

ST. REGIS MOHAWK TRIBAL COURT

Saint Regis Mohawk Tribe,)	
)	
Plaintiff)	
)	
v.)	
)	
Ms. Robbi Cook,)	Case No.: 12-TRF-00259
)	
Defendant)	
)	
)	
)	

DECISION AND ORDER

PROCEDURAL HISTORY

Ms. Robbi Cook was issued a ticket by St. Regis Mohawk Tribe Police Department [hereinafter, SRMT PD] Patrolman Ronald J. Swamp, for violating §A [amended to §III (1)] of the SRMT Tribal Traffic Law, TCR 2001-25 (Amended (TCR) 2012-15) [hereinafter, SRMT TRF Law] for speeding on the Cook Rd.

Prior to Ms. Cook’s initial appearance she filed, on June 13, 2012, a request asking the Court to order the SRMT Police Department [SRMT PD] to provide her with copies of the radar reports, 3 months of calibration logs, and Patrolman Swamp’s training for radar guns in class/in field training. Pursuant to SRMT TCR 2008-18 Civil Code [hereinafter SRMT Civ. Code] §VI (D), once a Judge is assigned a case, they shall handle all aspects of the case. As such, Ms. Cook’s request was forwarded to the assigned Judge for this case, Traffic Court Judge Lois Terrance, to decide.

Ms. Cook appeared before the Traffic Court on June 18, 2012 regarding SRMT PD ticket #14809 issued by Patrolman RJ. Swamp on June 3rd, 2012. At this initial appearance, Ms. Cook was asked by Judge Terrance if she admitted or denied the allegation of ticket #14809. Ms. Cook responded that she denied the allegation and that she had her cruise control on and was not speeding. Judge Terrance informed Ms. Cook that a denial of the ticket meant that the Court would schedule a time, in the future, for a full hearing.

Ms. Cook then inquired about the status of her request for the SRMT Court to order the SRMT PD to produce the information she requested. On June 13, 2012, the Court reviewed Ms. Cook’s request and wrote a decision denying the request. The request was denied by the SRMT Court based on the fact that since the Officer would be present to answer Ms. Cook’s questions during the hearing there was no need, at the time, to order the SRMT PD to produce the requested records. (*See, SRMT v. Robbie Cook*, No. 12-TRF-00259, slip op. TRF Ct. (SRMT TRF. Ct. June 25, 2012).

A hearing date was set for July 30, 2012, at 5:30 pm before Judge Terrance. At the hearing, also present was SRMT PD Sergeant Belson Herne who served as Prosecutor, and the Defendant, Ms. Robbi Cook.

DISCUSSION

The Court must decide if Ms. Cook has proved by a preponderance of evidence that she has not violated the speed limit, as charged by the SRMT PD of doing 53 mph in a 35 mph zone, on the Cook Road, on June 3, 2012. Pursuant to SRMT Traffic law the burden of proof is as follows:

It is the burden of the operator of the motor vehicle to rebut, by a preponderance of evidence, the allegations made in the summons and the presentation of the complainant. (SRMT Traffic law §V (2)(b)).

A preponderance of evidence is defined as follows:

As a standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, the evidence which as a whole is more probable than not. (See, BLACK'S LAW DICTIONARY 819 (West Pub. 1997) (1991)).

As such, Ms. Cook as the operator of the vehicle has the burden to prove by a preponderance of the evidence that when she was driving on the Cook Road she was not speeding, doing 53 miles per hour in a 35 mile per hour zone, as alleged in SRMT PD ticket #14809.

This Court, as does other courts, provides *pro se* litigants wide latitude in the interpretation of their pleadings and papers. (See, *S.E.C. v. Elliott*, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, *United States v. Miller*, 197 F.3d 644, 648 (3rd Cir. 1999). As such, the Court draws from Ms. Cook's request for information and her testimony that she denies the allegation of speeding based on the following: 1) She was not doing 53 MPH because she was using a cruise control; 2) The radar was calibrated incorrectly and/or it was not maintained; 3) The Officer could not adequately visually access her speed because his view was blocked by a hill and coming around a corner; 4.) The speed on the radar device was not from her car; and, 5) The Officer's training concerning estimating speed and proper use of radar devices was insufficient. (See, Defendant's request for information dated June 13, 2012; Oral statements on June 18, 2012 (Audio file on record with the Court); Testimony on July 23, 2012 (Audio file on record with the Court)).

At the hearing, neither party offered an opening statement or a closing statement. The Prosecutor called Patrolman RJ Swamp as a witness and on redirect informed the Court that Corporal Phillip White, who was riding with the Patrolman at the time of the incident, was unable to attend the hearing due to being away at training in Connecticut.

The SRMT called their first and only witness, SRMT Patrolman RJ Swamp. The Prosecution established that the Patrolman had written the ticket to the Defendant for speeding on the Cook Road on June 3, 2012. The Patrolman testified that he visually estimated Ms. Cook's speed at 50 mph and then caught the speed with the radar at 53 mph. When asked by the Prosecutor where did he get his training? The Patrolman answered at the Police Academy. When asked by the Prosecutor who puts on the training the Patrolman did not understand the question. When asked who sets the guidelines for radar, the Patrolman did not know. The Patrolman was asked if he was trained in visually estimating speed and the use of radar devices. The Patrolman responded yes.

Judge Terrance asked the Patrolman a few questions and from those questions the Court learned the Patrolman was employed as a police officer for a little over one year, he was riding with Corporal Phillip White on the night of the incident, and that he was going south bound on Cook Road as the Defendant was driving northbound.

Ms. Cook asked the witness, Patrolman RJ. Swamp, if the radar gun was reset prior to being used to determine she was speeding. The Patrolman responded by saying, "Reset it?" Ms. Cook asked the officer if it was possible that you did not reset the radar; and, the reading you got, was from another vehicle. The Patrolman replied that he saw her speed in the first box [on the radar device] and that there was a car behind her but it was smaller and the radar would pick-up on the larger vehicle first. Ms. Cook also asked how he visually estimated her speed when the Patrolman could not have seen her since she was coming around a corner and over a hill. The Patrolman's response was that when he did see her, is when he estimated her speed. Ms. Cook asked about his training and how many hours he has had. The Patrolman said that he did not know how many hours; but, that he passed training in visually estimating speeds of cars by correctly estimating the speeds of 200 vehicles in motion and 200 vehicles with his car stationary.

Ms. Cook testified on her behalf. She made a short statement that she was driving with her cruise control on Cook Rd. coming from River Road going 35 mph over a little hill then the Police Officer pulled us over from in back of us. The SRMT Prosecutor questioned Ms. Cook's claim of going 35 mph by saying in earlier testimony didn't you say that you were going faster. Ms. Cook stated that that the speed is about the same [she has a speedometer in kilometers (kph) and her cruise control set at 60 kph] then admitted it was faster than 35 mph. According to the metric converter on google.com, 60 kph is equal to 37.2823 mph.

Ms. Cook called as a witness, her father Dominick Cook who was in the car at the time of the incident. When Mr. Cook was called to testify, he said he did not speak English well and preferred to speak in his native language, Mohawk. The Court offered to stay the proceedings and reschedule so that an interpreter could be present. However, the Defendant and the witness

denied acceptance of the Court's offer and agreed to continue. Mr. Cook testified that he asked the Patrolman to see the readout in the Canadian side [kph] but was told that was not possible. He stated he was 100% sure that Ms. Cook was not speeding and was unhappy that the Court did not provide his daughter with the papers she requested, which was the only defense they had. Neither the Prosecution nor Ms. Cook asked Mr. Cook any questions, nor did they provide a closing argument.

The SRMT Court must weigh by a preponderance of evidence the allegations made in the summons and the presentation of the complainant. In doing so, and in light of the Court denying Defendant's request for the Court to order SRMT PD to produce the records and information sought by the Defendant, this Court finds that the SRMT Prosecution and the SRMT Patrolmen should have been better prepared to address the said issues that they knew would be asked of them by the Defendant. The issue before the Court, as alleged in the ticket, is that Ms. Cook was doing 53 mph in a 35 mph zone and not whether she was doing 37.2823 mph, if in fact her cruise control was set to 60 kilometers per hour.

In the future, SRMT PD as part of their testimony concerning speeding tickets should fully establish the following: 1) That the radar device was properly placed and used; 2) When the radar device was last calibrated, how calibrated, and who sets the guidelines; 3) The radar device was working properly; 4) That the Officer observed the speeding vehicle and identified it; and 5) The Patrolman's training and time in service as an Officer.

In weighing the evidence provided by the parties, the SRMT Court finds in favor of Ms. Cook, who brought to light issues that were not adequately addressed by the SRMT in their provided evidence and testimony. The Court's mind is not at ease to find that Ms. Cook was doing 53 mph in a 35 mph zone. As such, SRMT PD Ticket #14809 issued to Ms. Robbie Cook by Patrolman Ronald J. Swamp is dismissed with prejudice.

THEREFORE, it is ORDERED:

That SRMT PD Ticket #14809 issued to Ms. Robbie Cook by Patrolman Officer Ronald J. Swamp is dismissed with prejudice.

Entered by my hand on this the 3rd day of August 2012


Judge Lois Terrance, Traffic Court Judge