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Criminal Law—Conviction for Speeding Based Upon Speedometer Reading

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the result reached is consonant with the prevailing principle that a criminal statute should be strictly construed in favor of the defendant.⁴⁴

Conviction For Speeding Based Upon Speedometer Reading

In a prosecution for speeding, when the evidence includes the arresting officer's statement of his speedometer reading while following the defendant's car, must the People prove the accuracy of the instrument? Although a number of County Courts in New York have held that when there was no competent evidence of the accuracy of the speedometer, a conviction based upon a speedometer reading will be reversed,⁴⁵ there is an "almost tomb-like silence"⁴⁶ on this question in the state appellate courts.

The silence is rendered somewhat less than deafening by the opinion in *People v. Heyser*,⁴⁷ wherein the Nassau County Court's affirmation of defendant's conviction in a Court of Special Sessions is upheld. The Court declares: "In our opinion, evidence of the reading of an untested speedometer without more would be insufficient to sustain a conviction for speeding."⁴⁸ As a practical matter, this is indeed of premonitory value, even though it is dictum only. The case actually decided that evidence of the reading of an untested speedometer and an estimate of approximately the same speed made by the pursuing officer "independent of the speedometer," together are sufficient to sustain the conviction when there is also in the record supporting evidence as to the *expertise* of the officer in judging speed,⁴⁹ and as to the adequacy of the officer's opportunity for observation,⁵⁰ and when the speed as found by the speedometer reading and the officer's "independent" estimate exceeds the speed-limit by a substantial margin.⁵¹

In *People v. Marsellus*,⁵² decided about two months later, the Court follows *People v. Heyser*, stating that therein, ". . . we held at least by implication that evidence as to what even an untested speedometer showed was admissible." A fortiori, according to *People v. Marsellus*, where evidence presented on trial before a Court of Special Sessions included the elements noted above, it was not error to

44. *People v. Ahearn*, 196 N.Y. 221, 89 N.E. 930 (1909).

45. *People v. Boehme*, 1 Misc.2d 629, 152 N.Y.S.2d 759 (County Ct. 1955); *People v. Rothstein*, 1 Misc.2d 516, 152 N.Y.S.2d 757 (County Ct. 1955); *People v. Rice*, 206 Misc. 999, 136 N.Y.S.2d 134 (County Ct. 1954); *People v. Matthews*, 4 Misc.2d 278, 155 N.Y.S.2d 873 (County Ct. 1956); *People v. Greenhouse*, 4 Misc.2d 692, 136 N.Y.S.2d 675 (County Ct. 1955).

46. Annot., 21 A.L.R.2d 1200 (1952).

47. 2 N.Y.2d 390, 161 N.Y.S.2d 36 (1957).

48. *People v. Heyser*, *supra* note 47 at 393, 161 N.Y.S.2d at 38.

49. *People v. Matthews*, *supra* note 45; *People v. Rothstein*, *supra* note 45 (cases distinguished by Court on grounds of no evidence in record of officer's *expertise*).

50. *People v. Greenhouse*, *supra* note 45 (distinguished by Court in that officer did not have adequate opportunity for observation).

51. See *People v. Boehme*, *supra* note 45.

52. 2 N.Y.2d 653, 163 N.Y.S.2d 1 (1957).

receive the State Police officer's testimony that six weeks before the arrest he observed the satisfactory performance of his speedometer as compared with a master speedometer in a test made by an employee of a service station where State Police cars were customarily so checked, and the County Court's conclusion that such receipt was error⁵³ must be rejected. Consequently it was also reversible error for the County Court to find that the trial court's finding of guilt was against the weight of evidence, since the County Court reached this conclusion with the evidence of the speedometer testing erroneously excluded from its consideration.

The law in New York as it now stands would seem to be as follows: (1) Evidence of the reading of an untested speedometer is admissible, but by itself will probably be found insufficient to sustain a conviction for speeding. (2) Such evidence coupled with a coinciding independent estimate of the defendant's speed made by an officer qualified to judge speed may be sufficient to sustain a conviction. (3) Evidence as to the testing of a speedometer even by an agency outside the police department and without the testimony of the person who conducted the test is admissible as long as the witness observed the test.

Receipt Of Bribes By Labor Representative

Section 380 (2) of the New York Penal Law⁵⁴ relating to the acceptance of bribes by a labor representative was recently considered by the Court of Appeals in *People v. Cilento*.⁵⁵ In this case a labor representative was indicted for allegedly accepting a bribe while acting in the capacity of trustee of the union welfare fund. The Court reinstated the indictment after it was dismissed by the lower courts.⁵⁶

As pointed out by the Appellate Division⁵⁷ there generally is a valid distinction between the positions of trustee and labor representative, so that no question arises as to whether section 380 (2) of the Penal Law applies. The problem arises when the two positions are combined in the same person. In construing the section, the Court of Appeals held that the term "labor representative" was not to be considered generically but was to be interpreted in a broader sense to include any duty imposed on a labor representative. The Court reasoned that where the constitution of a union provides that a certain labor representative solely by virtue

53. *People v. Marsellus*, 4 Misc.2d 211, 157 N.Y.S.2d 148 (County Ct. 1956).

54. N.Y. PENAL LAW §380(2) provides:

Any duly appointed representative of a labor organization who solicits or accepts . . . any thing of value . . . that he shall be influenced in respect to any of his duties . . . is guilty of a misdemeanor.

55. 2 N.Y.2d 55, 156 N.Y.S.2d 673 (1956).

56. 207 Misc. 914, 143 N.Y.S.2d 705 (Gen. Sess. 1955); 1 A.D.2d 206, 149 N.Y.S.2d 14 (1st Dep't 1956).

57. 1 A.D.2d 206, 149 N.Y.S.2d 14 (1st Dep't 1956).