2014 IL App (2d) 131084-U
No. 2-13-1084
Order filed August 7, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRAD JUDD, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 13-TR-6157 Honorable Stephen L. Krentz, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Deputy's testimony was sufficient to establish his qualifications to operate radar equipment; (2) defendant forfeited argument that specified contractor did not have license to repair radar equipment; (3) defendant was proven guilty beyond a reasonable doubt of speeding; and (4) evidence of radar results was not inadmissible where defendant failed to present "some evidence" that speed of his vehicle was captured within 500 feet of a sign changing the speed limit.

¶ 2 Following a bench trial in the circuit court of De Kalb County, defendant, Brad Judd, was found guilty of driving at a speed greater than the applicable statutory maximum speed limit in violation of section 11-601(b) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-601(b) (West 2012)). Defendant has filed a *pro se* appeal asserting various errors in the proceedings below.

We do not find any of defendant's claims persuasive. Accordingly, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 On May 19, 2013, Deputy Josh Duehning of the De Kalb County Sheriff's Department issued defendant a citation for speeding in violation of section 11-601(b) of the Code (625 ILCS 5/11-601(b) (West 2012)). Defendant pleaded not guilty and requested a bench trial. Defendant was initially given a court date of July 18, 2013, but successfully moved to continue the matter to September 19, 2013. Defendant represented himself at the trial.

¶ 5 The State's only witness was Deputy Duehning. Duehning testified that he began working for the De Kalb County Sheriff's Department in May 2000. On May 19, 2013, Duehning was on patrol in the area of Illinois Route 64 and Malta Road. At around 7:52 a.m., Duehning observed a vehicle traveling westbound on Route 64 at a high rate of speed. Duehning activated his radar which showed the vehicle traveling 77 miles per hour in a 55 mile-per-hour zone. Duehning initiated a traffic stop and made contact with the driver, whom he identified as defendant. Duehning then issued defendant a citation for speeding. Duehning testified that he tested his radar both before and after the stop to ensure that it was functioning properly.

¶ 6 On cross-examination, Duehning testified that he was not aware what paperwork was in his personnel file with respect to radar training. Duehning stated, however, that he was instructed on the use of radar equipment during field training in 2003. Duehning testified that he was using a Kustom Golden Eagle radar detector on May 19, 2013. Duehning was not aware if that model is approved by the National Highway Traffic Safety Administration (NHTSA). Defendant offered a "certificate of accuracy" for the radar detector that Duehning used on May 19, 2013. The certificate of accuracy was admitted into evidence as defendant's exhibit No. 1.

Defendant then introduced a "certificate of competency" issued to Duehning by Kustom Signals, Inc., on September 23, 2010, certifying that he is a Doppler traffic radar instructor. The certificate of competency was admitted as defendant's exhibit No. 2. Duehning testified that he had not received any radar training since September 23, 2010. Shortly later, the court temporarily adjourned the case to attend to other matters.

¶ 7 Upon resuming the trial, defendant continued his cross-examination of Duehning. Duehning testified that he did not know if any government agency approved the certificate of competency. Duehning stated that he has had training by NHTSA for driving under the influence, but he could not recall any training by NHTSA for the use of radar.

¶ 8 Defendant then questioned Duehning about the closest speed limit sign to his location on the day he issued the citation to defendant. That testimony was as follows:

"Q. Thank you, Deputy. And would you tell the Court where the closest speed limit sign was to your location?

A. No, I do not know.

Q. Okay.

A. I don't know that there are speed limit signs on Route 64, other than right outside town.

Q. Do you know that there's a state law that would make this inadmissible in a court of law if the sign was within 500 yards [*sic*] of where you were shooting radar?

A. There is a law as to how close you can or cannot write tickets for running radar at a speed change, but if there's just random 55-mile-per-hour speed limits and the speed limit doesn't change, then yes, I can.

Q. Thank you. And what is the maximum speed limit in the State of Illinois?

A. 65, and if all this law goes into effect, then it will be 70."

¶ 9 Duehning further testified on cross-examination that the radar he used on May 19, 2013, was not a hand-held model. Rather, it had been mounted in his squad car for about six years and was in the car when Duehning was assigned to the vehicle. Duehning reiterated that he was not aware if the radar detector he used on May 19, 2013, was approved by NHTSA. He stated, however, that he trusted the De Kalb County Sheriff's Department to provide him with equipment meeting relevant standards and regulations. Duehning testified that he tested the radar before and after the stop using a tuning fork. Duehning then described the tuning-fork process he performs to test the radar. Duehning admitted that he does not keep a log of the testing. He noted, however, that every time the radar detector is turned on, it performs a "self-test" to ensure that it is working.

¶ 10 Duehning testified that while using the radar detector on the date in question, he was sitting parallel to the road as defendant's vehicle approached him. Duehning acknowledged that rain, snow, trees, and hills can act as a natural interference with a radar detector, but that he had never had any problems with power lines interfering with his radar equipment.

¶ 11 On redirect examination, Duehning testified that the speed limit at Route 64 and Malta Road is 55 miles per hour. Duehning further testified that he had a clear view of defendant's vehicle, that there was nothing obstructing his view at the time when he used the radar, and that there were no other vehicles in the area.

¶ 12 Following Duehning's testimony, the State rested. Defendant did not call any witnesses, and he did not testify on his own behalf. Following closing arguments, the trial court found defendant guilty and entered fines and costs totaling $215. On October 18, 2013, defendant filed a notice of appeal.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant raises four separate arguments. Defendant's first claim of error consists solely of the following paragraph:

> "Defendant served proper notice to The DeKalb County Sheriff's Department for proper training and equipment certification by an approved government agency in accordance with [section 11-601 of the Code (625 ILCS 5/11-601 (West 2012)), but] no documentation of any 'approved' training or certification was provided, proving that [Duehning] and the DeKalb County Sherrifs [*sic*] department is not lawfully operating Radar Equipment. [Duehning] admitted to this during his testimony."

Defendant's argument, as we interpret it, is that his conviction should be overturned because the State failed to sufficiently establish the qualifications of either Duehning or the DeKalb County Sheriff's Department to operate radar equipment. Defendant's argument is foreclosed by *People v. Donohoo*, 54 Ill. App. 3d 375 (1977). *Donohoo* holds that where an officer testifies that he has received personal instruction in the use of a radar gun and has had experience operating the equipment, the officer is deemed to be sufficiently qualified in the operation of the radar equipment. *Donohoo*, 54 Ill. App. 3d at 378. In this case, Duehning testified that his radar equipment was supplied by the DeKalb County Sheriff's Office. Duehning testified that he received personal instruction in the use of the radar gun during field training in 2003. Duehning further testified that he was last trained in the use of such equipment in September 2010, when he was certified as a Doppler traffic radar instructor. Further, Duehning's testimony that the same radar equipment had been in his vehicle for about six years showed that Duehning had experience operating the equipment. This evidence was sufficient to establish Duehning's qualifications to operate the radar detector. See *Donohoo*, 54 Ill. App. 3d at 378.

¶ 15 Defendant's second argument is as follows:

> "Defendant/Appellant also pleaded and argued to the lawfulness of the 'Contractor' known as; [*sic*] 'Communications 3000 Inc.' which has no Federal Communications Licenses to effect approved repairs on any Radar equipment regardless of use for law enforcement or any other Radar frequency emitting or speed detecting device."

The relevance of this argument is not clear to us. Defendant's *pro se* status does not absolve him of the duty to present a clear argument on a relevant question that is capable of decision. See Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013); *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825 (2010). Defendant does not indicate where in the record he "pleaded and argued the lawfulness" of Communications 3000, Inc., and our independent search has not revealed any reference to the entity. More important, defendant does not explain why this allegation constituted error and does not cite any authority in support of his contention. We therefore find that this argument has been forfeited. See Ill. S. Ct. Rule 341(h)(7) (eff. Feb. 6, 2013) (requiring the appellant's brief shall include argument containing "the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on."); *People v. O'Malley*, 356 Ill. App. 3d 1038, 1046 (2005).

¶ 16 Defendant also suggests that the State failed to prove him guilty beyond a reasonable doubt. When reviewing a challenge to the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Diomedes*, 2014 IL App (2d) 121080, ¶ 24. In this case, defendant was charged with a violation of section 11-601(b) of the Code (625 ILCS 5/11-601(b) (West 2012)). That section states in relevant part, "No person may drive a vehicle upon any highway of this State at a speed

which is greater than the applicable statutory maximum speed limit." 625 ILCS 5/11-601(b) (West 2012). Duehning testified that he observed a vehicle traveling at a high rate of speed and activated his radar. The radar showed the vehicle was traveling 77 miles per hour in a 55-mile-per-hour zone. Duehning initiated a traffic stop and made contact with the driver, whom he identified as defendant. Duehning verified that the radar was working properly before and after the reading. Moreover, Duehning testified that he had a clear view of defendant's vehicle and that there were no obstructions or other vehicles in the area when he used the radar. Based on this evidence, we conclude that any rational trier of fact could have found beyond a reasonable doubt that defendant was traveling at a speed greater than the applicable statutory maximum speed limit.

¶ 17 Finally, we address defendant's claim that Duehning did not know the location of the closest speed-limit sign and that this violates section 11-603 of the Code (625 ILCS 5/11-603 (West 2012). In particular, defendant contends as follows:

> "Defendant/Appellant clearly and effectively questioned [Duehning] as to the closest "speed Limit" [*sic*] sign and by [Duehning's] own admission stated: 'He did not know.' The Law [*sic*] is clear in accordance with 625 ILCS 5-11-603 of the Illinois Vehicular Code [*sic*] that the evidence obtained shall be inadmissible in court and the grounds for an immediate and automatic dismissal."

At the time defendant was cited, section 11-603 provided as follows:

> "Whenever the Illinois State Toll Highway Authority determines, upon the basis of an engineering and traffic investigation concerning a toll highway under its jurisdiction, that a maximum speed limit prescribed in Section 11-601 of this Chapter is greater or less than is reasonable or safe with respect to conditions found to exist at any

> place or along any part or zone of such highway, the Authority shall determine and declare by regulation a reasonable and safe absolute maximum speed limit at such place or along such part or zone, not exceeding 65 miles per hour. A limit so determined and declared becomes effective, and suspends the application of the limit prescribed in Section 11-601 of this Chapter, when (a) the Department [of Transportation] concurs in writing with the Authority's regulation, and (b) appropriate signs giving notice of the limit are erected at such place or along such part or zone of the highway. *Electronic speed-detecting devices shall not be used within 500 feet beyond any such sign in the direction of travel; if so used in violation hereof, evidence obtained thereby shall be inadmissible in any prosecution for speeding.*" (Emphasis added.) 625 ILCS 5/11-603 (West 2012).

In *People v. Johannsen*, 126 Ill. App. 2d 31, 34 (1970), the court held that the purpose of the language italicized above is to give a motorist time to adjust to the speed limit before subjecting him or her to radar detection. Thus, the court reasoned, the admission of evidence is barred under the statute only when a speed detection device is used within 500 feet of a sign that effectuates a change in the existing speed limit. *Johannsen*, 126 Ill. App. 3d at 33-34.

¶ 18 As noted above, defendant suggests that, pursuant to section 11-603 of the Code (625 ILCS 5/11-603 (West 2012)), Duehning's acknowledgment that he did not know the location of the closest speed-limit sign rendered inadmissible his testimony regarding the result of the radar equipment. The State responds that defendant never claimed at trial that a different speed limit had been provided or that any sign changing the speed limit was present.

¶ 19 Initially, we note that defendant does not indicate why section 11-603 applies here. The plain language of that statute limits its application to toll highways under the jurisdiction of the

Illinois State Toll Highway Authority. 625 ILCS 5/11-603 (West 2012). In this case, defendant was cited while traveling westbound on Route 64 near Malta Road. There was no evidence that these roads were part of a highway under the jurisdiction of the Illinois State Toll Highway Authority. As a result, we find that section 11-603 does not apply.

¶ 20 Nevertheless, we recognize that language similar to the language at issue is also contained in sections 11-602 and 11-604 of the Code (625 ILCS 5/11-602, 11-604 (West 2012)). The former provision applies to highways for which the Illinois Department of Transportation has maintenance responsibility (625 ILCS 5/11-602 (West 2012) while the latter provision applies to highways, streets, or roads under the jurisdiction of certain local authorities (625 ILCS 5/11-604 (West 2012)). To the extent that either of these provisions applies here, however, we are not convinced that they require reversal of defendant's conviction.

¶ 21 Use of an electronic speed-detecting device within 500 feet of a sign changing the speed limit in the direction of travel is an affirmative defense. See *People v. Russell*, 120 Ill. App. 2d 197, 200 (1970); *People v. Powers*, 89 Ill. App. 2d 120, 121-22 (1967). In order to raise an affirmative defense, the defendant is required to present some evidence on the issue unless the State's evidence raises the issue. *Russell*, 120 Ill. App. 2d at 200; *Powers*, 89 Ill. App. 2d at 122. Once an affirmative defense has been raised, the State has the burden of proving the defendant guilty beyond a reasonable doubt as to that issue. *Russell*, 120 Ill. App. 2d at 200; *Powers*, 89 Ill. App. 2d at 122.

¶ 22 We conclude that defendant failed to present "some evidence" in support of his claim that an electronic speed detecting device was used within 500 feet of a sign changing the speed limit in the direction of travel. Although Duehning testified that he was unaware of the location of the speed limit sign nearest to where the radar equipment was used, defendant did not elicit any

testimony or present any evidence that there was a sign in his direction of travel effectuating a change in the speed limit within 500 feet of Duehning's location. See *Johannsen*, 126 Ill. App. 2d at 33-34. Moreover, even if the result of the radar equipment was improperly admitted, defendant has failed to show that he was prejudiced by its admission. Defendant elicited testimony from Duehning that, on the date the citation was issued, the maximum statutory speed limit in Illinois was 65 miles per hour. See 625 ILCS 5/11-601(d) (West 2012). Duehning stopped defendant for going 77 miles per hour in a 55-mile-per-hour zone. Thus, even if there was a speed change from 65 miles per hour to 55 miles per hour, defendant still violated section 11-601 of the Code (625 ILCS 5/11-601 (West 2012)), as he exceeded the maximum statutory speed limit by 12 miles per hour.

¶ 23 III. CONCLUSION

¶ 24 For the reasons set forth above, we affirm the judgment of the circuit court of DeKalb County.

¶ 25 Affirmed.