

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

AGAINST

JAROSLAW CICHORCZYK

P R O C E E D I N G S A T T R I A L

BEFORE HIS WORSHIP JUSTICE OF THE PEACE
H. DIAMOND, on May 2nd, 2000, at KEELE STREET
COURTROOM 702, 7:00 P.M.

CHARGE: Section 128, H.T.A
 Speeding

APPEARANCES

Prosecutor for the Crown
Agent for the Defendant

Ms. E. Daniel
Mr. P. Periti

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ONTARIO COURT OF JUSTICE

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MS. DANIEL: Number five on the list,
Cichorczyk, Cichorczyk.

MR. PERITI: Good evening, Your Worship.
Paul Periti appearing as agent for the
defendant, who is coming before the
Court and ready to proceed, where this
is a Charter application.

MS. DANIEL: Yes.

This matter for Officer 163...sorry,
1631 yes, it is my understanding that
Officer 1631...okay.you're present.
We are prepared to proceed with this matter
then.

MR. PERITI: Your Worship, the fact
is (indiscernible). I know what my
friend's position is in regards to service
but I have personally served in fact
the Attorney General's Officer of Canada and
Ontario. We would normally attach a
photocopy to the Information sometime
afterward. Sometime they don't get
attached. The original is in our file.
Unfortunately the original is on it's
way back from Brockville, so it will
be with my partner, Miss Blancha (PH)
had a case this morning at nine o'clock
in Brockville and is expected to be
back in plenty of time for this particular
matter.

I don't know what my friend's position
is on...if she's conceding that I have
affidavits. Other than that, I can

testify in the proceeding, saying that I have served the Attorney General's Office of Canada and of Ontario and I am quite prepared to do that and it was done back in November when the motion was filed.

MS. DANIEL: I am satisfied, obviously, that the Provincial Prosecutor's Office was served in the appropriate amount of time.

I will leave it in your hands, Your Worship, with respect to the issue of service regarding the Attorney General's offices.

THE COURT: It's not in my hands, are you satisfied?

MS. DANIEL: Well in the absence of any documentation I can't be satisfied that there was service.

THE COURT: You are not then?

MS. DANIEL: I am not satisfied.

MR. PERITI: Your Worship, if sworn in, I can give evidence with respect to the faxing to the Attorney General's Office of Canada and Ontario.

THE COURT: Go ahead.

CLERK OF THE COURT: State your name?

MR. PERITI: Paul Periti.

CLERK OF THE COURT: Do you swear that the evidence you are about to give --

THE COURT: I think this is now going to involve you as a witness at this

trial, however.

MR. PERITI: The unfortunate part of it is, it's not with respect to the trial, it's with respect to the service -
THE COURT: It's the trial we are at now, isn't it?

What do you wish to do.

MR. PERITI: Had I been counsel, Your Worship, then my word would have been good enough, but unfortunately because I am not counsel I am not (indiscernible) the Court.

THE COURT: Well I believe that some of your fellow agents that's perhaps created that difficulty now, as a result of a case that's been recently from Barrie and I have repercussions on this and a lot of other things.

MR. PERITI: Well in that case, I would ask that the matter be stood down to see if I can locate the Affidavit.

THE COURT: Sure.

MR. PERITI: Thank you, Your Worship.

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- - U P O N R E S U M I N G:

MS. DANIELS: I do believe number five, the matter on the list for Cichorczyk.

MR. PERITI: Good evening, Your Worship. Paul Periti appearing as agent for the

defendant, who is before the Court.
My colleague Miss Blanka (PH) has arrived.
I do have the Affidavit of Service for
my friend.

THE COURT: Yes.

MR. PERITI: Thank you, Your Worship.

THE COURT: Has he been arraigned?

CLERK OF THE COURT: No he has not Your
Worship.

Stand up please sir.

Your name for the record please?

THE DEFENDANT: Jaroslaw Cichorczyk.

CLERK OF THE COURT: Sir, you are charged
on or about the 7th day of April, 1999,
at 10:45 A.M., at northbound Kipling
Avenue, in the Municipality of Toronto,
did commit the offence of speeding,
76 kilometers per hour in a 50 kilometer
per hour zone. Contrary to Highway
Traffic Act, Section 128.

MR. PERITI: Your Worship, prior to
entering a plea, I am making a motion
to have the matter Stayed under the
Charter Of Rights And Freedoms. I am
providing evidence to you that the defendant
had been prejudiced on the time (inaudible).
Your Worship, the defendant received
the traffic ticket, the Offence Notice
on the 7th day of April, 1999. I believe
we applied for a trial date for him
on the (inaudible) of April, if I recall
and sometime goes by, at which time

on the 28th of October, he has been notified of the trial date, for the 2nd day of May, 19...sorry, 2000, at seven o'clock. That is the first available date. Calculating the timeframe from today's date all the way back to the date of the offence, minus the time it took to apply for the trial, I believe one day (inaudible). Now the time is approximately one year, 24 days.

With respect to this, Your Worship, I am going to suggest to the Court that it is extremely long.

With respect to waiver, the only way the only waiver that was made was the timeframe that the defendant took to apply for a trial date, which is very minimal.

The reason for delay, Your Worship, we have to look at all the reasons and factors with respect to the (inaudible) and the officer's duty schedule, et cetera, as to why this matter has taken so long.

We've seen Courtroom 211 from 80 The East Mall close down and all those matters transferred over to this particular building.

THE COURT: Are you going to become a witness?

MR. PERITI: No, Your Worship, I am just pointing out some of the basis

5 why it is the obvious. I would also
like to point out, Your Worship, that
Courtroom 704 was opening up intermittently
to take care of some of the backlog.
However, these courtrooms no longer
exist. They did exist at one time and
for whatever reason the powers that
10 be they did not see these courtrooms
be extended to take case of some of
these cases and as a result, we are
seeing cases like this one, well over
a year from the date of offence to the
date of trial.

15 Now I have no explanation for this
(inaudible) and I guess I am at a bit
of a loss here. I should have or there
should be some type of a reason why
this matter has taken so long and I
haven't any. However, maybe my friend
20 may provide the Court may be providing
the Court with some reasons as to why
this matter should be taking so long.
There is a number of ways (inaudible)
evidence. I could call the officer
25 to the stand to find out what his schedule
is like, I think that way is fine (PH).
I know this matter has taken too long
and it's not at the defendant's fault,
it is systemic reasons and I think that
should be accepted.
30 With respect to the last point I think

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should be covered, is with respect to
presence. The defendant is here and
I can ask him a few questinos with respect
to this matter.

JAROSLAW CICHORCZYK: SWORN

EXAMINATION IN CHIEF BY MR. PERITI

10 Q. Do you recall the date that you
got this ticket?

A. Not really.

Q. Why is it that you don't recall
the date?

A. Because it was a long time ago.

15 Q. And as a result of this happening
a long time ago, what happened?

A. Sir, I forget.

Q. And with respect to the details
surrounding you getting this ticket, for example the
20 road, the speed you were travelling, the speed the officer
says, all the little details, when you first saw the
officer, all the details?

A. I don't remember.

Q. Do you recall why you don't remember
them?

25 A. As I said it was a long time ago.

Q. Do you get a lot of tickets?

A. No.

Q. When you think about this ticket,
do you remember the details, do you think about the
30 details?

A. No, there is so many things come

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Cichorczyk - in-ch.
Cichorczyk - cr.ex.

up in a single day, so I don't really remember.

MR. PERITI: That would be the only
questions for the defendant, Your Worship.
Stand there a second, my friend may
have some questions for you.

CROSS EXAMINATION BY MS. DANIEL

Q. Sir, you are indicating...you are
testifying you can't recall the date?

A. No. I don't remember the day.

Q. You don't ever remember receiving
the ticket?

A. I know I receive a ticket, but I
am having problems, I don't remember.

Q. You don't remember the way the officer
approached you when he gave you the ticket?

A. No.

Q. You don't remember what weather
it was, you just remember you received the ticket?

A. I don't even remember that exactly
if he was (inaudible), I don't even remember --

Q. You don't remember the street you
were on?

A. I think it was Islington.

Q. You think.

A. Yes.

MS. DANIELS: No further questions.

THE COURT: Thank you.

MR. PERITI: Your Worship, with respect
to case law, I don't have any here before
me. I just rely on REGINA VS MORAN.

Every case should be looked at on it's own merits.

With respect to this case it dates back one year and 24 days is a long time to wait for a trial and has been waiting for over six months for his final trial date. Without there being some type of an explanation brought forward, as to why we are waiting this long and Section 5...35.1 (PH) is not complied with with respect to applying for a trial date and the date of the offence is sometime...a time that is considered practicable, I don't see as to why this matter should proceed. I think the matter should be Stayed. I think there is enough prejudice here, the timeframe, et cetera and I don't see any reason why this matter should be taking this long, Your Worship.

I asking for a remedy that the matter be Stayed.

MS. DANIEL: Well with respect to the issue of prejudice or hardship, we've heard that the defendant before the Court can't really remember the details.

However, I haven't heard any other information with respect to any evidence regarding how he has suffered hardship, whether it be financial, whether it be losing sleep over the matter, stress and I would submit that the fact of the matter

5 that the defendant does not have a vividly clear recollection of the matter, is not basis for a Stay of these proceedings. THE COURT: Thank you.

10 THE COURT: It would appear that the defendant received the ticket on the 7th of April. He made application for a trial on the 7th of April, 1999. I don't know who made that request, whether it was him or in fact an agent, but obviously whoever was anticipating there was going to be a trial and a Notice was sent out...it was issued 15 on the 28th day of November, I am sorry, the 28th day of October, 1999 and was sent out and mailed in November and in fact in November sometime, he would have been aware of the trial and from 20 then on he can't remember anything about the incident. The trial was pending, well that would have been a short period of time, some six months perhaps, that he's aware there's a trial coming up. Tonight he tells me he has no recollection 25 of it whatsoever.

30 I am of the opinion that it falls short that I should do anything other than have a trial in the matter and hear what the evidence consists of and I will make my decision when I've heard all the evidence. As far as the Motion it

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fails. I think we are going to have anarchy on the roads if we are going to start losing or dismissing or staying matters, simply because they don't get to trial, in what some people consider a year or whatever. Each one will be dealt with on its own merits and I am not satisfied and for the same reason this one should proceed.

How is his plea?

MR. PERITI: The Court's indulgence, Your Worship.

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Not guilty to the original speed, but guilty to a lesser --

THE COURT: I won't accept it.

MR. PERITI: No?

THE COURT: I will not accept it under the circumstances.

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MS. DANIEL: Well then I am prepared to call evidence with respect to the officer --

THE COURT: I am prepared to hear the evidence.

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POLICE CONSTABLE GORD YOUNG: (1631) SWORN

EXAMINATION IN CHIEF BY MS. DANIEL

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Q. Officer, on the 7th of April, 1999, were you employed and on duty as a City of Toronto Police Officer?

A. Yes I was.

Q. Did you investigate the matter before the Court?

A. Yes I did.

Q. Did you make notes of this matter?

A. Yes I did.

Q. When did you make them?

A. Directly after the incident.

Q. Have you made any additions or deletions to these notes?

A. None.

Q. Do you wish to use these notes today?

A. To refresh my memory.

MS. DANIEL: The crown requests permission for the officer to rely on his notes?

THE COURT: Go ahead.

A. Thank you, Your Worship.

Your Worship, on the 7th day of April, 1999, approximately 10:45 A.M. I was on duty in full uniform. I attended the area of Kipling Avenue near Bywood to enforce the speed bylaw, using the speed measuring laser device. This device is capable of accurately detecting the speed of moving vehicles. I tested this device before, during and after the set-up, according to manufacturers specification and found it to be in proper working order. I am a qualified laser operator.

Your Worship, Kipling Avenue in this area is a four lane highway, two lanes northbound, two lanes southbound. It is an unposted 50 kilometer per hour zone for a residential area. At this time, Your Worship, I observed a blue Ford. This vehicle was northbound in the northbound curb lane of Kipling Avenue. It was

5 rapidly approaching my position. I believed it to be speeding. It was also catching up to other vehicles that were preceding it. I directed my laser device directly at this vehicle, activated the beam and immediately received a return of 76 kilometers per hour.

10 I stopped this vehicle. It contained two occupants. I demanded the driver surrender his driver's licence, ownership and insurance card. At this time he produced to me a valid Ontario Class "G" driver's licence in the name of Jaroslaw Cichorczyk, of 2555 Lakeshore Boulevard West, Apartment 4, being in the City of Etobicoke. I issued the Offence Notice now before the Court.

15 The weather that day, Your Worship, was clear and mild, the roads were dry and in good condition. I had a clear view of this vehicle the whole time and never lost sight of it.

20 MS. DANIEL: Q. And how far...what was the intersection, was it near an intersection?

A. The intersection of Bywood.

Q. Bywood, okay and how far away north of Bywood did you pull over the vehicle?

A. Right at Bywood. I had not pulled it onto the street. The vehicle was 96 metres --

25 MS. DANIEL: I am trying to --

THE COURT: What was your question?

MS. DANIEL: What my question was?

My question was how far north of Bywood did you pull over the vehicle. My understanding was that the vehicle was going northbound.

30 A. It was northbound at the intersection.

14.
Young - in-ch.
Young - cr.ex.

Q. But you didn't go north?

A. No.

Q. Okay, all right and did you ever
lose sight of the vehicle?

A. No.

MS. DANIEL: No further questions.

CROSS EXAMINATION BY MR. PERITI

Q. Officer, can I take a look at your
notes please?

A. Sure can.

Q. Officer, you have these notes here
to refresh your memory, correct?

A. Yes sir.

Q. Do you have any independent recollection
of this particular event?

A. Not much, no.

Q. Do you have an independent recollection
of that day?

A. Not much, no.

Q. You said you tested this device,
"checked set", I notice you have written here?

A. Yes.

Q. Okay, can you please define this?

A. About the check sir?

Q. You have written down "checked set".

A. Mhm.

Q. What does that tell you?

A. That tells me that I tested the
machine according to the manufacturers specifications
and found it to be in proper working order.

Q. That's all it tells you?

A. That's what it tells me.

Q. So you don't really recall doing
5 it, but you know

A. I do the same test everyday sir.

Q. Okay, I understand you do them everyday?

A. And I did it on this day.

Q. And you know you have done it on
that day?

10 A. Yes.

Q. Because you wrote it down?

A. Yes.

Q. Do you recall doing it that day?

A. No.

15 Q. Okay, so --

A. Not specifically on that day, but
I do do it everyday, so I did do it that day.

Q. Now all you are able to tell the
Court is that it was done that day?

A. Yes.

20 Q. But you don't know when?

A. It would be before, during and after
the set-up. I test it after each set-up, during the
set-up and after I take down at the end of the set-up.

Q. That's (inaudible)?

25 A. No, that's what I said when I gave
you my evidence.

Q. I know you gave it in your evidence,
I am just going over it now and just trying to understand
what that means, what you are telling (inaudible), is
something you say today -

30 A. This is the notation I made because

I do do it everytime on every set-up.

Q. Do you recall specifically doing it?

A. No.

Q. Do you recall every time you've done it?

A. It would be before the set-up. That specific time, no.

Q. Are you able to say it was done before?

A. It would have been done sometime before nine o'clock in the morning. That was my first summons I gave that day and periodically through the set-up and directly after.

Q. Now what exactly did you do?

A. The manufacturers specified ways.

Q. Do you know what they are?

A. Yes.

Q. Do you want to tell us?

A. Okay, when you activate...when you turn the set on, it will give you a certain readout, which would be three eights and three dots and it also beeps four times. It does all the internal checks itself. After that I'll measure out a distance with a tape and test it, subzero speed test. I'll measure a distance, like a known object which obviously is not moving and I'll direct the laser directly at that object, activate the beam and receive a zero reading and it is also capable of measuring distances. I'll go to the distance mode and make sure that the distance on the machine is exactly exact distance on the tape.

Q. Is that pre-set, the mode?

A. I believe so. It's the manufactures specified.

5 Q. Do you pull out the manual everytime you do this test?

A. No.

Q. You just go off your memory?

A. Yes sir.

10 Q. Are there any other tests that you do with respect to this particular device?

A. A. No.

Q. Now you mentioned that this device is capable of measuring the speed of a moving motor vehicle. How do you ascertain that?

15 A. Just by using it for the last three years.

Q. Because you use it for measuring the speed of moving motor vehicles?

A. That's what I use it for, yes.

20 Q. Now when you were at this location, you mentioned you were doing these tests as well, these three tests. The first test is turning on the device.

A. Yes.

Q. And it checks itself automatically?

A. Yes.

25 Q. Do you have to press a button specifically?

A. No button to press. It runs through all kinds of internal tests.

Q. (inaudible), it's not that you are testing it, it's just that you are turning it on?

30 A. Yes, it does its own test and gives you a specific readout.

5 Q. The only test that you perform on it is when you take the measurements and you check to see if that measurement is accurate?

A. To see if the object is not moving.

Q. Not moving. Do you recall the distance of this object?

10 A. The distance? I use the one at the station; regular rate is twelve and a half metres.

Q. The manual they suggest you use, any particular distance or does it suggest you use something in excess of 25 metres?

A. It does specify over a certain distance, but

15 Q. Pardon?

A. I think it specifies a distance, but I am not sure what it is. I have used twelve and a half and it works fine. I've used more, longer ones, shorter ones.

20 Q. Well you mentioned before that...the manual that you are talking about specifies a certain distance.

A. Possibly it does.

Q. Have you seen the manual?

A. Yes.

25 Q. Officer do you ever do any comparison testing with respect to this device?

A. Comparison to?

Q. Radar?

A. Yes I have.

Q. And how often do you do it?

30 A. Intermittent basis. I have a radar device and I've tested it against that. I've also tested

it against another laser device as well.

Q. The date of the offence?

A. The date of the offence? I couldn't say.

Q. So you have no idea when --

A. I do it periodically. I don't keep records.

Q. You don't keep records of it. You are not able to say you did a comparison test in July (PH) --

A. Not on that date.

Q. Not on that date. You are not able to say you did a comparison test in July --

A. No.

Q. Now officer, is this device, is it mounted on the floor or is it something handheld?

A. It's mounted on a tripod actually.

Q. On a tripod and is it something that you spin around or --

A. I can direct it anywhere I like.

Q. When you are using it though, can it be (inaudible) across the road to view something or does it have to be stationary, locked in?

A. I don't understand what you mean. When I direct it at a vehicle I've ascertained that it was speeding, I'll direct it directly at that vehicle and then activate the beam. I am usually scanning two, maybe three lanes of traffic. There is not much variance there.

Q. I am trying to ascertain whether or not this device can do that?

A. It can.

Q. It can.

A. It can. You can move it 360 degrees
5 if you want to.

Q. Will it work if you are moving it?

A. Well generally if you are moving
the machine while you are trying to get a reading, it
will generally give you an error.

Q. Generally?

A. Well a hundred percent if you move
the machine. You can move it and click it, if it's
not directed at anything it will give you an error,
but at that time it was held steady and directed at
your client's vehicle.

Q. If you directed it at a large wall,
15 while you are panning the wall, for example, would it
give you an error reading?

A. I believe it would.

Q. You believe it would?

A. Yes.

Q. Are you certain? Have you tried
20 it?

A. I have been operating it three years
and generally if you move the machine, as you are saying
and directed it at anything, it would be an error.

Q. Did you have to fan over to get
25 the defendant's vehicle?

A. I wouldn't be fanning, I would be
directing it directly at his vehicle. Like we were
just monitoring the northbound lanes at that time.

Q. And then you stepped out and got
30 him?

Yes.

5 Q. Now you said when you first observed the vehicle it appeared to be catching up with the vehicles in front?

A. Catching up to the preceding vehicles, yes.

Q. Do you recall how many vehicles were in front of him?

10 A. No. I know there was vehicles there.

Q. Do you recall if the vehicles were directly in front of him, in the lane beside him?

A. Which is the preceding vehicles. They were preceding him. What lanes they are in, I couldn't tell you.

15 Q. How high does this tripod stand?

A. Eye level for me.

Q. Eye level for you. Would you be shooting straight on, well I mean the road at that point there is it hilly, downgrade, straight across?

A. It's fairly level there.

20 Q. Fairly level, so would you have to shoot over the vehicles that were in front of it?

A. I would have a direct line of sight to the vehicle, or this machine to operate, you have a direct line of sight to the vehicle. It's generally directed at the front licence plate of the vehicle in question.

25 Q. What lane was he travelling in?

A. Northbound in the northbound curb lane.

30 Q. And you were standing off to the side of the road?

A. I would be standing on the shoulder.

Q. So you would be shooting over the
vehicles or would you be shooting --

A. It would be straight at the vehicle.

Q. But there was vehicles in front
of him, is that a fact?

A. Catching up to preceding vehicles.
I have no idea what this is, but I have to have a clear
line of sight to catch the vehicle. He wasn't tailgating
anybody, let's put it that way.

MR. PERITI: No further questions.

THE COURT: You indicated officer that
this device is able to measure the speed
of moving motor vehicles?

A. Yes it was.

THE COURT: And you described the person
it was a blue Ford. I don't know whether
I catch, what was the blue Ford. What
is that?

A. Your Worship?

THE COURT: What is that? You mentioned
something about a blue Ford.

A. The blue Ford the defendant was
operating, a motor vehicle.

THE COURT: Yes, thank you.

MS. DANIEL: No questions, Your Worship.

THE COURT: Thank you.

MS. DANIEL: Well Your Worship --

THE COURT: Just a minute.

Do you have any other witnesses?

MS. DANIEL: No, no other witnesses.

THE COURT: Thank you.

Yes.

MR. FERRITI: Your Worship, the defendant doesn't recall, (indiscernible) I am not going to call a defence.

THE COURT: Thank you.

MS. DANIEL: Submissions, Your Worship?

THE COURT: Yes.

MS. DANIEL: Obviously you have heard

testimony from the officer. He has

notes. He is an experienced individual

with respect to operating laser device

and he's specifications with respect

to the manufacturer of the device and

he's testifying before Your Worship

that he stopped the motor vehicle that

the defendant was operating at a speed

that was over the legal speed limit.

I would submit that that is credible

evidence and that Your Worship should

accept that evidence, despite any type

of testimony or any submissions that

will be made with respect to whether

or not the device was used to the desired

specifications as outlined by the manufacturer

Those are my submissions.

THE COURT: Yes?

MR. FERRITI: You have heard evidence

from the officer, Your Worship, and

he specifically stated that this device

is capable of measuring the speed of

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5 moving motor vehicles and at the time, ascertained that he stated because he uses it, it is capable of measuring the speed.

10 There are a few (inaudible) cases that deal specifically with the new laser device. In REGINA VS CANNON (PH) and I do have a copy. I'll pass them up. And I believe that in one of these earlier cases with respect to this particular...these particular devices and I believe they are directed or the comments are directed towards whether or not this device is

15 capable of measuring the speed of a moving motor vehicle and how to ascertain that. It could be done by way of comparison test to radar device.

20 Now we've had the officer...we do know the officer had a comparison...a radar device but we don't know what that result is. We have no evidence as to whether or not he is capable of using the radar device, whether these devices are tested or when it is being done, et cetera.

25 He has also indicated...Your Worship, if you will give me a moment (inaudible) and that is with respect to REGINA VS AMOS TAYNOR (PH) and that matter will indicate...and this came out subsequently or shortly after the Cannon matter came

30 because there was still, I guess a large

area of grey matters with respect to whether or not these tests are required, that the laser device be tested in conjunction with a radar device, and if so, how often.

Well the Cannon decision came down from His Honour Judge McCluskey (PH) out of Newmarket and he basically said that that device has to be tested in conjunction with another device to confirm that it is capable of doing so. All we know is that it is capable of measuring a distance between itself and some nonmoving object and he basically says that that nonmoving object is travelling at zero at this distance, but is that good enough to say that this device is capable of measuring the speed of this motor vehicle that is travelling toward it?

Well because it's (inaudible) rather new devices they decided to suggest that these tests should be performed or the test in conjunction with a radar device prove that this device is capable of measuring the speed of a moving motor vehicle should be done. And furthermore with respect to Taynon, that decision comes about and basically says that device should be tested within 30 days of the offence at all times.

Now we've heard the officer saying that or he's testified that he's done comparison

tests in the past, he didn't know when. He can't say with respect to this particular offence, he doesn't have any of that noted.

So with respect to REGINA VS TAYNON, I am going to be suggesting that because... and I specifically asked the questions for this purpose. I could have left the questions out and basically said that there is no evidence whatsoever of comparison tests, but I don't think that's proper. I think that question should be asked and we do have answers now. We have no idea as to when --

THE COURT: What were your very first comments to me though, about that specific?

MR. PERITI: Pardon me?

THE COURT: Your very first comment were to the effect that there was something left out as a result of questions you made to the officer, right?

MR. PERITI: With respect to which?

THE COURT: You took him to so far and then you didn't go any further and the first comments to me was, that's missing, as a result of you raising the issue and asking questions. You take the officer so far and you don't go any further. Now you are making comments that that is not proper, yet you did it earlier.

Go ahead.

5 MR. PERITI: Your Worship, I will be
relying on that case there. I don't
believe there is sufficient evidence
for a conviction. Also when Your Worship
asked a simple question; what is a blue
Ford. There was no evidence of a blue
Ford being a motor vehicle until the
10 question was asked. I am anticipating
or I believe that question was asked
to clear up whether a blue Ford is a
motor vehicle or not. I am of the opinion
that that question should not be asked
by yourself, it should be clarified
15 by my friend. It's her case to provide
the Court...it's her job to provide
the Court with a case and I noted that
same comments as well, that the vehicle
was described (inaudible) a vehicle
and a blue Ford and the Court takes
20 judicial notice that a blue Ford is
a moving motor vehicle or pardon me,
a motor vehicle and in the case of REGINA
VS HANSON (PH), I do not have a copy
of that here, in that particular case,
25 it says that the vehicle that is committing
this particular offence under the Highway
Traffic Act must be a motor vehicle.
Until that question is asked and that's
one of the essential elements, I don't
think the crown has established her
30 case, established a case until you asked

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REASONS FOR JUDGMENT
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5 that question. I don't think that that
 question or that evidence should be
 considered. If you are asking that
 question simply because you believe
 that that is an essential element to
 the charge, then you have to dismiss
 it yourself, because I don't believe
 it is proper for you to be digging for
10 that particular answer.

 I am asking for a dismissal, Your Worship.
 You've heard evidence with respect to
 the case, however, you've heard no evidence
 as to when the device has been tested
15 in conjunction to radar devices and
 that is one of the essential elements
 to prove that that device is capable
 of measuring the speed of a moving motor
 vehicle and that's done by way of confirming
 that these tests are being done on a
20 regular basis and done properly.
 Thank you, Your Worship.

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25 REASONS FOR JUDGMENT

DIAMOND, J.P. (Orally):

 In regards to your comments about my question
 to the officer, I have indicated and qualified
 it and I've asked the officer made mention
30 of a blue Ford and I didn't know whether he

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5 had in fact gone further to say what it was.
That's why I questioned because I wasn't certain,
but he raised and says what it was, but that
was something that I didn't either hear or
was trying to clarify. That's the reason
why the question was asked.

10 In regards to the two cases you supplied,
these are from the Provincial Court in Newmarket.
Perhaps they are binding in that particular
jurisdiction, they are a guidance in this
particular Court. I am satisfied on the evidence
of the officer that he was there. He was
using laser. He was using it in accordance
15 to the recommendations to him by the manufacturer,
what they have suggested to him and he also
qualifies to say that he goes about and he
has in fact checked it with radar.

20 I am simply satisfied that laser is an accurate
means of recording the speed of moving motor
vehicles and he found that to be the case
on this occasion and he stopped the motor
vehicle and your client was found to be the
driver.

25 I find him guilty and register a conviction.
Any comments to penalty?

MR. PERITI: None, Your Worship.

THE COURT: Comments?

MS. DANIEL: No comments, Your Worship.

THE COURT: The fine will be \$102.50.

MR. PERITI: Thirty days to pay.

THE COURT: Yes.

30 MR. PERITI: Your Worship, may I ask if you

will be keeping those case law?

THE COURT: Yes.

MR. PERITI: Thank you.

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THIS IS TO CERTIFY that the
foregoing is a true and accurate
transcription from the taped recordings
to the best of my skill and ability.

Joan Supply
(Mrs) Joan Supply
Court Reporter

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