IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.No.632/84

IN THE MATTER of an Appeal from the determination of the District Court at Auckland

BETWEEN THE AUCKLAND CITY COUNCIL

APPELLANT

AND NOEL MATHEW WYATT

RESPONDENT

Hearing: 14th September, 1984

Counsel: Katz for Appellant
Kiely for Respondent

Judgment: 14th September, 1984

(ORAL) JUDGMENT OF SINCLAIR, J.

This matter comes before this Court by way of case stated and I am informed that it is not a case which is brought in isolation and has been brought because what had occurred in this particular case has occurred on other occasions.

The case stated says that this particular respondent appeared before the District Court charged with an offenc e of exceeding 50km per hour in a restricted area. He pleaded not guilty and after hearing the evidence the Justices of the Peace dismissed the information. The case stated discloses that Traffic Officer Pearce was in a marked patrol car in Bond Street within the City of Auckland and there he was carrying out a microwave patrol for the purposes of apprehending drivers exceeding the speed limit

of 50km per hour. The officer observed a lone vehicle travelling on Bond Street for two seconds and clocked it on the microwave unit at 75km per hour and locked the reading on the unit. The case stated goes on to disclose that the officer identified the vehicle as being driven by the respondent and that no issue arose from that factor. However, the respondent said to the officer at the time that the vehicle would not go that fast and asked to see the readout on the microwave unit. The officer explained to the respondent at the time that it was not possible to show him the readout as, in an effort to get out of the patrol car, the officer had accidentally bumped the unit causing the readout to disappear. What in fact occurred was that the electric cord which powers the unit had dislodged. There were produced to the Court certificates of accuracy for the speed testing device pursuant to s.197 of the Transport Act 1962, and the Justices stated that they were satisfied that the microwave testing unit was accurate and also that it had been calibrated before and after the reading in question.

In giving evidence the respondent explained that he did not know what speed he was doing but denied doing 75km per hour. He repeated that he had asked to see the readout but, because it had been cancelled out, he was unable to do so. The final statement of any moment in the case stated is that the officer was of the opinion, contrary to that asserted by the respondent, that the vehicle could do 75km per hour.

The Justices then go on to say that they determined that it could not be established whether or not the respondent was speeding to what they considered to be the normal satisfaction of the respondent and that they held that there were some entitlements a respondent had in a speeding case which were not afforded to this alleged offender because the reading had been cancelled as a result of the knob having been knocked by the traffic officer. The Justices further determined that, as the respondent could not therefore be shown conclusively what speed he was doing and because he was entitled to see it, they dismissed the information.

The question for the Court is framed in this way:

> "Is there any requirement in law for the purposes of a conviction for a charge of speeding that the person apprehended be shown evidence of his speed?"

Mr. Kiely suggest that the question may be inelegant. It may be so in relation to the facts of the case in question but, if it is intended to cover the whole area of speeding offences, then probably it is not.

The simple situation in this case is that the Justices have introduced an element into their considerations which is not recognised by the law. In any charge of speeding proof to the satisfaction of the Court is what is required and not proof to the satisfaction of the offender.

One may merely point to the fact that, if a speeding offence is before the Court as the result of a pursuit by an enforcement officer on a motorcycle or by a motor vehicle, there can be no showing of the alleged speed to the offender because by the time he has stopped and the traffic officer has stopped the speedometer will be at zero. When a microwave unit is used there is the facility for locking the unit on the speed and then as a matter of courtesy it is often shown to an offender. That is not his legal right, and he has no entitlement to be shown the result of the apprehension and, if he is shown it as I have already said, it is a matter of courtesy which is extended to him. Normally that will be done but in this case it could not be done by reason of the cord having become disconnected. There is probably no necessity for me to say anything further on this matter, but if a similar finding is of assistance it can be found in the case quoted to me by Mr. Katz, namely, Russell v. Beesley (1937) 1 All E.R. 527. An unreported decision in 1971 has also been referred to but in view of what is involved in this case I do not think it necessary to refer to that decision which is now some thirteen years old and because it is not reported.

In prosecutions of this nature it is for the Justices to hear the evidence which is available and then to decide whether it has been established beyond reasonable doubt that the offence has been committed. No doubt the evidence may vary from case to case, but I simply repeat

that, so far as the facts in this case are concerned, on the day in question this particular respondent could not escape liability for the offence if after hearing all the evidence the Justices were of the view that the offence had been established beyond reasonable doubt.

Accordingly the question asked in the case stated is answered in the negative and the matter will be referred back to the District Court for it to act in accordance with this judgment.

Solicitors: Butler, White & Hanna, for Appellant

Holmden, Horrocks & Co., Auckland, for Respondent