

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

CITY OF DAVENPORT,

Plaintiff,

vs.

WILLIAM WAYNE GREENFIELD,

Defendant.

NO. CICR291451

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT ENTRY

2006 NOV 27 PM 3:43  
CLERK OF DISTRICT COURT  
SCOTT COUNTY, IOWA

This matter came on for Trial on September 11, 2006. The City of Davenport was represented by Assistant City Attorney, Chris Jackson. The Defendant, William Greenfield, appeared personally with Attorney's John Flynn and Mike Meloy. The Defendant is charged with a violation of Davenport Ordinance 10.16.070. The Ordinance in question is classified as a Civil Citation by the City of Davenport. Therefore, the burden of proof in this matter is civil in nature with the City being required to prove by a preponderance of the evidence or by clear satisfactory and convincing evidence that the Defendant committed the violation in question.

The Court wishes to take an opportunity to apologize to all of the parties for the long delay in issuing its Ruling. It is clear from the amount of work done by counsel for each side that while this is a simple civil citation, it is nevertheless a matter which both sides take very seriously. Likewise, the Court has spent a considerable amount of time not only reading all of the parties briefs, but conducting independent research. The Defendant raises a myriad of constitutional and statutory objections to the statutory scheme under which he is charged. Likewise, the Plaintiff has presented a well written argument in support of the statutory scheme.

After a considerable review of all the various issues, the Court has concluded that it need not reach the issue of whether the statutory scheme in question is unconstitutional or is in any other way a violation of any State Ordinance or DOT regulation. For reasons stated below the Court finds that it can rule on this matter based solely on the evidence presented at the time of Trial.

The Plaintiff introduced as evidence the testimony of Brian Adam Coopman and Clifford Anderson. Plaintiff also filed with the Court a Brief in response to the Defendant's Motion to Dismiss which has been considered by the Court. The Defendant at the time of Trial introduced Defendant's Exhibits "A through C" which are contained in the Court file. In addition, Defendant's furnished to the Court a Reply Brief which once again has been fully considered by the Court.

The Court decides the facts from the evidence. The Court considers the evidence using its observations, common sense and experience. The Court attempts to reconcile any conflicts in the evidence, but if it cannot, the Court accepts the evidence it finds more believable.

In determining the facts, the Court may have to decide what testimony to believe. The Court may believe all, part or none of any witness's testimony. In deciding what testimony to believe, the Court considers the reasonableness and consistency of the testimony, both internally and with respect to other evidence, and the witness's appearance, conduct, age, intelligence, memory, knowledge of the facts, interest in the trial, motive, candor, bias and prejudice.

The evidence leading up to the charge and to the Trial itself is essentially undisputed. On or about May 18, 2006, at approximately 2:26 p.m., the City of Davenport's "speed camera" located at the intersection of Brady and Kimberly Road in the City of Davenport photographed a van with Iowa License Plate 317RIY allegedly going at the rate of 49 mph in a 35 mph zone. Defendant's Exhibit "C" is the citation the Defendant ultimately was personally served with as a result of the alleged violation by this 1993 Ford van.

At the time of the Trial Brian Coopman, a Community Service Specialist, with the Davenport Police Department testified as to how these citations are written and reviewed. The speed camera in question is one manufactured by Nestor. Mr. Coopman himself is not a sworn Police Officer. Mr. Coopman personally did not review any of the photos or make any determination as to whether the Ford van in the photograph had in fact made a violation. Even though Mr. Coopman is not a police officer and reviewed no physical evidence, he nevertheless is the one that actually issued the citation in question to the Defendant.

The City also presented in its case the testimony of Davenport Police Officer, Christopher Anderson. Mr. Anderson testified that the camera which photographed the vehicle in question is triggered by a scanning laser that continuously scans certain sections of the roadway. If a vehicle enters into the section of roadway covered by the laser and it is determined to be in excess of the speed limit, then the camera unit photographs the vehicle and produces photographs like those contained in Defendant's Exhibit "C". The pictures and alleged violations themselves are reviewed directly by Nestor. If Nestor after their review determines there is a possible violation, then the information is sent by computer to the Davenport Police Department so that a further review can be performed by a sworn police officer or by one of the police departments civilian employees. Officer Anderson testified that this particular citation was also reviewed by Davenport Police Officer, Phil Coleman. Officer Coleman made a determination that the vehicle had violated the speed ordinance. Subsequently three separate notifications were sent to the registered owner, William Wayne Greenfield at 229 Hickory Grove Road, Davenport, Iowa. Officer Anderson also testified as to how the owner of the vehicle is determined. The Court is not going to spend a lot of time discussing that process any further as there is really little doubt in the Court's mind that the vehicle in question is in fact owned by the Defendant, William Wayne Greenfield.

Officer Anderson further testified that the speed limit at the location where the camera and laser unit are located, is a 35 mph zone. Officer Anderson further testified that the vehicle shown in Defendant's Exhibit "C" was clocked going 49 mph. The Defendant's attorneys at this point objected to Officer Anderson's testimony as to it being hearsay. The Court felt that the objection was more to lack of proper foundation. At any rate, the Court allowed Mr. Anderson to answer the question as to how the speed limit was determined and in trying to do so when asked by Assistant City Attorney, Chris Jackson, how the number 49 mph shows up on the citation, Officer Anderson answered, "That's more of a technical question in what I would be able to answer, I believe. - - It is integrated into - - the camera and the laser system are integrated, and that's where the information comes from. How exactly it gets there I don't know how." Officer Anderson went on to describe in general how a laser speed detector works.

Under cross-examination by Attorney Flynn, Officer Anderson in response to whether the laser units owned and used by the City of Davenport were periodically tested for accuracy indicated that it was his belief that they were. The laser unit in question is owned by Nestor. When asked whether "the Davenport Police Department has any control over that process as far as checking or certifying the accuracy of the laser unit in question," Officer Anderson indicated in the negative. When Attorney Flynn asked Officer Anderson the following question, "So you can't testify today whether this unit is within its whatever certification period it has as to whether it is accurate?" Officer Anderson responded, "Correct." Attorney Flynn then asked Officer Anderson how long the speed cameras had been in use to which Officer Anderson replied that they went into operation in January of this year. When asked whether he was personally present when the photographs of Mr. Greenfield's van were taken, Officer Anderson indicated he was not personally present at that time. Officer Anderson further testified that he did not review any video or computer image or photograph prior to this ticket being issued to Mr. Greenfield relating to this charge. When asked as to his particular knowledge of how the computer extracted the speed and put it into the photograph introduced as Defendant's Exhibit "C", Officer Anderson indicated he did not know exactly how that process worked. When asked the following by Attorney Flynn, "So you really can't testify as to the accuracy of that 49 mph speed limit except in reliance upon this Nestor Company?" Officer Anderson responded, "Correct."

It is undisputed that the City of Davenport has no human witness that saw the alleged violation. It is undisputed from the record evidence that the citation was generated strictly by automation of the laser unit in combination with the camera. The images produced are stored on a computer and then are reviewed by humans to determine whether or not a citation shall be issued.

It is also undisputed from the record that the City of Davenport's witnesses could not testify as to the accuracy of the laser unit and camera owned by the Nestor Company. Neither

Mr. Coopman or Officer Anderson had any personal knowledge as to whether or not the equipment has ever been certified as being accurate. The City presented no Exhibits or Certifications showing that the unit which produced the images in question has ever been certified as being accurate.

The Court spent many hours researching the topic of Laser Speed Units and the status of the law on those units with respect to certification and accuracy. The Court found no Iowa case dealing with the accuracy of laser units in general or specifically with the need for their certification.

In general, Courts will take judicial notice of facts arising from the technical, scientific basis of scientific devices. Judicial notice of these matters is founded on the premise that the basis of the facts are capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable accuracy. Under this theory Courts have taken judicial notice of radar, blood tests for intoxication, blood tests for non-paternity, handwriting and typewriter identification and ballistics. McCormick on Evidence, Judicial Notice, § 330, p. 763 (1981).

While the Court will take judicial notice of the scientific basis for a specific device, counsel must use care to establish prerequisite proof regarding the use of the device and the particular case in question. For example, in a case involving the speed of a vehicle measured by radar, counsel must establish that the radar device was properly calibrated and the reading obtained by the use of the radar gun in the particular case. The Court will then take judicial notice of the scientific basis of radar units, their operation, and reliability. Accordingly, while the Court will take judicial notice of the scientific basis of a device such as radar, proof of specific facts relevant to the case will still be required. McCormick on Evidence, Judicial Notice, § 330, p. 763 (1981).

The Court, since there is little law and research available with respect to laser speed technology, thinks that an analogy to speed radar units is certainly appropriate.

Generally a radar reading by a device the reliability of which is judicially noticed or otherwise established, is held sufficient in itself to sustain a conviction for speeding provided the following preconditions are shown by the prosecution:

- (1) The device used was properly set up and in working order at the time of the alleged violation.
- (2) The accuracy of the device used has been tested by approved methods and recently enough to provide a reasonable assurance of the validity of the reading obtained.
- (3) The Officer operating the device was adequately trained in its use.

§ Am. Jur. 2d Automobiles and Highway Traffic § 1077.

Further the accuracy of a particular device, as distinguished from the general liability of the class of the devices of which it is a member, is not a proper subject for judicial notice but must be established through evidence. The requisite preliminary proof can be furnished by testimony of the Officers operating the equipment that within a reasonable time before and/or after taking the reading in question it was tested by the use of external tuning forks, by driving a police vehicle through the radar beam, and comparing the reading on the speedometer with radar reading, or by other methods or combinations of methods providing reasonable assurances of accuracy. However, it is generally held that the tests of radar equipment for accuracy by the use of a device, the accuracy of which itself is not established is not adequate proof the accuracy of the radar equipment. Since the accuracy of a radar device is always at issue when the prosecution relied on such a device in a speeding prosecution, denying a Defendant the opportunity to cross-examination an expert witness used by the prosecution to establish the accuracy of the device in question is error. In the absence of any statute to the contrary evidence as to speed based upon untested radar equipment is not sufficient to sustain a conviction for speeding, but it is generally held that such evidence is admissible. Though there is authority to the contrary, and that it may be sufficient to sustain a conviction where corroborated by additional competent evidence. 8 Am. Jur. 2d Automobiles and Highway Traffic § 1077.

The Court thinks that a laser speed detector essentially must meet the same tests for accuracy if the reading from the unit is to be relied upon to sustain a conviction for speeding. Applying the tests above cited, the Court notes there was absolutely no evidence presented by the Plaintiff to show the laser/camera unit owned by the Nestor Company was properly set up and in working order at the time of the alleged violation by Mr. Greenfield. Neither did the Plaintiff present any evidence of the accuracy of the devices used, nor did they present any evidence as to whether such tests were done recently enough to provide a reasonable assurance of the validity of the reading obtained.

Finally, the City presented no evidence by an Officer operating the Nestor Unit who is adequately trained in its use.

There is authority in the State of Iowa for the proposition that a speeding conviction can be upheld even when the accuracy of the radar unit which clocked the speeder is in question. In the case of State v. Shimon, the Defendant was clocked going 94 in a 55 mph zone. Trial was held before a Magistrate who found the Defendant guilty. The two arresting Officer's testified they were both in the police car and observed Defendant's vehicle "being operated at a high rate of speed". One of the Officer's pointed the radar device and obtained a readout of 94 mph on Defendant's vehicle. One of the Officer's testified he had tested the radar unit earlier in the evening by holding in front of it an external tuning fork. The resulting digital reading of 55 mph indicated the unit was working properly. He also checked the accuracy of the radar gun when mounted on the dash of the auto against the speedometer of the police car and secured a reading compatible with the test results obtained by testing the unit with the tuning fork. The Officer further testified that he had worked with the radar equipment in question for approximately 7 months but he was unable to say when, if ever, the tuning fork had been certified as being

mechanically perfect. He also stated that while the speedometer on the police car indicated it was certified as having been calibrated, he had no knowledge as to when it had been so certified.

The Defendant in the Shimon case appealed, arguing that the speed registered on a radar speed meter is inadmissible when there is no foundation testimony as to the accuracy of the device used to test the radar unit and that the Trial Court had erred in overruling the Defendant's Motion for Dismissal on the ground that the State had failed to establish a prima facie case of speeding 94 mph in a 55 mph zone. The Court in discussing the Defendant's attack on the admissibility of the testimony with respect to the radar unit viewed that the Defendant's argument as going "more to the weight and sufficiency of the evidence than to its admissibility". State v. Shimon, 243 NW 2d, 571, 573 (Iowa 1976). The Court went on to Rule that clearly the evidence of the reading on the radar speed meter was admissible. As to the weight and sufficiency of such evidence the Court noted that one must look to the other testimony of the Officers with regard to the testing to which the radar speed meter was subjected. Because the Officer was unable to testify that either the tuning fork or the police car speedometer was certified as mechanically perfect, Defendant insists that the test results were ineffective. No other witness testified as to any such recent certification of mechanical perfection, although it was indicated that the speedometer on the police vehicle had been calibrated and was in fact accurate.

The Court held that it was inconceivable that the reading of the radar unit prior to the readout taken of the Defendant's speed, a subsequent testing of the radar unit with tuning fork and the testing of the radar unit against the speedometer of the police vehicle were all inaccurate. The Court concluded that the weight of the testimony tended to establish the culpability of the Defendant in the case even in view of the alleged shortcomings in the accuracy of the radar unit put forward by the Defendant. State v. Shimon, supra at 573. The Court upheld the Defendant's conviction on the speeding charge. In the Shimon case it was also noted by the Court that in addition to the radar obtaining the reading of the Defendant's speed, that the two arresting Officers testified they were both in the police car and observed Defendant's vehicle operating "at a high rate of speed". Thus, in addition to the tests that were performed by the officers in question to show that the radar unit was accurate, there was also the additional eye witness testimony of the officers with respect to their observation of the Defendant's speed being clearly in excess of 55 mph.

As already discussed the City of Davenport has presented no testimony with respect to the accuracy of the laser unit nor, from any police officer with respect to the speed of the vehicle which was cited. Under these circumstances the Court cannot simply take judicial notice of the general accuracy of laser speed units and therefore presume that the City has met their burden of proof.

In summary, the Court finds that the City of Davenport failed to produce evidence of the reliability of the laser/speed camera unit which provided the basis of the citation issued to the Defendant, William Wayne Greenfield. That being the case the Court finds this matter is dismissed with costs assessed to the City of Davenport.

  
MAGISTRATE

**APPEAL RIGHTS:**

The parties are notified that they have 10 days from the date of this decision in which to file a Notice of Appeal. A notice must be filed in writing with the Clerk of this Court within 10 days or a party's right to appeal is waived. All Notices of Appeal must be accompanied by a \$50.00 filing fee. You may consult an attorney for further specifics regarding your right to Appeal.