

[Cite as *State v. Lett*, 2009-Ohio-5268.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	CASE NO. 08 MA 194
PLAINTIFF-APPELLEE,	)	
	)	
- VS -	)	OPINION
	)	
MARK LETT,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from  
Youngstown Municipal Court,  
Case No. 08 TRD 1316.

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: Attorney Joseph Macejko  
City Prosecutor  
Attorney John Marsh  
Assistant City Prosecutor  
26 South Phelps Street  
Youngstown, OH 44503

For Defendant-Appellant: Attorney James E. Lanzo  
4126 Youngstown-Poland Road  
Youngstown, OH 44514

JUDGES:  
Hon. Mary DeGenaro  
Hon. Joseph J. Vukovich  
Hon. Cheryl L. Waite

Dated: September 25, 2009

DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, and the parties' briefs. Defendant-appellant, Mark Lett, appeals the decision of the Youngstown Municipal Court that convicted him of one count of driving under suspension (DUS) pursuant to R.C. 4510.11(A), following a bench trial, and sentenced him accordingly. On appeal, Lett argues that the trial court abused its discretion by admitting a LEADS printout that showed Lett's driver's license was under suspension. He argues that the printout constitutes inadmissible hearsay and that its admission was prejudicial in that there is no other substantial evidence to support his conviction, which should be vacated. Upon review, Lett's arguments are meritless. The LEADS printout at issue falls under Evid.R. 803(8), the "public records exception" to the rule against hearsay. In addition, it was properly authenticated. Thus, the trial court did not abuse its discretion by admitting the record. Accordingly, the judgment of the trial court is affirmed.

#### **Facts**

{¶2} On April 3, 2008, several Youngstown police officers were dispatched to a Huntington Bank Branch in Youngstown to investigate a report that several women were attempting to cash bad checks. The officers were provided with a description of the vehicle in which the two women had arrived at the bank. When they arrived, two officers observed Lett sitting in the driver's seat of a vehicle matching that description, with the engine running. Upon questioning, Lett told one of the officers he had just driven his two daughters to the bank. A warrant check revealed Lett's license was under suspension. As a result, Lett was charged by complaint with one count of driving under suspension, a violation of R.C. 4510.11(A).

{¶3} Lett was arraigned in the Youngstown Municipal Court, pled not guilty to the charge, and retained counsel. The case proceeded to a bench trial. The State called Youngtown Police Office Assad Chaibi as its first witness. Chaibi testified he was dispatched to Huntington Bank to investigate a report that several individuals were attempting to cash "bogus checks." He stated he was told the two suspects arrived at the bank in a tan-colored Buick. Upon arrival, Chaibi saw a vehicle matching that description parked in front of the bank. He stated he parked his cruiser behind the Buick in order to prevent it from moving. Chaibi testified he observed Lett sitting in the driver's seat of the

Buick with the engine running. Chaibi said he then went into the bank to determine whether anything of a "volatile nature" was occurring. Upon exiting the bank, he observed Lett still seated in the driver's seat of the Buick, speaking with another officer who had arrived on the scene. Chaibi stated he ran a warrant check which revealed Lett's license was under suspension, and as a result, issued Lett a citation.

{¶4} The State then called Youngstown Police Officer Thomas Andrews. Andrews stated he was also dispatched to the bank. He said he arrived on the scene shortly after Chaibi. Andrews testified he also observed Lett in the driver's seat of the Buick with the engine running. Andrews stated that while Chaibi was inside the bank, he made contact with Lett. Andrews testified that when he questioned Lett about what was going on at the bank, Lett stated he did not know, and that he had just driven his two daughters there. On cross, Andrews admitted he never saw the Buick in motion.

{¶5} After Andrews testified, the State moved to admit State's Exhibit A, which was a certified copy of Lett's driving record. The State argued that such a record was self-authenticating pursuant to Evid.R. 902. Lett objected, alleging that testimony was needed to authenticate the driving record prior to its admission. The court briefly heard arguments on this issue from both sides. In the end, the court ruled that a witness must testify to the authenticity of the driving record prior to its admission. The State then requested a brief recess to procure such a witness.

{¶6} The State then called Darlene Jones, an employee and supervisor at the Ohio BMV in Youngstown. Jones testified she is the keeper of records at the BMV, meaning that she secures the driving records of all Ohio licensed drivers. She then explained the process that occurs when someone requests a certified copy of an Ohio driving record from the BMV. Specifically, she stated she must access what is called the "LEADS" system and print out a copy of the driving record. That record is then certified, which means it is stamped, signed and accompanied by a document from the BMV registrar attesting to its validity.

{¶7} The State then presented State's Exhibit A, Lett's driving record, to Jones. Jones testified she recognized the record as one that her office certified. She noted there is a raised seal on the cover sheet and agreed it is a true and accurate copy of a record

that would be requested from her office. Jones admitted she did not personally print State's Exhibit A, but said one of her employees did, on July 18, 2008. She also stated that the record was printed from a LEADS computer and that LEADS stands for "Law Enforcement Automated Data System." Jones stated that based on that record, Lett's license was indeed suspended on April 3, 2008, due to a "12-point suspension."

{¶8} Again the State moved to admit State's Exhibit A. Lett objected on the grounds that Jones was not the one who personally printed the record. Lett also objected to the fact that the record originated from the LEADS system. He argued that a LEADS printout is inadmissible hearsay. Lett requested that the evidence be excluded and that he be discharged. The court overruled the objection and admitted the record into evidence.

{¶9} After considering all the evidence, the trial court found Lett guilty as charged. Following a sentencing hearing, where the court noted that Lett had fourteen prior DUS convictions, the court sentenced Lett to 180 days in jail, plus a \$500 fine and court costs. A judgment entry of sentencing was issued on September 26, 2008. That same day, Lett filed a notice of appeal with this court. The trial court then ordered Lett's sentence stayed pending appeal.

**Evid.R. 803(8)**

{¶10} In his sole assignment of error, Lett asserts:

{¶11} "The trial court erred by admitting the LEADS printout."

{¶12} Lett challenges the trial court's admission of his driving record. "The admission of evidence lies within the broad discretion of a trial court, and a reviewing court should not disturb evidentiary decisions in the absence of an abuse of discretion that has created material prejudice." *State v. Noling*, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, at ¶43, citing *State v. Issa* (2001), 93 Ohio St.3d 49, 64, 752 N.E.2d 904. An abuse of discretion means more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Noling* at ¶43, citing *State v. Barnes* (2002), 94 Ohio St.3d 21, 23, 759 N.E.2d 1240.

{¶13} Lett argues that the trial court abused its discretion in this case by admitting his driving record into evidence. He notes that per the testimony of Jones his driving

record originated from the LEADS system. Lett argues that LEADS printouts constitute inadmissible hearsay in that they do not fall under the Evid.R. 803(8), the public records exception to the hearsay rule. He argues that the trial court's purportedly erroneous admission of his driving record caused him material prejudice because there is no other substantial evidence to support his DUS conviction.

{¶14} Evid.R. 803(8), the public records exception to the rule against hearsay, provides, in pertinent part:

{¶15} "The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

{¶16} "(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, unless offered by defendant, unless the sources of information or other circumstances indicate lack of trustworthiness." Evid.R. 803(8)

{¶17} Lett cites *State v. Straits* (Oct. 1, 1999), 5th Dist. No. 99CA7, in support of his argument that LEADS printouts do not fall under the public records exception and therefore constitute inadmissible hearsay. In *Straits*, the Fifth District held that LEADS printouts are not admissible under Evid.R. 803(8) because they are exempt from disclosure under the Ohio Public Records Act. *Straits* at \*2.

{¶18} However, as the Twelfth District has noted:

{¶19} "[T]he term, 'public records' in the title of Evid.R. 803(8) is a misnomer. Weissenberger's Ohio Evidence Treatise (2006 Ed.) 531, Section 803.102. A more accurate term for what the rule means is 'official records,' which Weissenberger defines as records "made or done by an officer of the government," not necessarily 'capable of being known or observed by all.' *Id.*" *State v. McClain*, 12th Dist. No. CA2005-09-102, 2006-Ohio-6708, at fn. 2.

{¶20} In light of this, the rationale behind the *Straits* holding is tenuous.

{¶21} Moreover, there is a split in authority between the Fifth District, as

articulated in *Straits*, and other Ohio appellate districts on this issue. The Eighth and Twelfth Districts have held that LEADS printouts are admissible as public records under Evid.R. 803(8). See *State v. Papusha*, 12th Dist. No. CA2006-11-025, 2007-Ohio-3966, at ¶13; *City of Middleburg Hts. v. D'Ettorre* (2000), 138 Ohio App.3d 700, 707-708, 742 N.E.2d 196.

{¶22} We choose to follow the majority of our sister districts and therefore hold that LEADS printouts are admissible under Evid.R. 803(8). Further we note that the LEADS printout in this case was properly authenticated.

{¶23} "A LEADS report is a public record, pursuant to Evid.R. 901(B)(7), and requires authentication prior to being admissible. Extrinsic evidence of authenticity is not required for certain domestic public documents and for certified copies of public records as these are self-authenticating. Evid.R. 902(1), (2), and (4). However, 'the certification must be accompanied by a seal before the copies would be self authenticating.'" *Peterson* at \*6 (internal citations omitted.)

{¶24} In this case, the LEADS printout was signed, sealed and certified by the BMV, and therefore self-authenticating. In addition, although not required pursuant to Evid.R. 902(1) and Evid.R. 902(4), Jones, an Ohio BMV employee and supervisor, testified to the authenticity of the LEADS printout.

{¶25} Lett's sole assignment of error is meritless. The trial court did not abuse its discretion by admitting the LEADS report in this case, as it constitutes a public record under Evid.R. 803(8), and was properly authenticated.

{¶26} Accordingly, the judgment of the trial court is affirmed. As the trial court issued a stay pending appeal on September 26, 2008 this case is remanded to the trial court for further proceedings on its order.

Vukovich, P.J., concurs.

Waite, J., concurs.