

Jack Weir appeals the trial court's judgment that he committed the infraction of speeding,¹ contending the evidence is insufficient to support the judgment.

We affirm.

FACTS AND PROCEDURAL HISTORY

Weir drives a semi-truck for Wal-Mart. On February 25, 2005, he was driving north on I-65 in Bartholomew County. When Indiana State Trooper Edward Olibo aimed his radar gun at the truck, the radar gun indicated that the truck was traveling seventy-two miles per hour. Trooper Olibo issued Weir a citation for traveling seventy-two miles per hour in a sixty miles per hour zone.

At trial, Trooper Olibo testified that he noticed Weir's truck traveling faster than surrounding traffic and that he had checked the reliability of the radar unit that he used. Weir claimed that he had been driving truck number 91316, the records for which revealed that this truck had not exceeded the speed limit on the night in question. The trial court also heard testimony from Matt Deckard, the service manager for the fleet of Wal-Mart trucks that included Weir's semi.

The trial court issued an order on August 3, 2005, with *sua sponte* findings of fact and conclusions of law. The trial court concluded that Weir did exceed the speed limit. Weir now appeals.

¹ See IC 9-21-5-2(4). Before July 1, 2005, the maximum lawful speed was sixty miles per hour for any vehicle, other than a bus, with a declared gross weight over twenty-six thousand pounds, operating on an interstate highway outside an urban area. This statute currently sets forth a corresponding maximum speed limit of sixty-five miles per hour. Weir was adjudicated under the previous statute.

DISCUSSION AND DECISION

When a trial court, *sua sponte*, enters findings of fact and conclusions of law, the specific findings control only with respect to the issues they cover, while a general judgment standard will apply to any issue upon which the court has not made findings. *Dewbrew v. Dewbrew*, 849 N.E.2d 636, 640 (Ind. Ct. App. 2006). In reviewing the judgment, we employ a two-tiered standard of review. *Kesler v. Marshall*, 792 N.E.2d 893, 895 (Ind. Ct. App. 2003). First, we consider whether the evidence supports the findings. *Id.* Next, we determine whether the findings support the judgment. *Id.* Findings of fact are clearly erroneous when the record lacks probative evidence or reasonable inferences from the evidence to support them. *Dewbrew*, 849 N.E.2d at 640. A judgment is clearly erroneous when it is unsupported by the findings of fact and conclusions thereon. *Kesler*, 792 N.E.2d at 895. In applying this standard, we will neither reweigh the evidence nor judge the credibility of the witnesses. *Id.* We must affirm the judgment of the trial court unless the evidence points incontrovertibly to an opposite conclusion. *Id.* at 896.

In its order, the trial court made the following findings:

3. Based on the evidence and testimony presented, the court finds that Jack² committed the infraction of speeding. The evidence and testimony presented established that Trooper Edward Olibo of the Indiana State Police obtained two stationary front radar clocks on Jack's semi truck at 72 miles per hour in a posted 60 miles per hour zone. Trooper Olibo also obtained one stationary front radar clock on Jack's truck at 71 miles per hour in a posted 60 miles per hour zone. Additionally, Trooper Olibo observed that Jack's truck appeared to be

² In its findings, the trial court referred to Weir as Jack.

visually faster than other vehicles in the area. Trooper Olbio [sic] based this observation on his 15 years of training and experience as a law enforcement officer. Finally, Trooper Olibo did not activate his stationary radar until after he noticed that Jack was driving faster than the other vehicles in the area.

4. The radar unit Trooper Olibo used was in proper working order and was properly calibrated.
5. The court notes that Jack presented evidence indicating that truck number 91316 had a built in vehicle speed sensor that would automatically cause the truck to slow down if it exceeded 72 miles per hour. Jack also submitted evidence suggesting that truck number 91316 was not traveling at 72 miles per hour on the date and time Jack was cited for speeding. Jack did not, however, present any evidence to establish that he was driving truck number 91316 on the day he was cited. Further, Jack did not dispute the accuracy of the radar unit Trooper Olibo used or that Trooper Olibo clocked his truck.

Appellant's App. at 70.

Weir first contends that the trial court erred in finding that he failed to present any evidence that he was driving truck number 91316 on February 25, 2005. At trial, Deckard offered testimony that Weir could not have been speeding because he drove truck number 91316. According to Deckard, the electronic calibration records for that truck proved that, during the latter part of February 2005, truck number 91316 had gone no faster than 67.5 miles per hour.

Weir points to Deckard's testimony that the calibration records, which the trial court entered into evidence, were "Jack Weir's report for his truck." *Id.* at 41. Further, Deckard identified the truck as number 91316 and testified that these records included February 25, 2005. *Id.* at 7, 8-11, 41. Deckard also testified on cross-examination as follows:

Q. Mr. Deckard on defendant's exhibit one you indicated the highest speed occurred on February 22nd and it was sixty-seven point five?

A. Yes.

Q. That would indicate that on that occasion Mr. Weir was exceeding the posted speed limit correct?

A. Yes, he was running sixty-seven point five miles on that date. I guess I can't say that it was him. That truck was going that fast. I can't say it was him because I have no idea about that.

Tr. at 30-31. Weir asks us to reevaluate the trial court's finding that he failed to present evidence he was driving truck number 91316. Weir, in effect, is asking us to reweigh the evidence. This we cannot do.

Weir next contends that the trial court erred in finding that Trooper Olibo's radar unit was properly calibrated and in finding that Weir did not challenge the radar gun's accuracy. Before the results of scientific tests are admissible, the proponent of the evidence must lay a proper foundation establishing the reliability of the procedure that is used. *Marlatt v. State*, 715 N.E.2d 1001, 1002 (Ind. Ct. App. 1999). To lay a proper foundation for the admission of radar test results, the State must establish that the radar unit was properly operated and regularly tested. *Id.* (citing *Charlie v. State*, 651 N.E.2d 300, 303 (Ind. Ct. App. 1995)).

In *Dawley v. State*, 580 N.E.2d 366 (Ind. Ct. App. 1991), *trans. denied* (1992), a police officer at a trial for a speeding infraction testified that he checked the calibration of his radar unit. He explained the procedure and indicated that the unit was in good working condition on the date in question. He further explained that the unit was inspected annually. This court found that the officer's testimony was sufficient to meet

the foundational requirements for admitting evidence obtained from the radar unit. *Id.* at 367. Similarly, in *Marlatt*, 715 N.E.2d 1001, a State Police trooper testified that, during his shift, he checked his radar unit three times using a tuning fork. He also acknowledged that an internal maintenance procedure showed that the unit was operational. This court found that “[w]hile the better practice might be for the State to prove certification of the radar gun operator, the absence of proof in this instance merely goes to the weight of [the trooper’s] testimony and not the admissibility of the test results.” *Marlatt*, 715 N.E.2d at 1002.

Here, Trooper Olibo testified about his training and experience in traffic enforcement. He also explained how he calibrated his radar unit. Although he could not specifically remember calibrating his radar unit that night, and had no written record of the unit’s calibration or testing, Trooper Olibo testified that he calibrated the unit three times during each eight and one-half hour shift, and that he had calibrated the unit prior to pulling Weir over. *Appellant’s App.* at 29, 36-37. Without objection from Weir, the State entered into evidence the radar data. Thus, the issues that Weir raises regarding the officer’s recollection of calibrating the unit and the lack of written records go to the weight of the officer’s testimony.

The evidence is sufficient to support the trial court’s judgment.

Affirmed.

BAILEY, J., and CRONE, J., concur.