

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

ARTHUR GAROFALO

PROCEEDINGS AT COURT

**BEFORE THE HONOURABLE MADAM JUSTICE M. L. HOGAN
ON JUNE 19, 2003, AT TORONTO, ONTARIO.**

OLD CITY HALL -- COURTROOM 'L'

APPEARANCES:

T. DiMUZIO, ESQ.

T. BROWN, ESQ.

COUNSEL FOR THE CROWN

AGENT FOR THE ACCUSED

MR. DiMUZIO: Thank you, Your Honour. Returning please, to the appeals proper list, the matter at line 14, Arthur Garofalo.

MR. BROWN: Good afternoon, Your Honour. My name's Todd Brown, B-R-O-W-N, first initial T. I appear as agent for Mr. Garofalo. He's not before you this afternoon but I'm here with his instructions. This matter is before you as an appeal proper. There was sometime materials filed, I don't know if Your Honour's had the opportunity

THE COURT: I have not seen them. Unfortunately I was not able to see them yesterday.

MR. BROWN: Oh.

THE COURT: All right. Why do you not tell me about it then?

MR. BROWN: I'd love to. Could I inquire, Your Honour, if you've had the opportunity to review the trial transcripts?

THE COURT: I have not. Unfortunately I did not have an opportunity to see the files yesterday. They did not get to me.

MR. BROWN: All right. Well, I guess as a precursor then, I'll indicate that it's a rather sensitive issue. We've brought this appeal with the intention of asking you to find that there was a reasonable apprehension of bias on behalf of the learned Justice of the Peace at the speeding trial of Mr. Garofalo. It has to do with a number of factors and I guess, just to keep it short, I can probably direct you to some relevant passages in the transcript that

THE COURT: All right. So that is the basis of your appeal then, sir?

MR. BROWN: The only basis.

THE COURT: All right.

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MR. BROWN: That's all that we've launched the complaint about. In any event, Your Honour, I guess just as an overview, Mr. Garofalo, the appellant, was represented at trial by his agent, Mr. Bonan (ph).

10

THE COURT: Hm-hmm.

15

MR. BROWN: The trial proceeded. It was a contested matter. It was the second time that it had been before the Court. It was up once briefly prior to the trial, it was adjourned for want of disclosure. The trial proceeded in front of a Justice of the Peace. Now the investigating officer is the only witness that was called for the Crown. He gave evidence that he was using an LTI 2020 Laser Speed Measuring Device. The defendant did not give evidence. The investigating officer, Officer May, was cross-examined by Mr. Bonan and this was all after an 11(b) application was unsuccessful.

20

THE COURT: Hm-hmm.

25

MR. BROWN: Mr. Garofalo had incidentally given evidence on the 11(b) application as to the prejudice that he felt he had incurred. In any event, he did not give evidence at trial. I take the position, Your Honour, that the learned Justice of the Peace grew very frustrated and very impatient with the defence and that that is borne out in the transcripts.

30

At the conclusion of the trial, Her Worship makes what I'll describe as a very problematic pronouncement with respect to the integrity and good faith of the defendant's agent and the manner in which he advanced Mr. Garofalo's theory. In the applicant's factum, I've actually reproduced the relevant passage at paragraph 38.

THE COURT: All right.

MR. BROWN: Her Worship indicates, 'All right. Under the circumstances, there's been an exhaustive and almost redundant, unnecessary cross-examination of the officer with no experts called. It's almost a situation, Mr. Garofalo, where the Court thinks, well, it's almost like Mr. Bonan has decided to take the Court on a very long trial because we did not grant the stay.' Her Worship goes on to indicate that, 'We did not grant the stay for the reasons indicated, no other. But under the circumstances, I have found, sir, a lot of the cross-examination unnecessary. Under the circumstances, I am imposing my discretion under 128(14)(c), there will be a fine of \$315 in respect of the matter.'

With respect to that penalty, that \$315, Your Honour, that's the maximum available under these facts with respect to the speed as alleged and ultimately Her Worship found Mr. Garofalo guilty of travelling 45 kilometres per hour over the speed limit. The act sets out a maximum which

would be \$315.

5 In any event, I think this passage is actually a
good springboard for a number of the issues, the
first being, Your Honour, that it's my view and
my respectful view, that Her Worship's
complaints with respect to the manner in which
Mr. Bonan conducted the cross-examination are
entirely unfounded. The cross-examination by my
10 count, and if this is an appropriate gauge or
not, takes up less than ten pages of this
transcript. The trial transcript is about 40
pages long.

15 In my view, Your Honour, Mr. Bonan, in advancing
the defence's theory, had elicited from Officer
May a number of very crucial pieces of
information and he did so, from an advocate's
point of view, in a rather efficient fashion.
20 I've set out in the appellant's factum a
statement of the facts. At the conclusion of
Officer May's evidence in-chief, Mr. Bonan had
conducted a cross-examination and what he had
elicited from Officer May was that there had
25 been no notation in Officer May's notebook with
respect to any other vehicles using the roadway.

30 I don't know that Officer May gave an answer
either way, I don't think he was telling us that
there was a vehicle or not, quite simply that
there was no notation. Officer May, as elicited
on cross-examination, was relying on an aiming

dot inside of a scope on an LTI 2020, to ensure that the dot is aligned with the target vehicle. Mr. Bonan also elicited that the beam emitted from this machine is invisible. He elicited that Officer May had heard of a scope alignment test and that Officer May believed the scope alignment test was a test relevant to the Marksman LTI 2020. Mr. Bonan also elicited from Officer that he didn't conduct the scope alignment test to ensure that the aiming dot is in line with the invisible beam on the Marksman LTI 2020.

Officer May testified, when asked, that he thought the purpose of the test -- this is at p. 34, line 26 -- '... that the purpose of that test is to determine whether the beam for the scope is aligned to the object on which it is receiving a reading from.' Officer May went on to indicate that he wasn't sure if the scope alignment test was a required test and that he did not refer to the manual, the operator's manual to step walk through the test procedure.

Now, Your Honour, I want to make it very clear that what findings could or should have been made on that evidence are essentially irrelevant to this appeal in the sense that if Her Worship was inclined to accept the theory of the defence or otherwise, it doesn't necessarily give rise to a reasonable apprehension of bias.

What's being alleged by the applicant is simply Her Worship wasn't persuaded by the theory of the defence for a number of reasons, one of which -- and I think it's borne out by the record -- that Her Worship's mind was closed to persuasion on the evidence and the submissions with regard to those particular issues. There seem to be a failure on the part of the learned Justice of the Peace to understand the importance of evidence elicited and the evidence that was sought from Officer May during the cross-examination.

Indeed, Her Worship seemed to become very frustrated and very quickly with the agent for pursuing the line of questioning. Of course as I've already indicated, at the conclusion of the trial, there was what could only be described as an overt indication from the learned Justice of the Peace that she felt the appellant's agent was acting in a professionally unethical manner. I think that serves no other purpose than to denigrate the integrity and the good faith of the accused, or the accused's representative. I think, Your Honour, a fair reading of the record would set out that Mr. Bonan was nothing more than courteous, respectful, polite and efficient, I might add, in his approach to representing Mr. Garofalo.

At the conclusion of it all, Your Honour, I'm aware of the test for reasonable apprehension of

5 bias, I'm aware the threshold is high. I note that it's not for the reviewing Court to take isolated incidents from the proceedings in the Court below and make an assessment based on that, but rather to take a global view.

10 And I think that Your Honour ought to look at everything that's transpired from beginning to end, then come to the conclusion as to whether or not a reasonable person who is informed, who had observed the proceedings, may conclude -- not would, but may conclude that there was a reasonable apprehension of bias. And I think on the facts of this case, on the record as it
15 stands, Your Honour, that that threshold has been met.

I don't know if you'd like to hear from the prosecutor with regard to his position but

20 **THE COURT:** Yes, I think I would.

MR. DiMUZIO: Your Honour, I can indicate I don't have a lot in reply. For whatever reason, I did receive a factum late last week and for whatever reason, I received the transcript
25 yesterday. It appears as though it was misfiled, in the July 19th file instead of the June 19th file. In any event, I did have an opportunity to review all the material and I'm really not going to take a position other than to say that there definitely are some comments made by the Justice of the Peace, as Mr. Brown points out, which may or may not cause some
30

concern and I'm simply going to leave it in the Court's hands as to

THE COURT: The difficulty is, you know, because I was not able to get the files yesterday, I have not read the material and I would obviously like to do that. So if I am going to make a decision on it, I would want to put it over just because I am not going to make a decision on something like this when I have not read the material.

MR. BROWN: I expected as much, Your Honour. I'm more than happy to return.

THE COURT: Yes, I just did not get it.

MR. BROWN: Yes.

THE COURT: The difficulty, of course, is I am not scheduled to be back here so you would have to find me.

MR. BROWN: Not a problem, Your Honour. I'll indicate that I'm very flexible with regard to scheduling. I'm more than happy to follow Your Honour around.

MR. DiMUZIO: As am I, Your Honour.

THE COURT: All right. How about two weeks? July 2nd or July 3rd?

MR. BROWN: Anytime, Your Honour.

MR. DiMUZIO: That's agreeable, either of those.

THE COURT: July 2nd.

MR. BROWN: Certainly. Could I just ask Your Honour what it is, at what stage we're adjourning these proceedings? Would you want to hear further argument at that time? Would Your Honour be content to make a ruling based on the

materials?

THE COURT: I am not sure. What I would like -- first let me read the materials ...

MR. BROWN: Certainly.

THE COURT: ... and then I am sure most of it is in your factum in any event.

MR. BROWN: Most of it.

THE COURT: And I have heard what you have to say. All right. Well, maybe what we can do is have it returnable here in 'L' Court and then it can be traversed to wherever I am sitting.

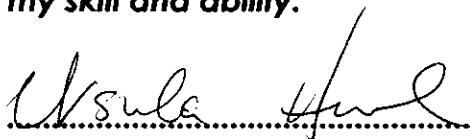
MR. BROWN: To be traversed? Okay.

THE COURT: So that is July the 2nd at ten o'clock to be traversed to wherever I am sitting that day and I will have had a chance to go through the materials by then. Thank you.

MR. DiMUZIO: Thank you.

MR. BROWN: Thank you for listening, Your Honour. Thank you. Good afternoon.

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

A handwritten signature in cursive script, appearing to read 'Ursula Hummel', written over a dotted line.

Ursula Hummel, Official Court Reporter

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

RESPONDENT

AND

ARTHUR GAROFALO

APPELLANT

APPEAL PROCEEDINGS

BEFORE THE HONOURABLE MADAM JUSTICE M. HOGAN
ON WEDNESDAY, JULY 2, 2003, AT TORONTO.

CHARGES: SPEEDING

APPEARANCES:

AGENT FOR THE CITY OF TORONTO

AGENT FOR THE APPELLANT

T. DIMUZIO, ESQ.

T. BROWN, ESQ.

July 2, 2003

MR. DIMUZIO: Thank you. Good morning,
Your Honour. For the record, DiMuzio,
initial T. for the City of Toronto. Your
Honour is aware that the matter of Arthur
Garofalo is up today for decision.

THE COURT: Can we deal with that first?

MR. DIMUZIO: We're prepared.

THE COURT: I don't know if we have the
actual documents.

MR. DIMUZIO: Yes.

MR. BROWN: It's Todd Brown for the record
also, Your Honour. B-R-O-W-N, first
initial T..

MR. DIMUZIO: L court says the file isn't
there, Your Honour, is it here?

THE COURT: I only have part of it. Shall
we proceed then?

MR. DIMUZIO: Certainly. I'm not certain
if we're all on the same page. I guess the
purpose of today's appearance, Your Honour,
was for judgment.

THE COURT: Yes.

MR. DIMUZIO: We're prepared.

MR. BROWN: We're prepared to receive
judgment on the matter.

THE COURT: This is the matter of Mr.
Garofalo who was charged on January 31st of
the year 2001 with the offence of speeding
- 95 kilometres in a 50 kilometres zone -
contrary to the Highway Traffic Act. Mr.
Garofalo was convicted on April 22nd of
2002 after a trial in front of Her Worship

July 2, 2003

McAleer. Mr. Garofalo had appealed this conviction on the basis that the proceedings had raised a reasonable apprehension of bias. The prosecutor took no position when this matter came before me. I have now had the opportunity to review the transcript of April 22nd, 2002 proceedings and the factum and authorities provided by the agent for Mr. Garofalo.

It is my view, having reading the proceedings there could be a reasonable apprehension of bias. I agree with the submissions of the appellant's agent and the following three reasons lead to this conclusion; first, and these are found in the factum at p. 5, a failure on the part of the learned Justice of the Peace to understand the importance of evidence sought on the cross-examination of the officer; (2) an inclination on the part of the learned Justice of the Peace to assist the officer at critical stages of the cross-examination; and thirdly, there were indications from the learned Justice of the Peace that she felt the appellant's agent was acting in an unprofessional, unethical manner thereby denigrating the integrity and good faith of the defence. Therefore, I am prepared to allow the appeal and order a new trial in front of a different Justice of the Peace.

July 2, 2003

MR. DIMUZIO: Thank you, Your Honour.

THE COURT: Do you know where it has to go?

MR. DIMUZIO: Yes, Your Honour, we're just trying to determine which courtroom. It's either 701 or 702. Suggesting a date of August the 6th, please, in courtroom 701. That's at 2265 Keele Street at 9:00 a.m. to set a date for trial. If that's agreeable with my friend.

MR. BROWN: It is.

THE COURT: All right. August the 6th, courtroom 701.

MR. DIMUZIO: Thank you very much, Your Honour.

MR. BROWN: Thank you. Good morning, Your Honour.

*This is to certify that
the foregoing is a true
and accurate transcript
of my recordings to the
best of my skill and
ability.*



Beverly M. Moss

Official Court Reporter

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

ARTHUR GAROFALO

* * * * *

PROCEEDINGS AT TRIAL

BEFORE HER WORSHIP JUSTICE OF THE PEACE D. MCALEER
on April 22nd, 2002 at 2265 Keele Street, TORONTO, Ontario

* * * * *

OFFENCE: s. 128 - Highway Traffic Act
Speeding 95 km/hr in a 60 km/hr zone

Appearances:

Mr. K. Wiedekowsky

Mr. J. Bonin

Municipal Prosecutor

Agent for the Defendant

ONTARIO COURT OF JUSTICE
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E X H I B I T S

ENTERED ON PAGE

EXHIBIT NUMBER

REASONS FOR JUDGMENT	16	(Motion)
	38	

Transcript Ordered: May 6th, 2002
Transcript Completed: December 19th, 2002
Transcript Party Notified: _____

April 22nd, 2002

MR. WIEDEKOWSKY: Arthur Garofalo, line 16?

THE COURT: Yes.

MR. BONIN: Good evening, Your Worship.

THE COURT: Good evening.

MR. BONIN: My name is Bonin, B-O-N-I-N initial J, appearing as agent for the defendant who is here before the Court.

THE COURT: And he is aware of your status?

MR. BONIN: Yes, Your Worship.

THE COURT: And you are ready to proceed?

MR. BONIN: Yes, we are.

THE COURT: Prosecution?

MR. WIEDEKOWSKY: Yes, Your Worship.

THE COURT: Okay.

CLERK OF THE COURT: Arthur Garofalo, on or about the 3rd day January, the year 2001 at approximately 11:30 p.m. at southbound Kipling Avenue in the Municipality of Toronto, did commit the offence of speeding; 95 kilometres in a 60 kilometre per hour zone, contrary to the H.T.A. section 128.

How do you wish to plead to this charge sir, guilty or not guilty?

MR. BONIN: Prior to entering a plea, Your Worship, I believe there is a Motion before the Court.

THE COURT: Yes.

MR. BONIN: This is a Motion seeking a stay of proceedings due to an infringement of the object's right to be tried within a reasonable time, guaranteed under Section 11(b) of the Charter --- Canadian Charter of Rights and Freedoms.

THE COURT: Could you show me your affidavit of

service, sir?

I can hand you back the rest of that. I have the rest of it. I am just taking the affidavit of service, and it indicates the Provincial Prosecutor was served March 4th. Has the City been served?

MR. BONIN: You have got my copy, Your Worship.

THE COURT: Okay.

MR. WIEDEKOWSKY: I do have a copy here, Your Worship.

THE COURT: So you are prepared to concede you have been served?

MR. WIEDEKOWSKY: Yes.

THE COURT: All right then. The 4th of March, that would provide the Court with jurisdiction. Go ahead and make your argument, and do you have any transcripts for me?

MR. BONIN: No, Your Worship.

THE COURT: Okay.

MR. BONIN: If I might have my copy back, please?

THE COURT: Yes, I gave it to my clerk. The affidavit I keep, and he can have that back.

MR. BONIN: Thank you, Your Worship.

In regards to the transcripts, Your Worship, this stems from a matter from January of 2001. It was up for trial on January the 14th, and on January the 14th it was put over to today's date due to lack of disclosure being provided up until the date it came up for trial.

At that time there had been a prior 11(b) notice filed with the Court for that day, so there was a Motion before the Court on the trial date.

THE COURT: Right.

5 MR. BONIN: On the 14th of January. And as I said, disclosure hadn't been provided up to that date. Now there was an order made for a transcript for the proceedings of the 14th of January.

10 Unfortunately, we haven't received the transcripts as of yet. With the changeover, apparently the --- the information we have received is that the person that was the reporter at the time is no longer employed and they haven't --- we have made a number of different attempts including messages left on Friday and today with the lead, or the head of the section down there to try and find out what is going on. It has apparently been transferred to someone else to transcribe, but we still haven't got any information as to who is transcribing it or what has been done with it.

15 THE COURT: Okay. Then all I can go on is the certificate.

20 MR. BONIN: I believe the certificate shows it was put over for disclosure, and disclosure was --- a disclosure issue, and disclosure was actually provided on the trial date.

25 THE COURT: What is says is, April 22, 2002, 7:00 p.m., Y, for trial, request defence, bracket, disclosure provided. It does not speak to any effort prior to that date in getting disclosure. I do not have a transcript, so that is what I go with. A trial date request, by the defence.

30 MR. BONIN: Yes.

THE COURT: And disclosure given in court.

MR. BONIN: I have, I do have copies of the disclosure requests that were made prior to that

date.

THE COURT: You make your argument sir, but you can not ask me to take anything more from what happened on January 14th, than what is on the back of this certificate. Absent a transcript.

MR. BONIN: No, I understand, Your Worship.

THE COURT: Okay. That's fine.

MR. BONIN: We have ordered the transcript, but they are not available.

THE COURT: Right.

MR. BONIN: We ordered disclosure twice prior to that. On that trial --- on the 14th of January on the trial date, the officer was here. That date the officer's notes were viewed and it was put over so that there could be consultation with the defendant. We subsequently ordered the transcripts again and got a full copy of them for ourselves because there was no photocopy provided on that date.

So based on that, Your Worship, from the date of the offence to today's date is fifteen months and eighteen days. The defences' position is that this is an unreasonable length of time under any circumstances. That there has been no waiving of the defendant's right under 11(b). That the delay is systemic in nature, and that there has been inclined prejudice; the defendant is here to speak to specific prejudice as well. In regards to the length of time itself, in reference to Regina vs. Askov, the longer the delay, the more difficult it is for the Court to excuse it, and I would suggest that in any circumstances, a delay of fifteen

7.

-Motion-

A. Garofalo - In.Ch.

months is very excessive. As I said, our position is that it is systemic in nature. The disclosure requests were made twice prior to the court date, and disclosure wasn't provided until the court date. So, it certainly wasn't done in a timely manner in a position for the defendant to properly defend himself. And the defendant is here to make a statement as to his specific prejudice.

THE COURT: Okay.

MR. BONIN: Would you like him sworn, Your Worship?

THE COURT: I can not tell you how to run your show, sir.

MR. BONIN: Well ---

THE COURT: Are you asking me to ask my clerk to swear in your defendant?

MR. BONIN: Yes, please.

THE COURT: Fine.

ARTHUR GAROFALO SWORN:

EXAMINATION IN CHIEF BY MR. BONIN:

Q. Mr. Garofalo, just please take your time and explain to Her Worship in Court, exactly how this delay of fifteen months has affected you?

A. Well, it has been such a long time since the offence that I am worried about remembering all the facts of the night, and just thinking about how else my insurance could be affected if found was guilty at court, and it is hard for me to remember because it has been such a long time since the date.

Q. How do you think it is going to affect your insurance, sir? You said you were worried about how it would affect your insurance?

A. Well, I think it will cause my insurance to go

8.

-Motion-

A. Garofalo - Cr.Ex.

up significantly .

MR. BONIN: Thank you.

THE COURT: You have no further ---

MR. BONIN: I have no further questions, Your
Worship. If my friend has any questions?

CROSS EXAMINATION BY MR. WIEDEKOWSKY:

Q. Sir, back on January 3rd, 2001, you were pulled
over by a police officer; is that correct?

A. Yes.

Q. Is that one occurrence of many that you have
dealt with the police, or is that one of the few dealings that
you have had with the police?

A. Few, I don't have many dealings with the police
at all.

Q. So, was it your first time being pulled over by
a police officer?

A. In my life, no it wasn't the first time I have
ever been pulled over.

Q. Well in the last five years, let's say?

A. Probably not, with, no.

Q. First time in five years, approximately?

A. I wouldn't say the first time, but it is hard
to say the first or third or ---

Q. More than ten, sir?

A. I think that is excessive. I don't believe I
have been pulled over ten times.

Q. So you don't get pulled over by the police
quite often, then?

A. Not too often, no.

Q. And that particular day, sir, did you have
conversation with the officer?

9.
-Motion-
A. Garofalo - Cr.Ex.

A. I don't recall.

Q. Did he hand you a little yellow piece of paper, sir?

A. Well, sure.

Q. You would refer to that as a ticket; is that correct, sir?

A. Yeah.

Q. And on that ticket, sir, is the date of the offence; is that correct? And your name, is that correct, sir?

A. Yeah.

Q. And as well as that, your birth date is on the ticket; is that correct, sir?

A. Yes.

Q. Okay. And also the location of the offence; is that correct, sir?

A. That's on the ticket.

Q. It tells you what city that it occurred in, correct, sir?

A. Sure, tickets would have all those things on it.

Q. And this particular ticket had that on there, sir?

A. I suppose it did.

Q. And did this ticket also tell you that you were travelling at ninety five kilometres per hour in a fifty kilometre per hour zone?

A. If you have the ticket and it says that, then I agree with you.

Q. Okay. And you received that ticket that night?

A. From the officer, I received the ticket.

Q. So basically everything to do with the offence is basically on that ticket, sir, would you agree with me?

A. Sure.

Q. And was this in the daytime or the night time,

sir?

A. I think it was night time.

Q. Well was the sun out or was the sun set?

A. I don't know. I think it was night time.

Q. And what street did this occur on, sir?

A. Is the ticket handy there?

Q. Sir, I am asking you; do you know what street

this occurred on?

A. I don't know. Whatever the ticket says; I think it was --- I don't know.

Q. And the police officer, did he have lights, red lights and sirens on his car, sir?

A. Yes, he did.

Q. And did those red lights come on, sir?

A. I think they did, yeah.

Q. Or did he jump out in front of the road and stop you that way, sir?

A. No, I don't think he jumped out of the road.

Q. So was the police car in behind you, sir?

A. It was behind me.

Q. Did he come up behind you and turn on his red lights?

A. I believe he probably, yeah, I think he did. Well, sure because I had to pull over.

Q. And then you stopped your car, sir, is that correct?

A. Mmm-hmm.

Q. Okay, and the police officer got out and spoke to you, is that correct?

A. Well I think he did. He came over and he does

11.

-Motion-

A. Garofalo - Re.Ex.

what most police officers do when they pull people over.

Q. Then he had a conversation with you?

A. I guess I did, yeah.

Q. And did you hand him your drivers licence, sir?

A. Yeah.

Q. And did he take that drivers licence sir, and bring it back to his police car?

A. I think so.

Q. Okay, and did he spend a few moments at his police car and then return and hand you the ticket?

A. Well I don't --- like ----

Q. Well did you receive a ticket in the mail, sir or did the police officer hand it to you?

A. I think he gave it to me that --- during the incident.

Q. Well was there somebody else in the car that he would have handed it to? The ticket, that is?

A. No, I don't think so.

Q. So then are you telling this court that he handed the ticket to you?

A. Yeah I am.

MR. WIEDEKOWSKY: Okay, I have no further questions, Your Worship.

THE COURT: Re-examination?

RE-EXAMINATION BY MR. BONIN:

Q. Sir, in answer to a number of my friend's questions when he asked you something, you prefaced what you said by, "I think so" or "I believe so." Now when you answered those questions, do have a specific recollection of those specific things happening, or are you making an assumption based on what my friend asked? The way the questions ---

5 A. I am talking like, in general, when you are pulled over by a police man or a police officer, there is a procedure, and I am just going by general --- not specifically speaking. I mean I am talking about when you are pulled over by a police officer, you usually see the red lights, you pull over, they come to your car, they ask you certain, like, who you are, do you have your licence, and that sort of thing, so ---

10 Q. Okay, but in regards to this specific incident, to those questions, not a generalisation but specifically in regards to this incident that took place, do have a specific remembrance of those things happening, other than what may or may not happen in general?

15 A. No, it's, as you said, fifteen months. I mean, I don't remember specific events from, you know, it's been such a long time. I can't remember specifically how everything happened.

MR. BONIN: Thank you, sir. No further questions.

THE COURT: Mr. Garofalo, who is F. Larose?

THE DEFENDANT: Who?

20 THE COURT: F. Larose, who is that?

THE DEFENDANT: He is an agent.

25 THE COURT: I see. And F. Larose has signed your notice of intention to appear on this matter, and it is undated. Do you know when that was submitted?

THE DEFENDANT: No, I don't.

THE COURT: When did you retain your agent, sir?

THE DEFENDANT: Some time last year, after the ticket was given.

30 THE COURT: So you have no recollection what month that would be?

THE DEFENDANT: Not exactly, no, Your Honour. And

5 I just, when giving him the ticket and the information, I didn't know it would proceed on until now. Like, to such a long time. I thought having him, by giving him the ticket and the stuff that it would be looked after, and just taken from there.

THE COURT: Thank you. Any question on that, Mr. Bonin?

MR. BONIN: No, Your Worship.

THE COURT: All right. Any question on that?

10 MR. WIEDEKOWSKY: Nothing, Your Worship.

THE COURT: All right, thank you. Any other witnesses?

15 MR. BONIN: No, Your Worship. But in regards to the last question you asked the defendant, Your Worship, I can advise you that the offence date was the third of January and the defendant was retaining our office on the sixth of January of the same year.

20 THE COURT: That does not answer when the notice of intention to appear was filed with the court, sir.

MR. BONIN: No.

25 THE COURT: It has been left blank, and I want to know why. It also has someone who has pre-signed a document and chooses not to date it. I am concerned that that would occur, because obviously the notice of intention to appear is a trigger in this region to indicate a trial is requested. So it is not just the offence date we look at. So when an agent chooses not to put the date in, I do not think it automatically reflects in a positive fashion in the calculation of time, Mr. Bonin.

30 MR. BONIN: Yes, Your Worship. But as I said, you

did ask the other question, and I did have the answer for that for you. I just wanted to advise you.

5 THE COURT: But we were looking at the defendant's appreciation, but thank you Mr. Bonin. I will hear your submissions and your closing arguments, sir, if there is anything further?

MR. BONIN: I have nothing further to bring before you, Your Worship.

THE COURT: Mr. Wiedekowsky, any comments?

10 MR. WIEDEKOWSKY: Very briefly, Your Worship, with respect to the questions that I posed to the defendant, in my respectful submission he did have a recollection, Your Worship. He certainly indicated he did receive a ticket, Your Worship, with all the ingredients for this particular
15 offence, and he went on to indicate that the officer did not jump out in the road to stop him. The officer, in fact, pulled in behind him, activated his roof lights and stopped him in that
20 manner, Your Worship, which was, in my respectful submission, evidence that this particular defendant's memory isn't completely blank, and he also did indicate that this was one of the few
25 moments that he has had an opportunity to deal with the police, Your Worship. Certainly if he dealt with hundreds of tickets, much like a police officer would, it is quite conceivable that he would get things confused with other matters, but that is not the case in this particular issue. And
30 with respect to the cases cited by my friend, Your Worship, there has been no real true evidence of undue hardship. Certainly what would happen with

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respect to his insurance is not of a concern to the Court, Your Worship, and in my respectful submission does not constitute any, sort of, untoward hardship that the defendant has suffered. And that is the only thing that he basically has proposed to this particular court. Those are my submissions, Your Worship.

THE COURT: Do you want to respond, Mr. Bonin?

MR. BONIN: Yes, two things, Your Worship.

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MR. WIEDEKOWSKY: Oh, I am sorry, can I add one more thing, Your Worship?

THE COURT: Yes, go ahead.

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MR. WIEDEKOWSKY: And, I believe part of the delay was attributed to the fact that the officer was off sick due to a back injury up until mid-November, Your Worship.

THE COURT: Sir?

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MR. BONIN: Yes, Your Worship, I don't know about the back injury or how that would have anything to do with the delay, I am not sure. But certainly that would be part of the systemic delay. It shouldn't be attributed to the defendant.

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THE COURT: Actually, no, the Crown is saying, 'I have a reasonable explanation for whatever the concern is', in this case, your request for disclosure. And it is relevant. Certainly the Crown could have called the witness to say when they have it. But it is relevant because the Crown is entitled, if they wish, to explain the delay, and that is the point of explaining the delay.

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MR. BONIN: Again, but it still doesn't bear against the defendant, Your Worship.

THE COURT: But it doesn't bear against the Crown,

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sir. It is considered neutral time.

MR. BONIN: The defendant stated, when he was re-examined by myself when he gave the answers, and I am sure you recall he prefaced most of his answers with 'I believe' or 'I think'. And when he was specifically asked why he did so, he stated that he did that because he was speaking in generalisations as to what happened. When I asked him if he had specific recollection of what happened in those areas on the date in question, he stated he did not. Though the issue of how this is going to affect his insurance, the affect of the insurance specifically is not a concern, I would agree, is not a concern of the Court. The fact that it has been a concern, this has been a concern, or the outcome of the trial and it's repercussions have been a concern of the defendant for fifteen months. Certainly it has caused him some undue stress and that sort of is prejudicial, Your Worship. In addition to that, the prejudice against his memory for the fifteen months. Thank you, Your Worship.

THE COURT: Stand up, sir, please. There is an application before the Court for a stay of proceedings under section 24(1) of the Charter of Rights and Freedoms for an alleged breach under section 11(b) of the same said Act. The defendant was served with an offence notice on January 3rd 2001 for an offence of speeding. Could the ladies at the back --- excuse me ladies --- ladies, you have been asked to stop talking several times. I watched an officer tell you. I am going to have to ask you to sit in the hallway if you carry on like this, and it is quite pitiful to ask seniors such

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as yourself to go the hall. So please stop. I apologise Mr. Garofalo, it is just unfortunate that the noise carries directly to the front.

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Now, in respect to this matter sir, you are asking for the greatest relief that any trial court no matter what level, can attribute to any individual as a form of relief for an apparent breach of the Charter of Rights and Freedoms. You are asking the Court, first of all, to accept that you acted diligently. So, when one accepts sir, that you acted reasonably, your agent, not you because you are not able to answer a question about even when you retained your representative, indicates that three days after the offence date, you were in their office to retain them. I note three now, three agents are on this matter; Larosa, I note on the certificate it is someone named T. Brown, and now today we have Mr. Bonin; three separate representatives. Are they affiliated, I don't know. I do not really care. I do not know if you have discharged people or you have not, but in any event three different individuals.

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What concerns me first of all, is the defendant has included his own notice of intention to appear, which is a trigger as I indicated in this system to apply for a trial. When an individual elects to proceed to trial, that is a trigger by the Court's administration to set up a trial date. Where they do nothing, they can be docketed sir, and generally speaking, in this jurisdiction, thirty days after, despite the notice that says fifteen, thirty days

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later the defendant can be found guilty under section 9.

5 In this case, you triggered a request through an agent, and you are entitled to act by agent under the Provincial Offences Act. But when your agent, first of all, uses a pre-printed form and then chooses not, and I underline not, to enter in the day in which the request is made, it does not allow the Court to take a favourable disposition when you are unable to ask.

10 So, sometime in the first thirty days, sir, I am going to presume that a request was made for a trial. And in that regard sir, I take thirty days off the delay at this point, because I do not find, sir, that necessarily, you acted reasonably. If there was a different time, and I am going to circle this area, I am going to write a stoke through it, and I am going to initial it; totally blank. So I take that position sir, in this jurisdiction, you do not get convicted under section 9 for thirty days. There has not been a conviction registered and a re-opening made, so therefore within thirty days you made application for a trial. That time comes off as a neutral period of time for which, sir, you have not acted. The trial date was set up sir, from January 3rd to January 14th 2002. Taking that thirty days off, sir, we are looking at just a little over eleven months. On the first trial date, sir, you are asking the Court to take submissions made by your representative absent a transcript. I am not able

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5 to do that. I am not able to guess, surmise, speculated, or take the word of one over another in terms of what happened in a Court of record. I am only entitled, number one, to read a record or transcript of these proceedings, or number two, look at the certificate.

10 Your agent has indicated that you applied for a record. Certainly, sir, you could have commenced these proceedings had the Court seized so that you are making the argument and ask for an adjournment to obtain this transcript. But without the transcript, I am not in a position to put a spin either way on it. I can only go with the certificate, so I know that on the first trial date, there was no Motion made in advance to change the date for non-disclosure. It was just a trial date application for a new trial date, and that matter went to April 22nd at the defence request, disclosure provided. I also note, sir, that you were not present, so even though Mr. Bonin tells me 20 that he filed notice in respect of this matter, he also told me when he got disclosure, he had to go and discuss it with you and seek instructions.

25 Maybe that is why the Motion did not proceed on that date. I really do not know. The period of time, sir I can only calculate, given the Court's comments, is from the initial period, sir, some thirty days after the offence date to the first trial date. After that sir, I find the delay is attributable to the defence clearly because they 30 postponed the matter for want of disclosure. I do

not have any other documents before me in terms of what was applied for. I have submissions made by your agent; absent a transcript I am not relying upon those.

5 As a result sir, we see a delay of approximately eleven and a half months. That is not unreasonable. If the case, sir, were to be met, that every time the defence requests an adjournment at the eleven month jurisdictional point --- because eleven months is pretty average in this region --- if the Court were to take the position that once we grant the defence application, they will place themselves in a position where they will then file notices and seek to stay proceedings under the Charter because we have granted their application, then you would see zero grants of any application on the trial date. That is not how it goes, sir.

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20 Basically the way we work it is, if you want an adjournment because you need to better prepare yourself, we will give it you. But we do not allow you then, to try and pro-offer that as an explanation, and attribute it to the Crown or the Court as a form of delay. I do not find that delay sir, in excess of eleven months and the assorted days. I find that not unreasonable in the busiest jurisdiction in the Province, let alone the City, let alone the Country.

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30 I find it not inconsistent with the Moran decision. I find, sir, the in relation to the Askov, and

5 subsequently the Moran decision, sir, that was read
Askov down that you were not under onerous
conditions of bail. Your lifestyle was not changed
in any fashion, sir, awaiting trial in this matter.
There were no restraints on what you went through,
and you were not facing the stigma of a criminal
conviction.

10 The fact that you are concerned about your
insurance premium is really of no consequence. I
find you also have some recollection of this matter
that is appreciable, and I find sir, that there is
no merit in your application. It is denied, and I
direct that a plea be entered please.

MR. BONIN: Not guilty, Your Worship.

15 MR. WIEDEKOWSKY: Officer 1-7-6-7.

P.C. A. MAY SWORN

EXAMINATION IN CHIEF BY MR. WIEDEKOWSKY:

20 Q. Good evening, officer; I understand you are
currently employed as a Police Constable with the Toronto Police
Service?

A. Yes, I am.

25 Q. Were you so employed on the 3rd of January,
2001?

A. Yes, I was.

Q. Did you make notes with respect to your
observations?

A. I made notes, yes.

Q. And when were those notes made, sir?

30 A. At the time.

Q. And are they in your own handwriting?

A. They are.

Q. Any additions, deletions, or alterations to those notes?

A. None.

Q. And you require them for what purpose?

A. To refresh my memory.

Q. With leave of the Court, Your Worship.

THE COURT: Mr. Bonin?

MR. BONIN: Yes, officer, you made these notes to refresh your memory?

A. That is correct.

MR. BONIN: Q. Do you have an independent recollection of the events that took place on that date officer?

THE COURT: You don't have to answer that officer, because it is an unreasonable standard to place the witness at, and that is why he makes notes.

MR. BONIN: Q. Perhaps I can reword the question,

Your Worship?

THE COURT: As long as it doesn't have anything to do with independent recollection, Mr. Bonin.

MR. BONIN: Q. You do have some memory other than your notes, officer?

A. Yes, I do.

MR. BONIN: Q. Okay, and would they be fairly vague, or specific recollections?

A. In regards to issuing this ticket?

MR. BONIN: Yes, sir.

A. My memory has been refreshed over the last few minutes, quite well.

MR. BONIN: Q. And these refreshed memories, did they come from your notes that you made on the day, or from some outside source?

A. My memories were refreshed from the

conversation of your client in this court, from the notes that I have before me, and from the incident on that day.

MR. BONIN: Q. Okay, and again, would you say they are general recollections, or specific ones?

THE WITNESS: Pertaining to?

MR. BONIN: The memory that has been refreshed over the past little while.

A. It is specific.

MR. BONIN: Q. And these were the notes that were disclosed to the defence; your offence notes?

A. Yes, they were.

MR. BONIN: No objection to the officer using his notes, then.

THE COURT: Go ahead.

THE WITNESS: Thank you, Your Worship.

A. On Wednesday, the 3rd of January, 2001 at 11:30 p.m. I was situated on Kipling Avenue specifically to monitor vehicular traffic, speed of the vehicles. I was parked south of the Humber River, on the west side of the roadway. I had a clear view of vehicles travelling southbound.

Kipling, at this location, is a four lane roadway; two lanes northbound, two lanes southbound. The specific area I was monitoring had a slight downhill grade, and it was a clearly posted fifty kilometre zone. At 11:30 p.m., I observed a motor vehicle travelling at a high rate of speed southbound in the curb lane.

I was monitoring speed with a Marxman L.T.I. 20-20 laser unit, serial number 8-0-2-0. I am qualified to operate this device. When I did activate the device, pointing it directly at the defendant's vehicle, from a distance of two hundred and forty seven metres, I received a speed of ninety-five kilometres. As I said, this is a posted fifty kilometre

zone.

5 The vehicle passed by me quickly. I pulled behind the defendant's vehicle, stopped it a short distance later. The vehicle license, 6-5-9-P-W-L, a gold Nissan. I approached the driver and requested he produce his drivers licence, ownership and insurance for the motor vehicle. He produced a valid Ontario drivers licence in the name of Arthur Garofalo, at which time I issued him a Provincial Offences ticket for the offence of speeding, 95 kilometres in a 50 kilometre zone, under the Highway Traffic Act, section 128.

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This occurrence happened within the City of Toronto. Your Worship, this evening, it was a cold evening, and to top it off the roads were wet.

15 MR. WIEDEKOWSKY: Q. Now officer, did you test this unit?

A. Yes, this unit was tested by myself and found to be in good working order.

20 Q. And how did you test it, in accordance with what, sir?

A. I tested it with a --- according to the manufacturer's specifications, and as well against a radar unit.

Q. You did a comparison test?

A. Yes, I did.

25 Q. And this radar unit that you compared it with, was it tested?

A. Yes, I tested it according to the manufacturer's specifications as well.

30 Q. And as a result of those tests, what did you ascertain about the radar unit?

A. I was satisfied that the radar unit was in good working order, and in comparison, the laser was working

correctly.

Q. And did you ascertain that not only from the comparison test but also the manufacturer's specified tests for the laser device?

A. That is correct.

Q. What is the purpose of utilising laser or radar, sir?

A. It's to monitor vehicular speed to obtain the speed of a moving motor vehicle.

Q. And does it give you an estimate sir, or an accurate depiction of the speed?

A. This is accurate.

Q. Is this the only vehicle that you used the laser device on that evening, sir?

A. No, it is not.

Q. And every time that you activated this particular laser device sir, did it appear to be reflecting the speeds that you were visually making observations of sir?

A. That is correct.

MR. WIEDEKOWSKY: Thank you, sir. I have no further questions.

THE COURT: Mr. Bonin?

CROSS EXAMINATION BY MR. BONIN:

Q. This comparison test you did between the radar and the laser itself, officer; what was the date of that test?

A. That test was on the 3rd of January, 2001.

Q. What time?

A. I don't have the time. Your Worship, normally when I start my shift, I will take both devices and do the tests simultaneously. Once I am satisfied that the laser unit is in

A. May - Cr.Ex.

good working order, then I commenced my duties.

Q. Officer, the --- you stated you normally do this test. Do you have the radar test noted in your notes?

A. No, I do not.

5 Q. And do you recall that you did it, specifically on that date, or is this just your normal procedure?

A. It is at the beginning of every shift, and the completion of every shift.

10 Q. And you state you testing this device according to the manufacturer's specifications, and I am referring to the laser?

A. Yes.

Q. And that you are qualified to operate this device?

A. Yes, I am.

15 Q. Okay. When were you qualified?

A. I would have to look at my card; it has been a few years.

Q. Approximately?

A. Seven years, six years.

20 Q. And to be qualified, you have to take some sort of a course, or?

A. Yes.

Q. Okay. And who qualified you on this device?

25 A. An officer attached to traffic services at the time.

Q. Do you know what his qualifications were to administer the testing or to take the course and train?

A. His qualifications, no.

Q. Do you remember his name?

30 A. Officer Malcolm.

Q. Back to the tests that you did on the laser on this date; these are the tests that you were trained to do

during your training?

A. Not originally, no. The laser testing was what I was trained years ago, and since I have tested the unit against a radar unit.

Q. Okay, other than the comparison test, are the tests the tests that you were taught to do?

A. That is correct.

Q. Okay, and have you ever seen the manufacturer's testing procedure, the manual? The one published by the manufacturer itself as opposed to the hand book published by the Toronto Police Service?

MR. WIEDEKOWSKY: Your Worship, I have some objections with the way that question was worded, Your Worship. There was no suggestion that any manual was prepared by a certain group or individual, and I think by wording the question that way, Your Worship, it is leading the witness down a certain path, Your Worship.

THE COURT: Are you going to respond?

MR. BONIN: I will rephrase the question, Your Worship.

THE COURT: All right.

MR. BONIN: Q. In the course of your training, were you given a manual detailing the testing procedures for a number of different devices?

A. I believe so, yes.

Q. Okay, and in that manual, are there testing procedures for both laser and radar devices?

A. I don't recall if both are in that manual, no.

Q. Do you know for a fact if you have seen the original manual as produced by the manufacturer of the laser device?

A. I don't believe so, no.

Q. The tests that you conducted on the date in question, other than the comparison test itself; can you relate the specific tests you did on that date and the results you got on that date?

MR. WIEDEKOWSKY: Well, Your Worship, with all due respect, at this particular juncture, what I would respectfully classify this line of questioning is, is a fishing expedition. Unless Mr. Bonin is going to be tendering any evidence with respect to what do these answers mean with respect to the tests.

Without the benefit of an expert who can actually be called to testify to say, if he strikes the wall and the banana turns green, that means the device is operational or is not operational. Anything that could be deduced from this is mere speculation, Your Worship.

THE COURT: Maybe Mr. Bonin is going to call that witness though. Go ahead Mr. Bonin. The Crown makes a good point.

MR. BONIN: Well, Your Worship, the officer stated that he determined the device was operating properly due to tests that he conducted ---

THE COURT: Correct.

MR. BONIN: --- according to the manufacturer's specifications. I am asking for him to relate the tests and what the results are because he has based his decision on that. I don't think that that's a fishing expedition; he says he has done the tests, I would like to know what the specific tests are.

THE COURT: But who will ---

MR. BONIN: The fact that ---

THE COURT: Go ahead.

5 MR. BONIN: The fact that he is not an expert isn't in contention, however I did have another question that perhaps I should have asked prior to that, but the fact of the matter is, he has been taught to conduct specific tests and receive specific results before he determines whether it is operating properly. If he hasn't done these tests, or he can't recall the tests, then I believe it opens up an opportunity for the defence to come up, to challenge the readings and whether or not the device was operating, we know the device was operating properly on the date in question.

10 THE COURT: So, the officer testifies to "X"; how do we then know that the answer really is why unless you call a witness, which is the exact objection the Prosecutor is making.

15 MR. BONIN: Well I don't know what the officer's answers are going to be. I don't know what line I will follow until I find out what the answers are.

20 THE COURT: No, but I think the Prosecutor's position is correct. If you are going to walk down this road, sir, and you are going to have us listen to every test the officer performed in respect to the laser and the radar, we expect you to be calling that expert, sir, to rebut that testimony rather than just take us on an exhaustive discussion of what tests are performed on these devices.

25 MR. BONIN: Well, Your Worship, you would certainly be in a position to --- it may well be that the officer may have the answers to the questions that I would ask in regards to the specific testing of the ---
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5 THE COURT: Well, I am not going to tell you how to run the case Mr. Bonin. The Crown's objection is appropriate, so we will see at the end. I am not going to ask you to disclose anything. You just have to know that that is the Crown's position and obviously that is something the Court thinks is reasonable. But at this particular juncture, I am going to hold this matter down and deal with all the other fine people who are here. I think you have taken up enough of my time at this point, Mr. Bonin, and we will resort to your matter at the end of our list.

10 MR. BONIN: Thank you, Your Worship.

15 COURT REPORTER'S NOTE: AT THIS POINT UNRELATED MATTERS WERE SPOKEN TO

20 THE COURT: All right. Call Mr. Garofalo back, call Mr. Bonin. We will proceed to trial. Mr. Garofalo, come up here sir, please. All right, the record will show that has taken us about four minutes. Back to the matter for Garofalo, the officer is still sworn. Go ahead, Mr. Bonin.

25 MR. BONIN: Thank you, Your Worship. Q. Again officer, can you relate the specific tests and results you got when you tested the device that day other than the comparison test?

A. I found that the device was in good working order, and I commenced using it.

Q. Which tests did you perform on the device.

30 A. Your Worship, the device is in a suitcase which is padded. The first thing I do is look at the device and insure that it doesn't have any visual defects on it. I was

5 satisfied that it didn't have any visual defects. There is a separate power package battery. I took the stand to the back parking lot at 23 Division, and at a paced off area where I set up the stand, put the device on the stand, plugged in the device into the battery, and at that point I turned the device on. And the device goes through a self calibration. It was in good working order at that time. I activated the device at a marked off distance of fifty metres, and the device displayed exactly fifty metres, and I was satisfied again that the distance calibration of the device was one hundred percent accurate. And these are the tests that I conducted and found the device to be working on that day.

10 Q. The self calibration test you are referring to officer, what result did you get from the device?

15 A. Your Worship, when you turn on the device, there are several bars that come across which indicate --- and there is an audio noise as well, that indicate that if those bars come across, the device is working. Once I activated the device, I went to the distance mode, and like I said, it was exactly fifty metres from the point that I had previously marked off in the parking lot at 23 Division.

20 Q. Officer, back to the instrument itself, that is the display test; any other results come up other than the lick bars?

A. No, that's all that this device came up with.

25 Q. This is an L-T-I-20/20?

A. That is correct.

Q. There is nothing else that is supposed to be illuminated at this time?

A. I don't believe so, no.

30 Q. Sorry?

A. I don't believe so, no.

Q. The distance test, officer that you conducted,

do you recall when you paced that off?

A. No, not this specific date. I can tell the Court though, that I used a measuring stick and put a mark in the parking lot and the wall of the building.

5 Q. A measuring stick, officer; can you just describe what that is?

A. It is a measuring wheel. You walk with it and it gives you the metres as you go along.

Q. Any other tests you conducted on that day officer?

10 A. No.

Q. Other than --- and when I am asking questions I am talking about anything other than the comparison test. I am referring to specific tests as per the manufacturer's specifications?

15 A. No, that was it.

Q. Are you sure of that?

A. Yes.

Q. You stated in your evidence that you pointed the device directly at the defendant's motor vehicle?

20 A. That is correct.

Q. And it was approximately two hundred and forty seven metres away at the time?

A. It was exactly two hundred and forty seven metres away at the time.

25 Q. And at this time, were there any other vehicles on Kipling Avenue?

A. I have no notation of any other vehicles on Kipling at this time.

30 Q. Okay. Do you have any recollection as to whether there were vehicles or not?

A. Your Worship, when I first --- my attention was drawn to this vehicle, it was due to the high rate of speed.

When I directed the device, pointed the device at the defendant's vehicle, I was satisfied that I was getting a reading from that vehicle and no other vehicles. And I have no notation on any other vehicles on the roadway at that time.

Q. Do you recall whether there were any other vehicles on the road at that time, officer?

MR. WIEDEKOWSKY: Your Worship, I think we have been down this road.

THE COURT: Asked and answered.

MR. BONIN: Well, actually, Your Worship, it wasn't answered. When he was asked the question, he related back information as to the fact that he made a visual observation of the defendant's vehicle and it appeared to be travelling at a high rate of speed.

THE COURT: No, initially he answered he had no recollection of that, so it is asked and answered; move on.

MR. BONIN: Q. Officer, how do you know you were pointing the device directly at the defendant's motor vehicle at this time?

A. The device is a beam, and that beam is pointed directly at the large mass area of the motor vehicle, and when I activated the device, that is when I received the reading of ninety five kilometres.

Q. Okay, can you see this beam?

A. Can I see it?

Q. Yes, the laser?

A. No.

Q. Okay, so how do you know you had it pointed directly at the defendant's motor vehicle.

A. The device has a light in the view finder area, eye area, and that light indicates the beam that is sent and I

was satisfied that a result of my earlier comparisons that that was the speed of the motor vehicle.

Q. Those are the tests that you related to us earlier?

A. Sorry?

Q. Sorry, are those the tests that you related to us earlier?

A. Correct.

Q. Those are the only tests you conducted on that day, other than, again, other than the comparison test?

A. Correct.

Q. So you were relying on this aiming dot that is inside the scope itself on the device? Is that what you are relying on to aim this device at the defendant's vehicle?

A. Yes.

Q. Okay. Do you know how wide the laser beam is at 247 metres?

A. No.

Q. Have you ever heard of a scope alignment test, officer?

A. Yes.

Q. Can you explain the scope alignment test --- actually, before I ask that question. When you say you have heard of a scope alignment test, is it a test that refers to the L-T-I-20/20?

A. I believe so, yes.

Q. Can you explain the purpose of that test?

A. The purpose of the test is to determine whether the beam for the scope is aligned to the object in which it is receiving a reading from.

Q. Now, you didn't conduct that test on this date, according to your prior testimony. How do you know that the scope, or your aiming section was accurate if you didn't conduct

the test?

A. Your Worship, when I activate the device large mass area of the vehicle, if the scope is out of line, will not afford me a reading. And after checking the device, finding it is in good working order, I was satisfied that I was getting accurate readings.

Q. Is the scope alignment test a required test of the L-T-I-20/20?

A. I am not sure if it is or it isn't.

Q. As a result of your training, is it recommended that it be tested every day that you utilise the instrument?

MR. WIEDEKOWSKY: You know, Your Worship, if I could just object at this particular point in time. I have given my friend an awful lot of latitude here, Your Worship. The officer has tested this device, and unfortunately he does not have the benefit of the manual that he has been provided to utilise with this device. He is simply trying to recall from his memory, Your Worship. The agent has the benefit of some form of manual over there that he is reciting from or reading from, Your Worship, and without the benefit of this officer being able --- if he is going to be asked specific questions about these tests, Your Worship --- without the officer having the benefit of being able to retrieve that manual that he was provided with and that he tests this device in accordance with, Your Worship, I think these types of questions are unfair. And perhaps the officer should be given the opportunity to retrieve the manual that he has been provided with.

MR. BONIN: Actually, Your Worship, I am in complete agreement with my friend.

5 THE COURT: No, we are not going to go through the manual, and no, you are not going to walk it across the room. The officer has indicated the tests he has done; move on. Mr. Bonin, it seems to be a big long fishing expedition. That is exactly what we feared initially. Please make your points, continue your cross examination, and quit going over areas sir, that quite frankly is not helpful to the Court.

10 MR. BONIN: Q. Officer, when you --- is it safe to say that it is as a result of all the tests you did on this date, in addition to the comparison test, that you made your determination, that you based your determination that the device was operating properly on those tests?

15 A. Yes.

MR. BONIN: Thank you, officer. No further questions, Your Worship.

THE COURT: Do you have redirect?

MR. WIEDEKOWSKY: Very briefly, Your Worship.

20 THE COURT: Go ahead.

RE-EXAM BY MR. WIEDEKOWSKY:

25 Q. Now officer, when you tested this device, when you retrieved this device from your division, did you utilise the manual sir, to step walk you through the steps?

A. No, I do not.

MR. WIEDEKOWSKY: Okay, thank you sir. No further questions.

THE COURT: Thank you.

30 MR. BONIN: Just one question in regards to that please, Your Worship.

THE COURT: I would have thought you had asked all

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the questions you could ask, Mr. Bonin, but go ahead, surprise me.

MR. BONIN: Well just in relation to that one charge. Q. How do you do the testing then if you don't refer to the manual, officer?

A. Sorry?

Q. My friend asked if you referred to the manual when you test the device and you said no. I am asking how you, what do you refer to if anything?

A. Your Worship, I refer back to my original training, and what I was told was required for the device to be in good working order. And I have seen some devices, or sent some devices back for repairs that were not satisfactory. This device on this day, I am satisfied that it was in good working order.

Q. Officer, perhaps I phrased the question improperly. Did you refer to any type of documentation when you did the test on this date, or did you do it by memory?

A. A combination of memory and repetitiveness.

MR. BONIN: Thank you, officer.

THE COURT: Thank you.

MR. WIEDEKOWSKY: Nothing else, Your Worship.

THE COURT: Is that your case?

MR. WIEKEKOWSKY: All right; defence? Mr. Bonin?

MR. BONIN: Calling no evidence, Your Worship.

THE COURT: Fine, the Crown argues first.

***** SUBMISSIONS *****

REASONS FOR JUDGMENT:

BY HER WORSHIP D. MCALEER J.P. (Orally):

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5 THE COURT: Stand up please, sir. The record will show the Court dismissed your Motion for a stay of proceedings, and as a result, a plea of not guilty was directed, and you, through your representative, a paralegal, have chosen not to give any evidence tonight. So there is no evidence to the contrary in respect of this matter. So what we have sir, is an officer who is trained and qualified in the use of speed measuring device. This device is a laser. He has also told me, sir, that he has been

10 qualified about six or seven years, and that prior to that, he was also using radar. He has told me sir, that he performs tests in regard to the speed measuring device but it is only a device sir, to corroborate his own visual opinion.

15 So, while he is set up on Kipling Avenue south of the Humber River on January the 3rd, 2001, he observes your motor vehicle travelling at a very high rate of speed. He tells me it is a fifty kilometre per hour zone, and sir, your vehicle is

20 travelling according to the speed estimate on the certificate, based on his observation and the device, almost double the speed limit. A very high rate of speed.

25 Whether there was one car or several around you, sir, the officer tells me he targets your vehicle with the device and I accept that.

30 In respect of what tests are required to be given in respect of the laser device, sir, we have had exhaustive cross examination on what the officer

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5 did. He has explained to me the test he has performed. I am satisfied with those tests. I am satisfied with his qualification to use the laser device. A comparison test ^{vis a vis} visa vie a laser and radar, of course, is always welcome, and not required in recent law. Laser has now become an accepted mode on it's own, standing on it's own in regard to the speed measuring of motor vehicles.

10 So, what we have, sir, is the observation that your vehicle is travelling at a very high rate of speed. Your identification ultimately with a valid Ontario Driver's Licence, as the operator of this gold Nissan motor vehicle with the plate as indicated, and no evidence to the contrary. The observation and the speed measuring device corroborate the
15 observation at 247 metres away. It is irrelevant and unnecessary that the officer know the width of the beam at that distance, sir. And in terms of the scope alignment, we would have welcomed from
20 your defence experts in respect to what tests are required in respect of this matter, and the necessity of these tests. Under the circumstances, that was not afforded to the Court.

25 So what we have is a long, very repetitious detailed cross examination of what the officer did. I am satisfied what he did was proper. I am satisfied that the reading on this device was reliable, and I accept his opinion that the device
30 was working properly. And he has also told me as a result of redirect, there have been times when the device has not been working; he knows the

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difference, and he has sent these devices back to be recalibrated.

Under the circumstances, of course, there is no evidence to the contrary. There is no doubt in my mind sir, of course, subject the low flying airplanes, that this indeed was your motor vehicle. There will be a conviction at ninety five. Dealing with penalty, any comment?

MR. WIEDEKOWSKY: I will leave that in your hands, Your Worship.

THE COURT: Something you want to say, Mr. Bonin?

MR. BONIN: No submissions, Your Worship.

THE COURT: All right. Under the circumstances, there has been an exhaustive and almost redundant, unnecessary cross examination of the officer with no experts called. It is almost a situation, Mr. Garofalo, where the Court thinks, well, it is almost like Mr. Bonin has decided to take the Court on a very long trial, because we do not grant the stay.

We do not grant the stay for the reasons indicated, no other. But under the circumstances, I have found, sir, a lot of the cross examination unnecessary. Under the circumstances, I am imposing my discretion under Section 128(14)(c). There will be a fine of \$315 in respect of this matter. Time to pay, please? Thirty days, time to pay. Thank you.

MR. BONIN: Your Worship, can I ---

41.

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THE COURT: You can recess the court, please.
Thank you very much.

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THIS IS TO CERTIFY THAT THE
foregoing is a true and accurate
transcription of the record made
from sound recording apparatus
to the best of my skill
and ability.

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