Case Name:

R. v. Prasad

IN THE MATTER OF The Highway Traffic Act, R.S.O. 1990, c. H.8

Between
Her Majesty the Queen, and
Rajesh Prasad, defendant

[2002] O.J. No. 267

Ontario Court of Justice
Provincial Offences Court - Toronto, Ontario
Quon J.P.

Heard: November 20, 2001.
Judgment: January 25, 2002.
(50 paras.)

Charge: S. 128, Highway Traffic Act - speeding

Cases Considered or Referred To:

Crossland v. D.P.P., [1988] 3 All E.R. 712 (Q.B. Div.).
R. v. Aguilera, [2001] O.J. No. 2287 (O.C.J.) per Quon J.P. at Toronto.
R. v. Amankwaa, [1997] O.J. No. 6014 (Ont. Ct.(Prov. Div.)) per Quon J.P. at Etobicoke.
R. v. Joudrey (1992), 39 M.V.R. (2d) 235, 113 N.S.R. (2d) 117, 309 A.P.R. 117 (Prov. Ct.).
R. v. Smith, [2001] O.J. No. 1504 (O.C.J.) per Quon J.P. at Toronto.
Weaver v. Buckle (1983), 19 M.V.R. 227, 42 A.R. 241 (C.A.).

Statutes, Regulations and Rules Cited:

Highway Traffic Act, R.S.O. 1990, c. H.8, s. 128.

Authorities Referred To:

Shannon, L.P., Motor Vehicle Offences and the Summary Conviction Court (Toronto, Canada: Canada Law Book Company Ltd., 1964), pp. 301-303.

Counsel:

P. McMahon, Provincial Prosecutor.
P. Tiller, for the defendant.

QUON J.P.:—

1. INTRODUCTION

¶ 1 Well, if the driver of motor vehicle in abruptly braking to avoid hitting a pedestrian, leaves skid marks on the road surface, and there is no police officer there to observe the events leading up to the pedestrian being

struck, would the police officer arriving after the mishap know how fast that vehicle was travelling just before the accident occurred by measuring the skid marks?

¶ 2 The investigating officer, who has some accident reconstruction expertise, concludes the defendant's vehicle was travelling faster than the posted speed limit because of the length of the skid marks left on the road surface. The defence disagrees and argues that there is no physical proof or evidence of the actual rate of speed the defendant's vehicle was doing when the defendant applied his brakes and caused the telltale skid marks at the accident scene. Ergo, the defence moves for a directed verdict based on the absence of this proof of speed.

¶ 3 In this case, the defendant had been driving a vehicle that struck a pedestrian while she had been in a crosswalk trying to cross on a red light. The defendant was subsequently charged for speeding - the pedestrian for jaywalking. The police officer laying the charge was not present during the occurrence of the alleged offence of speeding nor did he use any mechanical measuring device to determine the speed of the defendant's vehicle. The officer based his decision to charge the defendant for speeding on his professional or expert opinion and his interpretation of the length of the skid marks left by the defendant's vehicle, which he confirmed by performing his own skid test using a vehicle which was not exactly like the defendant's vehicle.

¶ 4 The trial was held on November 20, 2001. The judgment of the court was reserved and adjourned to be given on January 25, 2002. These are my reasons for judgment.

FACTS

¶ 5 The defendant was charged for committing the offence of speeding at 60 kilometres per hour in a 50 kilometres per hour zone, southbound on Yonge Street at St. Clair Avenue in Toronto on June 24, 2000, at 1:56 a.m. contrary to s. 128 of the Highway Traffic Act, R.S.O. 1990, c. H.8.

¶ 6 On June 24, 2000, at 1:56 a.m. Officer Comartin had been called to the intersection of Yonge and St. Clair Avenue in the City of Toronto to investigate a personal injury accident.

¶ 7 Upon arriving at that intersection Officer Comartin observed a female lying on the road in the southside crosswalk of St. Clair Avenue. She had been attempting to walk across Yonge Street from the westside to the eastside. An ambulance attended to provide medical aid to the female.

¶ 8 Comartin also observed a Nissan motor vehicle with license plate number ABW8378 located south of the female pedestrian's position.

¶ 9 At this time, a male person came up to Officer Comartin and identified himself with a valid Ontario driver's license as Rajesh Prasad of an address in Stouffville. Comartin also identified the person who had approached him as the defendant before the court.

¶ 10 Officer Comartin testified that Prasad was the driver of a vehicle that had hit the female pedestrian who had been attempting to cross Yonge Street. The defendant's vehicle was a 1990 Nissan, black two-door Pathfinder.

¶ 11 Comartin also indicated that the female pedestrian had been drinking and had walked against a red light in the southside crosswalk of the intersection. The driver of the vehicle had being travelling southbound on Yonge Street and faced a green light before hitting the pedestrian.

¶ 12 The female pedestrian had also been charged with jaywalking.

¶ 13 Officer Comartin also testified that the motor vehicle involved in the accident was a four-wheel drive vehicle and had laid down initially 28 feet of solid rubber from all four tires. These skid marks from the vehicle that hit the pedestrian started just north of the crosswalk, then veered to the right and left scuff marks on the west curb, and then veered off the west curb towards the southeast where another 8 feet of rubber were left on the road surface. Officer Comartin testified that in his opinion the skid marks left by the four-wheel drive vehicle involved in the accident indicated the vehicle had been speeding on Yonge Street.

¶ 14 Comartin testified that he is an accident investigator and has completed a level one course as a reconstruction expert. He also testified that he has taken training and has experience in the speed-monitoring devices of radar and laser during the last 28 years. He also stated that measuring the skid marks in the present case were straightforward because of the solid pavement on a road of good repair.

¶ 15 Comartin also testified that he did not observe the vehicle speeding. However, he testified that in his opinion, to lay down that many feet of solid rubber on a truck of that size, with four-wheel drive and ABS (Automatic Braking System) would indicate speed.

¶ 16 To confirm his opinion that the defendant had been driving his vehicle over the speed limit, Officer Comartin performed a skid test later that morning using his own vehicle. His vehicle was a Safari van without ABS and without four-wheel drive. In his test, Comartin drove his own vehicle southbound Yonge Street at the rate of 65 kilometres per hour toward the intersection where the accident had occurred. He also braked his own vehicle abruptly in order to leave skid marks on the road surface. He performed this test at about 2:25 a.m., sometime after the occurrence of the accident. He testified that when he applied the brakes abruptly to his vehicle travelling at 65 kilometres per hour, he had laid down 11 feet of skid marks at the same intersection. This test confirmed Officer Comartin's opinion that the defendant had to have been driving his Pathfinder vehicle at least 60 kilometres per hour, to lay down the total of 36 feet of skid marks that had been observed on the road surface.

¶ 17 Based on Comartin's own test, he decided to charge the defendant for speeding 10 kilometres over the speed limit. That is, if Comartin had been travelling at 65 kilometres per hour to produce 11 feet of skid mark, then the defendant had to have been going at least 60 kilometres per hour to leave about 36 feet of skid marks.

¶ 18 The speed limit for Yonge Street in that area is a 50 kilometres per hour. Although Comartin testified that he could not prove the exact speed the defendant's vehicle had been travelling at, just before the vehicle began leaving skid marks on the road surface, he believed that the defendant was easily going 10 kilometres over the speed limit. He also reached this conclusion based on his previous dealings in that area and knew it to be prone to high-speed motorists travelling in that area.

¶ 19 Comartin also testified that the roads in the area of the accident scene were dry and in good repair at that time. However, Comartin did not make note of the weight of the defendant's vehicle. Under cross-examination, Comartin agreed that the length of a skid mark would vary with the type of vehicle in question, the type of tires on a vehicle, and the weight of a vehicle. At the time Comartin performed his own skid test using his Safari van, the road conditions had been under the same conditions as he had observed them earlier at 1:56 a.m.

¶ 20 Moreover, Comartin testified when he tried the same skid test with his police cruiser, which was equipped with the ABS braking system, he could not obtain any skid marks because of the ABS system.

3. ISSUES

¶ 21 Is there any evidence that the defendant had been speeding at 60 kilometres per hour in a 50 kilometres per hour zone?

¶ 22 Is the police officer's opinion that the defendant had been speeding at a particular rate of speed, proof of the speed the defendant's vehicle had been travelling before the accident?

¶ 23 Was the skid test conducted by the police officer in his own vehicle, an objectively reliable test to confirm the officer's opinion as to the rate of speed of the defendant's vehicle?

¶ 24 Has the prosecution made a prime facie case that the defendant had been speeding 60 kilometres per hour in a 50 kilometres per hour zone based on the police officer's opinion, the length of skid marks left by the defendant's vehicle and from the officer's own skid mark test?

4. ANALYSIS OF FACTS AND LAW

¶ 25 In this motion for directed verdict, the defense moves for a dismissal on the basis that the prosecution has not presented a prima facie case. Specifically, the prosecution has not presented a case containing evidence on all essential points of the speeding charge. It was argued that the missing evidence the prosecution failed to produce had been the lack of evidence of the vehicle's rate of speed at the alleged time of the offence.

¶ 26 I summarized the test for determining whether a motion for directed verdict should be granted in my decision in R. v. Amankwaa, [1997] O.J. No. 6014 (Ont. Ct. (Prov. Div.)) at paras. 24-26:

> The test to determine whether the motion for non-suit should be granted or dismissed is found in R. v. Paul (1976), 27 C.C.C. (2d) 1, 33 C.R.N.S. 328 (S.C.C.). The majority in R. v. Paul referred to R. v. Morabito (1949), 93 C.C.C. 251, [1949] 1 D.L.R. 609, [1949] S.C.R. 172 at page 4 in Ritchie J.'s opinion and at page 9 in De Grandpere J.'s opinion. The principle adopted by the Supreme Court of Canada is that the court has only to consider whether there is evidence upon which a properly instructed jury acting reasonably might have convicted the defendant.
> In Mezzo v. R., [1986] 1 S.C.R. 802, 27 C.C.C. (3d) 97 (S.C.C.) it was decided that the issue on a motion for non-suit is whether there is evidence on all essential points of a charge which, if believed by a properly charged trier of fact acting reasonably, and unanswered, would warrant a conviction. The court may not consider the credibility of the witness or the quality or weight of the evidence that the witness has given.
> In Monteleone v. R., [1987] 2 S.C.R. 154, 35 C.C.C. (3d) 193 (S.C.C.), at page 198 of 35 C.C.C., it was decided that while there must be evidence on all essential elements of the charge, there need not be direct evidence on all essential elements. It is sufficient if the evidence on some or all essential points is entirely circumstantial.

¶ 27 In a previous case on a motion for a directed verdict, I wrote in R. v. Aguilera, [2001] O.J. No. 2287 (O.C.J.), at para. 21 that:

> Normally, in a motion for directed verdict the defense moves for a dismissal on the basis that the prosecution has not presented a prima facie case. Specifically, the prosecution has not presented a case containing evidence on all essential points of a charge that if believed by the trier of fact, and unanswered, would warrant a conviction.

¶ 28 I also referred to the meaning of a "prime facie case" in R. v. Amankwaa, supra, at paras. 28-29:

> When the courts refer to prime facie case, there are two usages of the term, and depending on the context used, the court may be referring to a "permissive" sense or to a "presumptive sense". When prime facie is used by the courts in the permissive sense, it means that the Crown is not required to meet any onus beyond adducing "some" evidence, and the evidential or persuasive burden is not shifted to the accused. When the prosecution establishes a prime facie case in the permissive sense it simply allows the prosecution with the burden of persuasion to proceed or continue with the proceeding. In this sense, the trier of fact to is permitted to draw the inference sought by the party alleging the prime facie case.
> On the other hand, when the courts use prime facie case in the presumptive sense, the courts presume the truth of the facts alleged by the prosecution unless it has been rebutted by the defence. In the presumptive sense there is at least a shift of the evidential burden to the other party once a prime facie case is established.

¶ 29 The defendant is charged under s. 128 of the Highway Traffic Act, R.S.O. 1990, c. H.8, for committing the offence of speeding: 60 kilometres per hour in a 50 kilometres per hour zone.

¶ 30 The defence argues there is no proof of what speed the defendant had been doing at 1:56 a.m. on June 24, 2000, southbound Yonge Street at St. Clair Avenue in the City of Toronto. This argument is based on Officer Comartin, the police officer who issued the speeding infraction, not being there at the time of the alleged offence. He did not observe the defendant's vehicle being driven at the time of the offence nor did he observe the

rate of speed of the defendant's vehicle. In addition, Officer Comartin did not use any mechanical device to determine or to record the actual speed of the defendant's vehicle at the time in question.

¶ 31 The prosecution submits that the defendant's vehicle had left skid marks at the accident scene. These skid marks are measurable and this measurement could be compared to tables or charts to determine the defendant's speed. For reference purposes, various tables are available, including tables of stopping distances, that could be used to infer the rate of speed of the defendant's vehicle at the start of the skid marks.

¶ 32 These tables of stopping distances can be found in textbooks. Although, these specific tables do not exactly pinpoint a particular vehicle's actual speed, they can offer a guide or a set of parameters to determine whether a police officer's opinion is reasonable. In R. v. Joudrey (1992), 39 M.V.R. (2d) 235, 113 N.S.R. (2d) 117, 309 A.P.R. 117 (Prov. Ct.), the court had taken judicial notice of textbook passages from a book on speeding and radar. Thus, it is permissible to take judicial notice of certain tables of stopping distances from various textbooks.

¶ 33 I previously used tables of stopping distances in an accident case in R. v. Smith, [2001] O.J. No. 1504 (O.C.J.), for determining the distance or time it would take for a vehicle to reasonably stop to avoid a collision. At para. 66-68 of Smith, I referred to pp. 301-303 of Shannon's Textbook, "Motor Vehicle Offences and the Summary Conviction Court", (Toronto, Canada: Canada Law Book Company Ltd., 1964):

> These charts are from the textbook, "Motor Vehicle Offences and the Summary Conviction Court", authored by L. Paul Shannon. These stopping distances do not necessarily imply that the defendant made an unsafe lane change but assists the court in determining whether the dump-truck could have reasonably stopped in time after the defendant's vehicle was moved into the path of the dump-truck and whether the driver of the dump-truck over-reacted.
> As was stated in Shannon's textbook, various factors affect the stopping distance of a vehicle. They include reaction time of the driver, material used to fabricate the tires, the friction between the road surface and the tires, the material of the road surface, any evasive manoeuvre, the weight of the vehicle, and the braking system in the vehicle. In addition, this textbook was published in 1964. There may have been significant technological advances since 1964 in automotive technology and road surface construction that may shorten the stopping distances of vehicles.
> The first chart from page 301 is a chart relating to the stopping distances of passenger cars:
>
> > STOPPING DISTANCES OF PASSENGER CARS (After driver has perceived the hazard requiring a stop)
>
> SPEED

Miles Per Hour	Feet Per Second	Driver Reaction Distance* (feet)	Vehicle Stopping Distance** (feet)	Total Stopping Distance*** (feet)
10	15	11	6	17
15	22	17	14	31
20	29	22	25	47
25	37	28	39	67
30	44	33	55	88
35	51	39	78	117
40	59	44	105	149
45	66	50	136	186

50	73	55	188	243
55	81	61	230	291
60	88	66	300	366
65	95	72	380	452
70	103	77	455	532

* Driver reaction distance based on reaction time of 3/4 second, a typical reaction for most drivers under most conditions.

** Vehicle stopping distance based on provisions of the Uniform Vehicle Code for 20 m.p.h., adjusting where necessary at higher speeds to conform to studies of the U.S. Bureau of Public Roads.

*** If perception time is determined to be an appreciable factor for a particular situation, the distance travelled during this time should be added to the total stopping distance. After estimating perception time, the corresponding distance may be determined by reference to the second column which shows the feet travelled per second for the various speeds.

¶ 34 The defendant had been charged for travelling at a rate of speed of 60 kilometres per hour, a rate exceeding the posted speed limit. From the chart contained in s. 129 of the Highway Traffic Act, the rate of speed of 60 kilometres per hour converts to 35 miles per hour. As one can determine from reading the above table for stopping distances for passenger vehicles, a vehicle travelling at 35 miles per hour, after the driver reacts and applies the brakes, would travel 78 more feet before it would come to a stop. However, this table does not assist in determining how fast a vehicle had been moving in relation to producing about 36 feet of skid marks. The missing factor in this table is the distance the vehicle would travel while its brakes and tires were heating up before the tires would have actually produced skid marks. It is also noteworthy that in Weaver v. Buckle (1983), 19 M.V.R. 237, 42 A.R. 241 (C.A.), the court held that the science of stopping distances, particularly when treated as being synonymous with skid distances, is very inexact. It also held that standard textbooks differed considerably in the tables included.

¶ 35 As Shannon stated in his textbook, various factors affect the stopping distance of a vehicle, such as the material used to fabricate the tires, the friction between the road surface and the tires, the material of the road surface, any evasive manoeuvre, the weight of the vehicle, and the braking system in the vehicle. Other factors not mentioned by Shannon include whether the vehicle was in yaw or slide-slipping when braking and the temperature of the road surface. Therefore, even these factors would figure into the variations in the length of a skid mark.

¶ 36 Nonetheless, Officer Comartin's expert opinion as to rate of speed of a particular vehicle based on skid marks is evidence of the defendant's rate of speed for the offence of speeding. That is, expert opinion is admissible as evidence on the rate of speed of the defendant's vehicle, even though the expert proffering the opinion was not present during the alleged offence. Whether that evidence carries any persuasive weight has to be evaluated in relation to the other evidence before the court, especially as to what objective basis or phenomena had the officer used or relied on to form his opinion that the defendant had been exceeding the speed limit.

¶ 37 The expert opinion of an police officer as to the rate of speed of a vehicle based on skid marks was considered to be reliable evidence in the English case of Crossland v. D.P.P., [1988] 3 All E.R. 712 (Q.B. Div.). The facts of that case are very similar to the facts in the present case. In the Crossland scenario, the accused had struck a pedestrian at an intersection. Crossland was charged with driving at a rate of speed exceeding the 30 miles per hour speed limit. At the trial, the only witness as to the defendant's speed was the police officer who inspected the scene of the accident shortly after it had occurred. The police officer took into account the damage to the accused's vehicle and the skid marks made by the defendant's braking. The officer then carried out speed and braking tests on the accused's car, from which he calculated and determined that the accused had been driving at a rate of speed not less than 41 miles per hour before the accused had started to brake. The accused was convicted on the officer's opinion evidence. The accused then appealed and argued that

she had been convicted solely on the evidence of the opinion of one witness that she had been driving at an excessive speed and therefore her conviction should not stand. The appeal court held that although the police officer's evidence included a significant element of expert opinion, his evidence did not amount solely to his opinion that the accused had been driving at excessive speed since the officer also described in detail the objectively determined phenomena on which his expert opinion was based, namely the inspections and tests he had carried out at the scene of the accident. Accordingly the accused had been properly convicted and the appeal was dismissed.

¶ 38 Therefore, expert opinion is reliable evidence as to the rate of speed if the opinion has been based or confirmed by objectively reliable inspections, tests (including dragsled test to determine co-efficient of friction) or scientific tables from textbooks. In addition, in order for a police officer's evidence to be considered expert opinion, evidence of his education, training or experience is required.

¶ 39 Officer Comartin has testified he has some expertise in accident reconstruction and therefore, his expert opinion as to what the rate of speed the defendant's vehicle had been doing before the brakes were engaged, is evidence the court can consider for the proof of speed.

¶ 40 To confirm his opinion that the defendant had been speeding, Officer Comartin performed his own skid test using his Safari van. He obtained 11 feet of skid marks travelling at a rate of speed of 65 kilometres per hour. This result would have considerable weight if Comartin had recreated the skid marks with either the defendant's vehicle or a vehicle identical to the defendant's, in size, weight, mechanical construction and specialized braking system. The officer's Safari van did not have the ABS brake system, nor did it have four-wheel drive like the defendant's Nissan Pathfinder. Also there was no evidence that the Safari Van and the Nissan Pathfinder weighed the same amount. The outcome that Officer Comartin received in his own skid test is in reality, the result of "comparing apples to oranges". The two vehicles were not identical, nor the same, neither in size, weight nor in mechanized accessories. Therefore, the results from Comartin's own skid test was not the product of an objectively reliable test.

¶ 41 Furthermore, Officer Comartin testified that he tried to duplicate the skid marks with his police cruiser, which did have an ABS brake system, but as he testified, he could not produce any skid marks because of the ABS system. He said the police cruiser just stopped without skidding. This testimony taken on face value either is a contradiction to his own evidence that the defendant's vehicle with an ABS braking system had left the skid marks seen on the road surface at the accident scene or that it is only an indication that the police vehicle that is equipped with ABS could not leave any skid marks at a speed of 60 to 65 kilometres per hour but may leave skid marks at a higher rate of speed. Hence, there is the possibility because of Comartin's attempted skid test with his ABS equipped police cruiser, that vehicles equipped with ABS do not produce skid marks when the brakes are applied forcibly. However, I must admit that most of this is conjecture on my part, as Comartin was not asked to clarify or to explain the result of not being able to obtain skid marks from his police vehicle.

¶ 42 In any event, Officer Comartin's testing method in trying to duplicate skid marks at a higher rate of speed to confirm his opinion as to the defendant's rate of speed is not reliable, since neither an identical vehicle in size, weight and equipment to the defendant's Nissan Pathfinder nor the defendant's vehicle were used to perform the skid test as a confirmation of the officer's opinion as to the rate of speed.

¶ 43 In normal speeding cases, a police officer testifies to observing a vehicle travelling at a rate of speed that appears to be moving faster than the posted speed limit. This would be opinion evidence. He or she then activates a radar or laser device to obtain an accurate measurement of the rate of speed of the moving vehicle to confirm his observation that the particular vehicle had been in fact speeding. That is what Officer Comartin was trying to accomplish with his own skid test - to confirm his opinion.

¶ 44 In this particular case, although Officer Comartin's expert opinion on the rate of speed is admissible evidence of the speed the defendant's Nissan Pathfinder was travelling at just before the brakes were applied to produce the skid marks, his opinion has to be confirmed by an objectively reliable test, by scientific charts or by other objective phenomena. Opinion cannot stand alone; it needs the objective basis that helped form that opinion. Accordingly, there must be evidence of a reliable confirmation test of which the officer's expert opinion

is based upon before the prosecution has made out a prime facie case. Since the prosecution has failed to provide this essential piece of evidence, the defense argument for a directed verdict prevails.

5. CONCLUSION

¶ 45 Although a police officer may not be physically present to observe or to mechanically record the rate of speed so as to provide direct proof of the rate of speed for the offence of speeding, nonetheless, if the officer is qualified as an expert in accident reconstruction or a similar field, his expert opinion on the rate of speed based on his interpretation of the length of skid marks is admissible as evidence. I am guided by the court in Crossland v. D.P.P., [1988] 3 All E.R. 712 (Q.B. Div.) that accepted the expert opinion from a police officer as to the rate of speed based on the measurement of skid marks and calculations as reliable evidence.

¶ 46 However, the court in Crossland v. D.P.P also required that the police officer provide evidence of the objectively determined phenomena on which the officer's expert opinion was based, namely the inspections and tests he had carried out at the scene of the accident. Therefore, in the case at bar, Officer Comartin, who has some expertise in accident reconstruction and 28 years of experience and training in the operation of speed measuring devices, would qualify as an expert in calculating and determining the rate of speed. Comartin's expert opinion on the rate of speed derived from his calculations and measurement of skid marks in comparison to scientific charts or tables from textbooks or other reliable sources would be acceptable if the tables are submitted as documentary evidence. In addition, Comartin's expert opinion may also be confirmed by other objectively reliable tests or phenomena.

¶ 47 Ergo, Officer Comartin's expert opinion that the defendant had been driving a vehicle that had exceeded the posted speed limit is admissible evidence as to proof of speed. Comartin derived this opinion from the skid marks produced by the defendant's Nissan Pathfinder when its brakes were applied. To confirm his opinion, Comartin conducted his own skid tests trying to recreate the skid marks left by the defendant's vehicle. The officer used his own Safari van that was not equipped with an ABS braking system nor equipped with four-wheel drive. The defendant's vehicle on the other hand was a four-wheel drive vehicle equipped with the ABS braking system. There also was no evidence that the officer's van was of the same size and weight as the defendant's vehicle. In his test, the officer drove at 65 kilometres per hour and then applied the brakes and left skid marks 11 feet in length. Therefore, Officer Comartin concluded that the defendant's vehicle must have been travelling at least 60 kilometres per hour to leave 36 feet of skid marks.

¶ 48 Variations in factors such as material used to fabricate the tires, the friction between the road surface and the tires, the material of the road surface, any evasive manoeuvre involved, the vehicle being in yaw or slide-slipping when braking, the road surface temperature, the weight of the vehicle, and the braking system in the vehicle would change the length of the skid mark and the rate of speed calculation.

¶ 49 Although Officer Comartin's expert opinion on the rate of speed is admissible evidence of the speed the defendant's Nissan Pathfinder was travelling at just before the brakes were applied to produce the skid marks, his opinion has to be confirmed by an objectively reliable test, by scientific tables or by other objective phenomena to have any weight. Therefore, in this particular case where the rate of speed is based on an interpretation of skid marks, there must be evidence of an objectively reliable confirmation test of which the officer's opinion is based upon, before the prosecution has made a prime facie case. In the case at bar, Comartin failed to use the defendant's vehicle or an identical vehicle in weight, size or equipment to conduct his skid test. In reality, Comartin was comparing apples to oranges. Thus, the results of the confirmation test in this case were not derived from an objectively reliable skid test. Since the prosecution has failed to provide any evidence of an objectively reliable confirmation test, to substantiate Officer Comartin's opinion on the rate of speed, the defense argument for a directed verdict has been made out.

6. DISPOSITION

¶ 50 The defendant's motion for directed verdict is granted and the charge of speeding against the defendant Rajesh Prasad under s. 128 of the Highway Traffic Act is dismissed.

QUON J.P.

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