

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090584
	:	TRIAL NO. C-09TRD-39195
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
DANIEL K. WOODIE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In four assignments of error, defendant-appellant Daniel K. Woodie claims that he was improperly convicted of speeding. We affirm.

Ohio State Highway Patrol Trooper David Theobald, using a cordless LTI 20-20, determined that the speed of Woodie's vehicle was 81 miles per hour as he was driving on eastbound Interstate 74 near the Ohio/Indiana border. The trooper testified that the LTI 20-20 was working properly that day.

In his first assignment of error, Woodie claims that the trial court showed bias when it cautioned him while he was giving his opening statement and when it asked questions of the trooper.

During his opening statement, Woodie stated that "I was driving 74 miles per hour through Indiana." The court then said, "Okay. * * * The prosecutor just heard that admission, but go ahead." There was nothing about that statement that indicated a bias.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

During the testimony of the trooper, the trial court asked the trooper what kind of laser unit the trooper had used. Under Evid.R. 614(B), the trial court is allowed to “interrogate witnesses, in an impartial manner, whether called by itself or by a party.” The question the trial court asked was in compliance with this rule. Therefore, we overrule Woodie’s first assignment of error.

In his second assignment of error, Woodie claims that the trial court improperly took judicial notice of the reliability of the LTI 20-20 because there were different models. We have specifically rejected this argument in the past, stating that “[i]t is the scientific principle underlying a device's reliability—and not the reliability of a specific model—that renders judicial notice proper. Accordingly, any evidence about the various models of the LTI 20-20 would have been irrelevant.”² Further, Woodie did not raise this issue below. Therefore, we overrule his second assignment of error.

In his third assignment of error, Woodie claims that the trial court erred in admitting inconsistent testimony. Woodie notes that the trooper claimed that the speed-limit sign was visible, while the video that he presented to the trial court showed that it was covered with vegetation. He also notes that the trooper testified that he could not see Woodie’s license plate, but that he then testified about the speed at which Woodie’s vehicle was traveling. He further notes that the officer indicated that Woodie had shown proof of financial responsibility, when he had not done so.

Matters as to the credibility of evidence are for the trier of fact to decide.³ This is particularly true regarding the evaluation of witness testimony.⁴ We will not

² *State v. Wiest*, 1st Dist. No. C-070609, 2008-Ohio-1433, ¶12 (citation omitted).

³ *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶116.

⁴ *State v. Williams*, 1st Dist. Nos. C-060631 and C-060668, 2007-Ohio-5577, ¶45, citing *Bryan*, supra, and *State v. Russ*, 1st Dist. No. C-050797, 2006-Ohio-6824, ¶23.

reverse a conviction because the trial court chose one version of events over another. There is nothing about the evidence that Woodie cites that would indicate that the trial court, as a matter of law, should have disregarded the trooper's testimony. Therefore, we overrule his third assignment of error.

In his fourth assignment of error, Woodie claims that the trial court erred "in basing its ruling on multiple incorrect assumptions, not the evidence presented." The only example he cites, however, is an inference made by the trial court that Woodie had driven by the speed-limit sign sometime in February, at which point the sign would not have been covered with vegetation. But Woodie did not object. Woodie had testified that he had a job in Chicago that he had had for six months. He testified that he would come back to Ohio every month or two. The trial occurred in August. Six months before the trial was February. This is how the trial court made its inference, which Woodie did not object to or correct on the record. He claims, in his brief, that his first trip back to Cincinnati did not occur until mid-May. But that fact does not appear in the trial record. Since Woodie failed to object, he has waived all but plain error.⁵ And the inference made by the trial court did not constitute plain error. Therefore, we overrule his fourth assignment of error.

We affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., HILDEBRANDT and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 1, 2010

per order of the Court _____.

Presiding Judge

⁵ *State v. Baldwin*, 1st Dist. No. C-081237, 2009-Ohio-5348, at ¶6.