

Legally Speaking
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Barberton v. Jenney
2010-Ohio-2420

It's All in the Eye of the Beholder

While the Ohio Supreme Court usually decides cases of great significance (the Court's own criteria for selecting cases other than constitutional cases is that they must be of great general or public interest), sometimes it goes for the not-quite-so-significant. And the flap on those little ones can be loud and long. That's what happened this summer when the Court decided *City of Barberton v. Jenney*—a case about speeding.

One July summer day Officer Christopher Santimarino was using a radar gun from a marked police cruiser on State Route 21 in Copley Township Ohio. I'm sure anyone who travels up or down I-71 near Dana can picture this exactly. The posted speed limit of this stretch of SR 21 was 60 miles per hour. According to the officer, Jenney was in a black SUV in the left lane in moderate to heavy traffic. The officer stopped Jenney for speeding and gave him a ticket for driving over the posted speed. The officer had two reasons for this decision. The radar gun showed Jenney going either 82 or 83 miles per hour. The officer's visual estimate of Jenney's speed was 70 miles per hour.

If a driver is cited for going twenty miles over the posted speed limit, the driver has to appear in person in court. To give Jenney a break, the officer gave him a citation for traveling 79 mph in a 60 mph zone. But no good deed goes unpunished. Jenney

came to court anyway, and fought this ticket “all the way to the supreme court” as folks like to say they will.

At trial, predictably, Jenney testified that he wasn’t speeding. And he challenged officer Santimarino’s testimony about his speeding. Santimarino’s eyeballed estimate of Jenney’s speed was based on his training and 13 years of experience as a patrolman with the Copley Police Department. He was certified by the Ohio Peace Office Training Academy in 1995 and from then on worked in traffic enforcement. As part of the OPOTA training, officers are required to show that they can visually estimate a vehicle’s speed to within 3-4 mph of the vehicles actual speed. Santimarino passed this section of training. Santimarino was also trained and certified to use the type of radar gun he had used that day. But he couldn’t produce a copy of his radar-training certification.

The trial judge sorted all this out and found Jenney guilty of driving over the posted speed limit. The judge found the strongest evidence on this point to be the officer’s visual estimate of Jenny’s speed. Jenney was fined \$50 plus costs.

When the case got to the court of appeals in Akron, that court held that Jenney’s conviction could not be based on the radar results because without the officer’s training certification the state could not prove he was qualified to operate the radar unit. (yes, the rules of evidence are that picky). But the appeals court held the officer’s visual estimate of Jenney’s speeding was enough to support Jenney’s conviction.

And that was the only question before the Ohio Supreme Court when it took up this case—whether a police officer’s unaided visual estimate of a car’s speed is enough, by itself, to sustain a conviction for driving over the posted speed. For a 5-1 Court (then

Chief-Justice Brown did not sit on this case so did not participate in the decision) Justice Maureen O'Connor (who will become the new Chief Justice) wrote that as long as the police officer is properly trained and certified to do this, a speeding conviction can be based solely on the officer's visual estimate. Officer Santimarino was properly trained and certified, so Jenney's conviction was upheld. Justice Terrence O'Donnell was the lone dissenter.

From the outcry that followed this decision, you'd think an innocent man had been put to death. Newspapers editorials railed against the decision. Campaign commercials blasting the decision were aired against Justices O'Connor and Lanzinger, who were running for re-election. (Both were handily re-elected). A facebook group against the decision was created. There were a gazillion posts to various newspapers—almost uniformly negative. The decision was reported on CNN.

Mike Mier, Copley Chief of police apparently felt he needed to respond to this outpouring. He said "officers can rely on their unaided visual estimation of a vehicle's speed, but the intent is not to allow officers to routinely issue tickets based solely upon unaided visual observations."

I'm not very good at math. But one of the reasons the high court let Officer Santimarino give his opinion about Jenney's speed is because the officer was trained "to visually estimate a vehicle's speed to within 3-4 mph of the vehicles actual speed." Yet he estimated Jenney's speed at 70mph while the radar gun had him clocked over 80.

Now what? A bill has been introduced in the General Assembly to change the law to this: No person shall be arrested, charged, or convicted of a violation of any provision

of section 4511.21 or 4511.211 of the Revised Code or a substantially similar municipal ordinance based on a peace officer's unaided visual estimation of the speed of a motor vehicle, trackless trolley, or streetcar.

Despite legislative gridlock everywhere, this one may—pardon the expression—speed right along to passage. After all this issue affects Democrats, Republicans, liberals, and conservatives about equally. So I guess this case was a matter of great public interest after all.