

Evidence - Admissibility of Radar Speedmeter Readings

Thomas A. Savignac

Follow this and additional works at: <http://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

Repository Citation

Thomas A. Savignac, *Evidence - Admissibility of Radar Speedmeter Readings*, 38 Marq. L. Rev. 129 (1954).
Available at: <http://scholarship.law.marquette.edu/mulr/vol38/iss2/5>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

RECENT DECISIONS

Evidence—Admissibility of Radar Speedmeter Readings—The defendant was charged with exceeding the speed limit while operating a bus on the New Jersey Turnpike. The apprehension of the defendant was effected through the use of a radar speedmeter.¹ The State offered evidence of the accuracy and fitness of the speedmeter for use in detecting speed of moving vehicles by an electrical engineer, qualified as an expert. The State then offered evidence of the radar speedmeter readings to prove the speed of the bus at the time of the violation. Convicted on this evidence, the defendant appealed on the grounds that the court had permitted testimony to be given on the accuracy of this device by one not qualified as an expert, and further that the court had permitted hearsay testimony to be given by the officers who tested the accuracy of the radar device before the arrest. *Held*: Affirmed. The qualifications of the expert witness were sufficient to permit his testimony as to the operation and the accuracy of the radar speedmeter. The use of radio communication by the officers testing the device was merely incidental, and did not make their testimony relating to the tests hearsay, where each officer testified to independent facts not relying upon information relayed to each other over the two-way police radio.² *State v. Dantonio*, 31 N.J. Super. 105, 105 A.2d 918 (1954).

A prior New York decision held the testimony of the officers relating to the test of the radar device, in an attempt to show the accuracy of the device at the time of arrest, to be hearsay. There the court said:

“It seems clear when Officer Kelly testified that the reading on the dial in the radar car corresponded to the reading of the

¹ The radar equipment used in the apprehension of speeders consists of a black box called the transmitter placed on the police car facing the approaching traffic. The transmitter casts out a cone shaped beam on the road several hundred feet behind the police car. The distance at which this beam will accurately reflect off an approaching vehicle and return the frequency or wave to the receiving antenna depends on the height at which the transmitter is placed from the ground and the angle at which it is placed to the road. The reflected frequency is converted to miles per hour in the radar speedmeter and the meter needle registers the speed of the vehicle.

Two police cars are used in the operation, one with the radar device setup parked along the road called the “radar car” and the other car parked about one-quarter to one-half mile up the road called the “pickup car.”

The officer in the radar car watches the meter in his car while passing vehicles go through the beam; and when a violation of the speed limit is committed, the officer notes the color, model and license number of the car and radios this description ahead to the pickup car. The pickup officer, during daylight hours, flags down the offender and issues a summons. At night several pickup cars park close to the radar car; and when an offender's license number is given to them over the radio, they pursue the speeder and issue a summons.

² To test the accuracy of the radar equipment before using it to apprehend speeders, one officer drives his car through the beam while maintaining two-way radio contact with the officer in the radar car. This officer relays his speed as indicated by his speedometer, when he is approaching and passing through the radar beam, to the officer in the radar car. The officer in the radar car by

speedometer in the pickup car, he was relying upon what Officer Chaplin had told him over the radio; and when Officer Chaplin testified that the reading on the dial in the radar car corresponded with the reading on the speedometer of the pickup car, he was relying on what Officer Kelly told him over the radio. There, the testimony of each as to the reading on the instrument of the other was hearsay . . . the trial court erred in receiving their testimony over objection."³

Since the burden is upon the State not only to establish by expert testimony that the radar speedmeter is a proper device for measuring speed, but also that the instrument in question was accurately functioning at the time of arrest, it is essential that the testimony of these officers be removed from the realm of hearsay evidence so as to be properly introduced in the State's case. The New Jersey Court pointed out that each officer testified to what he in turn observed during the test of the radar speedmeter to establish the fact that the device was properly functioning at the time of arrest. Neither officer need testify as to the radio communication carried on during the test to establish what took place. Each officer was subject to cross examination on his particular observance. The New Jersey decision is further distinguished from the New York decision in that the officers using radar on the New Jersey Turnpike not only rely on their visual reading of the meter at the time of the check test, but they also use a graph machine attachment which registers the speed of the auto passing through the radar beam on paper. The officer in the radar car then notes in writing, alongside the graph reading, a description of the auto going through the radar beam at that time. This graph reading is submitted in evidence to substantiate the speeding proof. This same type of graph reading may be submitted to establish the accuracy of the radar speedmeter before it is put into use. Thus an officer testifies as to the speed his car was traveling when he passed through the radar beam, and the officer in the radar car testifies as to the speed the radar speedmeter indicated when the pickup car went through the beam; in addition, a graph written recording of the speedmeter's reading is introduced into evidence. In this way there is both oral and written evidence to establish the accuracy of the machine at the time of use and the speed of the driver at the time of the violation.⁴

The New York Court, in holding contrary to the present case, indicated that a contrary ruling on the evidence might have been had if the written record of the test had been offered and introduced into evidence.

radio relays the speed of the pickup car as registered on the radar speedmeter to the officer in the pickup car.

³ *People v. Offerman*, 204 Misc. 769, 125 N.Y.S.2d 182 (1953).

⁴ 31 N.J. Super. 105, 105 A.2d 918 (1954).

"Although the people claim that a record was made at the time of these transactions, no such record was offered in evidence, as provided by 374-A of the Civil Practice Act."⁵

Hearsay evidence has been defined as:

"evidence which derives its value, not solely from the credit to be given to the witness upon the stand, but in part from the veracity and competency of some other person."⁶

The primary reason for the rule against hearsay evidence might properly be summed up by saying the declarant is not on the witness stand and hence not subject to cross examination. Applying this rule and its reason to the New York decision it seems obvious that to question one officer about what another officer told him falls clearly within the realm of hearsay. However, this hearsay evidence is eliminated in the New Jersey decision where each officer is asked to testify with regard to what he observed at the time of the test of the radar in his individual function. These officers are not relating what they were told by each other, and each officer is subject to cross examination on his particular testimony. It would seem that this independent testimony of each officer, supplemented by written records of the tests of the speedometer and of the violation, would constitute proper evidence of the speeding violation without a violation of evidence rules.

The New Jersey decision held that the State had satisfied the burden of proof necessary to substantiate the charge of speeding by allowing the radar speedometer readings and testimony into evidence. However, the New York Court recommended in their decision, and the New Jersey Court adopted this recommendation in their decision, that

"The legislature in its wisdom might see fit to declare that the reading of an electrical timing device similar to the one here may be admitted in evidence as prima facie evidence of the speed of the automobile of an accused, after such device has been certified as accurate by the authority designated by the legislature. By such legislation the people will be relieved of the burden of proving the accuracy of the electrical timing device upon each trial by expert testimony. The traveling public will be protected against convictions based upon the reading of an unproven and possibly inaccurate device, and of equal importance, the rules of evidence will not be violated."⁷

Since the use of radar has been accepted in scientific fields for other purposes than speed detection of vehicles, it is now a question whether or not this speedometer is acceptable to the scientific fields as sufficiently accurate to serve such a purpose. The courts have held that when an instrument is recognized in scientific fields as acceptable and can be shown by tests to be reliable, it will be judicially acceptable. The New

⁵ 204 Misc. 769, 125 N.Y.S. 2d 179 (1953).

⁶ 20 AM. JUR., *Evidence* §451, p. 400.

⁷ *Supra*, notes 4 and 5.

Jersey decision with its proper expert testimony and sufficient evidence properly submitted on the tests of the device is an indication that the courts are ready to accept it.⁸

There as yet has been no appeal taken to the Wisconsin Supreme Court on the use of a radar speedmeter in the case of a speeding violation on Wisconsin highways. One case at the trial court level has been decided in which the defendant was convicted as charged through use of the device in question.⁹ In that case the State procured an expert witness who testified regarding the principle and accuracy of the radar device, and officers were permitted to testify regarding their testing of the device over the hearsay objection of the defendant. The court held that it was satisfied by the expert testimony that the radar speedmeter was a proper device to record speed, and that since both officers were present to testify to the test of the speedmeter and were subject to cross examination, their testimony was not hearsay. The officers in this case submitted in evidence the written records of the speeding violation made at the scene of the violation. At the present time the burden rests with the State, at each trial, to establish the acceptability of the radar speedmeter as a proper instrument to measure speed and its accuracy as of the time of the arrest.¹⁰ This will continue to involve "lengthy litigation and appeals."¹¹

Perhaps the legislature will come to the assistance of the prosecution in establishing the scientific worth of this device. As to the objection on the ground of hearsay evidence used to prove the State's case, it would appear that the New Jersey decision has pointed out the methods of its avoidance; this objection should present little difficulty where there is offered in evidence testimony by each officer as to his independent observations while testing the device and at the time of arrest, along with written records of the accuracy of the speedmeter at the time of test and arrest.

THOMAS A. SAVIGNAC

Federal Criminal Procedure—"Plain Error" in Instructions—
Defendants were convicted of conspiring to defraud the United States by obstructing the Bureau of Internal Revenue in its assessment and collection of taxes. Defendant Benater assigned as error the refusal of the district court to give an instruction requested by defendants to the effect that the alleged conspiracy, so far as defendant Benater was con-

⁸ See Rooney, *Admissibility of Radar Speedmeter Readings*, 28 TUL. L.REV. 398-400 (1954).

⁹ *State v. Leuch*, District Court of Milwaukee County, No. 50971, February 3, 1954, Judge Gregorski, presiding. However, this decision was reversed on the facts by a jury on appeal to the Circuit Court of Milwaukee County, No. 1763.

¹⁰ *Supra*, note 5.

¹¹ *Supra*, note 4.