2014 IL App (4th) 140104-U

NO. 4-14-0104

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 13, 2014
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
MICHAEL S. STRACK,	)	No. 13TR9297
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant forfeited any argument that he was denied a speedy trial by failing to file a motion for discharge prior to trial.

(2) Defendant forfeited any issue with the "visual speed assessment" testimony by failing to object at trial.

(3) The trial court committed no error by not (a) conducting a *Frye* evidentiary hearing to determine the admissibility of "moving radar" or (b) requiring the production of calibration records or a logbook.

(4) The State's evidence was sufficient to prove defendant guilty of speeding beyond a reasonable doubt.

(5) Defendant was not denied a fair trial due to judicial bias.

¶ 2 Following a bench trial, the trial court found defendant, Michael S. Strack, guilty of speeding (625 ILCS 5/11-601(b) (West 2012)) and fined him $150 plus costs. Defendant appeals *pro se*, arguing (1) he was denied a speedy trial; (2) the trial court committed several evidentiary errors, including (a) allowing a police officer to testify as to his personal

observations that defendant was speeding, (b) failing to hold a *Frye* hearing (see *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923)) on the admissibility of "moving radar," and (c) failing to require the production of calibration records and a logbook documenting the tests conducted on the radar unit; (3) the State failed to prove him guilty of speeding beyond a reasonable doubt; and (4) he was denied a fair trial due to judicial bias. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 1, 2013, Illinois State Police Sergeant Brad Kane issued defendant a citation for speeding in violation of section 11-601(b) of the Illinois Vehicle Code (625 ILCS 5/11-601(b) (West 2012)). Defendant pleaded not guilty and requested a bench trial. On August 21, 2013, the trial court entered an *ex parte* judgment against defendant. On September 18, 2013, defendant filed a motion to vacate the e*x parte* judgment, asserting he did not receive notice of the trial date because the notice was mailed to the wrong address. The court vacated the judgment. On January 8, 2014, defendant's second bench trial commenced. Defendant was present and appeared *pro se*.

¶ 5 The State's only witness was Sergeant Kane. Kane testified he had been a sergeant with the Illinois State Police for 18 years and an officer for 3 1/2 years before that. Kane testified that on July 1, 2013, he was on patrol duty in the area of Route 18 and County Road 100 East, both public ways in Champaign County. At approximately 10:30 p.m., Kane testified he observed an oncoming green BMW traveling on County Road 18 that appeared to be exceeding the posted 55-mile-per-hour speed limit. Following his visual assessment of the BMW's speed, Kane stated he activated the radar unit mounted in his vehicle—which he had been trained to operate—and determined the BMW was traveling at a speed of 80 miles per hour. Kane stated he then initiated a traffic stop and made contact with the driver, whom he identified

as defendant. Upon informing defendant that "he was going 80 mile[s] per hour," Kane testified defendant responded, "he had his cruise control set at 65 and that the digital display on his dash indicated that his average speed was like 43 mile[s] per hour." Kane stated he tested the radar unit before and after the stop using both "an internal testing mechanism" and "tuning forks" and that it was functioning properly.

¶ 6 During cross-examination, Kane testified the radar unit was calibrated. Defendant moved to dismiss when Kane was unable to produce the calibration records. The trial court considered this oral motion to dismiss as an objection, which it overruled after defendant admitted he had not subpoenaed the calibration records. In response to defendant's questions, Kane testified he could not explain "batching" and "cosign error" as the terms might relate to the radar unit or whether the radar unit mounted in his car could be affected by the car's fan blades. Kane admitted he had not recently read the manual for the radar unit.

¶ 7 Kane testified his squad car was moving when he activated the radar unit and recorded defendant's speed. Immediately following this testimony, defendant objected and moved to dismiss, asserting, "[t]here is no judicial notice of the accuracy of a moving radar set at this time." The trial court overruled defendant's objection, stating, "[i]t's a matter of proof and we've already had testimony about it." Defendant then questioned Sergeant Kane about whether the radar unit would display an inaccurate speed if Kane changed his own speed while using it. The State objected to this line of questioning on the basis of speculation and lack of foundation. The trial court sustained the State's objections. Defendant then moved to strike Kane's testimony for failing to have the proper documentation, *i.e.*, a logbook documenting the tests conducted on the radar unit, to support it. The court noted, "[t]here is no foundation whatsoever for that motion," and Kane's testimony regarding tests he performed on the radar unit was sufficient

without any supporting documentation. Defendant then moved to dismiss again because "no judicial notice has been taken in this case for moving radar, for the accuracy of it." The court responded that defendant could argue that when it was his turn to do so.

¶ 8 During defendant's case in chief, Kane testified again. Defendant inquired—apparently regarding Kane's visual observation of defendant's speed—"[s]o this is a guess, would you say?" Kane responded,

> "I wouldn't say it's a guess. It was a—it was a—there's a better term for it than a guess. It was my observation based on my training and experience and the fact that I've been driving since I was 16 years old that you were going at a high rate of speed."

¶ 9 Defendant did not testify on his own behalf.

¶ 10 Based on the evidence, the trial court found defendant guilty of speeding and fined him $150 plus costs. Defendant did not file any posttrial motions.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant asserts (1) he was denied a speedy trial; (2) the trial court committed several evidentiary errors, including (a) allowing Sergeant Kane to testify as to his personal observations that defendant was speeding, (b) failing to hold a *Frye* hearing on the admissibility of "moving radar," and (c) failing to require the production of calibration records and a logbook documenting the tests conducted on the radar unit; (3) the State failed to prove him guilty of speeding beyond a reasonable doubt; and (4) he was denied a fair trial due to judicial bias.

¶ 14 A. Procedural Inadequacies

¶ 15 At the outset, although not addressed by either party, we note defendant did not file a posttrial motion. Generally, in order to avoid forfeiture of an issue on appeal, a defendant must both object to an alleged error at trial and raise the alleged error in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124, 1130 (1988). In this case, however, our review of the record reveals that the trial court failed to admonish defendant that he must file a posttrial motion prior to taking an appeal pursuant to Illinois Supreme Court Rule 605(a) (eff. Oct. 1, 2001). Rather, the court only admonished defendant that he must file a notice of appeal within 30 days of the judgment if he wished to file an appeal, which defendant has done.

¶ 16 In cases such as this, our supreme court has held that we may consider postsentencing issues that have not been properly preserved due to inadequate Rule 605(a) admonishments where defendant was not prejudiced as a result of the incomplete admonishments. *People v. Medina*, 221 Ill. 2d 394, 414, 851 N.E.2d 1220, 1231 (2006). Here, defendant was not prejudiced as a result of the trial court's incomplete admonishments. Thus, we will consider defendant's appeal notwithstanding his failure to file a posttrial motion.

¶ 17 B. Deficiencies in Defendant's Brief

¶ 18 Before proceeding to the merits of this appeal, we find it necessary to address the deficiencies in defendant's supplemental brief and the State's request to strike defendant's brief as a result of these deficiencies.

¶ 19 Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013) sets forth the requirements for briefs on appeal, and defendant's brief fails to comply with that rule in several respects. Specifically, the "Points of [*sic*] Authorities" section does not contain headings alerting this court to the points or issues in his argument and merely lists the cases defendant used in preparation of his brief, without reference to the page of his brief on which such authority appears. Ill. S. Ct. R.

341(h)(1) (eff. Feb. 6, 2013). In fact, the argument section of defendant's brief fails to cite to the authority listed in the "Points [and] Authorities" section and the only authority he does cite in his argument section is not in his "Points [and] Authorities" section. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). The "Nature of the Case" section does not state the nature of the action, the judgment appealed from, whether the judgment was based on a jury verdict, or whether any issue is raised on the pleadings. Ill. S. Ct. R. 341(h)(2) (eff. Feb. 6, 2013). Instead, this section contains a list of questions and conclusory statements. The "Statement of Facts" section consists of several conclusory statements and does not "contain the facts necessary to an understanding of the case" or reference any pages of the appellate record upon which defendant relied. Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). Further, the standard of review cited by defendant, *i.e.*, "[d]oes the circuit court have to follow appellant [*sic*] decisions," is not a recognized standard of review. Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013).

¶ 20 "The rules of procedure concerning appellate briefs are not mere suggestions, and it is within this court's discretion to strike the [defendant's] brief for failing to comply with Supreme Court Rule 341." *Crull v. Sriratana*, 388 Ill. App. 3d 1036, 1045, 904 N.E.2d 1183, 1190 (2009). Defendant's *pro se* status does not excuse him from complying with the supreme court rules governing the appellate procedure. *Coleman v. Akpakpan*, 402 Ill. App. 3d 822, 825, 932 N.E.2d 184, 187 (2010). Here, defendant recognizes his supplemental brief is deficient, but he asks this court to review the issues despite these deficiencies. While defendant's failure to comply with the supreme court rules frustrates our review, we deny the State's request to strike his brief and, to the extent that we are able to understand the issues raised on appeal, we will consider them on their merits.

¶ 21 C. Speedy-Trial Claim

¶ 22 We first address defendant's assertion that he was denied a speedy trial due to the wrong address being listed on his traffic citation. Specifically, defendant argues the improper address resulted in his failure to receive notice of the first bench trial, requiring him to file an order to vacate the *ex parte* judgment that "added expense and time which violated his rights to a fair and speedy trial." The State responds that this court need not consider defendant's speedy-trial claim for several reasons, including that defendant forfeited any speedy-trial issue by failing to seek a discharge in the trial court due to an alleged speedy-trial violation.

¶ 23 Section 103-5(b) of the Code of Criminal Procedure of 1963 (Code) provides that "[e]very person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial," subject to a number of enumerated exceptions not relevant here. 725 ILCS 5/103-5(b) (West 2012). In *People v. Pearson*, 88 Ill. 2d 210, 219, 430 N.E.2d 990, 994 (1981), our supreme court recognized that any motion for discharge due to a violation of section 103-5 of the Code must be made prior to trial. The failure to file a motion for discharge prior to trial due to a speedy-trial violation results in a forfeiture of the right to discharge under the speedy trial act. *People v. Foster*, 297 Ill. App. 3d 600, 605, 697 N.E.2d 357, 361 (1998).

¶ 24 In this case, defendant did not file a motion for discharge based on a speedy-trial violation in the trial court. Further, defendant did not invoke his statutory right to a speedy trial by making a speedy-trial demand in the trial court. See 725 ILCS 5/103-5 (West 2012) ("Every person on bail or recognizance shall be tried by the court having jurisdiction within 160 days from the date defendant demands trial ***."); *People v. Hall*, 2011 IL App (2d) 100262, ¶ 21, 961 N.E.2d 1241 ("While there are no magic words required to constitute a speedy trial demand,

there must be some affirmative statement requesting a speedy trial."). Thus, defendant has forfeited any speedy trial issue.

¶ 25 We note in the "Points [and] Authorities" section of his brief, defendant cites Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967) (providing that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court") and *People v. Byron*, 164 Ill. 2d 279, 293, 647 N.E.2d 946, 953 (1995) (discussing the plain-error doctrine). However, defendant fails to cite this authority in his argument section and, as a result, we are unable to determine to which issue or issues he asserts the plain-error doctrine applies. Further, defendant's argument section does not include any discussion regarding why the plain-error doctrine should apply to any of the issues he asserts on appeal. Thus, any claimed application of the plain-error doctrine is forfeited. See *People v. Ramirez*, 2013 IL App (4th) 121153, ¶ 74, 996 N.E.2d 1227 ("Because defendant's brief is bereft of argument as to why the plain-error doctrine should apply to this case, we deem that contention forfeited.").

¶ 26 D. Propriety of the Trial Court's Evidentiary Rulings

¶ 27 Next, we address defendant's contention that he was denied a fair trial due to several evidentiary errors committed by the trial court. Specifically, defendant argues the court erred by (1) allowing Sergeant Kane to testify as to his personal observations that defendant was speeding; (2) failing to hold a *Frye* hearing on the admissibility of "moving radar"; and (3) failing to require the production of calibration records and a logbook documenting the tests conducted on the radar unit.

¶ 28 "A trial court's evidentiary rulings will not be disturbed on review absent an abuse of discretion." *People v. Stull*, 2014 IL App (4th) 120704, ¶ 68, 5 N.E.3d 328 (citing *People v.*

Jackson, 232 Ill. 2d 246, 265, 903 N.E.2d 388, 398 (2009)). A trial court abuses its discretion only where no reasonable person would take the view adopted by the court. *Id*.

¶ 29 1. *Sergeant Kane's Personal Observations of Defendant's Speed*

¶ 30 Defendant asserts Sergeant Kane's testimony "about visually assessing the vehicles [*sic*] speed should be [stricken] from the record." According to defendant, in order to visually assess his speed, Kane "would have needed a starting and stopping point and a timer to calculate vehicle speed using a visual method." Defendant argues such a visual assessment of his speed was not possible because it was dark and "[t]he vehicles approached each other head on with driving lights on low beam, which caused a visual impairment on the human eyes reducing the pupil and narrowing our ability to see behind the approaching vehicle." The State contends defendant has forfeited any challenge to Sergeant Kane's testimony regarding his speed observations because defendant did not object to this testimony at trial.

¶ 31 We agree with the State that defendant did not object to Sergeant Kane's testimony regarding his visual assessment of defendant's speed at trial. In fact, the record reveals defendant called Kane as a defense witness and questioned him further on this matter. For example, defendant asked Kane whether it was a "guess" defendant was speeding. Kane responded, "It was my observation based on my training and experience and the fact that I've been driving since I was 16 years old that you were going at a high rate of speed." Defendant continued to question Kane about his visual assessment of a vehicle's speed. Kane responded, "[y]ou look at the car in relationship to the surroundings *** and if the vehicle appears to be traveling at a high rate of speed, *** you confirm whether or not the vehicle is traveling over the speed limit by radar."

¶ 32 Based on defendant's failure to object at trial, he has forfeited any issue regarding Kane's speed-observation testimony on appeal. See *Enoch*, 122 Ill. 2d at 186, 522 N.E.2d at 1130. For the reasons mentioned above, we decline to consider this issue under the plain-error doctrine.

¶ 33 2. *Necessity of a Frye Evidentiary Hearing*

¶ 34 Next, defendant asserts the trial court erred by not conducting a *Frye* hearing on the admissibility of "moving radar." According to defendant, "no reviewing court in Illinois ha[s] ever taken judicial notice of the reliability or accuracy of moving [r]adar technology as a means of measuring speed, thereby necessitating a *Frye* evidentiary hearing." The State contends defendant has forfeited any issue regarding the accuracy of "moving radar" because he did not request a *Frye* hearing at trial. Further, the State argues a *Frye* hearing was not necessary in this case as the use of radar is neither new nor novel.

¶ 35 Where a defendant fails to object to the underlying foundation of an expert's testimony at trial, he forfeits any issue relating to such testimony on appeal. *Snelson v. Kamm*, 204 Ill. 2d 1, 24-25, 787 N.E.2d 796, 809 (2003). In this case, our review of the record reveals that, although defendant did not specifically request a *Frye* hearing on the admissibility of "moving radar" testimony at trial, he did object. After Sergeant Kane testified his vehicle was moving at the time he used the radar unit, defendant stated, "I would object. I would move for dismissal. There is no judicial notice on the accuracy of a moving radar set at this time." To the extent defendant's objection can be viewed as a *Frye* challenge, we will consider it here notwithstanding the State's forfeiture argument.

¶ 36 In Illinois, the admission of expert testimony is governed by the " 'general acceptance' test" first articulated in *Frye*. *In re Commitment of Simons*, 213 Ill. 2d 523, 529, 821

N.E.2d 1184, 1188 (2004). Under the general-acceptance test, "scientific evidence is admissible at trial only if the methodology or scientific principle upon which the opinion is based is 'sufficiently established to have gained general acceptance in the particular field which it belongs.' " *Id*. at 529-30, 821 N.E.2d at 1188-89 (quoting *Frye*, 293 F. at 1014). The general-acceptance test applies only to new or novel scientific methodologies. *Id*. at 530, 821 N.E.2d at 1189. "[A] scientific methodology is considered 'new' or 'novel' if it is ' "original or striking" ' or 'does "not resembl[e] something formerly known or used." ' " *Id*. (quoting *Donaldson v. Central Illinois Public Service Co*., 199 Ill. 2d 63, 79, 767 N.E.2d 314, 325 (2002)).

¶ 37 Here, defendant challenges the use of what he terms "moving radar" as a reliable indicator of measuring a vehicle's speed. In the "Points [and] Authorities" section of his brief, defendant cites *People v. Canulli*, 341 Ill. App. 3d 361, 792 N.E.2d 438 (2003), which we assume was to support his contention that a *Frye* hearing was necessary. In *Canulli*, this court reversed the defendant's speeding conviction where the only evidence defendant was speeding was obtained from the use of a Lidar laser device—the admissibility of which had not yet been adequately litigated—and thus, constituted "new" or "novel" evidence. *Id*. at 369-371, 792 N.E.2d at 444-45. Unlike the Lidar laser device at issue in *Canulli* (which has subsequently been found to meet the *Frye* standard in *People v. Mann*, 397 Ill. App. 3d 767, 771-72, 922 N.E.2d 533, 537-38 (2010)), the use of radar to detect speed is neither new nor novel, and it has long been recognized as a means of determining a vehicle's speed. For example, in *People v. Beil*, 76 Ill. App. 3d 924, 928, 395 N.E.2d 400, 403 (1979), this court stated as follows:

> "Radar's accuracy as a means of determining speed is a fact which courts will judicially notice. [Citation.] Where, as here, the officer testifies that he has tested the device both before and after

> issuance of the citation, indicates that there was nothing to impede or interfere with the device, and states that it was his opinion that the device was working accurately, the State has laid a sufficient foundation to admit this evidence."

Thus, a *Frye* hearing was not necessary and the trial court did not abuse its discretion in allowing Sergeant Kane's testimony regarding the use of radar to determine defendant's speed.

¶ 38 3. *Production of Documents*

¶ 39 Defendant next contends the trial court erred in allowing Sergeant Kane to testify regarding his use of radar in the absence of calibration records and a logbook documenting the tests he conducted on the radar unit. Defendant argues this documentation is necessary to prove the radar unit was functioning properly, and without it, Kane's testimony should be stricken.

¶ 40 Despite defendant's repeated assertions that calibration records and a logbook are required to establish a foundation and prove the radar unit was functioning properly, he does not cite any authority to support his contention. Nor does our research reveal any such authority. Here, Sergeant Kane stated that he tested the radar unit using two separate methods, both before and after the traffic stop, and that the radar unit was functioning properly. Kane's testimony, on its own, was sufficient to establish the radar unit was working properly. See *People v. Burch*, 19 Ill. App. 3d 360, 363, 311 N.E.2d 410, 413 (1974) (a police officer's testimony regarding the defendant's speed, as measured by a radar unit, is sufficient to support a speeding conviction where a proper foundation regarding the accuracy of the radar unit has been established). Thus, the trial court did not abuse its discretion in allowing Kane's testimony.

¶ 41 E. Sufficiency of the Evidence

¶ 42 Next, we address defendant's contention that the evidence at trial was insufficient to prove him guilty of speeding beyond a reasonable doubt.

¶ 43 On appeal, the test for determining the sufficiency of the evidence "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 offense beyond a reasonable doubt." *People v. Lloyd*, 2013 IL 113510, ¶ 42, 987 N.E.2d 386. "The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court *** that saw and heard the witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007). Thus, the trier of fact's findings concerning credibility are entitled to great weight. *Id*. at 115, 871 N.E.2d at 740. The testimony of a single witness, if credible, is sufficient to support a conviction. *People v. Kiertowicz*, 2013 IL App (1st) 123271, ¶ 19, 995 N.E.2d 512. "We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005).

¶ 44 Here, defendant was cited for speeding under section 11-601(b) of the Illinois Vehicle Code, which provides, "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 established by paragraphs (c), (d), (e), (f) or (g) of this Section, by Section 11-605 or by a regulation or ordinance made under this Chapter." 625 ILCS 5/11-601(b) (West 2012).

¶ 45 The evidence at defendant's trial established that Sergeant Kane was on patrol when he observed a green BMW approaching him that appeared to be traveling in excess of the posted 55-mile-per-hour speed limit. Kane used the radar unit mounted to his vehicle and determined the BMW was traveling 80 miles per hour. Kane initiated a traffic stop, identified

defendant as the driver of the vehicle, and issued defendant a citation for speeding. Kane testified the radar unit was functioning properly based on tests he conducted before and after the traffic stop. Further, Kane testified defendant admitted at the scene he had his cruise control set at 65 miles per hour. Based on this evidence, we conclude that a reasonable trier of fact could have found beyond a reasonable doubt that defendant was traveling in excess of the 55-mile-per-hour speed limit.

¶ 46 F. Alleged Judicial Bias

¶ 47 Last, we address defendant's claim that he was denied a fair trial due to judicial bias. Specifically, defendant alleges the trial court repeatedly interrupted him during cross-examination, refused to let him ask important questions of the witness, offered legal advice to the State, and used intimidation tactics to limit the questions he was allowed to ask the witness, thus limiting the issues that could be appealed.

¶ 48 "[A]llegations of judicial bias or prejudice must be viewed in context and should be evaluated in terms of the trial judge's specific reaction to the events taking place. [Citation.] The fact that a judge displays displeasure or irritation with [a defendant's] behavior is not necessarily evidence of judicial bias against the defendant." *People v. Urdiales,* 225 Ill. 2d 354, 426, 871 N.E.2d 669, 711 (2007). Rather, to show bias, a defendant must demonstrate "active personal animosity, hostility, ill will or distrust toward him" by the court. *People v. Brisco*, 2012 IL App (1st) 101612, ¶ 29, 971 N.E.2d 20.

¶ 49 Our review of the record reveals defendant's allegations of judicial bias are without merit. For example, defendant alleges the trial court interrupted him and gave legal advice to the State. However, the portion of the transcript that defendant directs our attention to pertains to his oral motion to dismiss the case because Sergeant Kane could not produce

calibration records to support his testimony. The court did not give legal advice to the State, but rather, simply inquired of defendant whether he subpoenaed the documents in question. Further, defendant's claim that the court interrupted and spoke over him is not evidence that the court was biased. Instead, the court barred defendant's inquiry into irrelevant matters, limited repetitive questions, and sustained objections. Thus, defendant was not denied a fair trial due to alleged judicial bias.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 52 Affirmed.