

ONTARIO COURT OF JUSTICE  
IN THE MATTER OF THE PROVINCIAL OFFENCES ACT R.S.O. 1990

CITY OF TORONTO

HER MAJESTY THE QUEEN

v.

VAN C. TRAN

\* \* \* \* \*

P R O C E E D I N G S   A T   T R I A L

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BEFORE HIS WORSHIP JUSTICE OF THE PEACE V.N. BUBBA  
On Thursday, February 17, 2005, at Old City Hall  
60 Queen Street West, TORONTO, Ontario  
Courtroom F - 9:00 a.m.

\* \* \* \* \*

Charge: *Highway Traffic Act* s. 128  
Speeding

\* \* \* \* \*

APPEARANCES:

E. Fernandez, Ms.

City of Toronto Prosecutor

T. Brown, Mr.

Agent for the defendant

\* \* \* \* \*

ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

| <u>WITNESSES:</u> | <u>Exam.<br/>in-Ch.</u> | <u>Cr-<br/>exam.</u> | <u>Re-<br/>exam.</u> |
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| STIBBE, Robert L. | 9 | 17 | 44 |
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| REASONS FOR JUDGMENT |  |  | 51 |
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THURSDAY, FEBRUARY 17, 2005

**MS. FERNANDEZ:** Good morning, Your....

**THE COURT:** Good morning, Ms. Fernandez.

**MS. FERNANDEZ:** Your Worship.

**THE COURT:** How are you today?

**MS. FERNANDEZ:** Good.

**THE COURT:** Okay.

**MS. FERNANDEZ:** We have only one matter which is found on line seven, Van Tran, a speeding matter. The officer is here. I've given you my written submission on Wednesday and the cases that I relied upon. I gave my friend a call on Wednesday to pick up a package from our office of what I've given you.

**THE COURT:** All right. As I recall -- one moment. Yes, I believe that I have -- I received a number of items, a number of cases, a Thomas. Are those the items that you had left for me, Ms. Fernandez?

**MS. FERNANDEZ:** No.

**THE COURT:** No? Then I do not have the items that you left. These must have been items that were left -- I have one beginning with -- what is the name of the case? Tran?

**MS. FERNANDEZ:** Yes. I submitted....

**THE COURT:** When were they left there?

**MS. FERNANDEZ:** I left it on Wednesday. It's....

**THE COURT:** Wednesday, yesterday?

**MS. FERNANDEZ:** No, I think it was Tuesday. It's in a yellow folder.

**THE COURT:** No. I have not received it because I was stationed at another...

**MS. FERNANDEZ:** Court?

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**THE COURT:** ...court yesterday, way out in the east end of town and I never got back here last night. All right, then with respect to this....

**MR. BROWN:** Good morning, Your Worship. Todd Brown, for the record.

**THE COURT:** Yes.

**MR. BROWN:** Agent for Mr. Tran.

**THE COURT:** Did you leave anything for me to review?

**MR. BROWN:** I did not.

**THE COURT:** You did not. Okay, the application that I have is only with respect to delay. Since Ms. Fernandez has left something downstairs, I should probably go and get it. We have plenty of time, here. Give me five minutes to go and get that and I am sure there are a lot of cases that I have already had the opportunity to review but if not, just give me -- how many cases are there, Ms. Fernandez?

**MS. FERNANDEZ:** Around five or six.

**THE COURT:** All right....

**MR. BROWN:** Your Worship....

**THE COURT:** Yes.

**MR. BROWN:** Before you go, I should indicate my intentions. It might shorten things.

**THE COURT:** All right.

**MR. BROWN:** I'm content -- after what's transpired in the disclosure that I've received, I'm content to abandon the application without prejudice. If the matter is adjourned, I reserve the right to bring it forward again.

**THE COURT:** If the matter is?

**MR. BROWN:** Adjourned or not completed today...

**THE COURT:** Oh.

**MR. BROWN:** ...or if it's delayed any further.

**THE COURT:** All right. Are we ready to proceed?

To be quite frank, I do not know if -- I understood today was a day only for the purpose of hearing the motion and so, I do not know if Madam Prosecutor is prepared to proceed with the matter today. Did you....

**MS. FERNANDEZ:** With the trial, you mean?

**THE COURT:** Yes. Did you summon your witnesses for today?

**MS. FERNANDEZ:** The witness is here but I'm sort of not agreeable with his proposition that he is willing to abandon the motion today and then has the....

**THE COURT:** Well, it is his motion. He is able to abandon it and if you have your witnesses here, why would we not proceed with the trial?

**MS. FERNANDEZ:** Yes, but he -- did he just not indicate that he might -- he will be reviving it?

**THE COURT:** No, no, no, no. He says if you do not proceed with your trial today he would like to revive it but -- that is why I put the ball back in your court to say, well, are your witnesses here. If so, take five minutes. Review your matter with your witnesses

**MS. FERNANDEZ:** Okay.

**THE COURT:** ...and we will proceed with the trial, okay?

**MS. FERNANDEZ:** Yes.

**THE COURT:** Okay, all rise, let us say until 9:30

and we will return here. The matter is Tran and it is with respect to a speeding charge and we will proceed from there. Are your witnesses present or not?

**MS. FERNANDEZ:** Yes, he's here.

**THE COURT:** All right, but I will still make sure that I obtain your materials, Ms. Fernandez, because we can always do with more materials dealing with these applications because there are more and more of them that come forward.

**MS. FERNANDEZ:** Your Worship, I prepared these materials and put them together. It's ten page factum...

**THE COURT:** I realize that.

**MS. FERNANDEZ:** ...and then all of a sudden, it's just going to be abandoned. He should have said that, like, Monday or Tuesday.

**THE COURT:** Well, when was the disclosure given to Mr. Brown?

**MS. FERNANDEZ:** It was given, like, two weeks ago...

**THE COURT:** Well, then this is something that I know in....

**MS. FERNANDEZ:** ...or maybe three weeks ago.

**THE COURT:** Well, all right. Well, we are wasting a lot of time now and I appreciate and the Court appreciates the effort you have put into it but let us proceed with the trial as such and we will go from there. Okay?

**MS. FERNANDEZ:** Okay.

**THE COURT:** The Court will rise until 9:30 and we will proceed with the trial.

**R E C E S S**

U P O N R E S U M I N G... '

5

**MS. FERNANDEZ:** Good morning again, Your Worship.  
Did you find it?

10

**THE COURT:** No, I was stopped. I had to attend to  
something else from my office but I will get down  
there and make sure that I obtain it, do not worry.  
Yes, please proceed. This is the matter....

**MS. FERNANDEZ:** There's several cases there that  
might help. Okay, I'm calling the officer, please.

**THE COURT:** All right. This is the matter of Tran?

15

**MS. FERNANDEZ:** Yes, sir.

**THE COURT:** We should have an arraignment first.

**MS. FERNANDEZ:** Oh yes, that's right.

20

**THE CLERK OF THE COURT:** Van Tran is charged on the  
12<sup>th</sup> day of February, 2004 at 9:33 a.m. at westbound  
Highway 27 in the city of Toronto, did commit the  
offence of speeding 95 kilometres per hour in a 60  
kilometre per hour zone, contrary to the *Highway*  
*Traffic Act*, section 128.

25

On behalf of the defendant to this charge, how do  
you plead, guilty or not guilty?

**MR. BROWN:** Could I look at that before I enter a  
plea, Your Worship, please?

**THE COURT:** Of course.

30

**MR. BROWN:** Thank you. Your Worship, before I  
enter a plea, I wonder if you'd entertain an  
application to have the certificate quashed. I've  
just taken a look at the original and I'd like to

direct your attention to the municipality, or what it may be.

**THE COURT:** Yes.

**MR. BROWN:** If the Court is content that that says Toronto, I'll sit down, but it doesn't look like that to me.

**THE COURT:** Well, I am not going to comment on the...

**MS. FERNANDEZ:** Writing.

**THE COURT:** ...writing of the officer. I have even noticed the make of the vehicle -- I have some difficulty figuring out the make of the vehicle and if that is his fashion of writing, I -- and the same with the word Eglinton Avenue. It seems to be Eglinton Avenue, as far as the address of the defendant is concerned.

I am not going to comment on the officer's penmanship, but I think that it is a sufficiently close indication of the location of the offence that the Court is satisfied that it is a close enough reference to the city of Toronto to advise the defendant of the location of the offence and in those circumstances, I am not prepared to grant that motion to quash, in the circumstances.

**MR. BROWN:** Not guilty.

**THE COURT:** Thank you. And for the purpose of the record, Mr. Brown, I realize you are an experienced agent but do you affirmed to the Court that the defendant understands the consequences of any conviction that may be registered in this matter even -- bearing in mind he is not here and he is



aware of your status as an agent, not as a solicitor?

**MR. BROWN:** Yes, most certainly. Forgive my lapse. I thought that I had covered that on a previous occasion.

**THE COURT:** You may have and that is fine, sir.

**MR. BROWN:** Thank you.

**THE COURT:** Thank you, appreciate that. Please proceed.

**MS. FERNANDEZ:** Officer.

ROBERT L. STIBBE: SWORN

EXAMINATION IN-CHIEF BY MS. FERNANDEZ:

Q. Officer, on February 12<sup>th</sup>, 2004 by whom were you employed?

A. Toronto Police Service.

Q. In what capacity?

A. Police Constable.

Q. Are you also a Provincial Offences Officer?

A. Yes, I am.

Q. On that day, did you investigate the matter before the Court?

A. Yes, I did.

Q. Did you make any notes with regards to this incident?

A. Yes, I did.

Q. Is it in your own handwriting?

A. Yes, it is.

Q. Did you make any alterations or deletions after you made your notes?

A. No, I did not.

Q. Do you have any independent recollection  
pertaining to this matter?

A. Yes, I do.

Q. Did you bring your notes today?

A. Yes, I did.

Q. And for what purpose?

A. To refresh my memory.

**MS. FERNANDEZ:** With the leave of the Court,  
please.

**THE COURT:** Mr. Brown, any questions with respect  
to this application to refer to his notes?

**MR. BROWN:** If I can just see the notes? They  
would appear to be the notes that were disclosed.  
I have no objection.

**THE COURT:** No objection? All right, thank you.  
Based on the information provided to the Court and  
the consent of the defendant, the Court grants  
leave to Officer Stibbe to refer to the notes made  
contemporaneously with your investigation  
concerning the matter before the Court. Please  
proceed.

**THE WITNESS:** Thank you, Your Worship.

**THE COURT:** The Court grants you leave to refer to  
those notes for the purpose of refreshing your  
memory with respect to the matter before the Court.  
Please proceed.

**THE WITNESS:** A. Your Worship, on February 12<sup>th</sup>,  
2004 at approximately 9:33 in the a.m., I was detailed to  
enforce the speed limit on the northbound Highway 27 in the city  
of Toronto.

At approximately 9:33 a.m., I observed a green  
Toyota Tercel approaching my enforcement location, which was

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5 north of -- between Dixon Road and Highway 427 -- I mean, 401  
and I was parked on the east shoulder, approximately 400 metres  
north of the 401. I was using a hand-held speed measuring laser  
device Ultralite LTI20/20 with a serial number of 9003, which I  
had tested at the start of my shift and tested at the end of my  
shift.

10 At approximately 9:33, I observed the vehicle  
approaching me at a high rate of speed. I activated that speed  
measuring laser device and registered an instantaneous reading  
of 95 kilometres an hour at a range of 159.4 metres to my  
position. I then stepped out from the east shoulder and  
proceeded to direct the vehicle to pull over at my location.

15 There was two occupants in the vehicle, one male  
driver and one female passenger. I asked to see the documents  
for the motor vehicle and the driver's licence. He ID'd himself  
with a valid Ontario driver's licence in last name of Tran first  
name of Van, V-A-N, with the middle initial of "C". At the  
time, the address was 2558 Eglinton Avenue West, Apartment 305  
in the city of Toronto. His driver's licence number was T tango  
20 717076226 90203 and his date of birth was 1969-02-03.

After looking at his documents, I issued a  
Provincial Offences Notice for speeding 95 kilometres an hour in  
a 60 kilometre an hour zone, contrary to the *Highway Traffic*  
Act, section 128.

25 The marker on the vehicle he was driving was 490  
tango, doctor, yankee. The weather was clear, dry and cool.

Q. And Officer, this offence occurred in what  
city?

A. The city of Toronto.

30 Q. Okay. Officer, you indicated that your -- you  
were parked at the east shoulder of Highway 401?

A. No, Highway 27.

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Q. Highway 27?

A. North of the 401.

Q. Okay.

A. Approximately 400 metres.

5 Q. All right, okay, and from where you were located, was your view obstructed in any way?

A. No, it wasn't. There was -- I was able to see beyond the 401. Highway 427 comes north and then turns into Highway 27 approximately around the 401 and I'm able to see the  
10 off ramp from the 427 that turns into the 27. Up to my position, I had a clear view.

Q. Okay, so you were looking at the vehicles...

A. The northbound traffic.

Q. ...going northbound.

15 A. Yes.

Q. All right, and what is the posted kilometre in this particular highway?

A. At this time, the posted speed rate was 60 kilometres an hour. The normal speed limit for this area was 80  
20 kilometres an hour but it was a construction zone due to the construction on the bridge of the Highway 401.

There is usually three lanes that are coming northbound from the 427 to two lanes. It switches to two lanes approximately 150 metres after the 401 but at this point it was  
25 strictly two lanes northbound and two lanes southbound traffic due to the construction area.

Q. Okay. The 60 kilometre zone, is that clearly posted?

A. Yes, it is, with several signs. Before the  
30 401, there's '80 kilometres an hour' signs, then it go to an advisory '70 kilometres an hour' zone that's well before the 401 and then it turns into '60 kilometres an hour' signs, extra

large ones, actually, because the construction company put them up and it says '60 kilometres an hour ahead' and then '60 kilometres an hour begins' and then '60 kilometres an hour' through the construction area until the sign after my enforcement area stated, 'construction zone ends and 80 kilometres an hour begins'.

Q. Is it visible for the driver going northbound there is a construction going on, on that particular day?

A. Yes, clearly visible.

Q. Okay. Could you describe, please?

A. There is orange signs with construction ahead, there is orange cones, there is construction -- concrete construction barriers in the area and there was workings, scaffolding at the bridge where the workers were working underneath the highway.

Q. Okay, so it looks very busy?

A. Yes.

Q. Okay.

A. Yes.

Q. And you indicated sir, that you were detailed to be there for the sole purpose of enforcing the speed limit, is that correct?

A. Yes.

Q. All right. And Officer, could you please state very briefly as to your training and qualification to operate the Laser 20/20.

A. I had a one-day course on the theory and operation of all laser units that the Toronto Police use and I was also trained by a qualified laser operator for approximately ten hours with that officer and then I was issued a card after I sent in my hours with the qualified operator. Then I was issued a card that I was qualified to use that.

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Q. How long have you been operating the laser  
20/20?

A. Approximately two and a half years.

5 Q. Two and a half years, okay. And you indicated,  
sir, that you tested this laser before you start the shift?

A. Yes, I did.

Q. How do you test them?

10 A. Once you turn -- that unit, you press the  
trigger and it goes through internal checks and I did a distance  
check twice to make sure it was measuring the same reading.

Q. Okay, and when you tested it during the start  
of your shift, you found it to be properly...

A. Yes, I did.

15 Q. ...in order. And you indicated also that you  
tested it after the end of your shift?

A. Yes. I was in the same location and I tested  
it twice to make sure I was getting the same reading.

Q. Okay.

A. I was using a fixed object.

20 Q. Okay, all right, and you indicated that you  
observed a Toyota Tercel, is that correct?

A. Yes.

Q. Your personal observation is that this  
particular car is speeding?

25 A. Yes.

Q. Okay.

A. It was in the -- I call it the fast lane, lane  
one.

Q. Lane one.

30 A. Yes, closest to the middle of the northbound-  
southbound lanes.

Q. Okay, and then when you observed this

particular car speeding, what did you do?

A. I activated my speed measuring laser device and got a reading of 95 kilometres an hour in a 60 kilometres an hour zone.

5

Q. Okay. Where did you point that laser device?

A. At the licence plate, the front licence plate of the vehicle.

Q. Okay. What is the laser capable of doing, sir?

A. Measuring the speed of a moving object.

10

Q. All right. Is this the lead vehicle at the time you activated your radar?

A. Pardon me?

Q. Was this car the lead vehicle when you activated....

15

A. It was the only vehicle in my sight.

Q. The only vehicle?

A. Yes, in the lane one, in the northbound lane.

20

Q. Okay, okay. From the time that you observed this vehicle speeding at -- from the time that you pulled him, did you ever lose sight of this vehicle?

A. No, I did not.

Q. Okay, you indicated that you asked for some documentation, is that correct?

A. Yes, I did.

25

Q. And he ID'd himself with a valid Ontario driver's licence?

A. Yes, he did.

Q. Are you satisfied with his identification?

30

A. Yes, I was. It was the same picture as the driver.

Q. All right, and you indicated that there's two occupants in the car?

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A. Yes.

Q. The driver, which is the defendant and a female...

A. Yes.

Q. ...is that correct?

A. A female in the front passenger seat.

Q. All right. Did you observe anything unusual?

A. No. No, I did not.

Q. You did not.

A. No.

Q. All right, okay. And you indicated -- what was the road condition at the time?

A. It was clear and dry.

Q. Clear and dry.

A. And it was cool outside.

Q. I'm sorry?

A. It was cool weather outside.

Q. It was cool weather outside and was it sunny and bright?

A. Clear and dry. If I write clear and dry, it is usually sunny out.

Q. Okay. Is there anything else that you want to tell the Court?

A. No, I don't.

Q. One more question. You indicated that when you activated the radar, the distance from you and the car was 159.4...

A. Metres.

Q. ...metres. Okay. Is the laser 20/20 capable of measuring accurately the speed within this distance?

A. Yes.

MS. FERNANDEZ: Okay. Thank you, Officer.



**THE WITNESS:** Thank you.

**THE COURT:** Mr. Brown.

**MR. BROWN:** Thank you.

5 CROSS-EXAMINATION BY MR. BROWN:

Q. Officer, you had indicated that this area is normally an 80 kilometre per hour zone?

A. Yes, it is.

Q. How do you know that?

10 A. That's one of the areas I patrol. That's one of my designated highways.

Q. So at some point, it's a posted 80 kilometres per hour zone?

15 A. Yes, after the construction area and before the construction area.

Q. When it's not a construction area, it's an 80 kilometre per hour zone?

A. Yes, it is. Right now it's back to an 80 because construction is finished.

20 Q. Right. You had told the prosecutor that there were oversized signs posted by the construction company?

A. Yes.

Q. What colour were they?

A. The construction -- the speed signs for 60?

25 Q. Yes.

A. They were white with black lettering.

Q. Okay, and you had mentioned that there was 70 -  
- I think you used...

A. Yes.

30 Q. ...the word advisory?

A. Yes, it was, it was an orange sign, 70.

Q. So the 70 is an orange sign?

A. Yes.

Q. Now, the 60 sign that's white with black lettering...

A. Yes.

Q. ...that's erected by the construction company. Is that Graham? Are these are signs that say 'Graham' on the bottom?

A. I don't remember. I can't tell you. I didn't see that.

Q. All right. Do you know how you were aware that they're erected by the construction company?

A. It only made sense the way they were put, because they were on wood stilts.

Q. Right. You say they're oversized. How big are they?

A. They're probably -- the normal sign is -- I don't know exactly how big they are. They're normal speed signs probably about this big. These ones are like this. They were....

**THE COURT:** Can you give us the dimensions of the approximate size of the white signs?

**THE WITNESS:** I would say the white ones are probably two and a half feet by three feet. And then -- those were the first ones. Then after that, they were standard size signs.

**MR. BROWN:** Q. How were they mounted? You say they're on a wooden stand?

A. They were on wooden -- they were on wooden stilts...

Q. Right.

A. ...with sand bags holding them up.

Q. I see. Now, where you were positioned, you

were within this 60 zone demarked by those wooden stilt...

A. Yes.

Q. ...stands?

5 A. Yes. After my enforcement area, approximately 30 metres ahead of me was the sign that said, 'Construction Zone ends. 80 kilometres an hour begins'.

Q. I see. The oversize signs, do you recall if there was any writing on them with respect to the construction company involved?

10 A. No, I cannot recall.

Q. Is it possible that there's writing on it, from the....

A. It's possible, sure.

15 Q. It's possible? You had indicated that -- when the prosecutor asked you about your speed-measuring device, you had said that you had done an internal check and a distance check?

A. I said that I pressed the trigger and that does its own internal check.

20 Q. I see, and then....

A. And then I did a distance check.

Q. Right, where were you located when you did the distance check?

25 A. I was located on the shoulder of my enforcement area.

Q. So I take it what you do is, you would go to a set-up location, test your unit, enforce the speed limit...

A. Yes.

Q. ...test it again...

30 A. Yes.

Q. ...and leave.

A. That's right, correct.

Q. Is that what you generally do?

A. Yes.

Q. And the test that you do, of course, you do on the side of the road?

A. Yes.

Q. Yes. The training that you received, were you referred to any type of written materials perhaps from the manufacturer on how this unit is supposed to be tested?

A. We are issued just a guideline of the different functions of the laser. The actual internal workings of it no, we're not.

Q. You wouldn't know about the internal workings, of course.

A. No.

Q. The Toronto Police....

A. The radar....

Q. I'm sorry?

A. The radar co-ordinator would know all that.

Q. Yes. The training that you received, was it specific to the Ultralite unit?

A. The Ultralite, the Atlanta and the Marksman.

Q. I see. Now, the Toronto Police Service, correct me if I'm wrong, actually has their own list of set-up and test procedures for all of the devices that the Police Services employs. Have you seen those?

A. I -- like I said earlier, I have a book that gives us the functions on it.

Q. Right, okay, and the testing procedures set out in that book, I would gather?

A. I can't recall exactly.

Q. What does the book look like? Is it published by the Toronto Police Service or is it....

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A. By the Toronto Police.

Q. Right. Is that that small blue book...

A. Yes.

5 Q. ...that I've seen? The laser device that you  
were using....

A. Mm-hmm.

Q. Well, well, let me back up. Why is it that you  
test the unit at all? Is that part of your training?

A. To make sure for accuracy.

10 Q. Right. Would you agree with me that in  
accordance with your training, you are not to use these devices  
for law enforcement purposes unless they are tested in  
accordance with the prescribed routine or testing procedures?  
Would you agree with that?

15 A. I just go by the training that we were given by  
the radar co-ordinator.

Q. Right. The radar co-ordinator in the course of  
training you, made clear that you are to test the unit before  
and after use?

20 A. Yes. For distance and accuracy, yes.

Q. Right. I'm going to suggest to you that there  
is a prescribed set of tests that you're meant to do? I mean,  
you don't make up your own test, I mean...

A. No.

25 Q. ...you don't throw eggs at it.

A. No.

Q. Right. You do a prescribed set of tests.

30 A. Like I said, I just use what I did. I find a  
fixed object get a measuring twice to make sure that the metres  
is correct...

Q. Right.

A. ...and it does its own internal checks, which I

do not know what it does and I make sure the laser beam is actually going where it's supposed to. It's not shooting off one way or something.

Q. Right. How do you do that?

A. I activate the laser, point it at a fixed object and then I make sure -- get a reading and then I make sure -- I'll use, like, a sign, the back of a sign to make sure that if I move the line the laser beam, the dot, if it stops and goes by on both sides, then I know it's pretty well accurate.

Q. That object that you did that test -- that you incorporated in that test, what was the object you were pointing it at?

A. A sign.

Q. Do you know how far the sign was from you?

A. I did not write it down, so no.

Q. Do you have any notation about the testing that you did on that day?

A. No.

Q. None.

A. No. I use the same laser everyday.

Q. Right. This matter actually dates -- I think it's pretty dated now. It goes back to December or February.

A. Yes.

Q. You have given us some pretty detailed information about the testing that you did but you don't have any notation of it.

A. No. I use....

Q. Where does that evidence come from?

A. Independent recollection. I do it all the time, do the same thing everyday.

Q. Would it be more accurate to say that you are relating to us your standard practice of what you generally do?

A. That's....

Q. Or -- I don't want to put words in your mouth -  
- or are you telling us that on February 12<sup>th</sup> that you  
specifically recall or have a recollection of doing these tests  
on that day? I'll remind you that you are there quite  
frequently.

A. Yes, I am there quite frequently and do the  
same tests and make sure I distance the light beam side to side  
and I always get a reading.

Q. Yes.

A. And if it's not working properly, we return it.

Q. Of course. I just want to be more specific  
with regards to my question. What I'm asking you -- I'm not  
asking you whether or not you tested it on this day. I'm not  
asking you how it is that you recall. What I want to know is if  
what you're telling the Court is that this unit was tested  
before and after because that's what you always do.

A. Yes, I do.

Q. Or, are you telling the Court that it was  
tested before and after because you have a specific recollection  
of testing this Ultralite on February 12<sup>th</sup> of the year 2004. I  
would suggest that both of those propositions can't be true at  
the same time.

A. I do this -- I set up the same thing every day  
when I'm doing enforcement. That was the start of my  
enforcement. I was there for over an hour.

Q. Right.

A. Same thing. I test it every time I use it.

Q. Of course. Would it be your evidence then that  
the testing that you're relating to the Court is a result of  
your usual practice?

A. Yes.

Q. Given, Officer Stibbe, that you don't have any notation with regards to testing this unit on February 12<sup>th</sup>, I'm going to suggest to you that you wouldn't, in fact, have a specific recollection of testing it on that day.

5 A. No, I test it everyday.

Q. Again, not to split hairs, I'm not debating with you whether or not you tested it. I'm attempting to seek the source of this evidence. I'm suggesting to you that on February 12<sup>th</sup> you wouldn't, given that you're human, have a specific recollection of testing this unit on that day. Rather, you would be able to tell the Court it was tested before and after because that's what you always do.

15 **MS. FERNANDEZ:** Your Worship, he has asked this question several times and in fairness to the officer, before he even testified he indicated to the Court that -- and I asked him whether or not he has independent recollection with regards to this matter and he indicated, yes. So, I don't understand why Mr. Brown is belabouring that particular issue.

20 **MR. BROWN:** Your Worship, this isn't the time for my friend to be understanding or not and if she elicited from the officer that he has an independent recollection for the purposes of qualifying his notebook, that has very little to do with the specific details that I am attempting to elicit.

25  
30 An interruption timed skilfully to offset the momentum of a cross-examination is objectionable. If the questions are relevant, I think the prosecutor should remain seated. May I continue?



5       **THE COURT:** This is cross-examination. While the Court appreciates that the officer has answered in-chief questions that are very similar to what defence counsel is indicating, it is cross-examination on a very sensitive and important area of the evidence and the Court is going to permit the question and if you rephrase, sorry, repeat your question for the benefit of the officer....

10       **MR. BROWN:** Certainly.

15       Q. Officer Stibbe, given that this matter dates back to February of 2004 and given that you've told the Court that it was tested both before and after obtaining a reading of the Tran vehicle, is it your evidence that you specifically recall, given that this was over a year ago, doing that, or are you telling us that it's your usual practice and that's what you always do?

      A. I have an independent recollection of doing it, because....

20       Q. You have a specific recollection of February?

      A. Even though it's not in my notes, because it's my -- I have an independent recollection of the date and what I did and it's also standard practice for me to do that everyday. It's both.

25       Q. I appreciate it's your standard practice. Is there anything you would like to add perhaps as to this ability of yours to recall such a detail from well over a year ago?

**MS. FERNANDEZ:** Could -- I did not understand the question.

30       **THE COURT:** Well, I think the question was well put. Please answer it. Do you understand the question, Officer?

**THE WITNESS:** Yes.

A. I have a very good memory on dates and times and I just have to glance at the -- at my notes and that brings me back to the date. It's part of my job to remember things, and it's only been a year and it's not that big of a problem.

5 It's just like I had to -- my previous job before this was memory retention, fixing up cars and every car is different and you learn that, to remember things. That's how I was able to tell it was a Toyota -- I just saw it coming at me -- by the headlights and the shape of the car. I have -- I just  
10 remember a lot of things.

Q. Yes. The notes that you have there, you would agree with me they are rather sparse. Would you agree that they're....

A. It's enough for me to remember what I did.

15 Q. Right. You actually are trained in the course of becoming a police officer in proper note taking?

A. Yes.

Q. Would you agree that in accordance with your training in the use of a speed measuring device, that the  
20 testing is an integral part of its use, in law enforcement...

A. Yes.

Q. ...capacity, anyway?

A. Yes.

Q. Why wouldn't it be appropriate to make a note  
25 of the testing that you'd conducted in the speed measuring exercise? Why is that something that would be absent from your memorandum?

A. I just -- I know that I do it everyday. I don't have to put it down here to remind me that I did it  
30 because I know I do it everyday. It's the standard practice for me, that I would test my equipment.

Q. Right.

A. I test all my equipment everyday.

Q. Do you know that you do it everyday or do you recall each day that you've...

A. Everyday I have....

Q. ...ever used a laser?

A. Everyday I have a laser and I do my enforcement, I test it everyday. It's just like in a police car, I make sure it's working properly every day.

Q. Do you understand the distinction between knowing that you do it everyday and having a specific recollection? It's in your -- you have a picture in your mind of February 12<sup>th</sup>, that day?

A. I would check it every day and I know I do. It's a recollection, my independent recollection that I know I do it every day, because I do it every day. Everything I check every day.

Q. Yes, your independent recollection tells you that you do it every day?

A. Yes.

Q. Does that statement not seem to contradict itself?

A. I don't think so.

Q. No. The information that you have put in your notes -- you have the notes in front of you, of course?

A. Yes, I do.

Q. The information that you have there seems to, in my view -- correct me if I'm wrong -- be things of a more general nature than what the testing procedure that you employed would be?

A. There is no testing on this.

Q. No, there's not.

A. No.

Q. Just to give you an example, so I could explain to you what it is that I'm getting at, you've put in your notes, "location northbound Highway 27", is that right?

A. Yes.

Q. Now, if you are able to recall testing a laser unit without any notes over a year ago, why would it be necessary to write down such an innocuous and germane piece of information like northbound Highway 27?

A. Because it's on the ticket, sir.

Q. Right.

A. That's my offence location, correct?

Q. Yes, but I see here that you've -- can you see the piece that I'm holding?

A. Yes.

Q. This is your writing?

A. Yes, that's what I wrote after, after Madam Prosecutor asked me to write down that information.

Q. Right. You wrote down two occupants one female one male?

A. That's correct.

Q. Would you have been able to recall that if you didn't make a note?

A. Well, I would know there was a male driver by the name and the ticket, but I always write down if there's any other passengers in there.

Q. Right, but if you didn't write it down in this instance, would you be able to relay it to court? Is that part of your independent recollection, Officer?

A. No, no.

Q. It's not part of your independent recollection?

A. No.

Q. How about the fact that it was a green Toyota

that you were interacting with on this day? You wrote that down in your notes, did you not?

5 A. Yes, I did, because I knew it was Toyota by the make on the front of the ticket but I always make the model and the colour.

Q. Right. You put an "L" in a circle.

A. Yes.

Q. What does that mean?

A. I was using a laser.

10 Q. What would it be necessary to note that you were using a laser if you can recall...

A. Because I....

15 Q. ...far more specific details of the use of that laser but yet you've noted that you were using a laser. Why would you do that?

A. Because my -- if I was using my scout car, I would write scout car, "SC" and I have a radar unit in my scout car.

20 Q. The question I'm asking you is why was it necessary to write it down, given that you clearly are well aware that you were using a laser from your specific independent recollection that, that you were using a laser?

A. Because that day I could have been using my scout car, using the radar unit in my scout car.

25 Q. But you would recall that, wouldn't you?

A. Yes.

Q. Well, why would you write it down if you can recall it?

30 A. So I knew what hand held unit I was doing, if I was using a hand held or a scout car. That's the only reason I would write that down.

Q. Of course.

A. If I don't use it -- if I'm using the scout car, I wouldn't write "L".

Q. If you were using a scout car, I'm going to suggest to you that you would write scout car.

5

A. Yes, possibly.

10

Q. The question is, and I don't want to go in circles with you, why would it be necessary to write down "L" in a circle so that you know that you're using a laser when you are able to tell us all of these minute details of how you were using a laser, when it was tested, *et cetera*, *et cetera*, without the use of any notes. That's in your independent recollection. This generic innocuous almost obvious piece of information is copiously noted.

15

A. Yes.

Q. Why? Why? Can you explain the difference?

A. For disclosure issues.

Q. For disclosure issues. This isn't the first time you've been involved in a contested speeding matter, is it?

20

A. Actually, no. No, no. I've been on the stand a couple times.

Q. Why wouldn't it be pertinent to make note of the testing that you conducted before and after for disclosure purposes?

25

A. Because no one's ever -- to be honest, on the stand, I've never been questioned about my -- the way I test my laser. You are the first person.

Q. But clearly, you have been questioned as to the type of device you've been using?

30

A. Yes.

Q. So that's why that gives rise to the "L" for disclosure purposes.

A. As I explained earlier, I use the same unit

every time I do my enforcement. I do not use another unit.

Q. Precisely. Now, given that you've just made that statement, if you always use the same unit, it's probably the exact unit with the same serial number. Is that right?

5

A. Yes, it is.

Q. Then, you've taken the time to write an "L" -- just so I understand you -- in your notes...

A. That's right.

Q. ...indicating that it was a laser.

10

A. Yes.

Q. The reason you do that is not because you need to remember or be refreshed in that regard, it's because of disclosure purposes or disclosure issues. But you didn't see fit to write down anything about having tested this unit before and after?

15

A. No, I did not.

Q. All right. The testing that you did, you did at the side of the road. I think you've told us that twice.

A. Yes, I did.

20

Q. The sign that you had done -- I think you said it was a test to make sure that your scope was aligned?

A. Yes.

Q. How far away was that sign, again?

A. I don't know. I can't tell you. I didn't write that down.

25

Q. All right. Is that the same solid object that you had done what you described as a distance test?

A. Yes.

Q. All right. Do you recall the reading that you got as a result of doing that distance test?

30

A. No.

Q. Could you estimate the distance for the Court?

A. Approximately 250 metres.

Q. All right, 250 metres, approximately. Nobody is going to hold you to that, but approximately 250 metres away, you've tested -- correct me if I'm wrong -- a speed measuring device that uses distance as an integral part of its function in...

A. Yes.

Q. ...measuring speed.

A. Yes.

Q. Now, I'm going to suggest to you that the purpose of doing a fixed distance test is so that you can satisfy yourself that the laser device is measuring distance accurately.

A. Yes.

Q. How is it, Officer Stibbe, that you're going to satisfy yourself that this unit is measuring distance accurately if you don't know the predefined distance to the sign that you aimed it at? Or are you going to tell us that you measured the distance to that sign with a tape measure?

A. No, I did not.

Q. Okay, so then how do you satisfy yourself that -- let's assume for a minute that it gave you a reading of 250 metres. How do you know it's actually 250 metres?

A. It looked about right to me.

Q. Do you know how to conduct a fixed distance zero velocity test?

A. No.

Q. You don't.

A. No.

Q. Is that not part of your training?

A. I don't recall that from the test -- from the course.



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Q. Why did you do a distance test?

A. To make sure that the speed measuring device was working properly, it was giving a measurement reading.

Q. You did a distance test...

A. Yes.

Q. ...to paraphrase what you just said, so that you could satisfy yourself that it was measuring distance correctly.

A. Yes.

Q. Is it not odd to you that you couldn't possibly satisfy yourself if it's measuring distance correctly if you don't know the distance? How do you know the distance?

A. I just -- it looked like 250 metres.

Q. I see, and that's how you were satisfied it was measuring distance...

A. Yes.

Q. ...properly.

A. Yes.

Q. Does the term "fixed distance zero velocity test" sound remotely familiar to you?

A. It's been a couple of years since the course, but I don't remember that.

Q. You don't remember that.

A. No.

Q. You told us earlier that -- and I don't think anybody expects you to know the internal functions or workings of these machines.

A. No, I do not.

Q. You are simply an operator.

A. That's correct.

Q. The training that you received is -- correct me if I'm wrong -- directed towards the proper operation of these

units...

A. Correct.

Q. ...in accordance with your training. Would you agree with me that you're required to test the unit before and after, in accordance with the manufacturer's specifications, before you can satisfy yourself that it's operating correctly?

A. Yes.

Q. I'm going to suggest to you that you didn't test the unit in accordance with the manufacturer's specifications. What would you say to that, Officer Stibbe?

A. I would say that I tested it the way I was taught.

Q. The way you were taught....

A. To check it -- to check it....

Q. I didn't mean to interrupt. Sorry.

A. To check a distance...

Q. Yes.

A. ...to see if the laser was in check...

Q. Yes.

A. ...and get a reading.

Q. All right.

A. And if did its internal operation and it was ready to work.

Q. Right. The....

A. And no error, error messages or anything like that on the display.

Q. Right. The testing procedure that you had referred to earlier, you said was contained in a document published by the Toronto Police Service and it was blue book.

A. Yes.

Q. Would you recognize that book if you saw it again today?

A. Yes.

Q. Do you have with you.

A. No.

Q. Do you own one?

A. Yes.

Q. You do. Where is it now?

A. In my scout car.

Q. I see.

**MR. BROWN:** Court's indulgence, please. Could I have your indulgence, please, Your Worship, for a moment? We are going to ask for a break, Your Worship.

**MS. FERNANDEZ:** We are going to -- maybe we should advise the Court of what we are going to do.

**MR. BROWN:** I'd rather not.

**THE COURT:** No, no, no....

**MR. BROWN:** I'd rather not.

**MS. FERNANDEZ:** We are just getting the -- okay.

**THE COURT:** All right, is five minutes going to be sufficient time?

**MR. BROWN:** Probably ten.

**THE COURT:** Ten minutes.

**MS. FERNANDEZ:** Your Worship, I have a seminar at about eleven o'clock and I don't how long would his examination going to be, but at 10:30 there is going to be a second tier starting so I don't know. Maybe we could adjourn this matter for further evidence.

**THE COURT:** Is....

**MS. FERNANDEZ:** Are you still -- are you going to be long or how many more....

**MR. BROWN:** Not by the sounds of it, no.

**MS. FERNANDEZ:** How many more minutes?

**MR. BROWN:** I think this matter may come to a quick close once you retrieve the documentation from the officer.

**MS. FERNANDEZ:** All right.

**THE COURT:** Is ten minutes going to do it or....

**MS. FERNANDEZ:** No, I don't think -- ten minutes break is going to do it but I don't think we're going to finish, considering the submission that I'm going to do and his submission, as well. We are going to be finished by -- around quarter to eleven or eleven o'clock.

**THE COURT:** Okay, so where are we going from here now? We are going to break for ten minutes?

**MS. FERNANDEZ:** Is it....

**MR. BROWN:** Is there a long 10:30 tier?  
Perhaps....

**THE COURT:** I have no idea. Madam Clerk, can you help me out here?

**CLERK OF THE COURT:** There are 13 matters...

**MS. FERNANDEZ:** Yes, there is a long 10:30 tier.

**CLERK OF THE COURT:** ...and there's a Motion.

**MS. FERNANDEZ:** Is that an 11(b) Motion?

**MR. BROWN:** I don't want to be forward, Your Worship, but I'd indicated at the commencement of these proceedings that I reserved the right to once again bring an application under section 11(b) of the *Charter* if this matter doesn't come to a close today.

**THE COURT:** Where are we, as far as the 10:30 list is? There are 13 matters?

**CLERK OF THE COURT:** There are 13 matters.

**MS. FERNANDEZ:** There's 13 matters.

**THE COURT:** Are you the Crown on the 10:30 list, Madam Prosecutor?

**MS. FERNANDEZ:** I'm sorry?

**THE COURT:** Are you the Crown?

**MS. FERNANDEZ:** No.

**THE COURT:** There's another Crown coming.

**MS. FERNANDEZ:** I have a seminar at eleven o'clock.

**THE COURT:** All right, so well, why don't we break now for -- is ten minutes going to be enough time? You said you wanted to review some new matters that came up.

**MS. FERNANDEZ:** Yes.

**THE COURT:** Let us break now for ten minutes and we will return here at 10:30 now and we will just run into the 10:30 list, that's all, to see if we can complete the evidence in this matter.

**MS. FERNANDEZ:** Okay.

**THE COURT:** All right?

**R E C E S S**

**CLERK MONITOR'S NOTE:** At this time, other unrelated matters were spoken to.

**L A T E R...**

**MS. FERNANDEZ:** Yes, Your Worship, thank you for the indulgence. We have accomplished what we tried to accomplish. Thank you.

**THE COURT:** All right. Let us proceed. Mr. Brown is in the midst of his cross-examination.

CROSS-EXAMINATION BY MR. BROWN: (Continued)

Q. Officer Stibbe, have you had the opportunity to review the appropriate testing procedure for the Ultralite 100 speed measuring device?

5

A. Yes, I did.

**MR. BROWN:** Could I impose on the prosecutor, perhaps....

10

Q. Officer, I'm going to suggest to you, given that you've had the opportunity to read that, that a fixed distance test requires you to measure a distance, a distance that isn't particular crucial, although it's recommended to be 60 metres and that you are to compare the distances set out on your display with the pre-measured distance and that that's how you determine that the unit is measuring distance properly. Would you agree?

15

A. Yes.

20

Q. Given your evidence earlier, Officer Stibbe, would you agree that based on what you had done, that's not consistent with the manufacturer's recommendations as set out in that book?

A. By this book?

Q. Yes.

A. I've never seen this book until today.

25

Q. Is that not the correct users' manual for the Ultralite 100?

A. Yes, but I've never seen this book.

Q. Oh, I see.

A. I just -- it's the first time I've seen it.

Q. Do you know where that came from?

30

A. I came from the Crown's office -- Madam Prosecutor's office.

Q. Do you understand that to be the manual that

the Crown....

A. Yes, it would -- from reading it, yes, I would say, yes, this is the manual for the laser unit I do use.

Q. All right. Not to muddy the issue, is this one more familiar to you?

A. Yes, I've seen that.

Q. Oh, this is what you're....

A. That's the one I've seen before, yes.

Q. All right.

A. That's the one that's in my car.

**THE COURT:** Okay, so the book that the officer was referring to was the Users' Manual for -- or the suggested Users' Manual? What is it called?

**THE WITNESS:** That one is, it's a....

**THE COURT:** No, no, the dark blue covered...

**THE WITNESS:** Oh, the dark blue?

**THE COURT:** ...that you have in front of you, Officer. It says 'Ultralite 100 Users' Manual,' all right? And what page -- I am sorry, I pulled it out of your hand there. What page is being referred to?

**THE WITNESS:** Thirty-four, Your Worship.

**THE COURT:** Page 34, okay. That was the user's manual for the laser device that you were using on that day, Officer, just for the record? That is the...

**THE WITNESS:** That's the book that I just....

**THE COURT:** ...manufacturer's users' manual for the laser device you were using that day? The Ultralite?

**THE WITNESS:** Yes, this is the users' manual, yes.

**THE COURT:** All right, thank you. Now, you have

an....

**MR. BROWN:** In fairness, Your Worship, the officer said that that's not the one that he's familiar with though, just so you're clear.

**THE COURT:** It is the book he is not familiar with?

**MR. BROWN:** Yes, yes.

**THE WITNESS:** Yes.

**THE COURT:** But the testing device, he is familiar with.

**THE WITNESS:** Yes, from looking at it, yes.

**THE COURT:** But that book, he said he had never seen that book until today. All right.

**MR. BROWN:** I am going to approach the officer and present him with a book that he appears to recognize as the appropriate testing procedure for the Ultralite 100.

**THE COURT:** Okay, there has been a second book given to the officer. What is it called?

**THE WITNESS:** It's a Toronto Police Service Operator's Instructions Manual.

**THE COURT:** Okay, and what page are you being referred to?

**THE WITNESS:** He is referring to Page 12 in the Ultralite UL100 section, which is supposed to be only for the Toronto Police.

**THE COURT:** Okay. Is this applicable to the machine you were using, Officer?

**THE WITNESS:** Yes.

**THE COURT:** All right. Your question, Mr. Brown?

**MR. BROWN:** Thank you.

Q. Officer, could you take a moment to read page 12 and I'm going to -- if you'll allow me to just direct you to



a particular paragraph.

A. Yes.

Q. This paragraph here, the second paragraph under heading 4.2.

5 A. "LTI recommends that the test be performed on the laser each time it is taken on duty at a test area installed at a permanent location. The test area must establish a known distance from a shooting mark to the target which must be in the form of a straight line.

10 Q. Thank you. Do you adopt that as the appropriate procedure that's meant to be employed on the Ultralite?

A. This is the suggested one from the Toronto Police, from the radar co-ordinator.

15 Q. You are content that that's the correct procedure?

A. Yes.

Q. The -- that document clearly requires a known distance in the execution of a distance test. You would agree?

20 A. Yes.

Q. The distance that you had utilized -- you were very candid, Officer and I thank you for that -- that the distance that you had aimed your unit at is approximately 250 metres away and it wasn't a known distance.

25 A. It wasn't, no. I did not write down the distance.

Q. Okay. Now, I had already asked you earlier that in accordance with your training, you are not to use these units for law enforcement purposes unless they are tested in  
30 accordance with the appropriate procedure, as set out by your training and the manufacturer.

A. Yes.

Q. With respect, Officer, I am going to suggest to you that it would appear that on this occasion anyway, the unit wasn't tested in accordance with the manufacturer's recommendations.

5

A. The manufacturer's or the....

Q. I'm sorry. Not to....

A. You're jumping back and forth...

Q. I didn't want to debate terms.

A. ...between manufacturer and Toronto Police.

10

Q. Toronto Police.

A. Because if you -- as it says in here, the manufacturer says it should be done at 60 metres and then our Toronto Police one says 30 metres.

15

Q. Right. You would agree with me that in both of those documents, regardless of who their authors are, both documents require that the distance test be a known distance.

A. But once again, here is where it comes into next. "The distance between a shooting mark and a target is not critical but at least 30 metres is recommended."

20

Q. Right.

A. That's what ours says.

Q. Right.

25

A. And then if you go here, the same thing, it says wherever, that "...however the distance between the target and shooting mark must be a multiple of one metre or a fraction of a metre and that the specific distance is not crucial."

Q. Right.

A. So...

Q. Both make it clear...

30

A. ...that's where I'm....

Q. ...that....

A. One says one thing, one says another. Right?

Q. One says 30 and one says 60. Is that right?

A. Right, and they both say not critical.

Q. Right.

A. So it's not really....

Q. What does not critical to you mean?

A. It doesn't mean it is set in stone.

Q. Right, so I would suggest to you, based on your understanding what you've read and your training, that the distance could be 30 metres, 60 metres, 100 metres, it doesn't really matter, or even 250 metres.

A. Correct.

Q. Isn't that correct?

A. Correct.

Q. You would also agree with me that you have to know the distance first, regardless of what it is, to compare the reading with the fixed known distance.

A. It seemed right to me.

Q. Right.

A. It didn't -- it wasn't saying it was 50 metres and it was like...

Q. Yes.

A. ...you know way down.

Q. Right, would you agree with me....

A. By using it enough times, I can -- the metres, I can pretty well tell if it's working properly or not.

Q. Right. You would agree with me that the appropriate manner in which to do a fixed distance test is to pre-measure a distance...

A. Yes.

Q. ...and then to align your speed-measuring device with that distance...

A. Yes.

Q. ...and confirm that the pre-measured distance is the same...

A. Yes, that's correct.

5

Q. ...as the reading within a multiple of one-tenth of a metre.

A. Yes.

Q. You didn't do that.

A. No, I did not.

10

**MR. BROWN:** All right. I have no further questions. Officer, thank you very much for your candour.

**MS. FERNANDEZ:** I have questions.

RE-EXAMINATION BY MS. FERNANDEZ:

15

Q. Okay Officer, you have been there for such a long time.

A. It's okay, I'll sleep here today.

20

Q. I'm going to be quick. Just have some clarification questions. You indicated earlier that the distance test -- when do you perform a distance test?

A. Before the start of my enforcement and after.

Q. After. Before and after?

A. Yes.

25

Q. Okay, and you indicated to Mr. Brown that prior to starting your shift, you performed a distance test at around 250 metres. Is that correct?

A. That's about it.

Q. Okay.

A. That's what I said, yes.

30

Q. And this is just a guess estimation?

A. Yes.

Q. How good are you in measuring the length?

5 A. On a highway, we have to use light posts as markings and we can judge it because we don't have time to really take a walking stick and go the length of -- from our intersection, say Spadina to Jamieson and Dufferin Street and walk it. It's a fixed distance between the light posts and we judge them that way. Some light posts are 75 metres apart, some light posts are 25 metres apart, so you learn to judge how far that goes.

10 Q. Okay, and the laser 20/20 Ultralite could accurately measure speed up to what distance?

A. I believe when it's 500, 500 metres. Anything below that -- anything below that is accurate and anything over that, we are not supposed to take the reading.

15 Q. Okay.

A. I know on the other unit, on some other units, it's a little higher, but I know on this one, it's around 500.

20 Q. But this distance test, according to your knowledge and training, this is not crucial...

A. No.

25 Q. ...to whether or not you're getting the right speed?

A. No, it's just for a distance test.

30 Q. Okay.

**MR. BROWN:** Your Worship, could I interrupt? I don't see how this is appropriate questioning for a re-direct. In particular, the whole Court's procedure gets impugned because I did my best to solidify the officer's evidence.

The prosecutor is leading the officer down a path and I use that term specifically. The question put to him, "Officer, this measurement is not crucial"

is a leading question. It's inappropriate on redirect. The officer's evidence wasn't left with any doubt. There's no need to clarify it whatsoever. I don't think that the Court should pay any attention to that line of questioning. I think the prosecutor should be curbed or curtailed in pursuing it.

**THE COURT:** Thank you. The objection does have some merit. I have allowed questioning to go on. I am sure Madam Prosecutor knows that this is merely reply...

**MS. FERNANDEZ:** Yes.

**THE COURT:** ...and the questions should be limited only to items that are newly raised. I....

**MS. FERNANDEZ:** Well, with greatest respect, the distance test only came out in cross-examination.

**MR. BROWN:** That's not true, Your Worship. The prosecutor brought that out.

**MS. FERNANDEZ:** All right.

Q. So, you indicated, Officer, that you haven't seen the manufacturer's manual. Is that correct?

A. That's correct.

Q. Okay, and your training is only based on what the police, Toronto Police Services train you and also pursuant to the Police Services Manual?

A. Yes, that's right and what the radar coordinator has taught us.

Q. Earlier before we start our Court, you were able to read both manuals, is that right? Or go through it very quickly?

A. Yes.

Q. Okay. What was your observation?

A. There was differences between this manual and this manual.

Q. Okay, with regards to what?

A. Such as the fixed distance test. One says -- the manufacturer specs say 60 metres and this one says 30 metres.

Q. Okay. With regards to the testing procedure, which obviously you are familiar with and I'm not, what could you say with regards to those testing procedures, in relation to those two manuals? Are they the same?

A. This is....

**MR. BROWN:** It was asked and answered, Your Worship.

**MS. FERNANDEZ:** No, the testing procedure. Was it answered?

**THE COURT:** Well, I thought it was similar in one respect. One had said the distance should be a minimum of 30 metres, the other said a distance of 60 metres, but....

**MS. FERNANDEZ:** But that is....

**THE COURT:** Just a moment. But both of them indicated that the testing distance and that is real nub -- it had to be a known distance. I think that is the nature of Mr. Brown's argument, or I think that's what his argument will be.

**MR. BROWN:** It is.

**MS. FERNANDEZ:** But that is the distance test.

**THE COURT:** Well, we are not into argument here, yet...

**MS. FERNANDEZ:** Okay.

**THE COURT:** ...or submissions yet, Madam Prosecutor.

**MS. FERNANDEZ:** All right. Well what is....

**THE COURT:** Do you have a question of the Officer?  
It is obvious that there is a difference between  
the two books. That was already asked in cross-  
examination...

**MS. FERNANDEZ:** Okay.

**THE COURT:** ...and the officer said he had never  
seen the manufacturer's book before today.

**MS. FERNANDEZ:** But I'm trying to ask to compare  
him -- to compare those two books.

**THE COURT:** Well, we have already had a pretty darn  
good comparison and there seems to be some reason  
for the officer's confusion...

**MS. FERNANDEZ:** Okay.

**THE COURT:** ...if the two books are not alike  
obviously...

**MS. FERNANDEZ:** Yes.

**THE COURT:** ...on that one aspect.

**MS. FERNANDEZ:** That's only, Your Worship, in  
relation to the distance test.

**THE COURT:** The testing, yes....

**MS. FERNANDEZ:** A brief indulgence. But Your  
Worship, in the case of R. v....

**THE COURT:** Whoa, whoa, whoa. Just a moment.

**MS. FERNANDEZ:** Well....

**THE COURT:** Are you finished asking questions of  
the officer?

**MS. FERNANDEZ:** No.

**THE COURT:** Well, please proceed. Let us get this  
matter finished. It has been an hour and a half.

**MS. FERNANDEZ:** Q. Okay Officer, how many -- how  
many tests are there to perform?



**THE COURT:** Madam Prosecutor, we have already....

**MS. FERNANDEZ:** Okay.

**THE COURT:** You have already asked him what tests he performed.

**MS. FERNANDEZ:** Those are my questions.

**THE COURT:** All right, thank you. You may step down, Officer.

**MR. BROWN:** May I retrieve my book, Your Worship?

**THE COURT:** Yes. The two books would not be entered as exhibits, I take it?

**MS. FERNANDEZ:** No.

**THE COURT:** Thank you. All right, no further witnesses, I take it?

**MS. FERNANDEZ:** No. That's the case for the prosecution.

**THE COURT:** Any evidence for the defence to be entered?

**MR. BROWN:** No, but I am going to ask you to consider a non-suit application, if you would.

**THE COURT:** Well....

**MR. BROWN:** Your Worship is guessing what I'm going to say. I can tell.

**THE COURT:** Yes, sir.

**MR. BROWN:** The clerk arraigned the defendant, Mr. Tran, as having been operating motor vehicle westbound on Highway 27. The officer's evidence was that the defendant's motor vehicle was travelling northbound on Highway 27. The location in this contested speeding matter is not an issue that wasn't touched upon and cross-examined on through the course of the trial. It was a live issue.

5 The Crown's evidence as set out is not consistent with the document that compelled Mr. Tran to appear and answer to the charge, today. The Crown didn't seek an amendment. The Crown was entitled to seek an amendment. It would be inappropriate at this stage for the Crown to seek an amendment, given that it's the defence person over here pointing out the inconsistency in the Crown's case.

10 **THE COURT:** With respect to that, I acknowledge that there may have been a reading of the charge before the Court as being "westbound". Again, the penmanship of the officer on the ticket could have led to that error. The evidence here -- it was clear that there was -- that the vehicle was travelling in a northbound direction and looking at the ticket itself, the "N" indicating northbound, N/B on the ticket, that could have been the cause of some confusion on the part, if the clerk did indicate that, in reading -- arraigning the defendant. However the evidence, at the outset it was clear that it was travelling in a northbound direction -- that the defendant was travelling in a northbound direction.

25 **MR. BROWN:** I had looked at that. I thought it said a "W". Remember when I asked if I could see it before pleading Your Worship?

**THE COURT:** Well, as indicated, I have....

**MR. BROWN:** All right, if you....

30 **THE COURT:** I am of that opinion, therefore I am not prepared to grant...

**MR. BROWN:** Of course.

**THE COURT:** ...a non-suit at this time. Do you have any argument, any submissions -- I am sorry -- no evidence to call?

**MR. BROWN:** Calling no evidence, thank you.

**THE COURT:** All right. Any submissions on -- since you have not presented evidence, you can argue last if that is your wish.

**MR. BROWN:** It is.

**THE COURT:** Madam Prosecutor?

**CLERK MONITOR'S NOTE:** At this time, prosecution submissions were heard, followed by defence submissions. These were duly recorded, however not transcribed for the purposes of this transcript.

#### **R E A S O N S   F O R   J U D G M E N T**

BUBBA, J.P. (Orally):

I would like to give more detailed decision with respect to this matter and review the facts of the case in somewhat more detail but I believe that my conclusion will be the same regardless.

The matter of Van Tran comes before the Court in circumstances where on or about the 12<sup>th</sup> of February, 2004 he was charged with the offence of speeding 95 kilometres per hour in a 60 kilometre per hour zone. The Court will not review all of the facts save and except to indicate in a rather brief fashion.

There appears to be no issue with respect to the

5 location of the offence the identity of the  
defendant the identity of the vehicle. There seems  
to be some issue with respect to the speed of the  
vehicle. The reason for there being an issue in  
this regard is based upon the issue of the method  
by which the speed was determined.

10 In this particular case the speed was determined by  
the use of a laser device commonly used by the  
Toronto Police Service. In this particular case it  
was known as an Ultra LTI20/20 laser device also  
referred to as an Ultra UL device. The Court has  
received evidence that prior to using this device,  
15 the officer indicates that he was trained in the  
use of the machine by certain training manuals  
available and certain training procedures available  
through the Toronto Police Services.

20 At trial it was learned that the officer did not  
conduct one -- I'm sorry, there are apparently a  
number of tests required, one having to do with the  
-- one of those tests being a static velocity  
distance test for the laser device. The reason for  
that is to determine whether the device is  
25 operating properly in a certain fashion. There are  
other tests, that is, the operating system test.

30 At any rate, there appeared to be no issue with  
respect to the other tests that were performed,  
save and except for the fact that the normal  
fashion that evidence is given is that the testing  
that is done in accordance with manufacturers'

5 specifications. Here the officer candidly admitted that he had never seen the manufacturer's testing procedure or users' guide until today's date, the date of trial, even though he had been using this particular device for over two years. He had been relying upon a training manual provided to him by the Toronto Police Services and training guidance provided to him by the Toronto Police Services.

10 The one test of most importance, as I indicated, that caused some concern to the Court was the static velocity distance test which apparently was not properly performed. The evidence here is that the officer utilized the target approximately 250  
15 metres from his location in order to test the static distance. That static distance test is, of course, necessary because as the officer indicated, he believed that the laser device did not operate properly if the target intended to be tested was  
20 beyond 500 metres from his location, although he indicated he was not even sure that that was the appropriate distance; that the laser had its limitations.

25 In the circumstances, owing to the fact -- without any criticism of the officer who, in all other respects the Court finds performed his task in a proper fashion, the fact is that the method of testing the device, the speed testing device upon  
30 which the speed is determined must be properly done. The methods suggested by the manufacturer were not followed in this particular instance and

5 while the Court is reluctant to have a matter rise  
or fall on one particular issue such as this when  
all other aspects of the investigation appear to be  
proper, the fact of the matter is that the whole  
basis upon which speed is determined relies upon  
the accuracy of the operation and use of the  
machine in question, and bearing in mind the fact  
that machines are used for the purpose of  
determining speed, accurate testing must be  
10 performed in accordance with manufacturers'  
instructions. Here that was not done and that  
causes doubt in the mind of the Court.

15 Furthermore, with respect to the issue of the  
applicable speed limit, there is some conjecture as  
to the appropriate speed limit in the particular  
construction zone. There has been no evidence  
established as to the passing of the appropriate  
Order in Council or Regulation which would  
20 designate -- or bylaw designating the appropriate  
speed limit for the construction zone area.

25 In circumstances where the speed is in doubt, the  
decision of *DaSilva* would indicate that the charge  
should be dismissed. In any respect, the Court  
will not raise an issue between *DaSilva* and  
*Friedlan*.

30 Suffice to say the Court already has sufficient  
doubt in its mind with respect to the speed of the  
vehicle in question, bearing in mind -- owing to  
the fact that all of the manufacturer's tests were

not done in this particular matter for the use of  
the laser device and therefore that doubt must be  
resolved in favour of the defendant and the charge  
is dismissed.

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**MR. BROWN:** Thank you, Your Worship.

**MS. FERNANDEZ:** Thank you, Your Worship.

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**FORM 2**

Certificate of Transcript

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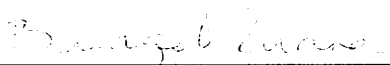
*Evidence Act, subsection 5(2)*

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I, **Bridget Ruane** certify that this document is a true and accurate transcript of the recording of **Jordan Bezemer**, in the matter of **R. v. Tran** in the **Provincial Offences Court** held at **60 Queen Street West, Old City Hall, Toronto**, taken from Recording Number **F-83, 84**, which has been certified in Form 1.

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**10 May, 2006**  
(Date)

  
(Signature of authorized person)  
**Bridget Ruane**

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