



**Beat Your**

***SPEEDING  
TICKET***

***Fast  
Track  
System***

***by Trey Garrison***

**Fight Your  
Speeding Ticket...  
and **WIN** !**

Members: traffic

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**OK, here=s the part the attorneys made me include :-)**

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\*\*\*\*We do not intend to give you legal advice regarding specific legal problems because the answer will vary in each and every situation. The law is always changing and I will try to keep it up to date but cannot promise it.

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Ok, as you go through these easy-to-follow steps- you can skip around but I would not advise it. Take the time to do each step and you'll be glad you did... Let's go get it:

## **STEP #1**

### **How To Avoid Your Insurance Rate From Skyrocketing...**

What I'm about to reveal to you is worth its weight in gold... This is where we use 'their' big bad database against them...

Remember we talked about the State computer... You know the computer EVERY city and county is linked to and records your ticket.

Well, here is where it gets interesting...

Every insurance company is hooked into that same computer or database... Your rates are determined by the computer and being convicted for speeding will most likely increase your rates with your present company.

The rule of thumb is this:

- One ticket every three years - no increase
- Two or more tickets in three years – increase
- One ticket and one minor accident in three years – increase
- Three tickets, or two tickets and one minor accident - increased A LOT!

But the key to the ratio above- it all begins with the FIRST ticket...

Once your insurance company increases your rate, every insurance company you apply with, will know about the ticket and will adjust their rates to come in a little below the present company but usually not much... You want to catch it before you it goes this far.

So how do you win?

BY USING THE SYSTEM to your advantage!

In short- Get quotes from a couple of insurance companies BEFORE the date occurs to renew your present policy... AND BEFORE you go to court for the speeding ticket you have now...

Here's why:

Until you are convicted for this ticket- you DO NOT have to mention it on your applications to the other companies... Also you don't have to mention any tickets older than 3 years. These get purged out of the system.

Ok, you ready? This is where it gets good...

Remember we talked about the computers all linking together... Here is where you use the system- Once you start requesting quotes from other companies- your insurance company will find out... They'll know you're shopping around... Remember: they're all linked together. They also know these rates are good for 90 days... and if they raise your rate you'll probably go to another company.

Now in their minds they will think you have a lower quote- even if you didn't.

So why wouldn't you do this?

A) But I don't want to change companies...

I'm not asking you to. That is not the point- the point is to flag that you are shopping.

You may find out your company has been taking you for an expensive ride... but even if you don't- doing this will raise the 'grace limit'... This is to prevent your rate from increasing and you leaving.

B) I don't have time

It will take you approx. 5 minutes to do the short forms twice... I know- I timed it when I did it. (I'd never ask you to do something I haven't)

Remember: DO NOT wait until your ticket is final- You've got to do this before your court date for it to be effective. Now- we are going to work hard for you to beat your speeding ticket- But...

Sometimes it doesn't matter who you go representing you or what arguments you bring up- the judge will find you guilty.

NOW- let's say you find another insurance company- they check your record then a week later you are found guilty of the speeding ticket-

**Click Link Below.. Do this NOW... It will take 4 minutes  
and could save you hundreds!**

**[Hometown Quotes](#)**

**(It will open in new window...  
Do it now while it's fresh on your mind)**

YOU have probably given yourself at least another year if not more-  
\*\*\*WITHOUT\*\*\* an increase. Do you see where this is awesome?

I've given you a link below after researching for quite awhile. What was my criteria?

A website that wouldn't bug the heck out of me...

(And I went through a few before that happened.)

If you're worried about getting a lot of emails- then do this and it will take you less than 4 minutes from beginning to end. Go to a free email account- with gmail.com or hotmail.com or yahoo.com

Open up an account and then enter that email in when you ask for these quotes... Viola- you can now quit using this email if you start getting a lot of emails. But with these two you won't.

You can try some other ones but these are two I found that will not bug you...

Now the easiest thing to do here is keep reading and get to the fight your speeding ticket section!

And after you go to court- this first step will not do you any good.

So, don't slide by this chapter **\*\*without\*\*** doing something about it. This chapter can save you literally HUNDREDS of dollars alone.

I'll wait on you...

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. .  
. .  
. .  
. .  
. .

You did do it, right?

Ok, now to the speeding ticket...

## STEP #2

Ok, this is where you fight your ticket. Go through these chapters- figure out which ones of these numerous tactics & strategies you are comfortable with...

Let me give you some guidelines that I would use- take it or leave it... This is my opinion.

If your ticket is over 15-17 miles over- DO NOT go to a jury trial- Jury is the keyword there. Yes, fight it- especially if it is just in front of a judge but my opinion is don't place yourself in the front of 12 people who couldn't get out of jury duty. ;-)

You are beyond the normal that they see and you will stick out like a sore thumb. They will make an example of you...  
GUARANTEED!

Two options:

- 1) I would get with the prosecutor's office and talk about a plea bargain of some type- **unless** you can find a blatant mistake when you are reading these chapters. Now that is solely my opinion.
- 2) Again- if the judge is the one ruling over the case- go for it.

Secondly- concentrate much more on the points rather than the fine. I KNOW this is hard to do- But think long term- if you can avoid the points then the insurance does not go up and you don't have to pay hundreds of more dollars in the next 3 years... Ok, let's get started...

## Fight Your Speeding Ticket and WIN!

It never fails: the *one* time that you drive just a tad bit faster than the posted speed limit, a patrol car pulls out of absolutely nowhere to stop you and give you a ticket. You attempt to give an entirely reasonable explanation for your choice of driving speed. However, it seems that officers usually don't think twice about writing a ticket, be it that you're late for work, burning something on the stove, or starting to go into labor. It's frustrating that they don't take into consideration all of the factors involved.



Getting a speeding ticket may make you just a little bit mad... ok... pissed. If you had to pay hundred dollars (which you knew funded all of the state's programs), that would be one thing, but instead you realize that you'll end up paying multiple times the ticket cost through increased auto insurance rates. It doesn't seem fair!

The aggravation is only compounded if you're pulled over for going four miles over the posted limit on a downhill stretch of the road. You, the officer, and your insurance company all know that you aren't a maniac on wheels. No one is particularly concerned that you are a danger to society.

Speeding tickets have become a game used to increase states' revenue and insurance companies' profits. Luckily, you live in a country where you have rights. You have the right to defend yourself when you are accused of a crime. (And in most states, speeding is a criminal offense!)

If you're not the type of person to roll over and take whatever the government tries to dish out, then this manual was written for you! Read on to learn the little-known defenses that you can personally use in the courtroom to help you fight your ticket....and WIN!

# The Players Of The Court System

## The Defendant

That's you. Remember though- in America- you are innocent until proven guilty. You'll have the right to cross-examine the witness (aka cop)

Traffic court is a very well oiled machine and will move fast... very fast. So hang on- but also don't get intimidated. You have rights... Don't forfeit them very time sake.

This fast pace is what you are going to use to your favor. Again- 99% of speeders will come through- pay their ticket or give some lame excuse and the machine continues on to the next one.

But they have no idea who they're going up against today- you will be prepared...

## **The Witness**

Aka... cop- policeman, etc...

He is treated and is an officer of the court. His testimony holds more weight than yours does. That is the reason you will not be defending yourself by calling the cop a liar or going head to head with him. This guy or girl comes to court every week. Depending on where you live- the judge and cop could be close friends...

He has done this hundreds of times and you will recognize it when he testifies... The police officer and the prosecutor work as a team... And they will tag team you quickly and smoothly.

**BIG TIP:** Do Not testify or take the stand- ever... The prosecutor does this for a living. He will get you to admit to speeding in some form or fashion... then you'll be found guilty on your own admission.

DO Not make any statements... like: other cars were going faster than me or

you go the wrong car... (these don't work)

Let's bring in the next player:

### **The Prosecutor**

This is the state's attorney. Most of the time this is a fresh lawyer getting their ears wet in traffic court...

In some states you will not see this person... It's ok- we'll deal with that too.

### **The Judge**

This is the man or woman. The king of court... Always... Always address him/her as 'Your Honor'. Show respect. Direct all your words to him-

He is supposed to be a neutral party. BUT people are people- You hang out with a cop and prosecutor week after week... after week... you get to like them and trust them.

He will hear both sides and make a decision. He is sort of a referee.

**He is the only one who can find you- not guilty- be nice.**

**You've got the baliff- the uniformed officer of the court.**

**and the court reporter... or clerk. They prepare... record... and process the court cases...**

# Going To Court:

Every state is different. Call the courts to find out how yours is set up. Either you will have one date and the case is presented on that day... or you will have dates:

- 1) the arraignment date and
- 2) the actual trial...

In any case you have several rights:

- right to a speedy trial- usually within 45 days (but as you'll see- why get in a hurry?)
- Right to question witnesses
- Right to subpoena or asked for documentation or certifications...
- Right to defend yourself or be represented by an attorney.
- And right to a court trial.

Let's cover the arraignment hearing:

Now you can plead in several ways:

- You can plead guilty with an explanation
- You can plead "no contest"- usually happens if you've been in an accident and think you are going to be sued. (You would get an attorney in this case anyway)
- You can plead guilty- accept the fine, record and insurance consequences. (Not my choice... If you're going to do this- mail

- your payment in and avoid the court appearance)
- You can ask to attend traffic school in place of pleading guilty. This will keep the ticket from going on your record or your insurance company finding out.
  - You can plead not guilty- and ask for a court date or like I said in some states- the case will be heard at that time- which is awesome if this happens. Why?

The cop will be much less prepared- chances are he won't have any paperwork, etc...

You can plead not guilty by calling up the courts (look on ticket for the phone number) that way you only have to go to court once.

OK, I'm going to assume you are pleading not guilty and requesting a trial... Let's get ready:

# Information Collection:

## The Preliminary Step

### Information Collection:

#### Specifics About Your Ticket

There are many good sources of information relating to your case, but the first and foremost is the ticket itself. ONLY your ticket can give you information specific to your case. Go find your ticket now. You will need a piece of paper and a pen to jot down a few very important notes, so you may want to grab that as well while you're up.

Now take a close look at the ticket and read both sides in detail. The officer who ticketed you should have written your name, car model, car color, license plate number, and driver's license number. There will also be spaces for the date, the infraction, and the officer's signature.

Check carefully to see if all personal data was filled in correctly. Does it say that your blue car was red? Did the officer forget to sign the ticket? For future reference, make a quick note on your paper about any irregularities that you have found on the ticket.

Now continue reading to identify the method that the officer used to clock your speed. This is very important, because many defenses are based on attacking the method that was used. Your ticket will probably say "laser, radar, speedometer," or something similar. Write down the method in your notes.

If you received your ticket in the mail after being captured by photo at an unmanned radar stand, then this is another method of

clocking. Don't worry; there are defenses that can be used no matter how you were caught. Just make sure that you figure out which method was used against you and then write it down!

Also look for the state law code- then go to the site that I provided for you in the video and look up the law. Is there anything in the law that was violated when you were pulled over- or where you were pulled over.

After you've looked at all of the information that the officer wrote down and decided which clocking method was used against you, there is **one more** type of information that you need to get from the actual ticket. This is general information that was printed on the ticket that gives instructions for fighting the ticket.

\*\*\*\*\*You may need to write to a certain office or fill out a particular form or request the officer's presence at the trial. In the legal world, process matters, so you will need to follow the written instructions to the letter! Whatever the process is for the state in which you were given the ticket, write it down in your notes.

You have just completed the collection of approximately half of the information that you are going to need.

That wasn't so bad, was it?

The next step involves doing a bit of research to uncover information that is not readily available on your ticket...

# Defense Tactics: The List is Long

## Defense Tactics: The List is Long

The list of defense tactics is long. There are defenses for all kinds of situations, yours included. This is great news for you, because it means that you have a lot of ammunition for your fight against your speeding ticket.

Some tactics work better in one situation than in another. Some tactics won't work in your case at all. (If you tried to fight your speeding ticket with the radar defense, but you were clocked with a laser, that wouldn't make any sense at all!)

At this point in the process, your notes on the information relevant to the case will be quite handy. Your notes will tell you which of the following defenses can be used in your specific case. All you really have to do is match up the facts of your case to a defense designed for cases exactly like yours!

One nice thing about the court system is that you don't have to pick just one defense tactic to use. Decide which tactics are appropriate for your case, and then take all of them to court! You can use one tactic after another until you win and your case is thrown out.

In most cases, you'll only need **one** single, powerful defense tactic from this manual to fight your speeding ticket and win. However, I bet you'll feel even more confident if you know that you have multiple tricks up your sleeve!

So with your notes in hand, read on to learn the best weapons

available to you to fight your speeding ticket and win!

## Defense Tactics: Plea Bargaining

As you read the title of this section, you may have wondered why plea bargains are included in the list of defense tactics. The reason is simply that a plea bargain is a fantastic way to defend yourself from the negative effects of a ticket without even going to trial!

In many cases, accepting a plea bargain offer may be your first line of defense. This is especially true if this is your **very first** speeding ticket, or at least the first speeding ticket in a long while. In these cases, the state is much more likely to let you get away with a lesser punishment.

How can you get a plea bargain? On TV shows, plea bargains are decided by emotional dialogue between lawyers in small visitation rooms in jail. Most likely, your plea bargain will not be nearly so exciting.

Once you decide to contest your speeding ticket, some states will mail you an offer for a plea bargain. In other places, you will be approached with an offer **WHILE** you're at court awaiting your trial. You may not be offered a plea bargain at all, especially if this ticket is one of many.

The plea bargains themselves can vary widely. The best bargains are ones that allow you to avoid points on your driving record. **The points are what cause your auto insurance to increase.** Accumulated points can even cause you to lose your license.

Plea bargains that allow you to pay less money for the ticket are not nearly such a good deal. You'll STILL get points added to your driving record, so your insurance premiums will increase and cost you more in the long run.

Ultimately, it is you who needs to decide what type of plea bargains, if any, you will accept. You will have to think about what factors are most important to you.

If saving money is your main goal, paying the ticket as written will cost you the most money. Taking a plea bargain that lowers the price of your ticket will cost you less than paying up from the beginning, but is still far more expensive than taking a plea bargain that lets you avoid points on your driving record.

You'll probably **save the most money** if you fight your speeding ticket in court and win, but that is not as certain as accepting a plea bargain.

**Overall, if you are offered a plea bargain that allows you to avoid points, it is a very wise thing to take it.** Even if you have to pay the ticket and go to traffic school, you are still getting a great deal.

And remember that plea bargaining is ONLY the first of many defense tactics available. If it appeals to you, then put this tactic on your list. This tactic is especially important if your ticket is 'out of the norm.'

Meaning... 90% or more of the tickets are written for speeds of 11 to 19 miles over the speed limit. So if your ticket falls in this category it is much more likely that you can enter some type of plea bargain...



But if you were going 40 miles over the speed limit- and this picture was the scene in your backseat... you are different. I don't mean that in a bad way... But you WILL stick out in court and the prosecutor will not be so easy to let you plea bargain. If he/she does then they will most the time just reduce the speed and let you plea at a lower speed.

Either way- showing up in court... can get your speed dropped if nothing else happens. But you must act in a proper manner while in the courtroom... which we'll cover a little later...

If you are not offered a satisfactory plea bargain, or not offered a plea bargain at all, move on to your other defense tactics to fight your speeding ticket and win!

# Defense Tactics: Stalling

Stalling may be a defense tactic that you have previously used outside of the legal world. Many small children learn to stall as soon as they're old enough to have to do household chores. My three kids are pros...

Stalling can be used to improve your chances of winning when you fight your speeding ticket. However, this type of stalling is a little bit different than the type that you learned when you were little. For example, stalling your trial by taking a two-hour bathroom break won't help your legal case in the least!

Stalling your trial is NOT difficult. To push back the trial date, you will merely reschedule a new trial after the first date is set for your trial.

Usually the rescheduling process involves calling the county courthouse, or filling out a particular form, or some other boring bureaucratic activity. To find out exactly how to change the trial date, refer to your important notes on the process required in your state and county.

Stalling itself does NOT provide your defense. When you stall, you're essentially hoping that this will lessen the chance of the officer who ticketed you showing up for the trial.

The officer may have been available for the first trial date, but be busy on the next trial date. There is also the possibility for some sort of scheduling mix-up that prevents the officer from coming to your trial.

The officer who originally stopped you is the star witness, and in many cases, the only witness, involved in your case. If he or she is not present to testify against you, you will automatically win.

Your case will be thrown out before you even say a word because there is no evidence for the state to use. This happens fairly frequently in traffic court, and stalling may just increase your chances.

Stalling, like plea bargaining, is a technique to be used *before* the trial happens. Don't ever schedule or re-schedule your trial and then skip it. You can actually be arrested for not attending your own trial!

If stalling appeals to you and you use it as a defense, it can successfully increase your odds of beating your speeding ticket. Be sure to plan more defense tactics in case you do have to follow through with the actual trial.

If the officer doesn't show, you won't have to use any of your additional strategies, but if he does show, you will be prepared to fight your ticket and win!

I know... you're waiting for an example. I was talking to a friend and we were talking about the making of this manual. He mentioned that on three separate occasions he stalled the court date and then received a letter later showing where the case was dismissed.

Now I am not telling you to use this tactic but here is how he did it all three times. At the last minute- around an hour before the trial- He would call the courthouse and talk to the secretary in the ticket court area. He would tell them that an emergency came up and in no way would he be able to show up today.

Of course they would asked for more explanation and he would give whatever story. He would come across- very nice and very sorry for having to call and give such a late notice. IT worked three different

times for him. He drove a cab and was always getting pulled over.  
Onto the next one...

# Defense Tactics: Confusion

Confusion is yet one more defense tactic that can be used to prevent your trial in traffic court from ever happening. Any defense strategy that can get your case thrown out before it is even presented in the courtroom is a good strategy indeed! This is the #1 Defense that is never talked about...

Similar to the Stalling defense, the ideal outcome of the Confusion defense is that the officer involved in the case does not show up at your trial.

The Confusion defense differs from the Stalling defense because it changes the location of the trial instead of the date and time of the trial.

Changing trial locations is not always possible. Many counties allow for people to move their trials to the county seat, which is a courtroom centrally located within the county. To do so, you'll probably have to give a reason for the change of location.

"I want to use the 'Confusion defense' so that the officer fails to show at my trial and I win," is probably not an accepted reason to move your trial to the county seat! However, if the county seat is closer to your home, work, or school than is the courtroom where your trial was assigned, this probably *is* a legitimate reason.

Different states and counties have different rules about if and

how you can change the location of your trial. Find out what rules govern your area and then follow the required process to change your trial location.

If you arrive at your trial and the officer does not, the case should be immediately thrown out. It is also possible that prosecutor (the lawyer who argues for the state) will ask for more time. He or she will probably say something like, "Motion for continuance" to the judge.

The prosecutor is basically asking to set another trial date to give the officer a second chance to show up. That's not fair at all!

If the prosecutor tries to postpone the trial (prosecutors use stalling as a tactic too!), simply say "objection." Then politely explain to the judge that you have taken time off of work /school and traveled to the courtroom prepared to defend yourself. It is not fair to give the state more time if they did not come prepared.

If you object to the prosecutor's request for more time, the judge will probably not let him or her have it. It would not be fair, and the judge is in the courtroom to make sure that everything is fair for both sides.

\*\*\*\*\*However, if you do not object to the prosecutor's request for more time, the judge probably will give more time and postpone the trial. So speak up for your rights!

**BIG TIP:** That was a big tip... Can you see I'm repeating this for you. If you are in the courtroom and you do not object to certain statements like this- then the judge will allow whatever he is asking. It is not the judge's job to object to an motion- it is yours. SO- SPEAK UP!

Confusing the process and hopefully confusing the officer involved by changing the trial location to the county seat is an

excellent tactic. Some officers may also choose not to come to the trial if they will have to travel a significant amount of time to do so.

If your state permits location changes, use this technique to increase the chances that the officer will fail to show at trial and your case will be thrown out.

**BIG TIP:** Use this one if you were clocked by VASCAR with an aircraft. The pilot has to come to court with the officer. So now, two officers have to come to court- now you've got a great chance of this not happening.

# Defense Tactics: Promptness

Rounding out the list of techniques to keep the officer from getting a chance to testify at your trial, there is the Promptness defense.

The Promptness defense is very easy to execute; all you need to do is be sure to be seated in the courtroom at least thirty minutes before your trial is scheduled to begin.

You hopefully would have figured out yourself that arriving promptly at your own trial is a smart thing to do. Did you remember that skipping your trial may be a crime?!

Even if you planned on making a timely entrance, you may not have realized how this can actually help you to win your case before the trial even starts!

Traffic court is a busy place. Ironically, traffic court is a pretty high-traffic place to be! Case after case is heard as quickly as possible. There is a continual parade of defendants and officers to testify against them coming and leaving the courtroom. Remember this is a smooth running ATM- Automatic Traffic Machine- And Cash Machine...

In some areas, cases are called by the defendants' order of arrival. That means that if you get there early and check in first with the clerk, then your case will be called first.

The beauty of going first is that you might be going early, or at least going on time as scheduled. The officer who is going to testify against you is not nearly as worried as you are about getting there on time.

Unless it is their first day on the job, all traffic cops have been to court a million times before. No one is going to arrest them if they don't

show up. They also know that the courts are frequently behind schedule.

Adding these factors up, your officer is likely to arrive barely on time or a little late. If you have successfully gotten the case called up before the officer arrives, you can have it thrown out before he or she even walks through the doors!

If the case is called up and the prosecutor appears to be trying to go ahead without the officer, politely tell the judge that you would like to motion for the case to be dismissed since the state does not have their witness.

**BIG TIP:** Once again- notice how you're having to speak up and OBJECT... but in a very nice and polite way. Keep this in mind-

And this is coming from someone who testified hundreds if not thousands of times- DO NOT let your emotions run wild and get upset no matter what happens. Stick with the FACTS. Your emotions will not overturn the ruling and may harm you. You want to come across like the law-abiding citizen that you are, right?

If the prosecutor asks for a continuance (more time to find the officer), simply object and state that you are prepared for the trial today as scheduled, and you should not be penalized because the prosecutor is not ready.

Prompt arrival at court could be all you need to do to fight your ticket!

There is no reason to arrive late to court when you might be missing this great opportunity!

Admittedly, the Promptness defense relies heavily on luck. You have to be lucky enough to be tried in a court that will call you up early, and lucky enough to be there on a day when this actually happens.

However, this strategy requires no skill and no preparation, so it is worth a shot! You will be going to court with several strategies planned, so you won't solely rely on the luck required for the Promptness defense. But you'll take luck if luck happens!

Make sense?

# **Defense Tactics: Statute of Limitations**

Somewhere in the back of your mind there are probably some legal concepts that you haven't thought about since you learned them in your American History class in high school. At the time you thought that information would never be useful. Little did you know, it sure would come in handy in the future to help you fight a speeding ticket!

Does the term "the right to a speedy and public trial" ring any bells? If so, you remember the very law that the Statute of Limitations defense is based on.

Citizens of the United States were originally guaranteed the right to a speedy and public trial so that the government wouldn't be allowed to let suspects rot away for years in prison waiting for their day in court. It is generally a pretty nice guarantee to have.

In creating the right to a speedy trial, our founding fathers probably weren't envisioning its eventual usage in traffic court. That's okay; if speeding is a criminal offense in your state, you can use this right anyway. It's like a nice little Bill of Rights bonus.

Your state has already determined the statute of limitations on traffic violations. That just means that there is a set amount of time between the violation and your trial that the state is allowed to make you wait.

The statute of limitations in effect varies by state. It could be forty-five days. It could be sixty days. It could be more or less than these figures. Try to find out what the declared statute of limitations is in your state so that you can execute this defense if the opportunity arises.

The Statute of Limitations defense becomes useful if the courthouse accidentally schedules you out past the time limit, which is a fairly common occurrence. It is a mistake that no one normally points out to them.

If your trial is originally scheduled past the allowed amount of time, do nothing about it until the day of the trial. If you call the courthouse ahead of time to inform them of their error, they will gladly reschedule you for an earlier trial. Then you will lose the chance to use the Statute of Limitations defense in your favor!

On the day of your trial, arrive at court as scheduled. If the officer who ticketed you is present and they call your trial to begin, object.

Politely explain to the judge that this trial violates your right to a speedy trial because it violates the statute of limitations set in the state.

If this is in fact true (and if it isn't, don't try this defense!), the judge will throw out the case. The Statute of Limitations is just one more thing that the state can screw up that gives you the opportunity to fight your speeding ticket and win!

# Defense Tactics: Ticket Error

During the information collection stage, you closely inspected your ticket for errors. If you noticed any irregularities, then this defense is for you!

**Significant mistakes** on the ticket cast doubt on the reliability of the ticket as evidence. Errors ruin the legal acceptability of the ticket.

The judge will allow a misspelling of your last name, or other trivial problems, but if the officer wrote a completely different street name down or forgot to sign the thing, you have a fairly good argument.

If you plan to use the Ticket Error defense, bring your original ticket with you to court and show it to the judge. Politely ask for case to be thrown out because of the significant errors found on the ticket.

Unfortunately, it is up to the judge to decide whether the ticket discrepancies are significant enough to throw out the case. Unlike other courtroom situations, it is not clear what decision the judge must make.

If you have found a serious error, use this defense. It can win your case for you. However, be sure to be prepared to use an additional defense tactic in case the judge doesn't agree with you about the significance of the error.

If you plan to fight your speeding ticket and win, over-

preparation in the courtroom is NEVER a bad thing!

# Defense Tactics: Throw Out Radar Evidence

If you were ticketed after being clocked by radar, this tactic should form the basis of your defense. Assuming that your case even makes it to trial after you have bargained, stalled, confused the officer, evoked the statute of limitations, and pointed out errors on your ticket, **this is your biggest, baddest defense weapon.**

Think about it. If you can manage to get the radar evidence thrown out, there is not a single shred of evidence to say that you may have been speeding the day you were pulled over. It is probably the most productive defense conceivable!

In order to attack the radar evidence at its core, you will have to demonstrate that the radar used on your car was not necessarily functioning properly. Yes, you know that it was probably fairly close to accurate. Yes, the judge and prosecutor know that was probably fairly accurate.

However, the wonderful thing about the legal system is that saying it was “probably fine” isn’t good enough. The functioning of the radar device has to **be proven in order** for the radar evidence to be used in court.

Radar equipment used by the police is calibrated with a set of tuning forks. Each individual radar device comes with its very own set of tuning forks. The tuning forks can easily become inaccurate if they are dropped or scratched, so they should be sent to a certified calibration facility **every six months.**

While an officer is on traffic patrol, he or she must also check

the accuracy of the radar both before and after a car is pulled over. Procedures require that the officer also record these checks in a log manual in the patrol car.

All of these procedural requirements mean that there are a lot of easy targets for your attack. Police officers and prosecutors don't typically prepare for traffic cases.

They would track down all of these documents if they had days to get ready, but they don't.

They see case after case after case all day and not enough defendants know to use this defense anyway.

During your trial, the prosecutor will first ask the officer questions. The officer will cover the who, what, when, where of the day when you were pulled over for speeding. After explaining this, the prosecutor will rest his or her case. This means that they are finished and believe all of the evidence needed to convict you has been presented.

At this point, you will get the opportunity to cross-examine the witness, meaning that you can ask the officer questions as well. Through your questions, you will establish that the prosecution doesn't have what it takes to prove that the radar evidence can be used in court.

Always ask questions **politely**. Begin by asking if the radar was checked on the day that you were pulled over. If the officer says it was not, ask the judge to throw out the radar evidence.

If the officer says that the radar was checked, ask for details on how the check was performed. He or she should answer that the radar was checked with the tuning forks before and after you were

pulled over.

If this is the answer that the officer gives, ask to see the log manual. If the officer has not brought it to court, ask the judge to dismiss the case...

If the officer answers that the radar was checked in some other fashion, politely ask why he or she did not follow the instructions in the radar manual. (The manuals say to check before and after with the tuning fork set.) Then ask the judge to throw out the radar evidence because the officer did not follow the correct procedure to check for accuracy.

If by some miracle the officer manages to produce the log manual, ask if the tuning forks were checked by a certified calibration facility in the last six months.

If the answer is no, then try to get the judge to throw out the evidence. If the answer is yes, then **ask to see the documentation!**

Remember also that the tuning forks and radar and log manual and certification documents will have serial numbers to identify them. If the officer or prosecutor tries to use a document, make sure that ALL of the numbers match.

Showing that some tuning forks somewhere in the world have been tested in the last six months doesn't prove anything! They have to be the tuning forks that were used to test the matching radar that you were clocked with.

The radar defense is not difficult to beat **unless** the prosecutor has days to gather the required paperwork. Don't worry; it is highly unlikely that this will happen, unless you have used this defense multiple times before with the same prosecutor.

The state doesn't have the budget or the patience to care much about your individual speeding ticket case. Losing one case like yours every so often doesn't concern them because they are still making tons of money off of other motorists.

By throwing out the radar evidence, you can fight your speeding ticket and win!

**Remember:** If you don't ask for concrete evidence, then the judge will continue with the case... You have to speak up and ask the questions...

Radar guns must be tested and calibrated to be considered accurate and admissible in court.

The officer is the one who tests the radar gun and the gun has to be sent off to get it calibrated... The officer does not calibrate the radar- Don't make this easy mistake...

Ask for proof that the radar used was tested, calibrated and working properly.

That's it. YOU just read the big one- That is the theme of what you are trying to accomplish and 9 out of 10 times this evidence will not be brought to court from the officer...

JUMP on this... Object to the continuance... You've wasted your day- you were prepared and they should be too!

Example questions:

- Officer, how did you determine that the radar in question was working properly?

He'll testify to either pressing the internal check AND using the tuning forks or just one of these.

IF he only mentions the internal check and doesn't

mention the tuning forks... use this one:

- Officer, the radar unit you used also calls for you to use tuning forks set at various speeds, is this correct?

If he answered that he didn't use the forks- ask for judge to dismiss...

If he says he used the tuning forks- then ask for the log for the radar... Then ask for the log with the specific time that he performed the tuning fork test. If he cannot, ask for dismissal.

Ask if the tuning forks were tested immediately after the arrest... If not- ask for a dismissal.

Your Honor, defendant motions for dismissal. The unit was not properly tested after the ticket and was not proven to be working properly at the time of the ticket.

If he has said he used the tuning forks- and tested before and after go to these questions:

- Officer, are the tuning forks used specific to the unit or will any fork do?
- Officer, please present the court will documentation as to when and where these tuning forks were checked last?

If he has answered all the questions correctly and presented all the documentation- then go to questioning if the tuning forks in question have the same numbers as the radar unit... And for documentation.

# **Defense Tactics: Throw Out Speedometer Evidence**

If you were ticketed after being followed by a police car, this tactic should form the basis of your defense. Your case might not even make it to trial after you have bargained, stalled, confused the officer, evoked the statute of limitations, and pointed out errors on your ticket, but if it somehow does, then be sure to use this defense tactic!

Now, if you did get caught by pacing, then you weren't paying attention to your surroundings.

To pace you the patrol car must ride behind you for a certain amount of time- to figure out your speed.

Ok, now to fight it...Think about it. If you can manage to discredit the speedometer in the car that followed you and get that evidence thrown out, there is not a single shred of evidence to say that you may have been speeding the day you were pulled over. This defense tactic cuts right to the chase!

In order to attack the evidence at its very roots, you will have to demonstrate that the speedometer on the car was not necessarily functioning properly that day. Yes, you know that it was probably fairly close to accurate. Yes, the judge and prosecutor know that was probably fairly accurate.

However, the wonderful thing about the legal system is that saying it was "probably pretty close" isn't good enough. The functioning of the speedometer has to be proven in order for this evidence to be used in court.

In order to be sure that the speedometer was functioning correctly, it would have had to be tested by a **specialized speedometer shop**. Chances are that the cruiser that followed you never has had its speedometer tested. Even if it had, the police officer won't bring this documentation to court.

During your trial, the prosecutor will first ask the officer questions. The officer will give the basic details about the day when you were pulled over for speeding. After hearing the officer's story, the prosecutor will rest his or her case. This means that the state has presented all of the evidence it feels is needed to win the case.

At this point, you will get the opportunity to cross-examine the witness, meaning that you can ask the officer questions as well. Through your questions, you will establish that the prosecution hasn't proven that the speedometer evidence can be used in court.

Always ask questions politely. Begin by asking if a specialized speedometer shop checked patrol car's speedometer within the last six months. (check your state for the time frame) If the officer says no, ask the judge to throw out the speedometer evidence. If the officer says that it was, ask for documentation of that check.

The officer may answer that someone other than a speedometer shop checked the speedometer's accuracy. In this case, reiterate the need for a specialist and ask the judge to throw out the speedometer evidence.

Sometimes officers check their speedometers by driving in front of other officers using radar. If the officer answers that the speedometer was checked in this way, ask where the other officer is. This officer cannot testify for the other officer that helped with the check. Ask the judge to throw the evidence out.

Using these techniques, chances are that the prosecution will have their main evidence tossed. They can't back up the legitimacy of the speedometer, so they can't present that against you.

By throwing out the speedometer evidence, you can fight your speeding ticket and win!

I know... **you want specific questions, don't you?** : Here are a few:

- Officer, how did you check the accuracy of your speedometer?
- Officer, are you a qualified speedometer technician?
- Officer, please present the court will documentation that shows the speedometer to the vehicle you were in was calibrated by a speedometer certified facility...

(If he presents the paperwork- check that it is to the vehicle he used and that it isn't expired- (most states require every 6 months)

Now for the motion:

- Your Honor, defendant motions for dismissal as the prosecution cannot certify to the accuracy of the speedometer to determine the speed...

(Here are some cases relevant: State vs. Tomanelli, State v. Gerdes, Honeycutt V. Com & People v. Perlman)

# Defense Tactics: Throw Out Laser Evidence

If you were ticketed after being clocked by laser or lidar, this tactic should form the basis of your defense. If your case manages to make it to trial after you have bargained, stalled, confused the officer, evoked the statute of limitations, and pointed out errors on your ticket, then this defense will surely put an end to it.

Laser works as a stationary radar- outside of the vehicle- You know, the guy on the side of the road- pointing the gun at you. Your radar detector will not help with these guns because it is not detected until the trigger is released at your car... Just prepare to pull over- you've been nailed!

Think about it. If you can manage to get the laser evidence thrown out, there is not a single shred of evidence to say that you may have been speeding the day you were pulled over. This is the single most productive defense you can come up with!

Laser speed guns transmit a light beam that measures the distance between the laser gun and the target vehicle. Distance is measured by the time of flight of a laser pulse. Because the speed of light is both known and constant, it serves as the basis for determining distance. Once distance is known, speed is calculated by comparing the change in distance against a span of time. This marks a significant difference between traffic radar and laser guns- traffic radar does not measure distance.

In order to attack the laser evidence at its base, you will have to demonstrate that the laser used on your car was not necessarily functioning properly. Yes, you know that it was probably fairly close to accurate. Yes, the judge and prosecutor know that was probably fairly accurate.

However, the wonderful thing about the legal system is that

saying it was “probably working just fine” isn’t good enough. The functioning of the laser device has to be proven in order for this evidence to be used in court.

Police officers test laser equipment by driving a patrol car in front of the laser at varying known speeds. If the speedometer and the laser agree, then it is assumed to be accurate.

There is also an “internal check” button on the laser that tests to make sure the circuitry is working. It **cannot** test for accuracy of the laser’s speed readings.

During your trial, the prosecutor will first ask the officer questions. The officer will cover the ‘who, what, when, where of the day and the when’ you were pulled over for speeding. After explaining this, the prosecutor will **rest** his or her case. This means that they are finished and believe all of the evidence needed to convict you has been presented.

At this point, you will get the opportunity to cross-examine the witness, meaning that you can ask the officer questions as well. Through your questions, you will establish that the prosecution doesn’t have what it takes to prove that the laser evidence can be used in court.

Always ask questions politely. Begin by asking if the laser was checked on the day that you were pulled over. If the officer says it was not, ask the judge to throw out the laser evidence since lasers can be affected by weather conditions.

If the officer says that he or she used the “internal check,” ask why another car was not used. Ask whether the internal check button checks electronics or the laser’s accuracy. Then ask the judge to throw out the laser evidence since the laser was not properly tested.

If the officer answers that the laser was checked with the help of another officer and a patrol car, ask for documentation of the accuracy of the speedometer in this car. At this point in the trial, use the speedometer defense from the previous chapter.

Following these steps, you should easily be able to get the judge to throw out the laser evidence. Without the laser evidence, you will win your case!

Want questions: Here are examples only... come up with your own...

- Officer, how did you determine the unit was working properly? He'll state he used another patrol car or that he used the internal check or both...

IF NO PACE CAR:

- Officer, the internal check is an electronics check, is it not?
- Other than the internal check what other check did you perform?

(IF he did not use a patrol vehicle or a pace vehicle- question him/her about this:

- Officer, if you did not check the unit against a moving object where you knew their speed, can you really state that the unit was working properly as per engineering specifications.

If he answers, yes- as for him to describe his engineering qualifications.

Then ask for dismissal.

- If he says the unit was tested against a moving pace or patrol car... then use these questions:

Officer, is it important that the moving object you used to test the unit have an accurate ability to know how fast they were going?

Please present the documentation of the speedometer of the pace car that you used... (See speedometer defense)

(For Laser or Lidar: bring the admissibility of Motor Vehicle Speed Readings... attached)

# Defense Tactics: Throw Out VASCAR Evidence

If you were ticketed after being measured by VASCAR, then this is going to be your main defense technique. It is surprisingly easy!

VASCAR is a technique not commonly used to determine vehicle speeds, but police do use it in some states. Basically, an officer chooses two landmarks a particular distance apart and then times you as you cross this section of the street. You may have noticed these painted white lines in the road- spaced a certain distance apart.

What is VASCAR? It's an acronym for Visual Average Speed Computer and Recorder. It is nothing more than a computing device that reports your speed based on the time it takes you to cover a measured distance. (Distance divided by time equals speed in feet per second which is then converted to miles per hour.) VASCAR is no different from clocking your speed with a stopwatch and time/distance chart (like airplanes do), except that it is not limited to a section of highway with stripes painted on it as airplanes are. The VASCAR computer is linked to the police car's speedometer cable so it has a means to determine distance while the car is moving.

If, according to the officer's calculations, you are going too fast, another officer in a car will pull you over. In some states VASCAR is illegal and is not used... like California.

If you have been stopped after a VASCAR reading, you will need to demonstrate that the stopwatch was not necessarily functioning properly.

Yes, you know that it was probably fairly close to accurate. Yes, the judge and prosecutor know that was probably fairly accurate.

However, the wonderful thing about the legal system is that saying it was “probably a good stopwatch” isn’t good enough. The functioning of the time device used has to be proven in order for this evidence to be used in court.

**BIG TIP:** At the trial, all officers involved in your stop must testify. If only one of the officers is present, ask if there was another officer at the scene. When he or she says yes, ask for the case to be thrown out because one officer cannot testify for both of them.

This works also if you were involved in one of the speed traps- where a lot of cops are pulling every one over. Usually one cop will run the radar then he will radio to the patrol car to pull you over. Make sure both cops are present in court.

If both officers are present, or if only one officer was involved in the stop, you will have to attack the timepiece used instead. Usually the timepiece used is a stopwatch.

At the trial, the prosecutor will first ask the officer questions. The officer will tell the general story of the day when you were pulled over for speeding. After this, the prosecutor will rest the case. This means that he or she believes that all of the evidence needed to convict you has been presented.

At this point, you will get the opportunity to cross-examine the witness, meaning that you can ask the officer questions as well. Through your questions, you will establish that the prosecution doesn’t have what it takes to prove that the stopwatch was accurate. If they cannot prove this, then the evidence cannot be used in court.

Always ask questions politely. Begin by asking what timepiece was used on the day that you were pulled over. The answer will most likely be a stopwatch, but it doesn’t really matter if it was something else.

Ask if a certified specialist has calibrated the stopwatch (or other timepiece) in the past year. If the officer says no, politely ask the judge to throw the evidence out since its accuracy cannot be established.

If the officer says that a certified specialist has calibrated the stopwatch, ask for documentation. Chances are, it won't be in court. Ask for the VASCAR evidence to be thrown out.

With VASCAR, fighting your case and winning can be as easy as exposing an un-calibrated stopwatch!

Read your state laws on VASCAR & speed traps.

# Defense Tactics: Throw Out Photo Radar Evidence

Photo radar is basically a computer system hooked up to a radar speed gun, with a camera attached. What happens is when the radar gun detects a certain speed the computer triggers the camera to take a picture of the front and rear of the vehicle aiming at the license plate and the driver.

Afterwards, the citation is written up and mailed to the driver at their registered address. It's all very easy and one money making machine for law enforcements...

However, it is extremely easy to beat this type of ticket in court.

Your easiest defense is to trash the ticket and forget about it... (I am not an attorney... just telling you what I would do and here's why:

If it didn't come to you certified or requiring a signature, then there is no proof that you actually got the ticket... ;-) What they're hoping you will do is just send in the fine and go about your way... but you're smarter than that.

If you do feel you need to go to court- I would use the defense that when you are accused in court you must be able to face your accuser. I don't think they'll haul the machine in... And keep in mind- you do not have to identify yourself as the driver- this would be self-incrimination. Don't do it.

While I'm on the subject and don't want to forget to tell you:

Here are a couple of ways to NEVER get the ticket again.

#1: Remove your front tag- so you get pulled over- it's a small charge compared to the radar...

#2: Put a clear coat of paint over the plate. The radar can't read it... but the naked eye can. Also there are several products out there to do this for you- I believe one is called photoblocker...

## **Defense Tactics: Backup #1**

### **Presumed Speed Limit**

Earlier you collected information about the traffic laws in the state where you are contesting your ticket. One of the important things to look for was whether speed limits are considered absolute or presumed.

This defense can ONLY be used in states where there are presumed speed limits.

If you have tried to throw out the method used by the police officer and have not succeeded, then is a great backup plan to have!

Presumed speed limits mean that there is some leeway on the speed that you can legally travel. If traffic is light, the weather is good, you weren't that high above the posted limit, and you aren't around schools, churches, or construction sites, you have good reason to try



this defense.

To use this defense, add it on directly after your previous defenses. Ask the officer general questions about the weather, traffic, surroundings, and road conditions on the day that you were pulled over.

If the officer's testimony supports the fact that conditions were safe, you can politely explain to the judge that you were actually in compliance with the presumed speed limit.

It is such a logical argument that it seems like it wouldn't work in court, right? But if there are presumed speed limits in your state, then this is exactly what the law allows!

If you would like to further increase your chances of winning with this defense, look up previous cases in your state where it has been

used successfully. (You have access to this information from the site I showed you.)

It is best if your examples come from a higher court, like the state Supreme Court.

You can photocopy the record from these cases and bring copies with you to court to back up your argument. Fight your speeding ticket and win!

## Defense Tactics: Backup #2

### Street Survey Defense

The next backup defense tactic is fantastic because it can be used in all fifty states and in virtually all speeding ticket cases! Whoever you are and however you got pulled over, this defense is for you!



The basis for this defense is the Manual of Uniform Traffic Control Devices, which regulates traffic issues over the entire country.

The manual is long and typically uninteresting, but there is a section on street surveys that you can use for your benefit. This section says that **every five years**, an engineer must supervise a speed survey on each section of road to determine the speed limit.

If the speed survey was not done, or is older than five years, or did not include an engineer, this survey doesn't count. Without the official street survey of the section of road where you were stopped,

the police are not allowed to ticket you there.

If you can prove that the street survey for the street in question doesn't exist or wasn't done correctly, then your ticket should be considered invalid! That sounds like a worthy goal.

To get a copy of the speed survey, look up your **local Department of Transportation**. The speed surveys are public information, so they will have to give you a copy if you ask.

If someone tells you that there is no street survey for the section of road that you have requested, ask to get a written statement with their name, position, and date on official Department of Transportation letterhead. You will take that to court with you.

If you do get a copy of the street survey, look carefully for problems with it. Was it done on a different section of the road than where you were pulled over? Was there no engineer present? Is it older than five years?

If you find a discrepancy, take the street survey to court with you and use it as backup. You know what to do. Ask the police officer general questions about the Manual and the requirements for street surveys. Then present the evidence and ask the judge to throw out the ticket!

## Defense Tactics: Backup #3

### The Best Evidence Rule

The best evidence rule will come into play if the prosecutor or the police officer has brought documentation about anything. For example, you ask about the log manual, and the officer pulls a **photocopy of the manual** out of his pocket.

Don't worry! All is not lost! You will need to invoke the best evidence rule, a general rule for the courtroom.

The best evidence rule states that for any type of evidence, the original is best. **In the case of documents, you must present the original, not a photocopy.**

There are exceptions for documents that have been destroyed or are unavailable, but in these cases they will also have to show that the original is unavailable.

If the officer or prosecutor brings any photocopied document, ask if it is the original. When they say that it is not, ask where the original is. Then ask the judge to throw out the evidence because of the best evidence rule.

Can you believe that even a photocopy of evidence of calibration of the instruments isn't good enough for the court?

You should work the best evidence rule for all it's worth to fight your speeding ticket and win!

# **In the Courtroom: Rules to Remember**

## **In the Courtroom: Powerful Pointers**

Unless you tend to get into a lot of trouble, chances are that you are not very familiar with the courtroom setting. It isn't necessary to be an expert, but there are a few very important things that you should know before you go.

### **Dress**

Make a good first impression on the judge! Dress nicely for court. Business attire is appropriate: slacks, a collared shirt, and a tie for men, pants or knee-length skirt, closed-toed shoes, and shirt for women. It is considered insulting to be underdressed for court, so do not show up in jeans and a polo shirt!

### **Check-In**

When you first arrive in the courtroom, it will probably be filled with people. You need to figure out who is the Clerk of the Court and sign in with that person. If you have not signed in, they may not call your case because they don't know that you have arrived.

## Respect

Respect is incredibly important in the courtroom. Titles are used instead of names. The judge will call the lawyers "Counsel" and everyone will call the judge "Your Honor." **That everyone better include you!** Always call the judge Your Honor! Whenever you are in the courtroom, express yourself calmly and clearly. Don't yell like you may have seen lawyers on TV shows do.

Your hand that you are holding should not be shown until the prosecutor has rested his case. If you start asking questions- especially if they are intelligent questions, then they will go deeper into the testimony.

Don't attack the officer. Don't attack the prosecutor. I'm speaking verbally of course. If you thought I meant physically, you might want to talk to some one about that;-)

Keep these tips in mind when you are in court, present your defenses as you have practiced, and you will have a fantastic chance of succeeding. Now go fight your speeding ticket and win!

Use the CaseClerk on the download page to access any case law that you care to look up...

## Good Luck!

You now have the tools needed to fight your speeding ticket and win! Don't get intimidated... you are equipped! Go do it and beat that speeding ticket!

## Step #3

Remember to read the special bonus report on avoiding the next ticket... This report alone can keep you from getting another ticket and being here again in the same situation.

### Resources

#### Again: Make sure you do these quotes:

- [Hometown Quotes](#)

#### [Phantom Plates- The Ultimate Defense Against Traffic Cameras](#)

#### State Laws

When bringing case law from these laws to court... make three copies- one for the judge, prosecutor and you...

"Your Honor, May I approach the bench?"

"Your Honor, These are case laws from higher courts and I want to submit them as evidence in this case..."

Then hand him/her the copy- the prosecutor will meet you at the bench also- hand his copy.

Cases to check out are 'St. Louis v. Boecker'.

For Laser there is "ADMISSIBILITY OF MOTOR VEHICLE SPEED READINGS PRODUCED BY LASER" (On Next Page)

California residents a special case law 'The PEOPLE, Plaintiff v. Wendy EARNEST'.

For Vascar 'The PEOPLE, Plaintiff v. Jeffrey B. JOHNSON'.

For Picture Radar 'MUNICIPALITY OF ANCHORAGE v. Clyde BAXLEY.

# In the Matter of the Admissibility of Motor Vehicle Speed Readings Produced by the LTI Marksman 20-20 Laser Speed Detection System

314 N.J. Super. 233, 714 A.2d 381; (Law Div. 1998)

Reginald Stanton, Assignment Judge wrote:

I am satisfied from the evidence presented in the proceedings which led to the issuance of my Opinion of June 13, 1996 and from the evidence presented during the recent hearings before me that the general concept of using lasers to calculate the speed of motor vehicles is generally accepted within the relevant scientific community and is valid. Despite the fact that the testing conducted was far from perfect, it was adequate, and I am satisfied from the totality of the evidence presented to me that the laser speed detector produces reasonably uniform and reasonably measurements of the speed of motor vehicles under conditions likely to be present on New Jersey highways when the detector is used for law enforcement purposes. The error trapping programs and mechanisms built into the detector are fully adequate to prevent unreliable speed measurements when used for law enforcement purposes. Accordingly, under the broad teaching of cases such as *Romano V. Kimmelman*, 96 N.J. 66, 474 A.2d 1 (1984), and *State v. Wojtkowiak*, 170 N.J. Super. 44, 405 A.2d 477 (Law Div. 1979), reversed on other grounds, 174 N.J. Super. 460, 416 A.2d 975 (App. Div. 1980), speed readings produced by the laser speed detector should be received as evidence of the speed of motor vehicles without the need for expert testimony in individual prosecutions arising under the motor vehicle laws.

For the reasons expressed in the Opinion, speed readings produced by the LTI Marksman 20-20 Laser Speed Detection System manufactured by Laser Technology, Inc. (hereinafter "laser speed detector") shall be admitted into evidence in all municipal courts in

Morris County and in Sussex County in the prosecution of any case arising under the motor vehicle laws.

Admissibility of such readings shall be subject to the rules set forth below:

1. Expert testimony in support of admissibility shall not be required, except as specifically set forth below.
2. Appropriate training of the law enforcement officer operating the laser speed detector shall be shown in each case.
3. Pre-operational checking procedures recommended by the manufacturer of the laser speed detector shall be shown to have been made in each case.
4. Speed measurements shall be admitted whether made in daylight or at night and within any temperature range likely to be found in New Jersey, even if made under conditions of light or moderately heavy rainfall, but speed measurements taken during heavy rain or while snow is falling shall not be admitted without the support of adequate expert testimony in the individual case.
5. Speed measurements made at any distance up to 1,000 feet shall be admitted, but measurements made at any distance in excess of 1,000 feet shall be admitted only with the support of adequate expert testimony in the individual case.

This case was affirmed *State v. Abeskaron (In re Admissibility Hearing of the LTI Marksman 20-20 Laser Speed Detection Sys.)*, 326 N.J. Super. 110. November 24, 1999

**CITY OF ST. LOUIS, Plaintiff-Respondent,**  
**v.**  
**Forrest BOECKER, Defendant-Appellant.**

No. 31278.

St. Louis Court of Appeals, Missouri.

Sept. 17, 1963.

Forrest Boecker, St. Louis, for defendant-appellant.

Thomas J. Neenan, City Counselor, H. J. Dodson, Asst. City Counselor, St. Louis, for plaintiff-respondent.

DOERNER, Commissioner.

Defendant was arrested and charged with violating an ordinance of the City of St. Louis which limited the maximum speed of automobiles to 30 miles per hour. He was tried and found guilty in the City Court,

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and thereafter appealed to the St. Louis Court of Criminal Correction. A trial by jury in that court resulted in a verdict and judgment finding defendant guilty and assessing as penalty a fine of \$25. From that judgment defendant prosecutes this appeal.

Defendant was arrested by Officer John Hoffman of the St. Louis Metropolitan Police Department on June 1, 1961, about 11:35 A.M.,

on Lindell Boulevard, an east-west street in the City of St. Louis. The only evidence tending to prove that defendant was exceeding the lawful speed limit was that given by Hoffman, over the timely and proper objections of defendant. The officer testified that he was operating a radar speedmeter mounted in the trunk of his police car, and that as defendant's automobile, proceeding westwardly, passed through the beam projected from the radar machine the dial of the radar speedmeter indicated defendant's speed as 40 miles per hour. On cross-examination the officer admitted that defendant's car was 'lagging behind' other automobiles which were proceeding westwardly on Lindell ahead of defendant.

It has been said that normally there are four basic issues involved in the conviction of an accused for a speed violation detected by radar: (1) the accuracy of the device as a scientific instrument; (2) the proper functioning of the particular machine used; (3) the identification of the accused as the speed violator; and (4) hearsay evidence as it may relate to the testing and setting up of the unit, to identification, and to the arrest of the accused. 1 To those we suggest the addition of a fifth, that of the training and experience of the operator. However, in this appeal defendant has raised only one of the foregoing issues, and accordingly our review will be confined to that question. In brief, what the defendant here contends is that Officer Hoffman's testimony as to the speed registered on the radar speedmeter was not admissible, and that without it no submissible case was made, because there was no evidence that the radar device had been adequately tested or that it was functioning properly at the time defendant was arrested. The City, of course, contends to the contrary.

The only evidence of any test made of the radar device was that given by Officer Hoffman. Asked by the City's counsel whether on the day of the arrest he had tested the radar machine in any way before he took out the police car in which it was installed, he stated:

'Well, there is a tuning fork, as they call it, used specifically for checking this instrument, this unit. And this fork is used in a manner that you can turn it on, then you flip this fork and you touch it lightly, cause a vibration in it. And you hold it to the rear where the box

would be that is picking up this--shooting out this beam, and that makes a reading on your visual meter of thirty miles an hour. And when it holds that reading for several seconds, then we are told that the machine is in perfect operating condition.'

Defendant objected to the hearsay involved in the latter part of the officer's answer and moved that it be stricken, but the record fails to show any ruling by the court.

Sergeant Herbert Bosch, supervisor of the Communications Technical Section of the Police Department, who was licensed by the Federal Communications Commission to service radar units and was in charge of the maintenance and repair of the Police Department's machines, testified that the tuning fork used to test the radar devices was very similar to a tuning fork used by a piano tuner; that it is cut to a certain audial frequency; that when held in front of the radar instrument and vibrated, it has the same effect on the radar as a car going through the beam at 30 miles per hour; that if the dial registers 30 miles per hour it is considered a test of the accuracy of the machine; and that it is an accepted test, recommended by radar engineers. On cross-examination

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the Sergeant stated that the Police Department had two tuning forks, one calibrated for 30 miles per hour and the other for 60. He also stated that he had no personal knowledge of when, either before or after defendant's arrest, the unit used by Officer Hoffman had been tested.

Both the defendant and the City cite and rely on the only reported Missouri case involving radar, *State v. Graham*, Mo.App., 322 S.W.2d 188, decided by the Springfield Court of Appeals in 1959. In that case the state troopers had tested their radar machine shortly before defendant's arrest, and at the point where the arrest occurred, by what is called the run-through test, in which a car was driven through the beam at speeds of 50 and 70 miles per hour (as indicated on the automobile speedometer) to determine whether corresponding speeds were registered on the dial of the radar speedometer; and also

by the use of two tuning forks calibrated to register 50 and 70 miles per hour on the radar speedmeter. The defendant, who was charged with going 65 miles per hour in a 50 mile per hour zone, raised among others the same points as does the defendant here, namely, that there was no proof that the radar had been properly tested or that it was functioning properly at the time of his arrest. The court stated that it was a matter of common knowledge that an automobile speedometer reflects only approximate speed and that there is considerable variance in the speedometers of different cars. It noted that there was no evidence that the speedometer in the patrol car used to check the accuracy of the radar device was itself accurate, or had ever been checked. But it held (I. c. 197 of 322 S.W.2d):

'\* \* \* If such a situation existed in a close case, where there was a slight difference between the allowed and actual speed, we might question the admissibility of such speedometer evidence; but here there was an excess of 15 miles per hour. In addition, there was the confirmation of the tuning fork test. These tests we think were sufficient to make the evidence of the radar speedmeter admissible.'

The court further held that (I. c. 197 of 322 S.W.2d), '\* \* \* the dual tests made almost immediately before the occasion \* \* \*' was prima facie proof that the machine was functioning properly at the time of defendant's arrest.

Defendant argues that it was held in effect in that case that a run-through test by a moving vehicle is absolutely essential to establish the accuracy and proper functioning of a radar speedmeter, and that the court relied entirely on such a test. On the other hand, the City asserts that the court in State v. Graham, supra, recognized the sufficiency of the tuning fork test, standing alone, as prima facie proof of the accuracy and proper operating condition of the radar unit. In our opinion neither view is correct. As the foregoing quotations illustrate, the court based its decision on the duality of the tests made. We think that the important principles to be deduced from State v. Graham, supra, are three-fold: First, the acceptance as a matter of judicial knowledge, '\* \* \* that a radar speedmeter is a device which, within a reasonable engineering tolerance, and when properly functioning and properly operated, accurately measures speed in

terms of miles per hour.' (l. c. 195 of 322 S.W.2d); Second, the recognition as a matter of judicial knowledge that the device may not operate properly upon occasions and for various reasons, and that it is therefore, '\* \* \* the obligation of the proponent who uses it to establish prima facie that the machine was properly functioning \* \* \*' (l. c. 197 of 322 S.W.2d); and Third, that '\* \* \* the value of such tests (of a radar speedmeter) would depend upon the accuracy of the measuring device against which it is checked. \* \* \*' (l. c. 197 of 322 S.W.2d).

Unlike the situation which existed in *State v. Graham*, supra, dual tests were not

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made in the present case; in fact, Officer Hoffman testified that the Police Department ceased making the run-through tests some years before, when the use of the tuning fork began. The only test made of the accuracy of the radar unit here involved was the tuning fork test made by Hoffman 'on the morning' of the day of the arrest, before he took the police car 'out,' presumably at the start of his tour of duty on that day. The record is totally devoid of any evidence of the time when, and the place where, such test was made. No evidence was introduced as to the nature and extent of the movements of the car during the period of unknown length which intervened between the making of the test and the arrest of defendant. Nor is there any testimony as to the manner in which Hoffman set up the unit at the site on Lindell Boulevard, the procedure he followed when he activated the device, or the length of time the set had been in operation before the arrest was made. In fact, when his testimony regarding the test (heretofore quoted in full) is read carefully it will be noted that he did not even state that the radar speedmeter read 30 miles per hour when he tested it with the tuning fork; all that he actually did was to describe in the abstract the nature of and the principle underlying the tuning fork test. For the purposes of this case, however, we will infer from his testimony that the radar device read 30 miles per hour at the time he tested it with the tuning fork.

Bearing in mind the principle stated in *State v. Graham*, supra,

that it is the obligation of the proponent who uses the radar speedmeter to establish prima facie that the machine was accurate and functioning properly at the time the accused's speed was checked, the ultimate question presented is whether by the foregoing evidence the City sustained its burden of proof. We are constrained to hold that it did not. The reasons which impel us to reach that conclusion are based upon the nature and characteristics of the radar speedmeter.

The courts customarily adopt a conservative attitude toward accepting scientific advances or developments, 2 an inherent disposition which has been referred to as a 'cultural lag.' 3 While some reluctance to accord judicial recognition to the radar speedmeter was at first exhibited, 4 within the relatively short time since its use began numerous courts have taken judicial knowledge that a radar speedmeter is a device operating on scientifically sound principles, which when properly functioning and operated will accurately measure the speed of a moving vehicle within a recognized and relatively small tolerance. 5 It has been suggested that the important role played by radar during World War II greatly accelerated the judicial acceptance of the radar speedmeter: 'The war-time reputation of radar has created an impression, through name alone, of such perfection in design or performance integrity, that psychologically everyone is impressed.' 6 What is perhaps not generally recognized, however, is that the radar used by the military during the war is a completely different type instrument, operating on a totally dissimilar scientific principle, than the device called a radar speedmeter. 7 The military unit is a pulse type radar which transmits microwaves at

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controlled intervals. A wave, coming in contact with a target, is reflected back to the receiver. Since the wave travels in both directions at the speed of light, approximately 186,000 miles per second, by computing the elapsed time the distance of the target can be ascertained. Also, since the beam projected is a relatively narrow one, the bearing of the target from the transmitter may be determined. The military unit does not indicate the speed of the

target; that fact, as well as the target's direction of travel, must be computed by tracking and plotting the changes in distance and bearing over a period of time.

In contrast, the radar speedmeter does not send out microwaves at intervals or as short disconnected pulses. Instead, a continuous flow of microwaves is transmitted at a theoretical frequency of 2455 megacycles, or 2,455,000,000 cycles per second. When the beam of waves strike a target, part of the beam is reflected back to the receiver. According to what is called the Doppler effect, if the object is moving then the frequency of the reflected or echo wave will be different from the frequency of the outgoing wave; greater in frequency if the target is moving towards the transmitter, diminished in frequency if the target is receding. Because it would be extremely difficult to measure the difference in frequencies between one which already amounts to 2,455,000,000 cycles per second and another of an even greater number (if the target is advancing), a second phenomenon is invoked. This is the phenomenon of 'beats,' used in tuning stringed musical instruments. Thus, if two adjacent notes on a piano are struck simultaneously, the combination of the two tones will have alternate increases and decreases of intensity, the throbbing of the sound being called 'beats'; the number of beats per second being equal to the difference of the frequencies of the two vibrating sources. In the same way that beats occur with sound waves of different frequencies so can they also occur with radio waves of different frequencies. In the case of the radar speedmeter, the antenna receives the outgoing wave transmitted at the theoretical frequency of 2,455,000,000 cycles per second, as well as the echo wave, which has been modulated to a still higher frequency (if the target is advancing), and by measuring the number of beats set up by the two frequencies, transposes such beats into the miles per hour speed of the target; the result being indicated on a dial. Dr. John M. Kopper, who has testified as an expert on behalf of police departments in a number of the reported cases, states that a radar speedmeter '\* \* \* is in essence a beat frequency meter, whose readings are given in miles per hour instead of in beats per second. 8 \* \* \*'

We have used the phrase 'theoretical frequency' of 2,455,000,000 cycles per second because of the controversy which

appears to exist as to the precision and accuracy to which the transmitter in a radar speedmeter may be tuned. 9 Dr. Kopper states that the frequency of the transmitter can be set to within plus or minus 0.05 per cent of 2,455,000,000 cycles per second. Carosell and Coombs, who are highly critical of the radar speedmeter as an accurate device, point out in effect that such a margin of error would amount to 1,227,500 cycles more or less than 2,455 megacycles, which they consider excessive. Variations in the frequency would, of course, affect the accuracy of the radar unit as a speed measuring device. We have been unable to learn from the literature we have examined what increase of frequency of the echo wave is necessary, when measured against the transmitter's frequency, in order to produce one beat. We do learn, and both authorities agree, that despite the astronomical number of cycles with which a radar speedmeter deals, there are only 7.31 beats for each mile of speed which it records. Hence, a car traveling at 30 miles per hour would generate

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219.3 beats, while one going 40 miles per hour would produce 292.4; or a difference of only 73.1 beats.

An exhaustive research of the authorities has failed to disclose any case, and none has been called to our attention, in which it has been held that a test of a radar speedmeter made solely with a tuning fork is sufficient to establish the accuracy of the radar device. In his comprehensive article to which we have referred Dr. Kopper does not even mention such a test. Carosell and Coombs in their paper refer to it only in connection with their criticism that a radar speedmeter is susceptible to microphonic error from outside sources, such as a diathermy machine, an automobile radio, or the closing of the door of a car. The expert witness who appeared on behalf of the city in the instant case, David F. Winter, former professor of electrical engineering at Washington University and the holder of patents in radar circuitry, testified only as to the scientific principles and merits of the radar speedmeter, and was not asked a single question about the reliability or accuracy of the tuning fork test.

We share the opinion expressed in *State v. Graham*, supra, that the value of any test of a radar speedometer depends upon the accuracy of the measuring device against which it is checked. That is true whether the measuring device used is an automobile speedometer, a stop watch, or, as in the instant case, a tuning fork. All are the products of human endeavor and therefore subject to error in manufacture, or to subsequent impairment and damage. We do not question the use of a tuning fork to test a radar speedometer as a matter of principle. We accept the testimony of Sergeant Bosch that such a means is an accepted test, recommended by radar engineers. The same statement would undoubtedly apply to a test by an automobile speedometer, or a stop watch. But the value of such a test would obviously depend upon the accuracy of the particular tuning fork used. In the light of the number of cycles per second involved and the precise measurement which must be made, it is apparent that any imperfection in the tuning fork would materially affect the speed registered on the radar dial. Because of the absence of any evidence that the tuning fork used in the instant case was itself accurate, we entertain grave doubts that the City's evidence was sufficient to establish prima facie that the radar speedometer was functioning properly, even at the time such test was made.

We prefer, however, to rest our decision upon another aspect of the case, one about which there cannot be the slightest doubt. As stated in *State v. Graham*, 1. c. 196 of 322 S.W.2d in the colorful but wholly accurate language used by the writer of that opinion, a radar speedometer is '\* \* \* an instrument constructed by human hands, dealing with delicate measurements, and having a rather feminine need for priming \* \* \*.' Some indication of the amount of 'priming' required may be gathered from Sergeant Bosch's testimony that although the Police Department owned only four machines it employed eleven radio technicians who spent at least part of their time '\* \* \* fixing these units, calibrating them, testing them, keep it in service.' That the accuracy and proper functioning of a radar speedometer may easily be affected by its movements from place to place is acknowledged by Dr. Kopper, who states that, 'It is important to check the meter for accuracy each time it is set up for use; if the meter is to be used at two sites in one morning then it should be checked at each site to avoid the contention that the meter was

thrown out of adjustment during transit. 10 \* \* \*' The necessity for proving that the radar device was properly set up and tested for accuracy at the place where, and immediately prior to, the defendant's arrest was recognized by the Supreme Court of Appeals of Virginia in *Royals v. Commonwealth*, 198 Va. 876, 96 S.E.2d 812. A

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statute had been enacted in that state making the rate of speed as shown on a radar machine admissible in evidence without the necessity of proving by expert testimony the theory and scientific principles on which the device operates to measure speed. Nevertheless, that court held that the statute, '\* \* \*' does not eliminate the necessity for the Commonwealth to prove that the machine used for measuring speed had been properly set up and recently tested for accuracy \* \* \*' (l. c. 816 of 96 S.E.2d), and it reversed a conviction where such evidence was not adduced.

Here, as in that case, no test of the radar speedometer used to determine defendant's speed was made at the site of or immediately preceding his arrest. The only test made was at some unknown time and at some undisclosed place. Even if it is assumed that the radar unit was operating properly at that time, such evidence would have no probative force to establish that it was accurate and functioning properly after what may have been (for all the evidence shows) a great number of individual movements, to a far distant site, over a substantial period of time.

Our views in this respect are strengthened by a comparison between the apparent operational procedures employed in the instant case and those recommended by Dr. Kopper. All that appears from the evidence here is that Officer Hoffman parked his police car, flipped the switch which activated the unit, and immediately began to check the speed of approaching motor vehicles. Dr. Kopper recommends: (1) That the set be allowed to warm up for a period of five to ten minutes before being put to work; (2) That the dial then be checked to be certain that it reads zero; and that the set be adjusted accordingly if it does not; (3) that since diathermy machines, swinging

signs, swaying trees, and other outside sources can give false readings, that the meter be examined and watched for such indications; (4) that the accuracy be checked by the run-through test, both before and after the period of observation of traffic, by having a car with a calibrated speedometer run through the zone twice, once at the maximum legal rate of speed, and once at a speed 10 or 15 miles per hour greater; and (5), that if the difference between the speedometer reading and the radar meter reading is greater than 2 miles per hour, (due to the engineering tolerance inherent in the radar set) that a further check and any necessary adjustment be made. One court has gone so far as to adopt the substance of Dr. Kopper's recommendations as a requirement for conviction. *People v. Sachs*, 1 Misc.2d 148, 147 N.Y.S.2d 801, 809. It would appear from *State v. Graham*, supra, that the state highway patrol makes both the run-through test and the tuning fork test at the site where traffic is to be checked.

We are not unmindful that excessive speed is a dominant factor in the appalling amount of injury and death which occurs daily on our streets and highways. Nor are we unaware of the difficulties encountered by the authorities in the enforcement of the traffic laws and ordinances. Such efforts are to be encouraged, and not hampered. But the requirement that proof be adduced that a radar speedometer was tested and found to be operating properly at the site of and reasonably close to the time of an arrest should not place an undue burden on the prosecution, and should at the same time protect the rights of motorists against the possibility of error in this device which makes 'delicate measurements.' *State v. Graham*, supra.

It is unnecessary to discuss other points raised by defendant. For the reasons stated it is apparent that the judgment must be reversed. If the record indicated that other evidence as to defendant's speed could be produced, we would remand the case for a new trial. Here, however, it is clear from the record that no other evidence of the speed of defendant's automobile would be available to the City. Officer Hoffman, a traffic officer with years of experience, testified

on cross-examination that in the long block he followed defendant before he apprehended him he never once looked at the speedometer of his own car; and when invited on cross-examination to estimate the speed at which his own or the defendant's car was traveling, steadfastly maintained that he could not do so. The judgment should therefore be reversed. The Commissioner so recommends.

PER CURIAM.

The foregoing opinion by DOERNER, Commissioner, is adopted as the opinion of this court. Accordingly, judgment is reversed.

WOLFE, Acting P. J., ANDERSON, J., and JACK P. PRITCHARD, Special Judge, concur.

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1 Hough, 24 Mo.L.R. 197 (1959).

2 For example, although the use of fingerprints as a means of identification was known long before the birth of Christ, it was not until 1905 that fingerprint evidence was first introduced in an English court. Baer, Radar Goes to Court, 33 N.C.L.R. 355, 356 (1955); Stacy v. State, 49 Okl.Cr. 154, 292 P. 885.

3 Baer, 33 N.C.L.R. 336; Britt, 21 Minn.L.R. 671 (1937).

4 State v. Moffitt, 9 Terry 210, 48 Del. 210, 100 A.2d 778; People v. Offermann, 204 Misc. 769, 125 N.Y.S.2d 179.

5 See the wealth of cases cited in State v. Graham, supra, including the parent case of State v. Dantonio, 18 N.J. 570, 115 A.2d 35, 49 A.L.R.2d 460.

6 Carosell and Coombs, Radar Evidence in the Courts, 32 Dicta (Colo.) 323, 324 (1955).

7 49 A.L.R.2d 470.

8 Kopper, The Scientific Reliability of Radar Speemeters, 33 N.C.L.R. 352 (1955).

9 Compare Carosell and Coombs, 32 Dicta (Colo.) 329 (1955) with Dr. Kopper's article, 33 N.C.L.R. 343.

10 33 N.C.L.R. 353.

California residents a special case law  
'The PEOPLE, Plaintiff v. Wendy EARNEST'.

40 Cal.Rptr.2d 304

33 Cal.App.4th Supp. 18

The PEOPLE, Plaintiff and Respondent,  
v.  
Wendy EARNEST, Defendant and Appellant.  
The PEOPLE, Plaintiff and Respondent,  
v.  
Robert PERLMAN, Defendant and Appellant.

Cr. A. Nos. 9202, 9203.

Appellate Department, Superior Court, Orange County, California.

Feb. 14, 1995.

[33 Cal.App.4th Supp. 20] John R. Farris, Jr. and Mark D.  
Sutherland, Santa Ana, for defendants and appellants.

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Michael R. Capizzi, Dist. Atty., Maurice L. Evans, Chief Asst.  
Dist. Atty., Wallace J. Wade, Asst. Dist. Atty., David L. Himelson and

G. Stewart Hicks, Deputy Dist. Attys., for respondent.

## OPINION

GOLDSTEIN, Presiding Judge.

In these two unrelated cases we address an issue that arises with some frequency in speeding cases where radar has been used to enforce a posted speed limit. Can the People meet their initial burden of showing that the combination of a prima facie speed limit and the use of radar enforcement did not create a speed trap with no more than the citing officer's testimony as to the existence and contents of a current engineering and traffic survey for the pertinent segment of roadway? They cannot.

We hold that the People, whenever radar is involved in the enforcement of a posted speed limit, must produce, in the courtroom, either the original traffic and engineering survey for the location of the citation or a certified copy of that survey which (1) was conducted within the five years preceding the alleged violation and (2) justifies the posted speed limit.

## FACTS

Defendant Earnest was cited by Sergeant Smith of the Santa Ana Police Department for driving through a 35-mile-per-hour zone at 48 miles per hour. Defendant Perlman was cited by Officer O'Connor, also of the Santa Ana Police Department, for driving through a 40-mile-per-hour zone at 55 miles per hour. The officers were using radar. The defendants were tried on the same day before the same judge and, according to the respective settled statements, neither of the citing officers produced in the courtroom a current engineering and traffic survey justifying the posted speed limits but both testified that such a survey had been conducted within the past five years. 1 The People argue that both officers "testified from the certified copy of [33 Cal.App.4th Supp. 21] the engineering and traffic survey" which would indicate that the certified copy was present in the courtroom;

however, this court must presume that the settled statement certified by the trial court is an accurate account of the trial. (People v. Beltran (1981) 124 Cal.App.3d 335, 340, 177 Cal.Rptr. 262; Cross v. Tustin (1951) 37 Cal.2d 821, 826, 236 P.2d 142.) Both defendants were found guilty of violating Vehicle Code section 22350 and ordered to pay fines. These appeals followed.

## DISCUSSION

Appellants' primary argument is simple--that the citing officers' testimony about the engineering and traffic surveys conducted on the pertinent segments of roadway was insufficient to rebut the presumption of a speed trap that arose when those officers used radar to enforce posted speed limits. We agree.

It is the People's burden, as a part of their prima facie case in any Vehicle Code section 22350 prosecution where radar is involved, to demonstrate that a motorist exceeding the posted speed limit was not snared in an illegal speed trap and, unless the People can show that the offense occurred on a "local road," 2 they must produce a traffic and engineering survey, no more than five years old, that justifies the posted speed limit. (Veh.Code, §§ 40801, 40802,

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subd. (b), 40803; People v. Goulet (1992) 13 Cal.App.4th Supp. 1, 9, 17 Cal.Rptr.2d 801; People v. DiFiore (1987) 197 Cal.App.3d Supp. 26, 30, 243 Cal.Rptr. 359; People v. Peterson (1986) 181 Cal.App.3d Supp. 7, 10, 226 Cal.Rptr. 544; People v. Flaxman (1977) 74 Cal.App.3d Supp. 16, 22, 141 Cal.Rptr. 799; People v. Sterritt (1976) 65 Cal.App.3d Supp. 1, 6, fn. 4, 135 Cal.Rptr. 522; People v. Halopoff (1976) 60 Cal.App.3d Supp. 1, 5, 131 Cal.Rptr. 531.) If the People fail to demonstrate the nonexistence of a speed trap, no evidence as to the vehicle's speed may be admitted (Veh.Code, § 40803, subd. (a)), the citing officer is not competent to testify (Veh.Code, § 40804), and, if such evidence is admitted, the court has no jurisdiction to convict (Veh.Code, § 40805).

It is beyond dispute that the Legislature strongly disapproves of speed traps. (See *People v. Sullivan* (1991) 234 Cal.App.3d 56, 58-59, 285 Cal.Rptr. 553.)

[33 Cal.App.4th Supp. 22] Here, it is clear from the settled statement that a current engineering and traffic survey (original or certified copy) was not physically present in the courtroom during appellants' trials.

The People have trotted out one of their standard arguments--that the presence of the engineering and traffic summary in the courtroom is not required since their only burden under Vehicle Code section 40803, subdivision (c) is to submit "evidence ... that a survey was conducted within five years." The thrust of that argument is that the existence of the survey--regardless of the contents--is sufficient to rebut the presumption of a speed trap. We are not persuaded by the argument. Under that theory, the People could rebut the presumption of a speed trap on a roadway with a posted speed limit of 25 miles per hour by merely submitting evidence that a survey had been conducted within the past five years even though it established that the posted speed limit should have been 50 miles per hour (say, because the 85th percentile was between 50 and 54 miles per hour and there were no hidden hazards to justify a reduction below the first 5 mile-per-hour increment below the 85th percentile [see section 8-03.3.B.2.b of the California Department of Transportation Traffic Manual] ).

Vehicle Code section 40803 provides that: "(a) No evidence as to the speed of a vehicle upon a highway shall be admitted in any court upon the trial of any person in any prosecution under this code upon a charge involving the speed of a vehicle when the evidence is based upon or obtained from or by the maintenance or use of a speed trap.

"(b) In any prosecution under this code of a charge involving the speed of a vehicle, where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects, the prosecution shall establish, as part of its prima facie case, that the evidence or testimony presented is not based upon a speed trap as

defined in subdivision (b) of Section 40802.[ 3

"(c) When a traffic and engineering survey is required pursuant to subdivision (b) of Section 40802, evidence that a traffic and engineering survey has been conducted within five years of the date of the alleged violation or [33 Cal.App.4th Supp. 23] evidence that the offense was committed on a local street or road as defined in subdivision (b) of Section 40802 shall constitute a prima facie case that the evidence or

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testimony is not based upon a speed trap as defined in subdivision (b) of Section 40802."

In their responding briefs, the People contend: "The language of this statute is clear and unambiguous. The fact that a survey had been conducted and considered as evidence by the trial court established the prima facie case that the evidence of appellant's speed was not the result of a speed trap, and, in the instant case, appellant has not refuted this fact. The speed trap statutes are a creature of the legislature, not the courts. When the legislature passes a statute which establishes what evidence constitutes a prima facie case (i.e., which evidence is not based on a speed trap), there is no need for the court to interpret the statute." (Original Italics.)

When read with the other statutes in the antispeed-trap legislative scheme, Vehicle Code section 40803, subdivision (c) requires more of the People than they are willing to concede. Since Vehicle Code section 40803 must be harmonized with Vehicle Code section 40802 (People v. Comingore (1977) 20 Cal.3d 142, 147, 141 Cal.Rptr. 542, 570 P.2d 723; Bowland v. Municipal Court (1976) 18 Cal.3d 479, 489, 134 Cal.Rptr. 630, 556 P.2d 1081), the People's burden under Vehicle Code section 40803, subdivision (c) of producing "evidence" that a traffic and engineering survey was conducted within the five-year period prior to the date of the violation cannot be met unless the "evidence" produced demonstrates that the posted speed limit was justified by the data in the traffic and engineering survey. Appellate departments statewide have held that

the only acceptable "evidence" is either the original engineering and traffic survey or a certified copy of the survey. Although their opinions are not binding authority outside their respective counties (*People v. Corners* (1985) 176 Cal.App.3d 139, 146, 221 Cal.Rptr. 387; 9 Witkin, *Cal. Procedure* (3d ed. 1985) Appeal, § 777, pp. 747-748), we find that the appellate departments which have considered the issue and have followed the rationale first stated in *People v. Halopoff*, supra, 60 Cal.App.3d Supp. 1, 131 Cal.Rptr. 531, place an appropriate burden on the People in radar-involved speeding cases.

Because the People did not produce either the original engineering and traffic survey or a certified copy of it demonstrating that the posted speed limits on the pertinent segments of roadway were justified by current engineering and traffic surveys, none of their evidence as to the defendants' speeds was admissible (Veh.Code, § 40803, subd. (a)), they did not make a prima facie case against the defendants (Veh.Code, § 40803, subd. (b)), their only witnesses were incompetent to testify as to the defendants' speeds [33 Cal.App.4th Supp. 24] (Veh.Code, § 40804, subd. (a)), and the court had no jurisdiction to convict the defendants of violating Vehicle Code section 22350 (Veh.Code, § 40805).

Having concluded that reversals are required in both trials because the People failed to produce either the original engineering and traffic survey or certified copy of that survey, we do not address the other issues raised by the defendants.

## DISPOSITION

The judgments are reversed and the causes are remanded with directions to dismiss the charges against defendant Wendy Earnest and defendant Robert Perlman. (*People v. Kriss* (1979) 96 Cal.App. 3d 913, 921, 158 Cal.Rptr. 420.)

McDONALD and CHOATE, JJ., concur.

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1 According to defendant Earnest's settled statement: "[I]n support of the 35 m.p.h. posted speed limit, a certified copy of an engineering and traffic survey, conducted within 5 years of the date of the alleged violation was testified to. This showed the 85th percentile to be 38 m.p.h."

According to defendant Perlman's settled statement: "[I]n support of the 40 m.p.h. posted speed limit, a certified copy of an engineering and traffic survey, conducted within 5 years of the date of the alleged violation was testified to. This showed the 85th percentile to be 47 m.p.h."

2 Pursuant to Vehicle Code section 40802, subdivision (b), the People can rebut the presumption of a speed trap by showing, at trial, that the offense was committed on a local road, i.e., one designated as a "local road" on functional usage and federal-aid system maps as submitted to the Federal Highway Administration or, if not so designated, one that primarily provides access to residential property that is no more than forty feet wide with not more than one-half mile of uninterrupted length and not more than one traffic lane in each direction.

3 Vehicle Code section 40802 provides, in pertinent part, that: "A "speed trap" is ...:

[p] ...

[p] (b) a particular section of a highway with a prima facie speed limit provided by this code or by local ordinance pursuant to paragraph (1) of subdivision (b) of Section 22352, or established pursuant to Sections 22354, 22357, 22358, or 22358.3, which speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects. This subdivision does not apply to local streets and roads."

[p] (b) A particular section of a highway with a prima facie speed limit provided by this code or by local ordinance pursuant to paragraph (1) of subdivision (b) of Section 22352, or established pursuant to Sections 22354, 22357, 22358, or 22358.3, which speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and where enforcement involves the use of radar or other electronic devices which measure the speed of moving objects. This subdivision does not apply to local streets and roads."

**For Vascar**

105 Cal.Rptr. 212

29 Cal.App.3d Supp. 1

The PEOPLE, Plaintiff and Respondent,  
v.  
Jeffrey B. JOHNSON, Defendant and Appellant.

Cr. 23877.

Appellate Department, Superior Court, San Joaquin County,  
California.

Oct. 10, 1972.

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[29 Cal.App.3d Supp. 2] Thomas Teaford, Deputy Public  
Defender, for defendant and appellant.

John Phillips, Deputy Dist. Atty., for plaintiff and respondent.

BIDDICK, Presiding Judge.

This is an appeal from a speeding conviction in the Municipal  
Court for the Lodi Judicial District of San Joaquin County. On March  
15, 1972, at 10:35 p.m., Jeffrey B. Johnson was cited by an officer of

the Lodi Police Department for a violation of sections 22350 and 22352 of the Vehicle Code, excessive speed, travelling 43 miles per hour in a 25 mile per hour zone.

Mr. Johnson was convicted after a court trial at which the police officer testified, over objection, that he had determined the speed of the appellant's vehicle by means of a VASCAR (Visual Average Speed Computer and Recorder) device.

The appeal was presented on a settled statement. There is nothing in the statement to indicate that the police officer was not in uniform or that he was in an unmarked car.

The settled statement does not disclose whether any objection was made to the manner in which the VASCAR testimony was presented or whether any expert witnesses testified on the operation of VASCAR. The sole objection raised by the appellant is to the admissibility of VASCAR evidence under the California speed trap law. It is appellant's contention that the speed-reading of the VASCAR under the particular facts of this case was inadmissible under the California speed trap law, Vehicle Code sections 40801--40805.

The officer had measured the distance between two points, the crosswalks [29 Cal.App.3d Supp. 3] at two intersections of the street being observed, and had then parked and subsequently measured, by means of a time switch, the time it took the appellant's vehicle to travel the previously measured distance. The officer testified that he had travelled and the VASCAR device had measured the distance between the two crosswalks approximately 20 minutes prior to the timing of appellant's vehicle and that he had stopped other motorists for speeding during the 20-minute period, using the same measured distance.

The VASCAR consists of the three modular parts, 1) an adaptor which attaches to the speedometer cable; 2) a solid state digital computer which is concealed beneath the car seat; and 3) a control module consisting of two switches and a readout panel with illuminated numerals.

The VASCAR is a simple computer. Speed computation is achieved by dividing distance by time. In clocking a suspected violator, the officer flips on the time switch as the auto passes a selected landmark and flips it off when the suspect passes a second landmark. The VASCAR unit receives the distance information from the police vehicle speedometer cable. The distance may be travelled either before, during

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or after the target vehicle is timed over the measured distance. Time and distance are measured and fed into the computer which calculates the average speed to the nearest tenth of a mile per hour. The speed is then displayed in numerals on the control module. The reading remains there until a push of the reset button clears the computer for another speed check. VASCAR may be used to check a suspected speeder when the patrol car is following the target vehicle, when it is meeting the target vehicle, or when it is being followed by the target vehicle. It can also be used as it was in this case to clock a suspected violator over a previously measured distance.

There are several Vehicle Code sections, which make up the speed trap law. The law was originally enacted in 1923 and has been subsequently amended on several occasions.

Section 40801 of the Vehicle Code provides that no peace officer or other person shall use a speed trap in arresting or participating or assisting in the arrest of any person for a violation of the Vehicle Code. The section further provides that a speed trap shall not be used in securing evidence of the speed of any vehicle for the purpose of an arrest or prosecution under the Vehicle Code.

Section 40802 of the code defines a speed trap as follows:

'A 'speed trap' is a particular section of a highway measured as to distance and with boundaries marked, designated or otherwise determined in order that [29 Cal.App.3d Supp. 4] the speed of a vehicle may be calculated by securing the time it takes the vehicle to

travel the known distance.'

Section 40803 provides that no evidence as to the speed of a vehicle upon a highway shall be admitted in court for an alleged Vehicle Code violation when the evidence is based upon or obtained from or by the maintenance or use of a speed trap.

Section 40804, subdivision (a) provides that a police officer or other person shall be incompetent as a witness if their testimony is based upon the maintenance or use of a speed trap.

And finally, section 40805, in a grand finale, provides that every court shall be without jurisdiction to render a judgment of conviction against any person for a violation of the Vehicle Code involving the speed of a vehicle if the court admits any evidence or testimony secured in violation of the speed trap law.

The original speed trap law was contained in section 155 of the California Vehicle Act. The constitutionality of this act was challenged in the early days of its operation and its constitutionality was upheld in the case of *Fleming v. Superior Court* (1925) 196 Cal. 344, 238 P. 88.

In discussing the various constitutional attacks that were made on the legislation, the Supreme Court on page 349, 238 P. on page 90, discussed the legislative purpose of the speed trap law at some length:

"The Legislature, in the foregoing provision, clearly expressed its conviction that the presence of traffic officers actually patrolling the highways, dressed in distinctive uniforms, and in plain sight of all travelers on the highways, would have a most salutary effect in securing the observance of each and all of the regulations imposed upon drivers of vehicles upon the public highways. . . . The Legislature knew that a very large percentage of accidents upon public highways occurred at street intersections, that such accidents were caused by failure to observe the right of way rule, by failure to give proper signals, by failure on the part of drivers to turn at intersections in the manner prescribed by law. The Legislature quite evidently believed that many of these accidents would be prevented

in the event that officers patrolled the highway and enforced each and all the rules of the road heretofore mentioned."

'Is is not logical to suppose that the lawmaking body thought it better to prevent the commission of crime than to

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punish it after its commission, and that its members saw, in the means employed through section 155, a proper method of effectuating that laudable result? If the lawmaking bodies of the world should hit upon some means to prevent arson, burglary, or murder, thus obviating the necessity of laws to provide [29 Cal.App.3d Supp. 5] for their punishment, should we not hail the achievement as an epoch-making triumph? It is only (sic) possible, but it is extremely probable, as contended by petitioner, that the members of the Legislature had some such idea in mind as is suggested by these questions when they enacted section 155, and, if we can see the possibility of such a thing, it is enough under the rules of law affecting our power to pass upon the constitutionality of the section in question.'

In recent years, traffic law enforcement officers have made increased use of radar for the detection and apprehension of speeders. This use of radar came under attack in the courts in 1955 as being prohibited by the speed trap law.

In *People v. Beamer* (1955) 130 Cal.App.2d Supp. 874, 877, 279 P.2d 205, a judgment of conviction for speeding in the municipal court was obtained by the use of radar evidence and was upheld in the Appellate Department of the Superior Court of Alameda County. The court held that a speed trap required A particular section of the highway measured as to distance with boundaries marked, designated or otherwise determined, and that the determination of speed by radar was made without reference to any particular section of a highway, and, in fact, without reference to any highway at all.

The appellate department reasoned as follows:

'As defined in Section 751 of the Vehicle Code a speed trap consists of four elements: (1) A particular section of a highway, (2) measured as to distance, (3) with boundaries marked, designated or otherwise determined, and (4) in order that the speed of a vehicle may be calculated by securing the time it takes said vehicle to travel such known distance.

'The evidence of the experts in this case shows that the radar device in question determines the speed with which an object is moving toward or away from the device through space. It makes no difference whether the object in question is moving upon the surface of the ground or in the air, and it makes no difference whether the object is moving vertically or horizontally, or at any angle between the vertical and the horizontal.

'The determination of speed is made without reference to any particular section of a highway and, in fact, without reference to any highway at all. The distance measured by this radar device is the distance the reflecting object travels through space and not a measured distance on the highway. Highway boundaries, marked or otherwise determined, are not involved in the operation of this device. (Italics added.)

[29 Cal.App.3d Supp. 6] 'Appellant contends that this radar device is a speed trap because it measures time and distance and actually measures the distance a vehicle travels on the highway. Every determination of speed through space or over the ground involves a determination of time and distance because speed equals distance divided by time. This argument could be applied with equal force to the speedometer in the traffic officer's car when he pursues a speeder along the highway. It is too well established for argument that the officer's speedometer in his automobile is not a speed trap, even though the speedometer is actuated by the movement of the tires of the car along the particular portion of the highway which it is traveling, and incidentally measures the length of such portion.

'For the reason that the electromagnetic radar speed meter here involved determines speed through space without reference to the highway, it would seem to be clear that it is not a speed trap

within the meaning of Section 751 of the Vehicle Code and the judgment of conviction must be affirmed.'

In a subsequent Beamer case, *In re Beamer* (1955) 133 Cal.App.2d 63, 68, 283 P.2d 356, 359 a Court of Appeal dismissed a petition for a writ of habeas corpus in the same case. This court used similar reasoning to the language of the court in the Appellate Department and found that all of the elements of a speed trap were not involved in the use of radar.

'It seems quite clear that the method here used to secure the evidence that petitioner was violating the law does not fall within the prohibition of section 751. In no real sense was there 'a particular section of a highway measured as to distance and with boundaries marked, designated or otherwise determined.' While in a general sense a particular portion of the street was involved in that the effective range of the speed meter is the 175 feet effective range, forwards and backwards, from the device, that cannot be the 'particular section of a highway' mentioned in the code because only a very small portion of that section of the highway was used to ascertain the speed. Certainly, the boundaries of the area used to measure the speed were not 'marked, designated or otherwise determined', because any few inches of the roadway within the effective range of the device could be used for measuring purposes. The device may be used anywhere on the highway wherever the device is located, whether stationary or on a moving vehicle.' (Italics added.)

There have been no opinions of the appellate courts discussing the use of VASCAR. However, in 1969, the District Attorney of Humboldt County requested an Attorney General's opinion on its use. In 52 Ops.Cal.Atty [29 Cal.App.3d Supp. 7] Gen. 231 (1969), the Attorney General expressed the opinion that the VASCAR device provides a method similar to speedometer clocking and does not fall within the restrictive definition of a speed trap as defined in the Vehicle Code. The opinion noted that the use of VASCAR does not

Require a particular section of highway. The Attorney General was careful however to point out in a footnote that the VASCAR device can be used to measure a particular section of highway but expressed no opinion as to the admissibility of evidence secured from this method of operation of the device.

While it is apparent that the appellate courts have been reluctant to extend the operation of the speed trap law beyond the specific language of the statute, the factual situation here, although involving the use of a modern and reliable scientific device, comes squarely within the definition of a speed trap. There was a particular section of highway which was measured as to distance beforehand and it had boundaries which were specifically designated in order that the speed of a vehicle might be calculated by securing the time it took the vehicle to travel the known distance.

The irony of the situation is that radar, which the general public might well consider a speed trap in the commonly accepted sense of that term, is not a speed trap within the meaning of the Vehicle Code. VASCAR, another scientific device used for the same purpose, if used in a similar manner with a parked patrol car and with a previously measured distance, comes squarely within the statutory definition of a speed trap. At least, the popular and the statutory conception of a speed trap are both fulfilled in the facts of this case.

A direct and logical reading of the statute and an analysis of the Beamer opinions permits but one conclusion, if the VASCAR device is to be used as it was on Jeffrey B. Johnson, only the Legislature can make such testimony admissible.

The judgment of conviction is reversed.

SULLIVAN and CECHINI, JJ., concur.



**For Picture Radar**

**946 P.2d 894**

**MUNICIPALITY OF ANCHORAGE, Appellant,**

**v.**

**Clyde BAXLEY, Linda Weatherholt, Jeff Ullom, and Heather Siegel, Appellees.**

No. A-6420.

Court of Appeals of Alaska.

Oct. 16, 1997.

Order Denying Rehearing Nov. 19, 1997.

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Thane R. Mathis, Assistant Municipal Prosecutor, and Mary K. Hughes, Municipal Prosecutor, Anchorage, for Appellant.

Bradley K. Leutwyler, Leutwyler, Brion & Associates, Anchorage, for Appellee Baxley.

Heather Siegel, pro se.

No appearance for Appellees Weatherholt and Ullom.

Before COATS, C.J., and MANNHEIMER and STEWART, JJ.

OPINION

COATS, Chief Judge.

The Municipality of Anchorage prosecuted Clyde Baxley, Linda Weatherholt, Jeff Ullom, and Heather Siegel for speeding in a school zone, Anchorage Municipal Ordinance §§ 09.26.020 or 09.26.030.C. Each of the defendants was issued a citation based on a reading obtained from a photo-radar machine. On July 31, 1996, the municipality and the defendants appeared at a hearing before District Court Magistrates Geoffrey T. Comfort, Ron Wielkopolski, and Roy V. Williams. The magistrates, sitting jointly, heard the municipality's case against all four defendants. In its presentation, the municipality focused on proving that photo-radar was an accurate and reliable method for ascertaining and recording the speed of a motor vehicle.

Following three days of evidence and arguments, the magistrates took the case under advisement. Two months later, the magistrates issued a joint decision finding all the defendants not guilty. The magistrates first stated that, absent independent corroboration, radar results are not admissible. The magistrates next concluded, in the alternative, that even if photo-radar evidence were admissible, the evidence presented by the municipality at the hearing failed to convince the magistrates of the four defendants' guilt.

The municipality now appeals the magistrates' decision. The municipality argues that photo-radar results are admissible without independent corroboration. However, as explained below, we conclude that this issue is moot because of the magistrates' second conclusion: their conclusion that, even with the photo-radar results, the municipality's evidence at trial did not convince the magistrates of the defendants' guilt, and thus the defendants were entitled to a verdict of acquittal.

The municipality next asserts that, even though the magistrates may have acquitted

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the defendants after a trial based on the facts of the case, the

municipality is entitled to seek appellate review of the magistrates' decision. The municipality argues that such review is not barred by the double jeopardy clause because traffic offenses are not "offenses" for purposes of double jeopardy. We conclude that we need not decide this issue because, even assuming that the municipality is entitled to seek appellate review of the magistrates' verdicts, there is no reversible error in the verdicts. We therefore affirm the judgments of acquittal entered by the district court.

At the outset, we confront the municipality's assertion that the three-day hearing in front of the magistrates was only an evidentiary hearing, not a trial on the merits. To answer this assertion, we believe it necessary to detail the evidence presented at the hearing.

Before the hearing, the municipality made a motion asking the court to take judicial notice of a report from the National Cooperative Highway Research Program setting out nationwide practices on the photographic enforcement of traffic laws. The magistrates granted this motion at the beginning of the hearing.

The first prosecution witness at the hearing was Augie Henry, an administrative officer for the Anchorage Department of Public Works. Henry testified about the process used by the Municipality of Anchorage to adopt and to contract out a system of photo-radar enforcement of speed limits; the contract was eventually awarded to American Traffic Systems (ATS), a private organization, in December 1995. Henry testified that although the municipality remained in control of the photo-radar program, ATS actually operated the program and received seventy percent of the amount of collected fines. Henry then described some of the administrative aspects of the photo-radar program.

Henry testified that he also had personally seen the photo-radar photographs and driver license photographs of Ullom, Weatherholt, and Siegel, and had signed their citations in his capacity as a peace officer; Henry visually identified the defendants in the courtroom and testified that, according to the data generated by PR-100 photo-radar units, they had been speeding at the indicated times and places (school zones) when the photographs were taken.

Jim Lovell, an employee of the State of Alaska, testified that he had tested the three PR-100 photo-radar units used by ATS with various tuning forks and had verified that all three of the photo-radar units accurately measured the tuning forks' simulated speeds and otherwise performed their operations and computations correctly.

John Warner, the general manager of ATS Alaska, testified that he had participated in the training of employees, in particular Edward Owens and Gary Evans, in the operation of the PR-100 photo-radar units. Owens and Evans testified that they were employees of ATS Alaska and had been trained to and did operate the PR-100 photo-radar units at the times Weatherholt, Siegel, and Ullom (Owens) and Baxley (Evans) were photographed speeding. Owens and Evans testified that although they set up the photo-radar machine and tested it with a tuning fork when first arriving at and again before leaving the monitoring scenes, the machine detected and photographed speeding vehicles automatically. Owens and Evans testified that although they did watch the flow of traffic, they had no part in personally deciding, verifying, or taking any notes regarding which or whether cars were speeding when they were photographed.

The municipality's next witness was Clint Davis, who designed the photo-radar unit, the PR-100. The court recognized Davis as a qualified expert in electrical engineering. Davis testified at length about the PR-100 photo-radar device. He testified that the PR-100 was designed to accurately measure the speed of vehicles and to photograph the speeding vehicles (as they approach and after they pass the photo-radar unit) and to print the speed and time onto the photographs. Using the photo-radar photographs of the defendants and using a measuring device, Davis testified that the PR-100 unit had been parked at the correct angle to accurately record Ullom, Siegel, Baxley, and Weatherholt. Davis testified that the PR-100 unit

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was fully automatic in its operation and that, other than deployment and testing of the unit, the main role of the human operator was to ensure the machine was not vandalized and to reload film as

necessary. He also testified about nineteen separate operations that the unit performs to ensure the PR-100's accuracy.

The municipality's next witness was Robert Davies, the director of field services for ATS. Davies had nearly twenty-five years' experience in traffic enforcement with the New Zealand police. New Zealand was one of the early (1993) customers of the PR-100 photo-radar. Davies testified that he had conducted extensive testing of the PR-100 units in New Zealand and that the units had performed well. He testified that the units were used by the New Zealand police, and in Riverside, California; Paradise Valley, Arizona; Ft. Collins, Colorado; and Commerce City, Colorado. Davies also, as had Davis earlier, measured the photo-radar photographs of the four defendants and confirmed that these measurements showed that the photo-radar unit had been parked at the proper angle and that the four defendants had been speeding as shown on the photo-radar photographs.

Jeff Ullom was the only defendant who testified at the hearing. Ullom testified that at the time he was cited for speeding, a time he could identify because of the flash from the photo-radar unit, his speedometer indicated that he was driving at the twenty-mile-per-hour speed limit in the school zone.

Two months after the hearing, the magistrates issued written findings and conclusions. In their decision, the magistrates referred to the hearing as the defendants' trial. The magistrates found that the scientific principles upon which photo-radar was based were well established and had attained general acceptance in the relevant scientific community. <sup>1</sup> However, the magistrates observed:

In stationary and moving radar trials in the State of Alaska, this court has required testimony by a trained police officer who is certified to operate the equipment. That officer has to first observe a speeding vehicle and formulate an opinion as to the speed of the vehicle before activating the radar. If the officer receives a reading consistent with his or her observations the officer will then pursue the vehicle and issue a citation. Radar is used as a corroborative device.

The magistrates found that the municipality's assertion that the

photo-radar device accurately recorded the speeds of the defendant motorists rested on the testimony of Clint Davis and Robert Davies, witnesses the magistrates described as individuals who have a great deal at stake financially and who will testify to whatever it takes to convince the court in a given case.

Obviously a favorable decision by this court could be cited elsewhere and would be of great value to American Traffic Systems in fostering the growth of a market for its product. Thus, the pecuniary interest of Mr. Davis and Mr. Davies goes far beyond the Anchorage program and would appear to be so great as to call into question their objectivity when discussing their product. This is not the sort of testimony that persuades this court to find the PR100 evidence of speeding admissible. Moreover, were we to find this evidence admissible, the questionable reliability of the testimony renders it insufficient to sustain a conviction beyond a reasonable doubt in each of these cases. Accordingly, the court orders the cases against the above defendants dismissed.

The municipality appeals this decision.

The municipality asks us to reverse the magistrates' conclusion that photo-radar evidence is inadmissible without corroboration. However, that issue is moot. The magistrates decided in the alternative that, even if photo-radar evidence is admissible, the municipality still failed to establish the defendants' guilt beyond a reasonable doubt.

It seems clear from the record that the proceeding that took place in district court was a trial. The magistrates' decision refers to the hearing as a trial, and the municipality appears to have put on its entire case against the defendants, including having them identified and attempting to establish that they were speeding on the dates and times in question. One of the defendants testified that he was not speeding. Furthermore, in ruling against the municipality, the magistrates concluded:

This is not the sort of testimony that persuades this court to find the PR100 evidence of speeding admissible. Moreover, were we to find

this evidence admissible, the questionable reliability of the testimony renders it insufficient to sustain a conviction beyond a reasonable doubt. Accordingly, the court orders the cases against the above defendants dismissed.

The government may not appeal an acquittal of a defendant after a trial (of a double-jeopardy "offense") because such an appeal would violate the defendant's right against double jeopardy. *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571, 97 S.Ct. 1349, 1354-55, 51 L.Ed.2d 642 (1977); *Steve v. State*, 875 P.2d 110, 115 (Alaska App.1994); *State v. Martushev*, 846 P.2d 144, 147-48 (Alaska App.1993). In determining whether the trial court's ruling was a judgment of acquittal, the appellate court "must determine whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." *Martin Linen*, 430 U.S. at 571, 97 S.Ct. at 1355; *Martushev*, 846 P.2d at 148. "[D]ismissal on legal grounds that do not require resolution of the factual elements of an offense ... does not amount to a judgment of acquittal, regardless of its timing or the label attached thereto." *Martushev*, 846 P.2d at 148.

The municipality contends that the magistrates' ruling was not a judgment of acquittal because it did not "[represent] a resolution ... of some or all of the factual elements of the offense charged." The municipality points out that the magistrates never addressed whether any of the defendants drove above the posted speed limits at the time and place alleged. However, the municipality's case rested on the accuracy of the photo-radar unit. Once the magistrates found that they had a reasonable doubt about the accuracy of the photo-radar, the municipality did not have enough evidence to convict. The magistrates made a factual ruling that "the questionable reliability of the testimony [in support of photo-radar evidence] renders it insufficient to sustain a conviction beyond a reasonable doubt." This was an explicit finding that there was insufficient evidence at trial to prove the defendant's guilt beyond a reasonable doubt: in short, an acquittal based on the factual evidence.

The municipality argues that even if we find that the magistrates acquitted the defendants at trial, the double jeopardy clause does not

preclude our review of acquittals for traffic infractions. 2 However, even if we accepted the municipality's argument, it would not lead to our reversing the decision of the magistrates.

Even assuming that we have the authority to review these acquittals, we would only review the magistrates' decision to determine whether the evidence presented would allow a reasonable fact finder to conclude that the municipality had failed to prove its case. Here, the municipality's case rested on the credibility of the photo-radar witnesses. The magistrates, who heard the witnesses testify, were in a much better position to determine their credibility than we are. In general, the credibility of witnesses is exclusively a question for the fact finder. See *Simpson v. State*, 877 P.2d 1319, 1320-21 (Alaska App.1994); *Daniels v. State*, 767 P.2d 1163, 1167 (Alaska App.1989). Given the magistrates' resolution of the witness credibility issue, a reasonable fact finder could have concluded that the municipality had failed to prove its case. Thus, even if we were to review the magistrates' verdicts, we would find no reversible error.

The judgments in this case are AFFIRMED.

#### CORRECTED ORDER ON REHEARING

In our decision of this case (Opinion No. 1552, issued October 16, 1997), we ruled that the issue of the admissibility of photo radar evidence was moot. We reached that conclusion because the three magistrates, sitting as triers of fact at the defendants' trials, declared that the Municipality had failed to prove the defendants' guilt even if the photo radar evidence was taken into account.

In its petition for rehearing, the Municipality argues that the issue of photo radar is not moot because there are more than 3000 other traffic cases currently pending before the district court that raise the same issue. The Municipality's argument is based on a misunderstanding of the mootness doctrine.

An issue is moot when decision of the issue has ceased to be relevant to the resolution of the litigation before the court--when "it

has lost its character as a present, live controversy". *Kleven v. Yukon-Koyukuk School District*, 853 P.2d 518, 523 (Alaska 1993). The present litigation concerns the Municipality's prosecution of the four defendants (Baxley, Weatherholt, Ullom, and Siegel) for speeding in a school zone. The three magistrates who acted as the triers of fact at the defendants' trial concluded that, even when the Municipality's photo radar evidence was considered, the cases against the defendants were not proved. Given the magistrates' verdicts, it makes no difference whether the magistrates were right or wrong when they ruled that the Municipality failed to present a sufficient evidentiary foundation for admission of the photo radar results. While the admissibility of photo radar evidence may affect the outcome of the 3000 cases waiting to be tried, it cannot affect the outcome of the present four defendants' cases. As far as this appeal is concerned, the issue is moot.

The municipality seeks rehearing on a second ground. For the first time, the Municipality argues that the government's burden of proof in a traffic prosecution is "preponderance of the evidence" rather than "beyond a reasonable doubt". The Municipality argues that the magistrates' verdicts in this case are flawed because the magistrates applied the "beyond a reasonable doubt" standard when they found the defendants not guilty.

Alaska law does not allow a party to raise a new argument in a petition for rehearing. *Booth v. State*, 903 P.2d 1079, 1090 (Alaska App.1995). The Municipality's failure to raise this point during the normal course of the appeal means that the point is waived.

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1 This test for admission of novel scientific evidence is governed by *Frye v. United States*, 293 F. 1013 (D.C.Cir.1923), adopted in *Pulakis v. State*, 476 P.2d 474 (Alaska 1970). See *Harmon v. State*, 908 P.2d 434, 439 (Alaska App.1995).

2 The municipality cites *Carlson v. State*, 676 P.2d 603 (Alaska App. 1984), in which this court held that traffic violations were not double-jeopardy "offenses" for the purpose of precluding subsequent

prosecutions for criminal offenses arising out of the same conduct. We have never decided whether the government may appeal from an acquittal of a traffic violation; courts from other jurisdictions are divided on the issue. Compare, e.g., *State v. Knoles*, 199 Neb. 211, 256 N.W.2d 873 (1977); *Commonwealth v. Walczak*, 440 Pa.Super. 339, 655 A.2d 592 (1995), with *Park Forest v. Fagan*, 64 Ill.2d 264, 1 Ill.Dec. 59, 356 N.E.2d 59 (1976).

**IZER v. THE STATE**.A98A2475.(236 Ga. App. 282)(511 SE2d 625) (1999)JOHNSON, Chief Judge.Speeding. Gwinnett State Court. Before Judge Greene.

After a bench trial, David Izer was found guilty of speeding. He appeals from the conviction, claiming that evidence obtained from a laser speed detection device should not have been admitted because the state failed to introduce any evidence establishing the reliability of laser-based speed measuring techniques. We agree."In Harper v. State, 249 Ga. 519, 525 (292 SE2d 389) (1982), the Supreme Court held that the test for admissibility of novel scientific evidence is whether the procedure or technique has reached a scientific stage of verifiable certainty, or . . . whether the procedure rests on the laws of nature.

The court went on to say that once a procedure has been recognized in a substantial number of courts, a trial judge may judicially notice, without receiving evidence, that the procedure has been established with verifiable certainty, or that it rests upon the laws of nature." (Citations and punctuation omitted.) Hubbard v. State, 207 Ga. App. 703, 704 (429 SE2d 123) (1993). "The trial court may make this determination from evidence presented to it at trial by the parties; in this regard expert testimony may be of value.

Or the trial court may base its determination on exhibits, treatises or the rationale of cases in other jurisdictions." (Citations and punctuation omitted.) Smith v. State, 250 Ga. 438, 440 (4) (298 SE2d 482) (1983); Manley v. State, 206 Ga. App. 281 (424 SE2d 818) (1992).At trial, the arresting officer testified that he was certified to operate the device, that the particular unit was approved by the Department of Public Safety, and that the device had been tested and was working properly on the date in question.

However, the state did not introduce any expert testimony to establish that the technique of using laser-based devices to measure vehicle speed has reached a scientific stage of verifiable certainty. See generally *Caldwell v. State*, 260 Ga. 278, 286 (1) (b) (393 SE2d 436) (1990). Nor did the state bring to the trial court's attention any exhibits, treatises or cases from other jurisdictions establishing the reliability of the technique. Of course, as noted above, once a procedure or technology has been recognized in a substantial number of courts, or has been utilized for a significant period of time and expert testimony has been received thereon in case after case, a trial court may take judicial notice of the device's reliability and acceptance. See *Hawkins v. State*, 223 Ga. App. 34, 36 (1) (476 SE2d 803) (1996).

The trial court does not have to keep reinventing the wheel; a once novel technology can and does become commonplace. *Id.* Surprisingly, we have not yet reached that stage regarding laser technology. While the use of radar as a technique for measuring speed and its admissibility as scientific evidence is widely accepted in Georgia and other states, see discussion in *Lattarulo v. State*, 261 Ga. 124, 126 (3) (401 SE2d 516) (1991), the use and admissibility of laser evidence has apparently not been explored by the appellate courts of this state. The state has not shown the two techniques to be the same. Only a few courts in other jurisdictions have published opinions discussing the issue of the scientific acceptability or reliability of laser-based speed detection devices.

See *In the Matter of the Admissibility of Motor Vehicle Speed Readings Produced by the LTI Marksman 20-20 Laser Speed*

Detection System, 714 A2d 381 (1998) (use of lasers to calculate vehicle speed is generally accepted in the scientific community, is valid and reasonably reliable, and should be received as evidence of speed; no expert testimony is required); *People v. Clemens*, 642 NYS2d 760 (1995) (scientific expert proved the reliability and acceptance within scientific community of laser gun as accurate means of measuring speed); *People v. Depass*, 629 NYS2d 367 (1995) (use of laser device was based upon well-accepted scientific principles and could be accepted in court as accurate method of measuring vehicle speed; expert testimony was also presented); *Goldstein v. State*, 664 A2d 375 (Md. 1995) (laser evidence admissible where statute so provides or state proves technique is generally accepted in scientific community; parties stipulated that the use of lasers to measure speed was generally accepted in scientific community and trial court made extensive investigation into the reliability of laser speed measurements).

Although these courts have accepted laser evidence, in some cases only with expert testimony, it cannot be said that a substantial number of courts have recognized the technique. See generally *Hawkins*, supra. Considering the dearth of authority showing the scientific certainty of the technique, as well as the absence of expert testimony on the subject, the trial court erred in admitting the evidence. See generally *Gentry v. State*, 213 Ga. App. 24, 25 (2) (443 SE2d 667) (1994); compare *Allison v. State*, 179 Ga. App. 303, 306-308 (1) (346 SE2d 380) (1986), rev'd on other grounds, 256 Ga. 851 (353 SE2d 805) (1987). The state argues that laser evidence must be admitted because the legislature has included in its definition of acceptable methods for detecting speed any speed-measuring device based upon "the speed timing principle of laser." See OCGA 40-14-1 (4).

That the legislature included laser-based devices in the definition of "[s]peed detection device[s]" does not mean that evidence obtained from laser-based devices is not, at the same time, "novel scientific evidence." Novel scientific evidence is not admissible in court until it has reached a scientific stage of verifiable certainty. See Gentry, supra. Indeed, the admissibility provisions of the statute at issue concern whether a particular device is in good working order, which officers may use the device, and under what circumstances it may be used. The statute does not concern the threshold issue of whether the novel scientific principles upon which the device is based are verifiably certain or rest upon the laws of nature. See OCGA 40-14-1 (4); 40-14-4; 40-14-5; 40-14-6.

In Georgia, statutes are to be construed in harmony with existing law; their meaning and effect will be determined in connection with, among other things, the common law and the decisions of the courts. *Hillman v. State*, 232 Ga. App. 741, 743 (1) (b) (503 SE2d 610) (1998). We will not presume that the legislature intended to effect a greater change in existing law than is clearly apparent. *Id.* We hold that the inclusion of laser-based devices in the definition of "[s]peed detection device[s]," without more, does not vitiate the state's burden of satisfying the requirements applicable to "novel scientific evidence." The state's reliance on *Wiggins v. State*, 249 Ga. 302 (290 SE2d 427) (1982), is misplaced. The challenge there was to the admission of radar evidence on the grounds of hearsay and lack of authentication of documents. *Id.* at 304-305 (2) (a), (b).

This case involves a laser device, not radar; radar has long been accepted as reliable. See *Lattarulo*, supra. Moreover, this case does not concern hearsay or authenticity issues but, as noted above, the reliability and acceptance of the scientific principles involved. The trial court erred in admitting the readings obtained from the laser-based speed detection device. See *Hubbard*, supra. That being the only

evidence supporting Izer's conviction, the judgment of conviction must be reversed. Clark & Towne, David E. Clark, Jessica R. Towne, for appellant.

DECIDED FEBRUARY 5, 1999.