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ORDER OF THE INDIANA SUPREME COURT (MARCH 2, 2023)

IN THE
INDIANA SUPREME COURT

ROLLAND G. SHOUP, II,

Appellant(s),

v.

STATE OF INDIANA,

Appellee(s).

Court of Appeals Case No. 22A-IF-00122

Trial Court Case No. 49D22-2106-IF-23648

ORDER

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each

participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 3/2/2023.

/s/ Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

MEMORANDUM OPINION OF THE COURT OF APPEALS OF INDIANA (NOVEMBER 17, 2022)

IN THE
COURT OF APPEALS OF INDIANA

ROLLAND G. SHOUP, II,

Appellant-Defendant,

v.

STATE OF INDIANA,

Appellee-Plaintiff.

Court of Appeals Case No. 22A-IF-122

Appeal from the Marion Superior Court
The Honorable Marcel A. Pratt, Jr., Judge
Trial Court Cause No. 49D22-2106-IF-23648

Before: CRONE, MAY, and WEISSMANN, Judges.

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

Crone, Judge.

Case Summary

[1] Rolland G. Shoup, II, appeals the trial court's finding, following a bench trial, that he committed the infraction of speeding. We affirm.

Facts and Procedural History

[2] At approximately 9:15 a.m. on June 22, 2021, Shoup was driving his red GMC truck near the 9220 block of Crawfordsville Road in Indianapolis. Clermont Police Department Officer John Mattingly was parked in his patrol car in a parking lot when, using his patrol car's in-car radar, a Python II, he tracked Shoup's vehicle as traveling at fifty miles per hour in the thirty-mile-per-hour zone. Officer Mattingly then used a handheld radar, a Genesis VP, and tracked Shoup's vehicle as traveling at fifty-five or fifty miles per hour. Officer Mattingly initiated a traffic stop of Shoup's vehicle. When Officer Mattingly approached the vehicle, Shoup "was highly irate and upset with [Officer Mattingly] for stopping him." Tr. Vol. 2 at 6. Officer Mattingly issued a speeding ticket to Shoup.

[3] On June 28, 2021, the State filed a traffic citation alleging that Shoup had committed the infraction of speeding. A bench trial was held on January 3, 2022. The State presented the police officer's testimony regarding the radar readings he obtained when tracking Shoup's vehicle. Shoup's defense was that a television station antenna near where he was pulled over "could have interfered" with the readings. *Id.* at 9. At the conclusion of the trial, the court found, by a preponderance of the evidence, that Shoup committed the

infraction and ordered him to pay $171. This appeal ensued.

Discussion and Decision

Section 1 – Shoup has waived his challenge to the State's alleged discovery violation.

[4] We first address Shoup's assertion that the "State deliberately failed to provide all requested discovery" to him. Appellant's Br. at 10. Specifically, Shoup contends that the State failed to reveal in its answers to interrogatories or in response to his request for production of documents that, in addition to the handheld radar gun, a Python II in-car radar was also used to record his speed. Shoup baldly suggests that he was "denied due process" because he was unable "to conduct research on a potential interference of the second radar gun used . . . due to the State's failure to disclose information" prior to the bench trial. *Id*. at 12.

[5] We agree with the State that Shoup waived this assertion by failing to object and request relief during trial. "Where there has been a failure to comply with discovery procedures, the trial judge is usually in the best position to determine the dictates of fundamental fairness and whether any resulting harm can be eliminated or satisfactorily alleviated." *Kindred v. State*, 524 N.E.2d 279, 286-87 (Ind. 1988). A party's failure to object to and request relief from a discovery error therefore waives the issue for appellate review. *Etienne v. State*, 716 N.E.2d 457, 461 n.2 (Ind. 1999) ("The proper remedy for a violation of a trial court's discovery order is a continuance, or in extreme circumstances, a mistrial."). Because Shoup did not specifically object when Officer Mattingly testified about his

use of the Python II, any alleged discovery violation is waived. *See Troxel v. Troxel*, 737 N.E.2d 745, 752 (Ind. 2000) ("A party may not raise an issue for the first time in a motion to correct error or on appeal.").[1]

[6] In his reply brief, Shoup argues that even if he "did not object at trial, fundamental error occurred." Reply Br. at 5. Although an issue is generally waived on appeal if not raised at the trial level, an appellate court may address the issue if a party alleges fundamental error occurred. *Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011). But a party may not raise an issue, such as fundamental error, for the first time in a reply brief. *Id*. Shoup failed to allege fundamental error in his principal appellate brief, and therefore the issue is waived.

Section 2 – Shoup has also waived his claim that the trial court abused its discretion in admitting certain evidence.

[7] Shoup next argues that the trial court abused its discretion in admitting the results of the in-car and handheld radars because the State failed to lay a sufficient foundation for admission. As noted by Shoup,

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[1] Rather than object on the basis of an alleged discovery violation and request a continuance, Shoup's counsel merely stated, "I was unaware of the Python II that was used in the vehicle." Tr. Vol. 2 at 8. However, the State subsequently countered that it "certainly believes that the information of both devices was provided to the Defense." *Id.* at 17. Notably, Shoup did not provide the trial court (or this Court) with the actual discovery requests/responses to determine if any requested evidence was indeed not disclosed. Without more, Shoup has failed to meet his burden to show that a discovery violation occurred, much less what fundamental fairness would have dictated under the circumstances.

"[t]o lay a proper foundation for the admission of radar test results, the State must establish that the radar device was properly operated and regularly tested." *Marlatt v. State*, 715 N.E.2d 1001, 1002 (Ind. Ct. App. 1999). However, Shoup failed to make any foundational objection at trial regarding the admissibility of the radar readings. It is well settled that an objection asserting a lack of adequate foundation must be made at the time the foundation is being laid. *Id.* (citing *Mullins v. State*, 646 N.E.2d 40, 48 (Ind. 1995)). Moreover, the complaining party may not object in general terms but must state the objection with specificity. *Id.* Because Shoup failed to lodge a timely objection at trial along with an explanation as to why the evidentiary foundation was inadequate, he has waived the issue on appeal. *Id.*

Section 3 – Sufficient evidence supports the trial court's finding that Shoup committed speeding.

[8] Finally, Shoup contends that insufficient evidence supports the trial court's finding that he committed the infraction of speeding. Traffic infractions are civil, rather than criminal, in nature. *Coleman v. State*, 49 N.E.3d 1043, 1045 (Ind. Ct. App. 2016). Thus, the State bears the burden of proving the commission of the infraction by only a preponderance of the evidence. *Rosenbaum v. State*, 930 N.E.2d 72, 74 (Ind. Ct. App. 2010), *trans. denied*. When reviewing a challenge to the sufficiency of the evidence supporting a trial court's finding that an individual committed an infraction, we do not reweigh evidence or reassess the credibility of witnesses. *Id*. We look only to the evidence that supports the judgment and to all the

reasonable inferences that may be drawn therefrom. *Id*. If there is substantial evidence of probative value to support the judgment, we will not reverse. *Id*.

[9] Indiana Code Section 9-21-5-2(a) provides in relevant part that "a person may not drive a vehicle on a highway at a speed in excess of the following maximum limits: (1) Thirty (30) miles per hour in an urban district." A person who violates this subsection commits a class C infraction. Ind. Code § 9-21-5-2(b).

[10] Here, Officer Mattingly testified that he was seated in his patrol car when both his handheld and in-car radars recorded Shoup driving at fifty miles per hour in a zone where the speed limit was thirty miles per hour. Although Shoup claimed that there was a television antenna in the area that "could" have interfered with the radars, Tr. Vol. 2 at 9, Officer Mattingly testified that he had never had issues with equipment malfunctioning in that area due to an antenna and he had not heard of other officers experiencing any issues. Shoup's argument on appeal that the radar readings were unreliable is simply a request for this Court to reweigh the evidence and reassess witness credibility, a task not within our prerogative on appeal. Sufficient evidence supports the trial court's finding, and therefore we affirm it.

[11] Affirmed.

May, J., and Weissmann, J., concur.

BENCH TRIAL,
TRANSCRIPT OF EVIDENCE
(JANUARY 3, 2022)

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

MARION COUNTY SUPERIOR COURT

Cause No. 49D22-2106-IF-23648

STATE OF INDIANA,

Plaintiff,

v.

ROLLAND G. SHOUP,

Defendant.

BENCH TRIAL

Before: The Honorable Marcel A. PRATT, JR.,
Judge of the Marion County Superior Court

Date: January 3, 2022

Court Reporter: Blacina Pagoada-Cruz

APPEARANCES

On Behalf of the Plaintiff, State of Indiana

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[January 3, 2022 Transcript, p.4]

(Called to order at 9:48 a.m.)

MR. MACDOUGALL: Okay. This is State of Indiana versus Rolland Shoup, 49D22-2106-IF-023648. Officer John Mattingly of the Clermont Police Department is here for the State. Mr. Shoup is represented by Attorney Emily Kopp. We are ready to proceed, Judge

THE COURT: All right. Thank you. We will show all parties are present. And does the State have any opening statement for this trial?

MR. MACDOUGALL: The State would waive opening statement, Judge.

THE COURT: And Defense?

MS. KOPP: Yes, I have a brief opening statement, Judge.

THE COURT: Go ahead.

MS. KOPP: All right. Mr. Shoup, on 6/22/2021 he was accused, allegedly, of speeding. That is incorrect. He is not guilty. There were—there are very many factors that can happen with a radar gun and interferences, and I will show that later by questioning Mr. Mattingly about the use of the radar gun and the potential interferences that may have happened. Therefore, there is no way to accurately tell if Mr. Shoup was speeding on that day.

Thank you, Judge.

THE COURT: All right. Thank you. State, you may call your first witness.

MR. MACDOUGALL: Thank you, Judge. The State would call Officer John Mattingly of the Clermont Police Department.

THE COURT: All right. Officer Mattingly, if you could please turn your video feed on, sir. Thank you. And raise your right hand to be sworn.

OFFICER JOHN MATTINGLY,
STATE'S WITNESS, SWORN

THE COURT: Thank you very much. You may begin.

MR. MACDOUGALL: Thank you, Judge.

DIRECT EXAMINATION

BY MR. MACDOUGALL:

Q Officer, for the record, can you please state and spell your name?

A Officer John Mattingly. First name John, J-O-H-N. Last name Mattingly, M-A-T-T-I-N-G-L-Y.

Q And you are a law enforcement officer with the Clermont Police Department in Marion County?

A Yes, sir.

Q And how long have you been in that capacity?

A It was—it's been a year, I believe November. I'm sorry. August.

Q Okay. And on June 22nd of 2021, you were on duty that day, sir?

A Correct.

Q Okay. Now, on that date, approximately 9:15 a.m., did you have an occasion to come in contact with the Defendant, Rolland Shoup?

A I did.

Q And do you currently see Mr. Shoup on the video conference?

A I do.

Q Okay. Can you describe a distinctive visual feature of Mr. Shoup for the Court for identification purposes?

A I'm sorry. Say that again. I don't know if it was my computer or yours that cut out.

Q Could you provide a physical description based on your observations of Mr. Shoup for identification purposes?

A Gray hair.

MR. MACDOUGALL: Okay. Let the record reflect that the witness has identified the Defendant, Rolland Shoup.

THE COURT: Any objection?

MS. KOPP: No objection, Judge.

THE COURT: All right. The record will so reflect then.

MR. MACDOUGALL: Thank you, Judge.

BY MR. MACDOUGALL:

Q Officer, going back to that date on June 22nd, in your own words can you describe your observations that led to your encounter with the Defendant?

A I was sitting in the lot parallel with the road, 8800 block of Crawfordsville, running radar. I noticed behind me a vehicle was approaching at a high rate of speed. The radar picks up Mr. Shoup in a red GMC, traveling westbound, doing 50 miles an hour. I also have a—that was the in-car radar. I also have a secondary radar, which is hand-held. When he—when Mr. Shoup passed me, I pointed the hand-held radar out the window. Windows were down, air was off. I pointed the hand-held out the window, and he was still continuing to do 55—or 50 miles an hour in a 30, and that's where I initiated the traffic stop and stopped him at the 9200 block of Crawfordsville.

Q Okay. And can you describe any exchange that you might have had with the Defendant after the stop?

A I walked up and introduced myself, and it seemed as though almost immediately that Mr. Shoup was highly irate and upset with me stopping him,

and then that interaction continued for the duration of the—the stop.

It was he would see me in Court and several cuss words and foul language. And I also put that into the run as I closed the run out after the—the stop, so.

Q Okay. And do you explain to Mr. Shoup why you stopped him?

A I did. I told him I had clocked him on two different radars going 50 miles an hour in a 30 mile an hour zone.

Q And you were in a stationary position when operating the radar, correct?

A Correct.

Q Okay. What were the conditions, the weather conditions that day?

A I believe it was clear. It was not raining, so it was just—I don't think it was sunny yet because it was still early in the morning, but it was clear.

Q Okay. Were there any traffic conditions that might have impeded your—your equipment's ability to obtain the reading?

A I would say no. Traffic's not very high in that area.

Q Okay. Any other conditions present that day that would have interfered with the—the radar?

A I do not believe so.

MR. MACDOUGALL: I have no further questions at this time.

THE COURT: All right. Thank you. Cross-examination then.

MS. KOPP: Thank you, Judge.

CROSS-EXAMINATION

BY MS. KOPP:

Q Officer Mattingly—

A Yes, ma'am.

Q —it is correct that you had to read any type of manual for the radar guns that you are allowed to operate; is that correct?

A That is correct.

Q And you said you used two different devices to track the speed. What were those two devices?

A So there's an in-car, which has a dash—a dash mount that has a front window radar and then a back window radar, and then the other is a hand-held, which is, you know, just a hand-held radar that shows the display on the back side of it.

Q Do you know the brand of the hand-held radar?

A I do, actually.

Q What is that?

A So the in-dash is a Python II—or the dash one is a Python II, and then also the hand-held is going to be a Genesis VP.

Q Okay. Because in the discovery that we requested from you and Mr. MacDougall, it was only stated that one radar gun was used, so I was unaware of the Python II that was used in the vehicle. Was

that a recent discovery that you guys didn't think of?

A No. So I—when I run radar, I always—I tend to use—because I sit parallel with the road, I tend to use just my dash radar. And at this—with this being the only car on the road and it was wide open, I didn't have to rush to get out behind him. I just pulled out my second radar and—and pointed it at him, just to verify that he was doing 50 in a 30.

Q Okay. And you said that that was the Genesis VP Directional; that's correct?

A Correct.

Q Okay. And you are required to read the manual for all the radar guns—

A Correct.

Q —so you read the Genesis VP Directional? All right. Are you aware that any interference in the area can affect a screening of the radar gun and—

A (Inaudible).

Q Okay. Also in the discovery you had stated that you were not aware of any antennas or towers nearby; is that correct?

A Correct.

Q Okay. How familiar are you with that area? You said you had been there for about a year?

A I'm—I live relatively close to the area, so I'm pretty familiar with the area.

Q Okay. Actually, are you aware that there is actually a—it's called WDTI TV, there is an antenna

on that street, a big—a big tower on that street; are you aware of that?

A I was not—not aware of that.

Q Okay. That's actually on Crawfordsville Road as well, where Mr. Shoup was pulled over.

A Okay.

Q And you've already stated that, you know, antennas can interfere with radar pickup; is that correct?

A Correct.

Q Okay. So is it possible that the frequency of the antenna that is on that road could have interfered?

A It—it could be possible.

Q Okay. What kind of equipment do you have in your car; what kind of laptop—I know that a lot of patrol cars have, you know, a laptop or something in their vehicle. What do you guys use?

A We do have a laptop. I believe it's a Dell. I'm trying to think of the electronics. I'm sorry.

Q That's okay.

A A GPS unit that's in there.

Q Okay.

A And I'm going to say that's it, electronic wise.

Q All right. Also, really quickly, how often do you calibrate your radar guns, specifically the handheld one?

A Both radars are calibrated at the beginning of shift, and then after every—after every stop I tend to hit the test button on the actual unit itself, and

what that does is it just cycles through, make sure all the numbers are working.

Q Okay. So the morning of 6/22/2021 you did calibrate the gun?

A Yes, ma'am.

Q What do you use to calibrate the gun?

A We use the metal prong that was provided with the actual radar unit.

Q Okay. And what kind of packaging do you leave the gun in when you're not using it?

A It comes in a carrying case which has a foam protector inside.

Q Okay. And you've seen this as well, you use it, and Mr. MacDougall has seen this as well, what the gun that you used that day looks like. Would you say it's in good condition, or are there some a little beat up?

A It's been weathered, but it's in working condition, I believe.

Q Okay. And is it true that, you know, scratches and dings on the front of a radar gun, that can sometimes mess up the frequency?

A That I don't know.

MS. KOPP: Okay. All right, Judge, I have no further questions. Oh, you're muted, I think.

THE COURT: Thank you. Redirect examination?

MR. MACDOUGALL: I don't have any other questions, Judge. I'd just ask that the—if the Court wants to consider the presence of any kind of antenna

on that road, the Defense will have an opportunity to introduce that by somebody under oath, as opposed to in questioning by Defense counsel.

THE COURT: Well, he said he didn't know that so I haven't considered it yet as evidence.

Do you have any other witnesses to call?

MR. MACDOUGALL: No. The State rests, Judge.

THE COURT: All right. Defense, any witnesses or evidence?

MS. KOPP: I would like to call Mr. Shoup, please.

THE COURT: Okay. Mr. Shoup, if you would, sir, raise your right hand to be sworn.

ROLLAND G. SHOUP, DEFENDANT, SWORN

THE COURT: And I would note you are still muted, sir.

THE DEFENDANT: I do.

THE COURT: Sorry?

THE DEFENDANT: I do.

THE COURT: All right. Thank you. Ms. Kopp, you may begin.

MS. KOPP: All right. Thank you.

DIRECT EXAMINATION

BY MS. KOPP:

Q Mr. Shoup, for the record can you please state and spell your name?

A Rolland, R-O-L-L-A-N-D, last name is Shoup, S-H-O-U-P.

Q All right. Thank you, Rolland. And on 6/22/2021 were you traveling on Crawfordsville Road?

A Yes, ma'am, I was.

Q Okay. And did you believe that you were speeding on that road?

A No.

Q All right. And were you aware of the antenna in that area, of the TV station, the antenna in that area?

A Yeah, I saw it.

Q What was that? I'm sorry.

A I saw it. It's near—

Q You saw it? You saw it while you were driving?

A Yes.

Q All right. And it's your intention today that—to plead not guilty, that you are not guilty of this offense of speeding; is that correct?

A Yes, ma'am.

MS. KOPP: All right. No further questions, Judge.

THE COURT: Cross-examination.

MR. MACDOUGALL: Yes.

CROSS-EXAMINATION

BY MR. MACDOUGALL:

Q Mr. Shoup, you mentioned that you saw the antenna that's in the area. Can you—can you describe to the Court specifically the—the location of that antenna, based on your observations that day?

A All I did is notice it. It was near the church, which is the parking lot that he came out. He was not in front of me.

Q It was near the church?

A Yes.

MR. MACDOUGALL: Okay. Judge, I have no further questions for Mr. Shoup, but based on the testimony of the antenna, I do have a rebuttal question for the officer, if I may, when it's appropriate.

THE COURT: All right. Any redirect examination, Ms.—

MS. KOPP: Oh, no, Judge.

THE COURT: All right. Any other witnesses or evidence to present, Ms. Kopp?

MS. KOPP: No.

THE COURT: All right. Any rebuttal then, the Defense having rested?

MR. MACDOUGALL: Yes, Judge. The State would again call Officer Mattingly.

THE COURT: All right. Officer Mattingly, I will remind you, you are under oath.

THE WITNESS: Yes, sir.

OFFICER JOHN MATTINGLY, STATE'S WITNESS, PREVIOUSLY SWORN

DIRECT EXAMINATION

BY MR. MACDOUGALL:

Q Officer, you've been on the force out in Clermont for a little over a year, you said?

A Yes, sir.

Q And how—how large of a community is that?

A I believe the population is in—I think it's around 20,000, maybe less.

Q Okay. So it's a—relatively it's a small area of patrol?

A Yes.

Q And in your experience as a patrol officer, have you ever had any issues with any of your equipment malfunctioning, based on any kind of radio interference?

A No, sir.

MR. MACDOUGALL: Okay. No further questions. Thank you, Officer.

THE COURT: Cross-examination.

MS. KOPP: Yes, one question.

CROSS-EXAMINATION

BY MS. KOPP:

Q Officer Mattingly, you've stated that you have not had any issues in the past. Is that just because nobody's brought it to your attention?

A That could be the case. I have not personally had any issues with any of the equipment, and I do not know of anybody else who has had any problems. But again, I'm not—not of a rank so, therefore, I'm not somebody who they come to and say this—you know, this radar unit has an issue. So I would like to say that if another officer does

have an issue with their radar, that they would pass it on and—

Q But it's not for certain that that's never been an issue in that area?

A That's correct.

Q All right.

A That's correct. Outside of me not having an issue, correct.

MS. KOPP: All right. Thank you. No further questions, Judge.

THE COURT: All right. Redirect examination, Mr. MacDougall?

MR. MACDOUGALL: Nothing further, Judge.

THE COURT: All right. And let's hear closing arguments then. State.

MR. MACDOUGALL: Thank you, Judge.

You heard the testimony from the officer that he observed Mr. Shoup's vehicle at a high rate of speed, and verifying it through two different methods of radar. He obtained consistent readings of 50 miles an hour, that being a 35 mile an hour zone on Crawfordsville Road.

While the Defense has mentioned there being a radio tower in the area, as we heard from Mr. Mattingly with his further testimony, that in his experience in this community it hasn't been an issue with—with him or his other law enforcement officers that he's aware of.

Based on the observations that we heard from his testimony, along with his summary of any—

any—of the lack of interference by that antenna, it's certainly more likely than not that—by a preponderance of evidence, I should say, that Mr. Shoup did commit the infraction of speeding. The State has met its burden and we'd ask that the Court find in favor of the State against the Defendant. Thank you.

THE COURT: Thank you. Ms. Kopp, for the Defense.

MS. KOPP: Yes. Thank you, Judge.

You've heard the testimony today. Mr. Shoup has said that he was not guilty of speeding. Officer Mattingly has been in the area for about a year, but was still unaware of the antenna on that same exact road. Mr. Shoup even testified that he saw the antenna himself.

And in the manual for this specific radar, the hand-held radar gun, it is stated that antennas can cause interference and an inaccurate reading of a radar gun.

That being said, the Defense was also unaware that the Python II was used that day until the testimony today. So I cannot say either way if there's enough evidence there for the Python one in the vehicle. I would say that there is not enough evidence to convict Mr. Shoup of, you know, guilty of speeding, based on the evidence and based on the interference of the radar gun. Thank you, Judge.

THE COURT: Thank you. Mr. MacDougall.

MR. MACDOUGALL: Yes, very briefly.

The Defense had an opportunity to introduce any kind of language about the—the manual of the radar. They declined to do so. So as far as what the manual says about any kind of interference, that—you know, there was nothing introduced at trial for either side about any kind of interference.

Further, the State would just like to remind the Court that the—the Defendant, while he says he doesn't believe he was speeding, there wasn't any kind of testimony as to the speed he believed he was going. And in the absence of any testimony as to what speed the Defendant thought he might be going, the most reliable evidence is that of the radar.

And while the State certainly believes that the information of both devices was provided to the Defense, there wasn't anything, other than perhaps a radio antenna in the area, that would have any kind of interference on either device.

So even if we're considering the—the reliability of one device, being the device that was provided in discovery, that's still more reliable than any absence of testimony regarding an actual speed the Defense may have introduced. Thank you, Judge.

THE COURT: Thank you. The Court has heard the evidence and the argument of the parties. Notes the standard being preponderance of the evidence, or more likely than not, and based on that standard, the State has met its burden by a preponderance of the evidence, and as a result, the

Court finds against the Defendant and for the State.

Mr. Shoup, I will note you are still under oath, sir. Do you have any other moving violations within the past five years, sir?

THE DEFENDANT: None.

THE COURT: All right.

THE DEFENDANT: No, I don't have any on my record. No, I don't have any on my record.

THE COURT: Okay. And Mr. MacDougall, have you been able to confirm the same?

MR. MACDOUGALL: Judge, if you will bear with me, I can provide that information momentarily.

UNIDENTIFIED SPEAKER: That information—is this a Communist (inaudible) with a Communist, Judge? They didn't give you any in discovery. We have all those manuals.

MR. MACDOUGALL: Judge, there was a speeding ticket filed on January 13th of 2020, decided on November 12th for Rolland Shoup, Marion County.

MS. KOPP: That was dismissed. I handled that case. That ticket was dismissed and should be off his record.

THE COURT: Mr. MacDougall, anything else?

MR. MACDOUGALL: Let's take a look here. It looks like there was an admission on a ticket from 2016. This was September 7th, 2016, it was filed, decided in 2017. And this was a speeding ticket and a failure to signal a turn or lane change.

THE COURT: Any reason to dispute that, Ms. Kopp?

MS. KOPP: I'm looking at it, Judge. I'm sorry.

MR. MACDOUGALL: It looks like there was a Motion to Dismiss in 2021 filed.

MS. KOPP: But there was nothing ruled on that yet, so.

THE COURT: All right. Based on everything I've heard then, the judgment will be in the amount of $171. That is the minimum. I am not going to consider the prior, if there's some Motion to Dismiss that has not been ruled upon as a prior moving violation found.

So as a result, the judgment is in the amount of $171, the minimum. And Ms. Kopp, how long do you think your client needs in order to pay that?

MS. KOPP: Judge, I would ask for 60 days.

THE COURT: All right. So be it. The fine will be stayed for 60 days. Mr. Shoup, you will have—that judgment must be paid within the next 60 days. That is $171 even, and that is to be paid. You can pay it online through the clerk's office or in person. So you can get with Ms. Kopp and determine how to do such. All right?

MS. KOPP: All right. Thank you, Judge.

THE COURT: Anything else, Ms. Kopp?

MS. KOPP: That's all.

THE COURT: Anything else from the State?

MR. MACDOUGALL: No, Judge. Thank you, counselor. Thank you, Officer Mattingly, for your testimony.

OFFICER MATTINGLY: Thank you, guys.

MS. KOPP: Thank you.

MR. MACDOUGALL: You guys have a happy new year.

MS. KOPP: You, too.

(Proceedings adjourned at 10:10 a.m.)

TEXT ORDER ENTERING JUDGMENT AGAINST DEFENDANT FOLLOWING VIDEO BENCH TRIAL (JANUARY 3, 2022)

STATE OF INDIANA

v.

ROLLAND G. SHOUP

Case Number	49D22-2106-IF-023648
Court	Marion Superior Court 22
Type	IF - Infraction
Filed	06/28/2021
Status	01/03/2022, Decided
Appear By	08/26/2021
Related	Lower Trial Court Case 22A-IF-00122

Chronological Case Summary

[. . .]

01/03/2022

Amended Judgment

Judicial Officer: Pratt, Marcel A, Jr.

Reason: Court Ordered

01. 9-21-5-2(a)/IFC: Speeding

- Judgment Against Defendant

[. . .]

BRIEF OF APPELLANT
FILED IN INDIANA COURT OF APPEALS
(JULY 14, 2022)

IN THE INDIANA COURT OF APPEALS
Cause No. 22A-IF-00122

_____

ROLLAND G. SHOUP, II,

Appellant,

v.

STATE OF INDIANA,

Appellee.

_____

Appeal from the Marion Superior Court
22 Marion County

Trial Court Case No.: 49D22-2106-IF-023648

The Honorable Marcel A. Pratt Jr., Judge.

BRIEF OF APPELLANT

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{ TOC, TOA, Omitted }

STATEMENT OF THE ISSUES

Whether the trial court erred in finding that there was substantial evidence of probative value that supported the judgment that Mr. Rolland G. Shoup, II was speeding on the morning of June 22, 2021, and whether the trial court erred in finding in favor of the State when the State failed to provide Mr. Shoup with formally requested discovery resulting in an unfair trial?

STATEMENT OF THE CASE

Nature of the Case

Rolland G. Shoup, II appeals the final judgment that he is guilty of one count of Speeding/IFC under I.C. § 9-21-5-2(a) due to unsubstantial evidence presented by the State and the State's failure to disclose all documents requested by Mr. Shoup through formal discovery requests resulting in an unfair trial.

Course of Proceedings

On June 22, 2021, Mr. Shoup received a local ordinance ticket with traffic citation number 000

147371670 in Marion County for "Speeding/IFC" (App. Vol. II 2, 6). On September 24, 2021, Mr. Shoup, pro se, filed a petition to set aside/vacate judgment with the Marion Superior Court, Criminal Division 22 under cause number 49D22-2106-IF-023648 (App. Vol II 2). The Marion Superior Court 22 entered an Order on September 27, 2021, to set aside/vacate the judgment (App. Vol. II 3). On October 19, 2021, Mr. Shoup hired counsel (*Id.*). On October 22, 2021, Mr. Shoup, by counsel, served discovery requests on the State of Indiana's counsel, Deputy Prosecuting Attorney Jamie MacDoungall, which included the Defendant's First Set of Interrogatories to Plaintiff, State of Indiana, and Defendant's First Set of Requests for Production of Documents to Plaintiff (App. Vol. II 3, 7-8). A motion to continue bench trial was filed on October 28, 2021, due to ongoing discovery (App. Vol. II 3). The motion to continue was granted on November 2, 2021, setting the bench trial for January 3, 2022 (App. Vol. II 4). On January 3, 2022, the bench trial was commenced and concluded by the trial court, entering a judgment against Mr. Shoup (*Id.*). The Appellant, Mr. Shoup, now timely files his Brief of Appellant.

STATEMENT OF THE FACTS

On the morning of June 22, 2021, at approximately 9:15 a.m., Rolland G. Shoup, II, Appellant, was traveling near the 9220 block of Crawfordsville Road in Indianapolis, Indiana, County of Marion (App. Vol. II 6). On Crawfordsville Road, there is a large tower with an antenna for WDTI TV (Tr. Vol. II 9).

Prior to the traffic stop, Officer J. Mattingly Jr. ("Officer J.") of the Clermont Police Department ("CPD")

was parked illegally in a lot parallel to the road around the block of 8800 of Crawfordsville Road (Tr. Vol. II 6). Officer J. testified that he was running radar on Crawfordsville Road (Tr. Vol. II 6). Officer J. testified that he noticed a red GMC traveling westbound coming up behind him (*Id.*) Officer J. testified that the red GMC was traveling 50 miles per hour and used an in-car radar and a secondary hand-held radar gun (*Id.*). Officer J. testified he pointed the hand-held radar gun out the window to track the speed (*Id.*). The handheld device was a Genesis VP and the in-car radar was a Python II (Tr. Vol. II 8). However, the State failed to produce the formally requested information regarding the two radar guns through Request for Production of Documents and Mr. Shoup was unaware of the missing information and the use of the Python II until Officer J.'s testimony (Tr. Vol. II 16). Officer J. testified that he tends to use the dash radar, also known as the in-car radar, but for this traffic stop, he pulled out the hand-held Genesis VP radar gun which allegedly clocked the red GMC vehicle traveling at 50 miles per hour in a 30 miles per hour zone (Tr. Vol. II 8). Officer J. then pulled over the red GMC and found Mr. Shoup to be the driver (Tr. Vol. II 6).

Mr. Shoup testified at the bench trial on January 3, 2022, that he was in fact driving on Crawfordsville Road the morning of June 22, 2021 (Tr. Vol. II 12). However, he was not speeding and not guilty of the offense of speeding the morning of June 22, 2021 (*Id.*). Mr. Shoup testified that he saw the WDTI TV antenna tower when he passed it (*Id.*) Mr. Shoup stated that the large antenna was near a church on Crawfordsville Road which is also located near the parking lot that Officer J. was parked in (Tr. Vol. II 13). Nonetheless,

Officer J. testified that he lives relatively close to the area where Mr. Shoup was pulled over and that he was familiar with the area yet has never seen the huge antenna tower on Crawfordsville Road right where he was parked when he was taking radar on June 22, 2021 (Tr. Vol. II 9).

Officer J. gave Mr. Shoup a traffic citation with the UTT #: 000147371670 at 9:15 a.m. on June 22, 2021, for the offense of "SPEEDING/IFC" under I.C. 9-21-5-2(a) (App. Vol. II 6). Mr. Rolland G. Shoup, II is listed as the driver to unlawfully operate a red GMC 2013 truck (*Id.*). At the hearing held on January 3, 2022, the trial court entered a judgment against the Mr. Shoup (Tr. Vol. II 17). The Court entered a judgment against Mr. Shoup in the amount of $171.00 (Tr. Vol. II 18).

SUMMARY OF THE ARGUMENT

There was not substantial evidence of probative value to sustain the final ruling that Mr. Shoup was guilty of speeding on the morning of June 22, 2021, and the State failed to provide Mr. Shoup and his attorney with the information requested in formal discovery requests resulting in an unfair trial. The State did not provide Mr. Shoup with pertinent information to the case prior to the bench trial. The trial court ruled against Mr. Shoup and found him guilty of speeding. However, based on the probative evidence and reasonable inferences, a reasonable jury would not have arrived at the same determination that Mr. Shoup was speeding on the early June 22, 2021, morning. Parties are required to answer interrogatory requests and requests for production of documents with true and correct information under the penalties

of perjury. However, when Officer J. testified at the bench trial held on January 3, 2022, imperative information was revealed that was explicitly requested in the discovery requests sent to the State. This Court should reverse the ruling of the trial court for reason of lack of substantial evidence and the right to a fair trial.

ARGUMENT

Standard of Review

"We have often stated that appropriate sanctions for failure to comply with a trial court's order concerning discovery is a matter committed to the sound discretion of the trial court. Ind. Trial Rule 37 . . . Discretion is a privilege afforded a trial court to act in accord with what is fair and equitable in each case . . . An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law." *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993). "An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. An abuse of discretion also occurs when the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute." *Dillard v. Dillard*, 889 N.E.2d 28, 32 (Ind. Ct. App. 2008).

I. There Was a Lack of Substantial Evidence of Probative Value Presented to Support the Trial Court's Decision that Mr. Shoup Was Speeding on the Morning of June 22, 2021

The Indiana Supreme Court discusses the standard of review when sufficiency of the evidence to support the judgment is raised on appeal in civil cases. It said, "In reviewing the sufficiency of the evidence in a civil case, we will decide whether there is substantial evidence of probative value supporting the trial court's judgment. We neither weigh the evidence nor judge the credibility of witnesses but consider only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. Only if there is a lack of evidence or evidence from which a reasonable inference can be drawn on an essential element of the plaintiff's claim will we reverse a trial court." *Jennings v. State*, 553 N.E.2d 191, 192 (Ind. Ct. App. 1990). In the appellate review of a claim of insufficient evidence in civil cases, the Court will "affirm a verdict when, considering the probative evidence and reasonable inferences, a reasonable jury could have arrived at the same determination." *TRW Vehicle Safety Sys., Inc. v. Moore*, 936 N.E.2d 201, 208 (Ind. 2010).

A. The State Deliberately Failed to Provide All Requested Discovery to Mr. Shoup

"A speeding ticket is civil in nature and therefore the rules of trial procedure must strictly apply." *Ford v. State*, 650 N.E.2d 737, 739 (Ind. Ct. App. 1995). "The objective of pretrial discovery is to promote justice and to prevent surprise by allowing the defense adequate time to prepare its case." *Campbell v. State*,

500 N.E.2d 174, 182 (Ind. 1986). Indiana courts have noted "the seriousness with which we [the Court] consider claims of prosecutors failing to supply defendants with discovery and the fact that we find such behavior unacceptable and troublesome." *State v. Schmitt*, 915 N.E.2d 520, 523 (Ind. Ct. App. 2009).

Under Ind. R. Trial P. 26(A)(1) & (2), Mr. Shoup served written interrogatories and request for production of documents following the rules of electronic format under Ind. R. Trial P. 26(A.1)(a) on October 22, 2021 (App. Vol. II 3, 7-8). These interrogatories were requested because there was a firm belief that Mr. Shoup was not speeding the morning of June 22, 2021, and that there was likely an interference with the radar gun being used by the police officer due to the large WDTI TV antenna on Crawfordsville Road (Tr. Vol. II 9). However, Mr. Shoup was denied the opportunity to conduct research on a potential interference of the second radar gun used, the Python II, due to the State's failure to disclose information about the Python II before the bench trial (Tr. Vol. II 16). "Defense was also unaware that the Python II was used that day [June 22, 2021] until the testimony today" (*Id.*).

Along with the interrogatories sent to the State by Mr. Shoup's counsel on October 22, 2021, request for production of documents was also served on the State the same day (App. Vol. II 3, 7-8). The State never sent a response to the Defendant's First Set of Requests for Production of Documents to Plaintiff. Therefore, those documents were never produced to Mr. Shoup, which violates the Indiana Rules of Trial Procedure.

B. Due to the Evidence Presented by Mr. Shoup, a Reasonable Jury Would Not Have Arrived at the Same Determination as the Trial Court

A reasonable jury would not have arrived at the same determination as the trial court based on the evidence presented by Mr. Shoup and the State, thus presenting an abuse of discretion. The State has the burden of proof in this case. It is understood that the Court will not reweigh evidence or assess the credibility of witnesses. *Smith v. State*, 163 N.E.3d 925, 928 (Ind. Ct. App. 2021). In the present case, testimony was given by both Mr. Shoup and the CPD officer, Officer J. Although we do not reweigh evidence, it was apparent at trial that the Mr. Shoup presented substantial evidence of probative value to support the interference of the radar guns, whereas the State did not present any evidence as to this argument. The State also used evidence that was explicitly requested through formal discovery by Mr. Shoup and not provided to support its testimony.

> Question: Because in the discovery that we [Mr. Shoup and counsel] requested from you [Officer J.] and Mr. MacDougall [counsel for the State], it was only stated that one radar gun was used, so I was unaware of the Python II that was used in the vehicle. Was that a recent discovery that you guys didn't think of?
>
> Answer from Officer J.: No.

(Tr. Vol. II 8). "That being said, the Defense was also unaware that the Python II was used that day [June 22, 2021] until the testimony today" (Tr. Vol. II 16).

" . . . this court has determined that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good or bad faith of the prosecution." *Prewitt v. State*, 819 N.E.2d 393, 401 (Ind. Ct. App. 2004). The evidence of a radar gun in a speeding ticket case is pertinent and material to punishment. The evidence of the second radar gun was withheld by the State after all equipment was specifically requested by Mr. Shoup. Thus, Mr. Shoup's right to due process was violated.

Furthermore, a reasonable jury would have arrived at the determination that the evidence submitted by Mr. Shoup that the Genesis VP radar gun displayed an inaccurate reading due to the interference of a television antenna would be enough to find Mr. Shoup not guilty. Again, Mr. Shoup was denied the opportunity to conduct research on a potential interference of the second radar gun used, the Python II, due to the State's failure to disclose information about the Python II before the bench trial (Tr. Vol. II 16). Officer J testified that he has worked and lived near Crawfordsville Road for about a year (Tr. Vol. II 9). There is a big WDTV antenna tower on Crawfordville Road where Mr. Shoup was pulled over (*Id.*). Officer J. testified that he was not aware of the large television antenna nearby (*Id.*). However, Mr. Shoup testified that he even saw the antenna when he was driving (Tr. Vol. II 12). "It [the antenna] was near the church, which is the parking lot that he [Officer J.] came out. He was not in front of me" (Tr. Vol. II 13). "And you've [Officer J.] stated that . . . antennas

can interfere with radar pickup; is that correct?" (Tr. Vol. II 9) Where Officer J. responds "Correct" (*Id.*).

> Question: So is it possible that the frequency of the antenna that is on the road [Crawfordsville Road] could have interfered"
>
> Answer from Officer J.: It-it could be possible.

(Tr. Vol. II 9-10). It is a fact, that Officer J. acknowledged, that radio and television towers can interfere with radar gun frequencies, causing an inaccurate read (*Id.*). The burden of proof in this matter is on the State and through Officer J.'s testimony, it is evident that the State could not have met its burden based on the unsubstantial evidence presented. This further proves the trial court's abuse of discretion by failure to arrive at the same determination as a jury trial would have based of the substantial evidence presented by Mr. Shoup.

C. The State Failed to Establish Through Substantial Evidence that the Equipment Used to Measure Mr. Shoup's Speed Was Properly Operated and Regularly Tested

"To lay a proper foundation for the admission of radar test results, the State must establish that the radar device was properly operated and regularly tested." *Marlatt v. State*, 715 N.E.2d 1001, 1002 (Ind. Ct. App. 1999). In this instance, the State failed to establish that the two radar devices were properly operated and regularly tested at trial. The State failed to establish that the Python II radar device was properly operated and regularly tested at any point during the trial. Again, the Python II was not produced as evidence to Mr. Shoup prior to trial (Tr.

Vol. II 8, 16). The Python II's use, operation, and testing was not mentioned at the trial and therefore the test results of the Python II should be inadmissible.

The State additionally failed to establish that the Genesis VP was properly operated and regularly tested. The only evidence produced as to the testing and usage of the Genesis VP was through Mr. Shoup's counsel's questioning of Officer J. Officer J. testified that the Genesis VP that was used was "weathered, but it's in working condition, I believe" (Tr. Vol. II 11). "Working condition" is not the equivalent of properly operated. There were no questions or evidence presented at trial by the State that established the proper operation and regular testing of either radar gun, and, therefore, the radar gun results should have been inadmissible at trial and not weighed as evidence by the trial court, again another abuse of discretion. Without the radar gun admissibility, the State absolutely did not meet their burden of proof that Mr. Shoup was speeding the morning of June 22, 2021.

II. Mr. Shoup Was Stripped of His Right to a Fair Trial

For the reasons set forth above, Mr. Shoup was stripped of his right to a fair trial on January 3, 2022. It is the fundamental duty of our judicial system "to ensure that every citizen receives his or her constitutionally guaranteed right to a fair trial." *In re Pilot Project for Elec. News Coverage in Indiana Trial Cts.*, 895 N.E.2d 1161, 1166 (Ind. 2006). Mr. Shoup was not given the fair opportunity of due process. This Court has reversed civil matters on the sole merit of the State's failure to give an appellant due process rights at the trial court level. *Matter of D.H.*, 119

N.E.3d 578, 591 (Ind. Ct. App. 2019). Mr. Shoup was not given the fair opportunity to review the evidence prior to trial. The evidence presented at trial should have been provided by the State during the discovery phase as requested. The persons of Indiana should be confident that when they request information from the State in a civil matter, that he or she is getting the full truth. In this instant case, Mr. Shoup was denied crucial information and not given truthful information as documents and evidence specifically requested through discovery were not mentioned by the State until trial. Therefore, the judgment should be reversed on the ground of fundamental due process and the trial court's abuse of discretion in ruling against the facts and circumstances presented to the court at the bench trial.

CONCLUSION

For the foregoing reasons, Mr. Shoup respectfully requests that the Court reverse the trial court's judgment finding Mr. Rolland G. Shoup, II guilty of speeding on June 22, 2021, and grant all other relief just and proper in the premises.

Respectfully submitted,

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