

**ARKANSAS COURT OF APPEALS**

DIVISION I

No. CACR11-1137

PARTNE KIESLING DAUGHERTY  
APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered SEPTEMBER 19, 2012

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT,  
SEVENTH DIVISION  
[NO. CR-10-3498]

HONORABLE BARRY SIMS, JUDGE

REVERSED AND DISMISSED

**CLIFF HOOFFMAN, Judge**

Appellant Partne Kiesling Daugherty appeals her conviction for speeding in excess of fifteen miles per hour (mph) over the speed limit. On appeal, she argues that there is insufficient evidence to support her conviction. We agree; thus, we reverse and dismiss.

Appellant was cited for driving 16 mph over the speed limit—51 mph in a 35 mph zone. After being fined in district court, appellant appealed to Pulaski County Circuit Court, and a jury trial was held. Officer Paul Huddleston of the Jacksonville Police Department testified that he was performing radar enforcement on June 24, 2010, when he first visually estimated appellant's speed at 50 mph and then verified her speed as 51 mph with a radar device. Huddleston testified that he was trained to visually estimate speed within plus or minus two mph. A certificate, dated October 1, 2009, qualifying Huddleston as a "Certified Police Traffic Radar Operator" was admitted into evidence.

Huddleston testified that the radar gun he used was certified and calibrated. A

certificate certifying that the radar device “has been checked for accuracy and correctness of operation” was admitted into evidence. It was dated December 30, 2005, and certified that the device was “accurate within +/- 1 mph.” Huddleston testified that on the day of appellant’s citation, he had performed a tuning fork test and an internal circuit test on the radar gun. Certificates of accuracy for two tuning forks were admitted into evidence over appellant’s objection. Huddleston testified that he had no knowledge about when the radar gun needed to be recalibrated. After being shown the manufacturer’s user manual for the radar device, he acknowledged that there was a recommendation that the device be tested for measurement accuracy every three years and whenever the device undergoes repair. Huddleston testified that the radar gun had a power cord repaired around June 9, 2010. Noting that the radar gun had a plus or minus one mph differential, Huddleston acknowledged that appellant may have been going faster or slower than 51 mph.

At the close of the State’s case, appellant moved for a directed verdict. She argued that the officer visually estimated her speed at 50 mph, that the radar gun had a one mph plus or minus differential, and that the radar gun was not properly certified. The motion was denied.

Appellant called several Jacksonville police officers to testify on her behalf. Lieutenant Arthur Kaufman testified that he was in charge of having radar devices sent in for repair when they malfunctioned, but that the repair center decided when to have the devices recertified. Chief Gary Sipes testified that he would want to follow the manufacturer’s recommendations on recalibration and recertification. Captain Kenny Boyd, the captain over the patrol division, testified that the police department did not have a specific policy for recertifying

radar devices in a specific time frame, but that it would be reasonable to follow a manufacturer's recommendation of every three years.

Alvin Berndt, a standards specialist from the Commission on Law Enforcement Standards and Training (CLEST), testified next. Berndt testified that he did not believe the procedure by which Huddleston was certified as a radar operator was contrary to CLEST's rules. Berndt stated that, although Huddleston completed the radar training course prior to completing basic law-enforcement training, he was not certified as a radar operator until February 2010, after completion of both courses.

At the conclusion of all of the evidence, appellant renewed her motion for a directed verdict. The motion was denied, and the jury found appellant guilty of driving more than 15 mph over the speed limit. Appellant filed a timely notice of appeal.

Appellant challenges the sufficiency of the evidence to support her conviction, arguing that weight should be given to Huddleston's visual estimation of her speed at only 50 mph; that the radar gun and tuning forks were not properly certified in compliance with specifications; that Huddleston was not properly certified as a radar operator; and that even if the radar gun was properly calibrated, she may have been driving 50 mph instead of 51 mph. A motion for a directed verdict is a challenge to the sufficiency of the evidence. *White v. State*, 73 Ark. App. 264, 42 S.W.3d 584 (2001). The test for such motions is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or conjecture. *Id.* On appeal, we review the evidence in

the light most favorable to the appellee and consider only the evidence that supports the verdict. *Id.* Arkansas Code Annotated section 27-51-201(c) (Repl. 2010) provides in part that “the limits specified in this section or established as authorized shall be maximum lawful speeds.” Section 27-50-302(a)(7) (Repl. 2010) provides that speeding in excess of fifteen miles per hour over the posted speed limit is a Class C misdemeanor.

Appellant argues that Officer Huddleston conceded that even a properly calibrated radar device is only accurate within plus or minus one mph, and the manufacturer’s certification confirmed this. Appellant argues that to obtain a conviction, the State asked the jury to assume that the radar measured her exact speed or that it measured her speed one mph too slow. The State cites *Everight v. City of Little Rock*, 230 Ark. 695, 326 S.W.2d 796 (1959), in arguing that radar-detected speed is substantial evidence of speeding provided there is proof of the accuracy of the equipment used to verify the speed. The State argues that Huddleston’s testimony provided substantial proof that the radar equipment was properly operated and accurately calibrated. *Everight* involved the admissibility of evidence of speed as indicated by radar equipment. Our supreme court held that for evidence of radar-detected speed to be admissible, it is “necessary to prove the accuracy of the particular equipment used in testing the speed.” *Everight, supra.*

We hold that even if the radar device was properly certified as to its accuracy and operated by a properly certified radar operator, there was insufficient evidence to compel a conclusion beyond speculation and conjecture that appellant was driving 51 mph instead of 50 mph. Whether evidence is direct or circumstantial, it must meet the requirement of

substantiality; that is, it must force the fact-finder to reach a conclusion one way or the other without resorting to speculation or conjecture. *Haynes v. State*, 354 Ark. 514, 127 S.W.3d 456 (2003). Two equally reasonable conclusions as to what occurred raise only a suspicion of guilt, and on appeal, we may consider whether the record, viewed in the light most favorable to the State, presented this situation and required the fact-finder to speculate to convict the defendant. *Turner v. State*, 103 Ark. App. 248, 288 S.W.3d 669 (2008). Here, the radar gun measured appellant's speed at 51 mph, but the evidence showed that even a properly calibrated radar gun could measure speed only within plus or minus one mph. The jury was presented with equally reasonable conclusions that appellant was driving 50 mph, 51 mph, or 52 mph. Thus, the jury was forced to speculate that appellant was driving in excess of 15 mph over the speed limit. As there was insufficient evidence to support her conviction, we reverse and dismiss.

Reversed and dismissed.

PITTMAN and GRUBER, JJ., agree.

*Hancock Law Firm*, by: *C. Daniel Hancock*, for appellant.

*Dustin McDaniel*, Att'y Gen., by: *Rebecca B. Kane*, Ass't Att'y Gen., for appellee.