

CRIMINAL LAW:
EVIDENCE:

Electro-Matic Radar Speedmeter is a proven scientific technique for measuring the speed of motor vehicles and evidence so obtained constitutes legally admissible evidence which may support a finding of guilt in a criminal cause.



September 6, 1957

Mimeo copies

Honorable Ike Skelton, Jr.
Prosecuting Attorney
Lafayette County
Lexington, Missouri

Dear Mr. Skelton:

This opinion is rendered in answer to your recent inquiry reading, in part, as follows:

"Might I ask you for an opinion regarding the use of radar as a scientific means of detecting the speed of motor vehicles operating on the highways in so far as its admissibility into evidence in a court of law is concerned."

Paraphrasing the language of the Supreme Court of New Jersey in the recent case of *State v. Dantonio*, 18 N.J. 570, 1.c. 575, decided in 1955, it may be said that there have been no appellate court decisions in Missouri ruling the question posed in your inquiry, but "there have been several decisions in courts of other states and numerous articles in legal publications which have dealt comprehensively with the evidential problems presented by the use of radar speedmeters. See *State v. Moffitt*, Del. Super., 100 A. 2d 778 (Del. Super. Ct. 1953); *People v. Offermann*, 204 Misc. 769, 125 N.Y.S. 2d 179 (Sup. Ct. 1953); *People of City of Rochester v. Torpey*, 204 Misc. 1023, 128 N.Y.S. 2d 864 (Cty. Ct. 1953); *People v. Katz*, 205 Misc. 522, 129 N.Y.S. 2d 8 (Sp. Sess. 1954); *People v. Sarver*, 205 Misc. 523, 129 N.Y.S. 2d 9 (Sp. Sess. 1954); *People of City of Buffalo v. Beck*, 205 Misc. 757, 130 N.Y.S. 2d 354 (Sup. Ct. 1954); *Baer, Radar Goes to Court*,

Honorable Ike Skelton, Jr.

33 N.C.L. Rev. 355 (1955); Woodbridge, Radar in the Courts, 40 Va. L. Rev. 809 (1955); Notes, 30 N.C.L. Rev. 385 (1952); 38 Marq. L. Rev. 129 (1954); 28 Tul. L. Rev. 398 (1954); 58 Dick. L. Rev. 400 (1954); 15 Ohio St. L. J. 223 (1954); 39 Iowa L. Rev. 511 (1954); 5 Mercer L. Rev. 322 (1954); 7 Vand. L. Rev. 411 (1954); 30 Wash. L. Rev. 49 (1955); 23 Tenn. L. Rev. 784 (1955). See also Mc. Cormick, Evidence, Sec. 170 (1954); 2 Wigmore, Evidence (3rd ed. 1940), Sec. 417 (b)."

The decision of the Supreme Court of New Jersey in *State v. Dantonio*, supra, will support the conclusion to be reached in this opinion, but references will be made to cited decisions, texts and articles referred to in the preceding paragraph as we point out precepts of the law applicable to the question being considered.

The employment of a radar speedmeter to test the speed of a moving automobile on the highway involves the use of a scientific technique. To what extent will courts be authorized to consider the use of such technique as a source of proof? In *McCormick*, Evidence, Section 170 (1954), we find the following:

"'General scientific acceptance' is a proper condition upon the court's taking judicial notice of scientific facts, but not a criterion for the admissibility of scientific evidence. Any relevant conclusions which are supported by a qualified expert witness should be received unless there are other reasons for exclusion."

State v. Dantonio, 18 N.J. 570 (1955), cited supra, involved a defendant who was charged with speeding along the New Jersey Turnpike, with such excessive speed being checked by State Troopers operating a radar speedmeter. The case commenced in the Milltown Municipal Court, was tried de novo in the Middlesex County Court and was finally appealed by the defendant to the New Jersey Supreme Court. The Supreme Court spoke as follows at 18 N.J. 570, i.e. 575:

"The County Court expressly determined (1) that the radar equipment 'was properly set up and tested for accuracy and was functioning properly and was a correct recorder

Honorable Ike Skelton, Jr.

of speed'; (2) that the defendant 'was exceeding the speed limit of the New Jersey Turnpike and was traveling at 66 miles per hour, as charged'; and (3) that the State had 'established the guilt of the defendant beyond a reasonable doubt.' Our function on appeal ordinarily is not to make new factual findings but simply to decide whether there was adequate evidence before the County Court to justify its finding of guilt."

In its opinion in *State v. Dantonio*, supra, the Supreme Court of New Jersey suggested that "through the years our courts have properly been called upon to recognize scientific discoveries and pass upon their effects in judicial proceedings." The Court alluded to the evolution of the law of evidence which finally approved the use of fingerprint evidence and quoted approvingly from *State v. Cerciello*, 86 N.J.L. 309, 314 (E. & A. 1914), the following language found at 18 N.J. 570, l.c. 577:

"In principle its admission as legal evidence is based upon the theory that the evolution in practical affairs of life, whereby the progressive and scientific tendencies of the age are manifest in every other department of human endeavor, cannot be ignored in legal procedure, but that the law, in its efforts to enforce justice by demonstrating a fact in issue, will allow evidence of those scientific processes which are the work of educated and skillful men in their various departments, and apply them to the demonstration of a fact, leaving the weight and effect to be given to the effort and its results entirely to the consideration of the jury. *Stephen Dig. Ev. 267; 2 Best on Ev. 514.*"

Treating of the widespread knowledge of the use of radar the New Jersey Supreme Court spoke in its own language in these

Honorable Ike Skelton, Jr.

words found at 18 N.J. 570, 1.c. 578:

"Since World War II members of the public have become generally aware of the widespread use of radar methods in detecting the presence of objects and their distance and speed; and while they may not fully understand their intricacies they do not question their general accuracy and effectiveness. Dr. Kopper has pointed out that, in contrast to other radar methods, the method actually used in the speedmeter is rather simple and has been adopted by many law enforcement bodies; a recent tabulation indicates that speedmeters are being used in 43 states by almost 500 police departments. See Radar Traffic Controls, 23 Tenn. L. Rev. 784 (1955). The writings on the subject assert that when properly operated they accurately record speed (within reasonable tolerances of perhaps two or three miles per hour) and nothing to the contrary has been brought to our attention; under the circumstances it would seem that evidence of radar speedmeter readings should be received in evidence upon a showing that the speedmeter was properly set up and tested by the police officers without any need for independent expert testimony by electrical engineers as to its general nature and trustworthiness."

In its opinion the Supreme Court of New Jersey quoted approvingly from Woodbridge, Radar in the Courts, 40 Va. L. Rev. 809, and such quotation is extracted from the opinion in State v. Dantonio, 18 N.J. 570, 1.c. 578, 579, as follows:

"Under the Uniform Rules of Evidence, already approved by the American Bar Association at its 1953 meeting, judicial notice "shall be taken without request by a party * * * of such specific facts and propositions of generalized knowledge

Honorable Ike Skelton, Jr.

as are so universally known that they cannot reasonably be the subject of dispute." Radar speed meters are now in this category. Why should the time of experts be wasted and the expenses of litigation be increased by compelling such men to appear in court after court telling the same truths over and over? While it is agreed that every reasonable doubt about the accuracy of new developments should promptly be resolved against them in the absence of expert evidence, there is no longer any such doubt concerning radar. Rather, the applicable maxim should now be, "What the world generally knows a court of justice may be assumed to know." "

In concluding their remarks on the operation of the radar speedmeter in *State v. Dantonio*, supra, the Court spoke as follows at 18 N.J. 570, l.c. 579, 580:

"In the instant matter the State Troopers were sufficiently qualified to set up their radar speedmeter and the evidence indicated that they duly tested it before its use. They had been operating it for many months and could readily observe whether it was in regular working order. They had no difficulty in reading the calibrated needle and the permanent graph and it was no more necessary that they actually understand the intricate electrical workings of the device than that they understand how their car speedometers work. They tested the speedmeter to see that it registered 'zero' when nothing was in range and they pushed the designated switch to 'test' position to observe that the needle reacted properly; then they compared radar readings with speedometer readings on their cars which were driven within range. In one instance these readings were identical and in the other they favored the car; it may be noted, as Dr. Kopper testified below, that all types of error actually

Honorable Ike Skelton, Jr.

suggested during the trial would result in lower radar readings thus favoring the car. Before this court the defendant has also suggested the possibility of error but has pointed to no evidence of error which would favor him. In any event, the possibility of error would not wholly deny the admissibility of radar evidence but would simply affect its weight; the State concedes that the readings were not conclusive but merely constituted admissible evidence to be weighed by the trier of facts along with all other evidence which was logically relevant. (Underscoring supplied.)

The Supreme Court of Appeals of Virginia in 1956 decided the case of Dooley v. Commonwealth of Virginia, 198 Va. 32, 92 S.E. 2d 348, cited with approval State v. Dantonio, supra, and spoke as follows at 92 S.E. 2d 348, l.c. 350:

"That there is a natural and rational evidentiary relation existing between the results of a speed checked by radio-micro waves and the speed of a motor vehicle checked by them can hardly be denied. For many years the public has become generally aware of the widespread use of radiomicro waves or other electrical devices in detecting the speed of motor vehicles or other moving objects; and while the intricacies of such devices may not be fully understood their general accuracy and effectiveness are not seriously questioned. State v. Dantonio, 18 N.J. 570, 115 A. 2d 35, 39, 40."

The Court of Special Sessions in New York in 1954 decided the case of People on Inf. of Laibowitz v. Katz, 129 N.Y.S. 2d 8, l.c. 9, and spoke as follows:

"The Electromatic Speedometer herein described is a scientifically reliable device which if properly operated and properly functioning falls in the

Honorable Ike Skelton, Jr.

category of recognized instruments
used to determine the speed of
moving vehicles."

CONCLUSION

It is the opinion of this office that the use of an Electro-Matic Radar Speedmeter, when properly set up and tested by its operators, constitutes the employment of a proven scientific technique for measuring the speed of motor vehicles, and evidence so obtained constitutes legally admissible evidence which may readily support a finding of guilt in a criminal cause.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO'M:vlw