**CITY OF SOUTH EUCLID ) CASE NO: TRD 1303272**

 **Plaintiff, )**

**v. )**

 **)**

**DONNA FULLER )**

 **Defendant. ) JUDGMENT ENTRY AND OPINION**

This matter came before Judge Gayle Williams-Byers on October 20, 2015 for bench trial. Present in court were the defendant Donna Fuller (“Fuller), Prosecutor Michael Shaughnessey (“Prosecutor”), and Patrolman Peter Amato of the South Euclid Police Department (“Ptl. Amato”) as the city’s witness.

On November 18, 2013 at 8:28 a.m., Ptl. Amato issued citation number SE 50334 to the defendant after conducting a traffic stop. The citation alleges that the defendant was traveling westbound on Cedar Road at 40 miles per hour in excess of the posted speed limit, which is 25 miles per hour. The defendant was charged with violating South Euclid Codified Ordinance (“C.O.”) 333.03 “Maximum Speed Limits.”

At the bench trial, both Defendant Fuller and Officer Amato testified regarding the incident. Specifically, Officer Amato testified that he visually “paced” Defendant Fuller’s speed while driving behind her on Cedar Road for a quarter of a mile. During this time, Officer Amato testified that the Defendant reached a “top” speed of 40 miles per hour although she did not maintain that speed during the entire quarter mile encounter. In fact, Officer Amato testified that while pacing the Defendant, she began at a speed of 25 mph and increased to 35 mph where after some time, the Defendant reached a “top speed” of 40 mph. It should be noted that Officer Amato did not provide testimony as to any techniques or processes necessary to conduct proper “pacing” of a vehicle.

Officer Amato later testified that upon stopping Defendant Fuller, she was on a mobile telephone device. Defendant Fuller later testified, corroborating this fact and testified that she was reporting the traffic stop to her job in an effort to alert them that she would be late.

Officer Amato surmised during his testimony that Defendant Fuller was speeding because she was running late for work. Defendant Fuller testified that she was not initially late for work and instead saw the officer driving behind her. During her testimony, Defendant Fuller indicated that it would have been unreasonable for her to increase her speed with the knowledge that the officer was behind her.

This court notes that the pace method is an accepted method that police may use to determine an offender’s vehicular speed. This method requires that the officer, driving behind a suspected offender, maintain a consistent distance between the cruiser and the offender’s vehicle. Once the officer determines his/her speed, s/he can determine the offender’s speed. *State v. Jarosz*, 11th Dist. Portage. No 2013-P-0050, 2013-OHIO-5839, ¶9 (Dec. 31, 2013).

The issue before this Court is whether the State has proven beyond a reasonable doubt that on or about November 18, 2013 in South, Euclid, Ohio, Defendant Fuller was travelling in excess of the posted speed limit. This Court takes into consideration the testimony of the witnesses as well as all other evidence provided to the court for consideration. In doing so, this court finds that the State has failed to prove Defendant Fuller was traveling at the alleged excessive speed and therefore in violation of South Euclid Codified Ordinance 333.03.

 The City’s case and theory rests on the idea that Defendant Fuller was speeding even though a police officer was driving behind her in plain view. The State further asks the court to appreciate that the Defendant’s speed escalated while directly in front of the officer who traveled unobstructed behind the defendant for approximately one quarter mile. The government would have this court believe that as oppose to decrease in speed, the defendant brazenly increased her speed so as to heighten the likelihood to bring attention to herself from the trailing cruiser.

Although not outside the realm of possibility, the State’s theory does defy reason and common sense when taken as a whole. Insofar as Ptl. Amato testified that Defendant Fuller was stopped after having reached a top speed of 40 miles per hour, such speed according to testimony was a function of gradual escalation and not de-escalation.

Whereas there is no dispute that the officer took an unobstructed position to drive behind Defendant Fuller for at least a quarter of a mile, it is reasonable to believe that a driver in the defendant’s circumstance would begin to immediately reduce speed as opposed to increase speed once noticed by law enforcement. This court received no testimony that Ptl. Amato needed to accelerate in order to take a position directly behind the defendant. Furthermore, Defendant Fuller clearly indicated that she knew that a police officer was travelling behind her and would not as a matter of course increase her driving speed where this would have certainly increased her likelihood of receiving a citation.

Therefore, this Court finds the defendant **NOT GUILTY** of the charge of speed pursuant to C.O. 333.03, a misdemeanor of the 4th degree.

**IT IS SO ORDERED.**

 

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 Judge Gayle F. Williams-Byers