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Evidence—Evidence of Speeding Provided by Untested Radar Equipment Sufficient if Corroborated by Qualified Observers

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section of the Vehicle and Traffic Law appears to be eased by the instant decision. The officers may now charge defendant directly on information, relying upon facts within their knowledge to show "operation" circumstantially, without having to procure another affiant to support a charge upon information and belief.

EVIDENCE OF SPEEDING PROVIDED BY UNTESTED RADAR EQUIPMENT SUFFICIENT IF CORROBORATED BY QUALIFIED OBSERVERS

Defendant's conviction in the City Court of Buffalo for speeding was based on a radar meter reading, supported by the observations of two policemen. One officer, looking through the rear view mirror of the radar car, observed defendant's car for about 150 feet as it approached the field of the radar beam. The other officer was stationed about one-tenth of a mile further down the street. He watched defendant's vehicle as it passed the radar car and approached him head on, until it stopped just short of his position.

The grounds of defendant's appeal were that (1) the evidence of the radar meter reading was insufficient because there was no evidence to show that the speedometer, against which the radar set had been tested, was itself accurate and (2) the testimony of the policemen was insufficient because neither of them had an adequate opportunity to observe the speed of the defendant's car. On appeal the Supreme Court, Erie County, rejected both the policemen's testimony and the radar reading as insufficient and reversed the conviction without specifying whether its decision was on the law or on the facts.

The Court of Appeals, considering the Supreme Court reversal as one on the law alone,[83] held that evidence of speeding provided by untested measuring devices was admissable but insufficient, without more, to sustain a conviction, and that testimony of qualified observers could supply the deficiency in proof. The testimony of the police officers was also held to be admissable and sufficient to raise a question of fact as to defendant's speed. The case was remitted to the appellate court for determination of that question.[84]

The Court declared this holding to be based squarely upon its recent decisions in a radar meter case, *People v. Magri*,[85] and two speedometer cases, *People v. Heyser*[86] and *People v. Marsellus*.[87] In all three cases convictions based on police officers' estimates of defendant's speed which corroborated the readings of untested devices were upheld. In *Magri*[88] one officer located at the radar car and another about 800 to 1000 feet further down the road observed defendant as he approached the radar car, passed through the radar beam and continued down the road to the second officer's position. In

83. N.Y. CODE CRIM. PROC. § 543-a(4).
84. People v. Dusing, 5 N.Y.2d 126, 181 N.Y.S.2d 493 (1959).
85. 3 N.Y.2d 562, 170 N.Y.S.2d 335 (1958).
86. 2 N.Y.2d 390, 161 N.Y.S.2d 36 (1957).
87. 2 N.Y.2d 653, 163 N.Y.S.2d 1 (1957).
88. People v. Magri, *supra* note 85.

Heyser[89] a police officer followed defendant at a distance of 100 yards for more than one-quarter of a mile. In *Marsellus*[90] the officer followed defendant for two miles.

In considering the present case, the court found the opportunity for observation afforded the two police officers to be comparable to that found in the cases just described. It is submitted that the facts of these four cases demonstrate that there may be considerable latitude in defining the meaning of "adequate opportunity for observation."

In a concurring opinion,[91] Judge Van Voorhis deplored the majority's departure from "the almost universal custom of Police and Justices' Courts,"[92] which requires that speeding violations be established by speedometer or radar readings rather than by observations of eyewitnesses "no matter how expert they may be."[93] He pointed out that the need for supporting evidence would be eliminated if the police were to make and keep records of regular tests of measuring devices. Despite the appeal of this viewpoint to traffic courts and motorists, it now appears to be well settled that readings of untested radar equipment, if corroborated by testimony of policemen who have had an adequate opportunity for observation, will be sufficient as a matter of law to sustain a speeding conviction.

PROOF OF DAMAGE TO BAILED GOODS

Where a mutually beneficial bailment exists the bailee's duty is to exercise reasonable workmanship upon the bailed goods.[94] Upon completion of the work the goods must be returned to the bailor reasonably fit for the known use intended.[95] If the goods are returned damaged and the bailor shows they were not so damaged when bailed, a *prima facie* case is made out against the bailee,[96] whereupon the bailee, if he is to escape liability, must show reasonable care was used by him.[97]

In *Aronette Mfg. Co. v. Capital Piece Dye Works, Inc.*[98] defendant undertook to waterproof plaintiff's textiles after receiving them from a third party which had subjected the textiles to a crease resisting process. Defendant first sent three samples, which he had waterproofed, to the plaintiff for inspection. He also informed plaintiff that a few of the pieces when originally received by defendant had an odor. Upon plaintiff's approval of the samples, defendant waterproofed the rest of the textiles. When received by plaintiff, the goods contained an odor. Upon assurance by defendant that the odor

89. People v. Heyser, *supra* note 86.
90. People v. Marsellus, *supra* note 87.
91. *Supra* note 84 at 128, 181 N.Y.S.2d 496.
92. *Ibid.* at 130, 181 N.Y.S.2d 497.
93. *Id.*
94. Foster v. Pettibone, 7 N.Y. 433 (1852).
95. Douglas v. Hart, 103 Conn. 685, 131 A.2d 401 (1925).
96. Wintringham v. Hayes, 144 N.Y. 1, 38 N.E. 999 (1894).
97. Gerdau Co. v. Bowne Morton Stores Inc., 1 A.D.2d 581, 151 N.Y.S.2d 831, *aff'd* 2 N.Y.2d 905, 161 N.Y.S.2d 153 (1956).
98. 6 N.Y.2d 465, 190 N.Y.S.2d 361 (1959).