

MY COPY

MAJES IE QU

E E

P R O

I

I A L

B ORE
h

HONO

BL
f D

J DG

G V
B

O t

APPEARANCES:

T C

20

25

THE COURT: This is an appeal by Mr. Furlong based on the grounds the appellant stated the Crown did not have a prima facie case and motion of non suit was denied.

Have you had a chance to review this Mr. Cleary?

THE CROWN: Yes sir I have. Well, not in the sense of listening to the tape that developed in this file for reasons given for the ap

THE COURT: The evidence ... I did listen to the tape and I made some notes. The evidence would indicate that the officer testified that he was operating a minequip radar, moving radar, that he picked up this particular accused and clocked him at 110 on three different occasions in a posted 60 kilometer zone. The officer went on to testify that he was satisfied that the vehicle was speeding, even visually, and that he tracked it with the radar gun.

Now the issue that was raised on the non suit involved the testing of the machine. The officer's words in the transcript were, "The machine was tested at 5:39 and 5:56 and was working accurately per the manufacturer's specifications" or words to that effect. What he did not say was; I tested the machine. There is also no evidence on the record that in fact, he was alone in the vehicle.

The non suit was that the presentation to The Court was that only a qualified operator can test the machine. There was no evidence of who tested the machine. Although, the officer did testify that he, in fact, was a qualified operator of radar. And that was the basis of the motion.

Now, the Crown's counter to that in the argument was that the policeman's exact words were, "It was tested and I found it to be accurate". So, I listened to the tape twice and in fact, that's not what he said.

The J.P. in his ruling stated that he knew that that officer was the one who did the testing because there was no one else in the police car who could have done the

Testing And that evidence is not on the record.

Mr. Furlong, have I fairly represented what you heard?

MR. FURLONG: Yes, Your Honour.

THE COURT: The argument being, of course, that the Court has to be satisfied on the evidence before it, that the machine was tested by a qualified operator and was satisfied that it was in working condition. That is basically the grounds of the appeal.

THE CROWN: Based on that Your Honour, I would not attempt to say anything about it.

THE COURT: Alright. Mr. Furlong, the obvious grounds for allowing the appeal are what I just stated. The application for appeal is allowed. The conviction is quashed and the fine will be returned to you.

MR. FURLONG: Thank you.

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

Margaret E. Wickett
Margaret E. Wickett
Certified Court Reporter.

Date transcript ordered: November 1, 1985

Date transcript completed: November 2, 1985

Date parties notified: November 4, 1985
