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R. v. Marshall

Between
Her Majesty the Queen, and
Kyle Marshall

[1995] O.J. No. 4476

Ontario Court of Justice (Provincial Division)
Brampton, Ontario
Weagant Prov. J.

Oral judgment: December 22, 1995.
(4 pp.)

Charge: Speeding (Highway Traffic Act)

Counsel:

R. Craig, for the Crown.
G. Burd, for the accused.

¶ 1 **WEAGANT PROV. J.** (orally):— I am going to rule that the fact that had to be proven here for this charge to hold was that Mr. Marshall was going 99 kilometres an hour. This rate of speed was not measured by what is now commonly accepted to be accurate speed measurement, a radar machine. It was measured by a new device, a laser machine. No evidence was given as to why certain tests have to be performed and what the consequences of those tests are or the relative importance of each test to each other. One of the tests done by the officer in this case, who testified she was qualified to run the laser machine -- and I have no doubt that that is the case -- was that she tested it against a more traditional radar machine.

¶ 2 Perhaps only because of the state of the jurisprudence at this point, the Crown did not see fit to ask the questions which would have allowed the Court to determine that the officer was qualified to run the radar machine against which she tested the laser machine. To my mind, that is fatal. Given the lack of evidence on the relative importance of the test, it very well may be that testing the laser against the traditional radar set is the all-important test for a determination that the laser is capable of measuring the speed of a moving vehicle. If that is the case, I would think that proper evidence would have to be called in order to establish beyond a reasonable doubt that the radar was in working order and that the police officer using it for test purposes is qualified to so do. I can say for the purposes of any other Court that may be looking at this that I accept that the police officer's observations could very well and were found to have been relied upon to establish that Mr. Marshall was speeding, however there was no estimate of speed given by the police officer and the finding of guilt was made based upon the readings that came from the laser machine. Given what this appeal turned on, Madame Crown, it would be unfair to send it back so that the Crown could simply fill in

the holes that were identified on appeal. Otherwise no one would ever be able to get an acquittal in this country. Under the circumstances, I am going to enter an acquittal.

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