failed to sustain her Crim. R. 29 motion for acquittal which she made at the close of the State's case.

{¶ 9} Crim. R. 29(A) states that a court shall order an entry of judgment of acquittal if the evidence is insufficient to sustain a conviction for the charged offense.

“Reviewing the denial of a Crim. R. 29 motion therefore requires an appellate court to use the same standard as is used to review a sufficiency of the evidence claim.”

State v. Witcher, Lucas App. No. L-06-1039, 2007-Ohio-3960.

{¶ 10} “In reviewing a claim of insufficient evidence, ‘[t]he relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.’ (Internal citations omitted).” *State v. Crowley*, Clark App. No.2007 CA 99, 2008-Ohio-4636.

{¶ 11} We begin with Jackson’s motion for Crim.R. 29 acquittal.¹ In making her motion, Jackson first argued that the State did not submit sufficient evidence to support a finding that she was, as cited, under a license suspension at the time of the traffic violation. We find no merit in this claim.

{¶ 12} R.C. 4510.11 provides in, pertinent part, as follows:

{¶ 13} “(A) No person whose driver’s *** license *** has been suspended under any provision of the Revised Code, other than Chapter 4509. of the Revised

¹ We note that Jackson did not raise the question of the seat belt violation with regard to her motion for acquittal.

Code, or under any applicable law in any other jurisdiction in which the person's license or permit was issued shall operate any motor vehicle upon the public roads and highways or upon any public or private property used by the public for purposes of vehicular travel or parking within this state during the period of suspension ***."

{¶ 14} The trial court admitted State's exhibit 1 which is a certified copy of Jackson's driving record from the Ohio Bureau of Motor Vehicles. Those records show the status of Jackson's license as "suspended." Therefore, we conclude that the trial court did not err in overruling this portion of the motion for acquittal.

{¶ 15} Next in her motion, Jackson argued that the State failed to submit sufficient evidence to demonstrate that the radar device in question was functioning properly at the time of the traffic stop. Specifically, she argued that Ruchel failed to insure that the device was tested so as to "account for any obstructions or hindrance to the signal of the radar being sent and coming back."

{¶ 16} We note that the record demonstrates that Ruchel calibrated the radar device at the beginning, and again at the end, of his shift using the standard "tuning forks" test and that it was tested to account for items, such as metal, that might affect the function of the device. Ruchel further testified that the calibrations showed the device was functioning properly. Further, according to Ruchel's un rebutted testimony, there were no obstacles, or metals, between the device and Jackson's car which would support her claim of obstructions or hindrance to the signal. Indeed, Ruchel testified that there were no other cars near her vehicle at the time. Thus, we conclude that the trial court did not err in overruling this portion of the motion for acquittal.

{¶ 17} We next turn to turn the second assignment of error in which Jackson contends that the convictions are not support by sufficient evidence. Again, the evidence submitted by the State was sufficient to support a conviction for driving under a suspension; a fact that is bolstered by Jackson’s own admission during her testimony.

{¶ 18} Further, there was sufficient evidence to support a conviction for failure to wear a seat belt. Ruchel testified that he observed Jackson driving without a seatbelt, which was again, admitted by Jackson during her testimony.

{¶ 19} Finally, we conclude that the trial court had sufficient evidence before it to support the conviction for speeding despite Jackson’s argument to the contrary in which she complains that the “State failed to establish that Officer Ruchel was qualified to operate the radar device.”

{¶ 20} “When a measuring device is not subject to judicial notice, there must be testimony from the officer as to his qualifications to operate the device and that the device was in proper working order.” *City of Cleveland v. English*, Cuyahoga App. No. 84945, 2005-Ohio-1662, ¶ 11. In this case, the record establishes that the Court had sufficient evidence to determine that the radar device was a stationary device. “The admissibility into evidence of a speed reading obtained by a [stationary] radar speed meter without independent expert testimony as to the nature and function of, or the scientific principles underlying, such speed meter has been firmly established in Ohio.” *State v. Wilcox* (1974), 40 Ohio App.2d 380, 381-382, citing *East Cleveland v. Ferrell* (1958), 168 Ohio St. 298.

{¶ 21} Moreover, Jackson did not object to Ruchel’s testimony regarding the

device, nor did she move to strike the same. Further, she did not raise the issue of Ruchel's qualifications at the trial court level. Additionally, she did not give any testimony to refute Ruchel's testimony that she was driving forty-eight miles per hour in a thirty-five mile per hour zone. Thus, we conclude that the trial court did not abuse its discretion in accepting Ruchel's testimony regarding the speed indicated by the device.

{¶ 22} Both of Jackson's assignments of error are overruled. The judgment of the trial court is affirmed.

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DONOVAN, P.J., GRADY, J., concur.

(Hon. Robert P. Ringland, Twelfth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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