

CASE DISMISSED

How to Fight and Beat Your Speeding Ticket



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Congratulations. You have made the choice to fight that ticket and win.

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Introduction

The essence of *Case Dismissed* is Trial by Ambush. You will challenge the evidence against you by making essential to the prosecution something they should have, but cannot produce in court at your trial. You catch the prosecution unprepared. Illegal? No, but fatal to the prosecution's case against you.

The key to *Case Dismissed* is breaking the chain of evidence against you. This book will show you exactly how to do that. There are specific sections for dealing with the method that caught you, be it pace car, radar or laser. But read all the sections as there is useful information in each of them.

To succeed and beat your ticket, you will need to appear in court and argue your case. This may sound intimidating. It is; for the unprepared. You are going in against professionals who are there every day. What you will do maybe once or twice in your life, they do hundreds of times a day.

Prosecutors and police officers have a huge experience advantage against you. They know what to say, how to say it and when to say it. They've heard and beat the stupid excuses and gimmicks. They have built their own systems that allow them to try and convict dozens of people a day.

Are you intimidated yet? Well don't be. Because *Case Dismissed* is going to help you take advantage of their system. That's the ambush part of the strategy. You will be far more prepared than they ever expect you to be. You will be demanding information that they should have, but neglect to bring to court simply because it would take too much time to be that prepared. It would mess up the flow of their high speed conviction system. You will turn the tables on them and, realizing their weakness has been discovered, they will dismiss your case due to lack of evidence.

I assume you have checked the ticket, the car described is your car and the ticket is yours. There are no obvious mistakes or fatal flaws that make the infraction invalid (misspelling your name or an incorrect address does not invalidate the infraction, the officer will identify you as the person he ticketed.)

Why Does *Case Dismissed* Actually Work?

The core principle behind *Case Dismissed* is that the prosecution must be able to document the accuracy of the measuring device. If the measuring device is a radar, they must be able to document the accuracy of the radar and of the device that calibrated the radar. The same is true of the speedometer in the police car that was pacing you, and the same is true with a laser. There are legal precedents for all this, and in the following pages, you will be given general information on a trial, a background as to how this legal strategy works, and strategies and specific questions for each measurement type.

“If it is the law, then why don't prosecutors come to court with all the material to win. Surely they know they should have this documentation?”

You've got to understand a few facts. If you've ever been to traffic court, and I highly recommend going before your trial so you get comfortable with how it works, you will see that this is a machine. A money machine.

The prosecutor and court personnel are there to grind through as many cases as possible during the day. It is a numbers game and they need to pump people through.

You, being the prepared individual, are a serious impediment to productivity.

Most defendants are completely unprepared. They believe that their lame excuse will get them off. If their ticket is truly unjust, they somehow believe the officer will always tell the truth. These defendants are mowed down like long grass. The prosecutor knows this, so they do not prepare for each individual case.

In fact, the system is set up so they can't. Do you know how much time it would take to pull all of this evidence foundation documentation together for every single ticket? It just can't happen. It should, but it doesn't.

Suddenly, a prepared defendant (you) steps up. You calmly place some case law on the table and begin cross examining the officer, asking questions about the foundation of evidence that the prosecutor knows he doesn't have.

At this point, the prosecutor has three choices.

1. Try to challenge existing case law.
2. Beg the judge to stop you.
3. Chalk one up in the loss column and quickly get rid of you.

He isn't going to challenge case law because it just isn't worth it. Besides, he knows these precedents are already set and he isn't going to the supreme court any time soon.

He may well ask the judge to ignore proper law and let him get away without foundation. That is why you will always provide the relevant case law before your trial starts. If the judge does happen to side with the prosecutor, you now have excellent grounds for dismissal on appeal. Rightfully, the judge cannot ignore precedent.

No, the final choice is the most likely. The prosecutor will want to get rid of you as quickly as possible. In fact, the prosecutor will most likely ask for dismissal before you even have a chance. He doesn't need your grief. He is unprepared, he knows it, the judge knows it, the police officer knows it and you know it.

Okay, you ask, why doesn't the police officer come prepared? Essentially, it comes down to money. It will take a lot of time for each officer to be properly prepared with documentation for every single speeding arrest they make. Who is going to pay for that? As a taxpayer, do you want police out on the street preventing crime or in the office documenting tuning fork calibrations and collecting repair logs for cruisers?

Look at it this way. It's all about the money. They stopped you because they want yours. But they can't spend enough money being prepared to defend everyone so they just go by the averages, knowing that once in a great while one of you will get away. Perhaps if everyone used Case Dismissed, there wouldn't be so many speeding traps. On the other hand, if everyone used it, they would likely come up with different laws and or procedures to eliminate its effectiveness.

Moral? The prepared side beats the unprepared side.

The Ticket

Also known as, The Pleading which happens to be the charge against you.

Examine the ticket: The important side is the side the officer did not fill in. It is the side explaining what it is you are supposed to do if you intend to fight.

Every state has their own format and in many states every jurisdiction may have its own format. There is no standard format. Consider this side as being designed with evil and malicious intent. Some of the information of evil intent may also be on the other side.

Here is what to look for and do:

- If you intend to plead not guilty or contest the ticket what must you do.
- If you want the officer to be at your hearing what must you do
- If you want to subpoena witnesses what must you do
- Is it an infraction or an misdemeanor (this relates to your 6th amendment rights)
- If you want to examine any records or have copies of records, what must you do

Not doing as the ticket specifies is not fatal, however it will make your defense harder, possibly cause a second time consuming hearing, and cause unwanted confusion.

Special Directions:

1. If you send anything by mail send it registered, return receipt and keep a copy of what you sent. Bring it to court with you.
2. If the ticket states anything to the effect that if you want the arresting officer present you must do something, DO IT ! **You want the arresting officer present.** I know , it sounds stupid, but you definitely, absolutely, positively want to request the officer to be there. Without the officer, you have nothing to cross examine but a ticket.
3. If your ticket says that you may subpoena the officer, do so This is a trick and if you do not issue a subpoena, the officer will not show up and the Judge will say that you should have subpoenaed the officer. Your case will not be dismissed and the Judge will use the officer's written deposition as evidence. (Call the court clerk to find out how do subpoena the officer. It is different in different states.)
4. If the ticket says that you must do something concerning discovery, reply with these words only. 'The Defendant requests the prosecution present in court competent foundation to any evidence it intends to introduce.

Now read the rest of the ticket and try to determine what method was used to determine your speed. If it is not indicated on your ticket you can request this information from the court. However, the court may give you a wrong answer. Unless the ticket specifically states the method or you know what method was used then come prepared with all defenses, Laser (lidar), Radar and speedometer defenses.

The First Layer of Your Defense

Realize that just by showing up in court, you have greatly increased the odds that your ticket will be dismissed. You have taken the first, and most important step in beating your ticket. Every day more than 100,000 people roll over and pay their fine. Even when they know they weren't speeding or were operating their vehicles in a perfectly safe manner. Appearing in court is the first "layer" in your defense. Why? Because often the police officer who gave you the ticket simply will not show up. In a significant percentage of cases, which vary by county, the officer may not show up for one reason or another. (Again, as stated above, look over the ticket carefully to see if there is something you must do ensure that the officer is present.)

Remember, "If they can't talk, you will walk."

Many people advocate trying to get the court date changed. It may be a good idea, but you need to consider your personal circumstances. If the date is moved, you had better show up.

If the officer doesn't show up at the moved date, the prosecution will likely ask for a new date and they will probably be granted that request, since they will argue that you have already had the date moved. The Judge will probably agree. So another date is set and you have spent yet another day in court without resolution.

If you have a job that requires travel or has little flexibility, attending all these court dates could be a problem. Not showing up for a trial date is a more serious offense and can result in the issuance of a warrant for your arrest. Don't go there.

On the plus side, there is probably a greater chance that the officer will not show up and that you can get the case dismissed. So consider your options, and go for a postponement if your circumstances allow it. The clerk or courthouse can tell you the exact procedure to follow to get a new trial date.

This certainly can't be the basis for your defense, but it could be a good first layer. And it may very well be a painless way to beat your speeding ticket.

The second layer is the ambush, which the rest of the book discusses.

Some Legal Basics

1. The police officer is also an officer of the court. Be nice to him, do not insult him. Insulting him is like insulting the Judge. Remember the Judge, the prosecutor and that police officer know each other very well. They are both officers of the court.
2. Be nice, polite and friendly to the Judge and the prosecutor. They have a job to do. That job is to convict you and impose a fine.
3. Don't come to court dressed like a slob. That is an insult to the court.
4. Stick to the point: **getting your case dismissed**. Do not get sidetracked.
5. You are charged with a specific speed, say 15 MPH over the speed limit. It is the prosecution's job to present evidence that in fact you were traveling at that speed. Not "some" speed, not "fast" but 15 MPH over the limit. Even if they prove that you were going fast, fast is not what you are charged with.
6. If you open your mouth, and admit to anything, and I mean anything, the charge against you can be changed. You can and will be found guilty if it came from your own mouth. If the judge, magistrate or prosecutor asks you anything about the ticket or circumstances surrounding it, politely reply that you would prefer not to testify against yourself. Don't start quoting the fifth amendment like you are on TV, just be polite and firm.
7. Innocent until proven Guilty is 'Legal Fiction'. Like fiction, don't believe it. You are in court because you are presumed guilty. The only thing between you and the conviction is the evidence.
8. Proof required in criminal cases (tickets) is "beyond a reasonable doubt" not "beyond all doubt". The key word is "reasonable". Unless you challenge the evidence, it will be presumed to be "reasonable".

***Case Dismissed* makes the evidence against you inadmissible or unreliable:**

Do not, repeat, Do not try to prove that you are innocent:

The only reason for the trial is to hear the evidence and convict you:

The evidence could be:

1. Either you were paced by the officer's car, that is, he followed you and noted your speed on his speedometer.
2. The officer used a radar type device to determine your speed.
3. The officer used a laser device.

Quick overview:

This is a quickie, for you to get the idea. Take this situation. You were cruising along and suddenly there was a cop behind you with his lights blinking. He tells you he has been following you for ¼ mile. This means the cop paced you with his car, using his speedometer to determine how fast you were going. He has given his testimony and now it is your turn to ask him questions. You ask him to present documentation from a recognized speedometer shop as to the last time the speedometer in the car he used that day was calibrated.

Surprise, he can't. Few police forces calibrate their speedometers. If a police force does, chances are the officer does not have the documents with him. No, they can't go and get them to try you some other day. The trial is now and if the prosecution was unprepared, too bad. The prosecution rested its case when they handed the witness over to you. The evidence presented now has a fatal flaw.

You immediately ask for the case to be dismissed.

Note: You did not prove anything; you simply asked for documentation that the prosecution was unable to present. By asking for it, it became an essential element of the prosecution's case against you. Do not attempt to prove that the officer did not read his speedometer correctly. You simply took away their assertion that the speedometer was accurate to a legal degree of certainty. You cast doubt as to the accuracy of the speedometer. You broke the chain of evidence.

(The Judge knows that the speedometer, even though not 100% accurate was at least close. Close counts in horseshoes, atom bombs and hand grenades. The Judge knows you were going fast. However the charge is an exact figure based on readings from a device that the prosecution can no longer prove to be accurate to a legal degree of certainty.)

Fines are based on an exact figure. For instance, 11 to 15 MPH over the limit \$75, 16 to 20, \$125. If you open your mouth and say "I was not going that fast", you opened the door to a change in the charge. The court can assume by your own words that you were going over the speed limit. The court can now find

you guilty of speeding and impose a fine without a definite speed. The charge can and will be changed to an arbitrary figure. You opened the door to a change of charge, you admitted to a crime.

Remember when you plead not guilty, you plead not guilty to going 15 MPH over the speed limit. That is your plea, and 15 MPH over the limit is their charge.

Some Courtroom Basics You Should Know

This section is designed to provide you with some background information regarding your trial.

1. Cross Examination. When the prosecution has finished questioning their witness, the prosecution rests. You have the right to cross-examine the witness, but only as to the testimony the witness gave. That is, you cannot ask questions about something not covered in the direct testimony. The Prosecutor then has the right to question the witness again after you are finished, but only as to items covered in either the examination or your cross examination. After the prosecutor is done with his re-direct, you can re-cross examine the witness. It seldom gets to this point.

2. Best Evidence Rule. Basically if an original is available and it exists, it must be used. In the event the original does not exist a photocopy may be used provided that there is certification that the photocopy is a true copy of the original. Remember this, if someone tries to introduce a photocopy. Ask for the original and object to a photocopy.

3. Case Law. Applied law is based on case law. This is where someone takes a case all the way to the Appeals Courts in the State or Province, or to the State, Provincial or Federal Supreme Court and a ruling is made. That case is reduced to writing by the particular court and then is published so that the lower courts (e.g., the court in which your case is being tried) in that particular jurisdiction may and should follow the ruling of the higher court.

4. Case Law and Calibration. As it applies here: In every state and Province there is case law regarding radar and the use of pace cars. In every situation the ruling is that whatever means is used to determine your speed, the device must be accurate and functioning correctly. Calibration is recognized as being essential to proving that a measuring device is accurate. **If the calibration of a device is not challenged, it is presumed to be accurate and functioning properly.**

Calibration must be done within a reasonable period of time of an arrest. A calibrated unit, if damaged or altered, is no longer considered calibrated unless it is re-calibrated and found to be functioning correctly. If a device is used to calibrate another device that device itself must have been calibrated within a reasonable period of time prior to use for calibration. (in this event courts agree that six months is a reasonable period of time)

5. Reasonable Time in Regard to the Radar. The unit must be tested before your arrest within a reasonable time. That time is no more then the day of the arrest. To show that the device was functioning properly during the arrest the unit should be checked again immediately after the arrest.

6. Reasonable Time in Regard to the Testing Device to Test the

Radar. This is generally accepted as no more than six months and in some states it is three months. The same applies to speedometers.

7. Radar Log. The radar gun must be accompanied with a log, showing repairs, when it was last tested, who tested it and what malfunctions the unit has had in the past. There is also an arrest log that the officer must keep. This log shows the time of your arrest and the time when he tested the radar unit. He has an obligation to present the log if it is material to the evidence, provided **you ask for it.**

8. Maintenance Log. For the vehicle in the event of being paced. Ask for it, and ask for the documentation on the speedometer certification.

9. Match up the paperwork. If the prosecution produces certification or related paperwork it may not match up. That is if they produce a certification on the tuning forks for a certain radar unit. Make them show that by serial number (yes they all have serial numbers) that this particular tuning fork was used on the specific radar unit to which it belongs and that specific radar unit was installed in the specific car that day where it was used to determine your speed. They must show this by logbook entries, the officer's word is not good enough unless you accept it. (In the vast majority of cases, the officer does not have a clue as to the serial number of the radar unit installed in the car he was assigned to that day, and the trial is now. There is no time to spend days researching maintenance records to make a decent paper trail. Remember the prosecution has already rested its case, it can not ask for an extension unless you let them. (If the prosecutor asks for an extension, object. The judge will turn him down. If you do not object the judge may grant the request).

10. Radar. Okay, we all know the stories of radar clocking trees at 100 MPH and stop signs at 75MPH. All courts have taken judicial notice that radar readings are admissible **provided the following chain of four items remains unbroken.**

- a. The unit was used properly by a trained and qualified operator;
- b. The radar unit is properly maintained;
- c. The radar unit was properly tested;
- d. **That the calibration device used to test the radar was in proper operating order and was tested accurate within a reasonable period of time.**

(d. Is a key ambush item of Case Dismissed)

11. Judicial Notice. Judicial notice is the practice of the court accepting

something as fact, which does not have to be proven again in that court. For example, water is H₂O, fire is hot, ice is cold. Courts have taken judicial notice that radar and speedometers are accurate measuring devices provided they are calibrated and used correctly.

Do not bother telling the court that radar is bad, or that it doesn't work. Do not waste your time on explaining that there was heavy traffic, that the officer mistook your car for another one, or that there might have been radar scatter. Accept it, radar works, officers know how to use it, and the court will accept their testimony unless you find fault with one, any one, of the above four admissible evidence items.

Finding fault with any one of the items listed in the paragraph regarding radar above breaks the chain of evidence. Break one link and the court can no longer assume to a legal degree of certainty that the readings are accurate. This leaves the prosecution without credible evidence as to their charge.

12. Leading Questions. Although you are usually allowed to ask leading questions on cross-examination, a judge, particularly one who has not been trained as an attorney, may not allow you to ask leading questions. If you ask a leading question the prosecutor will most likely object and if you are uncertain as to how to respond, you may be prevented from continuing with the particular question. So it is best to avoid leading questions as you are not a lawyer and not trained in the nuances of separating leading questions from allowable questions. However it is necessary for you to have some basic understanding of what a leading question is in order to avoid this potential problem.

A leading question is essentially a question that implies its answer. For example, this is a leading question:

Q. Did Mrs. Smith tell you that her husband hit her?

An example of a non-leading question would be:

Q. What did Mrs. Smith say regarding her husband?

Basically the difference is that in one instance you make a statement and then ask the witness to agree with it. In the other instance you are asking the witness what the statement was. Non-leading questions can be thought of as who, what, when, where, why, and how questions. If you can begin your question with one of those words, you will safely skirt the leading question issue.

Avoid These Mistakes

1. Do NOT motion the court before the trial for any documentation whatsoever.
2. Do NOT motion the court for their evidence before the trial.
3. Do NOT testify, even if the prosecution challenges you to testify.
4. Make no statement whatsoever as to your speed, don't even say something as innocent as "I wasn't going that fast". Do not let the prosecutor con you into making a statement, any statement. Remember the burden of proof is on their shoulder. Don't make their job any easier.
5. DO NOT let the prosecution know your intentions.

One of the major aspects of **"Case Dismissed"** is **Trial by Ambush**. You are going to catch the prosecution unprepared. If you tip them off by letting them know your intentions, they may produce the necessary paperwork at trial.

Remember for speeding offenses the trial is assembly line prosecution. The prosecution has neither the time nor resources to gather the documentation for every case it will hear in this session. Dozens of people will be tried one after the other during your session with only a few minutes for each trial. The prosecution expects you to be a wimp, an unprepared victim just like the dozens before you and after you.

If you tip them off by asking in advance for all the required documents, they will know what you are up to. For your single case they may come prepared.

Remember **"Trial By Ambush"**. Yes the legal community frowns upon it. However in your case you are only asking at trial what any reasonable prosecutor would present. The fact he doesn't present it as proper foundation to the evidence is not your fault or responsibility. He is a trained lawyer, you are not. He knows that the items you ask for are required. The fact that he didn't properly prepare is no excuse and he cannot claim **Trial by Ambush**. (Even though you really ambushed him when you ask for the documentation, even in a simple case like a traffic violation, he should have been prepared)

During the officer's testimony, **do not object to anything**. Wait your turn; do not tip them off as to your intentions. If you object when the officer introduces the radar evidence by objecting to foundation, you open the door for the prosecution. The prosecutor will know your intent. Wait until it is too late, let the prosecution rest its case.

Remember, once the prosecution has rested, they cannot bring in more

evidence, their case is finished, and it is over. They can call no more witnesses unless they are rebuttal witnesses to your cross examination of the officer. Since you are asking for documentation, they can't call another witness, all they can do is present documentation they do not have at trial that day. You know the rest, no documentation, or **"If the paperwork don't fit, you must acquit"** Without that evidence the prosecution has nothing, nada, no evidence. The evidence presented by the officer is now worthless. Bottom line, do not tip them off.

6. You have ambushed the prosecution. They may try to introduce new evidence. Do not let this happen. Argue that the prosecution has rested. (Presenting logs or documentation that you ask for is not new evidence. Presenting something that is different like another officer who happened to be behind you is.)

7. DO NOT ask for a Jury Trial. The prosecutor will prepare himself for that. Unknown to you at a Jury trial the prosecutor can ask for the full punishment allowed by law including years of jail time for going just a few miles per hour over the speed limit.

A Jury trial takes a lot of time and resources from the court. This makes the court mad and you will most likely lose at a jury trial. The Jury can, without being bound by the evidence or lack thereto still convict you. They may even be getting back at you for wasting their time.

Preparing Yourself for the Trial

1. I am not allowed by law to give legal advice. Only a lawyer can do that. However by now you have read enough to know what to do. Disclaimer: I am not giving legal advice.

2. After reading *Case Dismissed*, make up your own list or of questions (or copy mine). You are allowed to read from a list at trial

3. Make up your own list of objections (or copy mine) should the prosecution ask for more time.

4. Make up a list of requests, Motions to dismiss so you can read them from your list. As a matter of fact, you can make a full list of motions and ask for them all, just in case one fits and another does not.

5. Write out a closing argument just in case you need to do a closing argument. Do not be afraid to read it to the court, you do not have to memorize it.

6. You already know what device was used to determine your speed. It is written on the ticket. The arresting officer told you (I clocked you with radar, laser or followed your car). Prepare the appropriate defense for the appropriate arrest.

7. Find out from the court what days they have traffic court.

What Will The Trial Be Like?

Fast, and I mean fast. The prosecutor already knows the questions he will ask the officer. The officer already knows what to say to the prosecutor's questions. They have done this hundreds, if not thousands of times before. You won't catch all of what they say.

Pay attention only to testimony regarding calibration. When it is your turn, only go for the calibration. Ask as few questions as possible. Open no doors and once the point is made, stop and ask for the case to be dismissed. Do not continue unless your motion is denied.

You will be nervous. Don't worry, take your time, read your notes and then ask any one of the prepared questions you have written down. You are allowed to read from your sheet. Do not let the Judge or prosecutor rush you. Ask for a moment to read your notes. They cannot deny this. (if they did deny this it would be grounds for immediate appeal)

The prosecutor will try to rattle your cage by objecting. He may object to your question as "leading". (He knows where you are going and he is trying to derail you). Turn to the Judge and state that you are a layman, not a skilled trial attorney, and ask for some leeway. If you hear the word "sustained" it means the officer won't answer the question the way you asked it. Ask it another way. Start the question off with "What", "How" or "Did". This will generally result in an acceptable question.

Most of all, the prosecutor will try by suggestion to have you take the stand and make a statement regarding your speed or how fast you think you were going... DO NOT DO IT. You may be tempted to take the stand so that you can tell your side of the story, DO NOT DO IT. Your story is not important and will never lead to "Case Dismissed" or "Not Guilty". Remember anything you say in your own defense can and will be used against you. Only ask questions, never give an answer. A question asked can never be used against you.

If your mind freezes, ask the judge for a moment to regain your composure and read the notes. It will come back to you.

Most of all keep your questions as few as possible. The fewer the better. Stay on target with your questions.

The entire trial should have only one objective. The speed-reading of your car **may be wrong. That is the only objective, achieve that and you win.**

The prosecutor before the trial or during the trial may make you an offer for a reduced charge. That is reducing the charge to a non-moving violation. Take the offer. Turning down the offer may just anger the Judge and produce a

guilty no matter what.

The Judge knows that on appeal his ruling will most likely be overturned, but in the meantime you have to put up a bond for appeal, hire a lawyer and spend lots of bucks. Judges don't like having their judgments overturned, but to piss you off for refusing a deal he thinks is good might just make him find you guilty.

Your Trial

OK you are going to fight the ticket. You have a court date and you appear at the court on that day and at the time specified. There are a lot of people there, mostly defendants, a few lawyers and the occasional policeman.

“All rise”, the Judge comes in and takes his seat. Generally he will first ask if any lawyers are present with business for the court. (this is where the deals are made). After the lawyers make their deals the cases are called. Generally this is only the plea portion. Your name is called and you plead “Not Guilty”. The judge sets a trial date for you and you go home. In some cases the trial is held right away. Come prepared.

Now that you are at your trial remember, the burden of proof is on the prosecution. You have nothing to prove, **don't try to prove anything**.

Your case is called:

You say, “Your Honor may I approach the Bench” You approach the bench and hand both the Judge and the prosecutor copies of the case laws you brought with you. (you need three copies, one for the Judge, one for the prosecutor and one for yourself).

You now say, “Your Honor these are the most notable case laws concerning (radar, Vascar, Lidar-laser, photo-radar or speedometer) they deal with foundation and admissibility of evidence.”

You now sit down. They may read them and then again they may not.

Important: Case Law to Bring to Court

For Radar and speedometer (being paced) and Vascar: bring, Honeycutt v. Com; People v. Perlman; St. Louis v. Boecker; State v. Gerdes; and State v. Tomanelli

For Lidar-Laser: bring, ADMISSIBILITY OF MOTOR VEHICLE SPEED READINGS PRODUCED BY the LTI MARKSMAN 20-20 LASER SPEED DETECTION SYSTEM.ase Dismissed Dismissed

For Photo-radar bring: Municipality of Ankorage v. Baxley

These can be found in Word format under Case-Law/Important ones - or in the individual States under Case Law

The arresting officer is called to the witness stand and the prosecutor asks him questions. (Don't be surprised if the officer lies through his teeth.)

After asking the officer's name, years on the force and training background he will get to the particulars of your arrest. The officer will remember your arrest (Sure, even though he has arrested hundreds, maybe thousands since he arrested you. You know he is lying. The judge knows he is lying. And the prosecutor knows he is lying. He does not remember your arrest, his memory is not that good and it does not matter, he is reading from the ticket and possibly his notes).

Now the evidence is introduced. First the prosecutor will ask the officer how he tested the radar. The officer will say something like; "I performed an internal check by pressing the test button. The indicator light turned green showing that the unit was working properly. I then tested the unit with the 30 mph tuning fork, the 50 mph tuning fork and the 70 mph tuning fork, all tested well."

The prosecutor will now ask him as to any special training he has had regarding the use of the unit. (in most cases he will lie like a rug, he never had any training, probably never even read the manual). However, the court will accept his word. He does not have to produce his training certificates. The court assumes he is telling the truth as an officer of the Court. Don't bother challenging his training unless it is obvious he has had none.

Unprepared Prosecution

When The Arresting Officer Fails To Appear

When Prosecution Wants to Move the Trial Date

If the officer doesn't show up for trial, the prosecution has no evidence to present. They will often ask the court to set another date. Do not let them, you must object. The Judge will say "without objection trial will be reset for June 13." If you don't object they have another shot at you.

If you were lasered, timed, or viewed in an airplane by one officer and another wrote you the actual ticket, both officers must be present.

You must object and state,

"Your Honor, the trial is today, and the fact that the prosecution came unprepared is not my problem. I have appeared and am ready to proceed with trial. If the prosecution is not ready, then I motion that the case be dismissed for lack of evidence."

Typically, if the primary officer does not appear in court, you won't even get this far as the prosecution will drop the case because they know they have no evidence.

Treat the un-preparedness of the prosecution the same way. If they did not bring something to court do not let them take time to get it.

When Prosecution Does Not Have the Paperwork It Should Have

(Should the officer not appear, ask for a dismissal, it most likely will be granted. Do not let the prosecution try for another trial date, object.)

1. The trial is today; now, if the prosecution does not have the required paperwork, don't let them get away with asking for a postponement. They can ask, but if you object it will not be granted.

Object this way.

"Your Honor, the trial is today, right now. If the prosecution came unprepared for trial, that is their problem. The prosecution knows, or should know, what is required to present proper foundation for entering evidence. The prosecution knows or should know that there must be evidence that both the radar unit and the unit testing the radar unit were in good working order and that documentation to prove this is essential to the presentation of their evidence. I request you deny the motion by the prosecution."

2. The prosecution may say that the officer's word as to the fact that the

unit testing the radar or that the speedometer was tested should suffice.

Object this way.

“Your Honor, unless the officer has direct knowledge of this by being present when the unit was tested, and presents evidence to that fact, his testimony to something he has no direct knowledge of should be stricken.”

3. If the prosecution tries to say that it is assumed that the police department has done these tests.

Object this way.

“Your honor, The prosecution has no direct knowledge of this, presented no evidence to this and the assumptions of the prosecution or the witness is exactly that, a presumption - with no basis in fact - and should be rejected by the court.”

Caught by a Pace Car

OK let's get to work. Let us assume you were caught by a pace car. The arresting officer used the speedometer in his car to determine your speed.

You may want to print out these pages and go over them and make notes on them. This is the heart of your defense.

He says he followed you for a certain distance at say 75 miles per hour in a 50 mile per hour zone.

Wait until his testimony is finished. Now it is your turn. Ask the following question.

"Officer (whatever his name), please present to the court documentation from an approved speedometer shop certifying the accuracy of the speedometer on the specific car used by yourself on or about the time of my arrest."

Now you have him, he can't produce the record and remember the paper trail. If he produces something it must show what car, and identify the car used during the arrest. In other words along with the certification there must be a log.

DO NOT ACCEPT "I AM CERTAIN THAT THE CAR HAS HAD ITS SPEEDOMETER CERTIFIED". If he says this, ask him,

"I am asking for facts, not your beliefs, please present to the court documentation as to the certification of the speedometer."

When he cannot produce the documentation or show a proper trace to the specific car, motion the court; ask for

"Defendant motions for dismissal".

If the motion is granted, you win. If the motion is not granted motion again, this time ask for

"Motion to exclude evidence as the prosecution can not certify as to accuracy of the device used to determine defendant's alleged speed to a legal degree of certainty."

If the motion is denied as to the exclusion of evidence, rest your case and go to the closing argument. The prosecution will make the first argument. Now it is your turn. Here is a statement you can use for your closing argument:

1. Since all fines are based on a specific speed, and this Charge is based on a specific speed the accuracy of the device used to determine that speed is essential.

2. The prosecution has failed to present evidence that the speedometer, the measuring device used, is accurate or that the speedometer has been tested by a qualified facility within a reasonable period of time prior to the arrest.

3. No other credible evidence that clearly and definitively, to a legal degree of certainty, quantifies the specific allegation, has been introduced.

4. Defendant requests the court to render a finding of not guilty as the prosecution has failed to prove its charge.

Notes:

It is highly unlikely that you will get to make a closing argument; the case will in all likelihood be dismissed. However it is a good idea to prepare for a closing argument. Use a similar closing argument for radar if the need arises.

Some notes on the speedometer and how to destroy that evidence:

1. No car manufacturer certifies the accuracy of the speedometer; only a test facility can do that, usually a certified speedometer shop.

2. Some states for their State Police either have their own test facility or use some approved facility to test their speedometers. It is doubtful that the arresting officer will have that documentation at trial. Even then it is more doubtful that a connection can be drawn to the specific car used that day because officers change cars all the time.

3. Almost no municipality ever has their Police car speedometers checked. Chances are that in a municipal court there is no record, because the Speedometers are never tested.

Another way some municipalities certify their speedometer:

The officer states that on that day he drove the car past another officer who clocked him on radar at 30 mph, 50 mph and 70 mph and that his speedometer agreed with the radar readings.

1. Only the officer who used the radar gun can testify as to the readings on the gun..

2. Only the officer who tested the radar gun can testify as to the test performed. Without the second officer present and testifying, challenge the admissibility of the evidence that the speedometer was tested and found to be working correctly.

“ Your Honor, only the officer performing the tests can testify as to the readings he observed and what tests if any he performed on the radar

unit itself. We have no testimony from that officer. Motion to strike evidence presented as to the accuracy of the speedometer”.

If the second officer is there and testifies: (highly unlikely) you will have to use the radar defense which is the next discussion.

Questions for the Trial: Pace Car Speedometer

If I were to prepare a list for trial, this is what it would look like. Remember this is only a list I would use. I am not giving legal advice. Do with this list as you please. You can add items; or refer to suggested questions from other advice on the net.

1. Listen to testimony of officer

Listen for: if the speedometer was checked or not. If the speedometer was checked, how was it checked?

Q1. Officer (name) how did you check the accuracy of the speedometer in your car?

A1. I did not check it, or the Maintenance people checked it, (no knowledge of it being checked or how it was checked).

(If maintenance checked it go to **Q1a**)

Q2. Officer (name) are you a qualified speedometer technician?

(Alternate question, Officer have you had any formal training in speedometer repair and calibration).

A2. No (he will say no).

Q3. Can you, **not being a qualified speedometer technician**, to a legal degree of certainty, certify to the court that the speedometer in the car you used on or about (at the of my arrest) was accurately calibrated?

A3. No. (if he says yes, say; Officer you just testified that you have no training in speedometer repair or calibration, other then your personal feelings as to the accuracy, do you have any documentation from a certified speedometer shop attesting to the accuracy of the device?).

Ask for dismissal.

If Maintenance people checked it or it was calibrated in any way then ask:

Q1a. Officer (name) Please present to the court documentation to that effect, documentation that shows the speedometer in the particular car used by you on or about the time of my arrest was calibrated by a facility certified to do such checks and calibration.

Wait for answer (if unable to present documentation, go to **Q2.** above and ask the next two questions, then ask for dismissal).

(If documentation is presented, make certain it deals with the vehicle the officer used that day)

Should the officer produce the correct paper work ask:

Q1b. Officer (name) Please present to the court documentation from **The Specific Vehicles Maintenance Record** showing that no changes in tires, transmissions or items on the car in question that may affect speedometer readings have been changed or altered, and no accidents with the car in question have happened since the time of the certification of the speedometer.

(He won't be able to show this) then ask the following two questions:

Q1c. Officer (name) Are you a certified speedometer technician?

Q1d. Not knowing if tires were changed, the accident history since the last speedometer certification or the existence of other maintenance items, which can affect speedometer accuracy on the said vehicle, can you, not being a certified speedometer technician certify, that without direct knowledge of the vehicle's maintenance or accident history you can, to a legal degree of certainty state that the speedometer on the car used by yourself on or about (date) was as accurate, and functioning exactly as it was on the day the speedometer was last certified?

Motion: Defendant Motions for dismissal as the prosecution can not certify as to accuracy of the device used to determine defendant's alleged speed to a legal degree of certainty."

B: Officer had another officer use a radar gun to determine the accuracy of the speedometer in the car that paced you.

Notes:

Only the officer that calibrated and checked the radar gun can testify as to the accuracy of the radar gun.

Only the officer using the radar gun can testify as to the readings on the gun.

1. If only the arresting officer testifies do the following (other officer not present):

Q1. Officer (name) is it important that the radar gun used to determine your speed be accurate?

Ask no more questions, no matter what he answers he loses. He will most

likely answer Yes. If so, go to the motion below. If he answers No, have some fun with him, then go to the motion below.)

Motion to Dismiss: Defendant motions for dismissal as there is no evidence that the radar gun used to test officer (his name) car speedometer was functioning properly or accurately when the test was done. There is no testimony from the officer using the gun as to the actual readings on the gun. There is testimony from the officer using the gun that the readings reported belong to the car in question. There is no testimony that the officer using the radar gun was properly trained in the use of the gun. There is no testimony from the officer using the gun that the gun itself was properly tested or if it ever was tested.

The prosecution has failed to present proper foundation as to the testing and accuracy of the speedometer of officer (name) car at or near the time of the arrest.

If the officer using the radar gun testifies - go to radar defense section.

Caught by Radar

Have no fear, **Case Dismissed** works great here.

How RADAR CALIBRATION WORKS

Well first off, it really isn't radar. Sure an electron beam is sent out and returned, but the Doppler effect determines the speed reading. That is where frequency changes as a moving object approaches you or moves away from you. The change in the frequency determines the speed. To do this the radar unit utilizes a "beat frequency oscillator." This deals with beats in the millions per second.

Tuning forks are the typical method used to test the accuracy of a radar gun. The tuning forks induce a specific number of beats per second which correlate exactly to a speed. That is there is a 30 mph fork, a 50 mph fork and a 70 mph fork. OK, the speed forks may vary depending on manufacturer; most have a minimum of three (the quantity is not important). These forks are similar to the ones you remember from music classes. The teacher hits the tuning fork marked "A" and you have an "A" on the chromatic scale. The frequency can be slightly off and no one will notice, our ears are not that good.

On the radar unit a change in frequency of 10 kHz or 10 beats per second in millions is enough to make it unreliable. A scratch on the tuning fork is enough to cause that. If the tuning fork is ever dropped or damaged in any way it becomes unreliable.

That is why at least every six months the forks must be sent away to a certified facility to be re-adjusted, tested and re-certified. It is also important that the tuning forks not be damaged in any way since the last test and certification.

These last two points are often weak points in the prosecution's chain of evidence. Case Dismissed will show you how to uncover this weakness for your own benefit.

We discussed ways of testing the radar equipment above. Remember not only must the radar unit be tested but the device testing the radar unit must also have been tested within a reasonable period of time.

This is the critical weakness in almost every trial, as the prosecution is rarely prepared to properly document the entire chain of evidence. It's just too much work for the volume of cases they have. You are going to ambush the trial by pouncing on this weakness – kind of like how they pounced on you when they hid on you to catch you speeding.

The trial:

The trial is same up to the point where the officer explains how he tested his unit.

When he is done, the prosecution rests its case and you now examine the officer.

Ask the officer to present certification of the last time the tuning forks were tested and calibrated by a certified facility. If he cannot present it, ask for dismissal.

If he presents it make certain that it is the original and not a copy. Reject the copy stating the “best evidence rule”. If he can't produce the original, ask for dismissal.

If he presents the original, ask him to prove by serial number that the tested tuning forks belong to the radar gun that was used to determine your speed. Not only must the gun match up to the car used that day it must also match up to the tuning forks.

I had one instance where the officer actually produced a tuning fork certification. He could not match it by serial number to the car or the gun in the car. To do that he also needed the car's maintenance records, which he did not have. He had to show in the radar log that the tuning forks certified belonged to the specific gun. As a matter of fact he didn't even know which car he was in that day. Well you know the rest, Case Dismissed.

Suppose the officer only states that he performed the internal check on his gun. Now you ask him about the unit. Ask him about the tuning forks that came with the unit and why he did not use them. You can have some fun with him. You don't even have to ask about the tuning forks having been tested because now that is irrelevant. The gun was not even tested properly. Case dismissed.

Proceed through the trial just like in the speedometer case, except shoot down the testing of the unit that tested the radar gun. Repeat: **the unit that tested the radar gun is your target!**

Some notes:

If the gun was tested shortly prior to the arrest and then tested shortly after the arrest, the court can presume that the gun worked properly during the arrest. This is important because most officers never perform the test after the arrest.

You can with clear conscience ask. "Is it not true, the manual provided by the manufacturer of the radar device recommends that for accuracy the gun be tested at a time shortly prior to use and immediately after an arrest." (All radar manuals state this.)

If he says, "I don't recall that being in the manual", ask him when the last time he read the manual. On the other hand if he states that it is true, then ask him why he did not follow recommendations. You really can have some fun with this.

(If you feel comfortable following this thread, please, do so. It is not essential to "**Case Dismissed**" and mistakes made by you here will not affect "**Case Dismissed**" because you have not used it yet. However you deserve the fun.)

Questions for the Trial: Beating Radar

1. Listen to the testimony

If there is no testimony as to checking the radar ask:

Q1. Officer (name) is it important that the radar be functioning properly?

If the answer is No have fun with him and ask for dismissal.

If answer is Yes:

Q2. Please tell the court how you determined that the radar was functioning properly and how you determined it's accuracy.

If he says he didn't check it, ask for dismissal:

If he only did the internal check he will say something like this:

I pressed the internal check button and the internal check indicated that everything was functioning properly.

Q3. Officer (name) is it not true that the radar unit you used also calls for a check with specific tuning forks set at various speeds.

If he says No, ask questions about his training into the use of radar make a fool out of him and ask for dismissal.

(Every radar unit comes with tuning forks or some kind of beat frequency oscillator. The internal checks only test the circuitry; they do not and cannot test the accuracy of the reading. Unless external beat frequency oscillations of a specific frequency are introduced it is impossible to determine that the readings of the gun are accurate. Remember the radar gun determines your speed by measuring the external beat frequency oscillations produced from the Doppler effect of your moving vehicle).

If he say Yes, but did not check the radar with the forks, ask for dismissal.

If he say Yes, and describes how he checked the radar with the forks ask the following.

Q3a. Officer (name) I am certain that you recorded this check in the log for the radar. Please present the log showing at what time on (date) you performed this check.

Q3b. Please show on the log where you checked the unit again after my arrest.

If he can not show a check that is almost immediately after the arrest, ask:

Q3c. Like all mechanical and electronic devices can this unit fail or can become inaccurate?

Q3d. Is it reasonable that if a unit was checked and found to be functioning properly before the arrest and then checked again immediately after the arrest that in all probability it functioned properly during the arrest?

Q3e. Since you did not check the unit immediately after the arrest, can you within a legal degree of certainty state unit functioned properly and was 100% accurate during the arrest?

He may, and most likely will say something like this. "I used the gun on other vehicles after the arrest and it worked perfectly, so it must have been accurate."

Q3f. You testified that you did not check the radar gun immediately after the arrest, what evidence do you have that the readings on the other cars you mentioned was accurate?

(Depending on his answers you can ask various questions, however this is not **"Case Dismissed"**, and losing on this point is not fatal.)

If he finally agrees that he can not prove accuracy after the arrest, ask for dismissal.

"Your Honor, Defendant motions for dismissal. Since the unit was not properly tested after the arrest the prosecution has not proven to a legal certainty that the unit which was used to determine defendants speed was functioning properly at the time of the arrest."

If he has checked the radar gun with the tuning forks, both before and after, then continue below (or if the Judge denies the previous motion):

Q1a. Officer (name), the tuning forks, are they specific to the radar unit, or will any other tuning fork, say one that I can buy at the music store work?

Q2a. If the tuning fork is damaged, bent broken, cracked, exposed to excessive heat, is it likely then that the tuning fork is as accurate as when it came from the factory?

Q3a. For the check with the tuning forks to be accurate, is it important that the tuning forks themselves to be accurate?

Q4a. Are you certified to check and calibrate these tuning forks?

Q5a. Do you have the equipment to calibrate these tuning forks and if so are you trained and certified in the use of this equipment?

Q6a. Officer (Name) Please present to the court documentation from a certified facility that checks these tuning forks that they have been checked and found accurate within a reasonable period of time prior to the date of the arrest.

If the answer is he has no such documentation. **Ask for Dismissal.**

“Your Honor, Defendant asks for dismissal as there is no evidence that the essential tuning forks used to test the radar were themselves accurate. Therefore the test of the radar unit is invalid and no legal certainty can be drawn as to the accuracy and proper functioning of the radar unit upon which the Prosecution has rested its case.”

If the motion is denied, ask:

Q1b. What does the manual for the radar gun you used that day say about the condition of the tuning forks or any cautions as to the handling of the tuning forks?

Q2b. Does the manual state in any way that the tuning forks can be dropped, cracked, bent or exposed to excessive heat without need for re-calibration?

Q3b. Does the manual state that no matter what condition the tuning forks are in that they will always be accurate, irrelevant of abuse, cracking, bending, exposure to excessive heat and so on?

If the answer is No **ask for Dismissal** this way:

“Your Honor, Courts have taken judicial notice that Radar works and is reliable provided that:

“The operator is trained in the use of the specific unit,

“The unit is tested correctly prior to and after use, and

“The testing unit itself is properly calibrated, undamaged and checked periodically by a qualified facility within a reasonable period of time.

“The prosecution has failed to present evidence to the fact that the tuning forks used to test the radar gun were undamaged and in good calibrated working order. Thereby the prosecution has failed to prove to a legal degree of certainty the accuracy of the radar gun upon which the prosecution has rested its case. Defendant motions for dismissal.”

Radar, Officer with the proper paperwork:

The chances that this will ever happen are very slim (unless you tip them off by making motions for this evidence before the trial)

By questions you must determine that the tuning forks belong to the specific gun used. That it was the gun in the officer's car (ask for log books) If this fails go for a paper trail that the tuning forks have not been dropped, mutilated or exposed to excessive heat since the certification.

Q1a. Officer (name) what is the serial number of the gun used by yourself on the day of the arrest?

Q2a. Please show to the court documentation that the tuning fork's serial number (read the serial numbers from the documentation on the testing) belong to radar gun with serial number (previous question) NOTE: if the two don't match ask for dismissal.

Q3a. (Only if the numbers match) Officer what is the license number or other identifying number of the car (motorcycle) you were using on the date of the arrest?

Q4a. Please present documentation that the radar unit serial number 12345 was installed in car (motorcycle) 6789 on the date of the arrest. (If it was a hand held unit documentation that this was the unit the officer checked out that day).

Remember; **"If the numbers don't fit, you must acquit,"** ask for dismissal

If the numbers fit **do not quit:**

Q1b. Officer (name) Please present documentation or other evidence that since the date of the last certification that the tuning forks have not been damaged, dropped, bent, cracked, exposed to excessive heat or been in a vehicle that was involved in an accident.

At this point, rest your case and do the best you can in your closing argument. The odds of things ever getting to this point are very slim.

Review:

Pace Car or Speedometer

1. Documentation when the speedometer was last inspected and certified

2. Documents are for the car that was used to pace you
3. The documentation must be from an accredited facility, Joe's garage won't do.
4. If radar was used to determine car speedometer accuracy, go to radar

Radar

1. Documentation as to the certification and testing **of the testing unit** (tuning forks or whatever other device was used)
2. Within a reasonable period of time (no more then 6 months)
3. Documentation is for the unit installed in the car used at the time of your arrest.

Caught by Laser/Lidar

Not all jurisdictions have taken judicial notice as to the workings and accuracy of Laser. Assume that the jurisdiction you are in has not taken judicial notice.

Good news, less than 1/10 of 1% of citations are with the use of Laser. For anyone who gets a laser ticket, we encourage you to fight it. That in itself isn't news, (we encourage everyone to fight all speeding tickets) but lasers are not on judicial notice in many of the country's courts. The prosecution teams around the country are glad you don't know that. (Note: I cannot provide a list of states as it may change at any time).

When faced with Laser the chances that Judicial notice in your state exists is small. For example, in March of 2000, the COURT OF APPEALS OF OHIO TENTH APPELLATE DISTRICT reversed a speeding ticket conviction when it failed to recognize judicial notice of the LTI 20-20 laser. However, in Georgia as cited in VAN NORT v. THE STATE the legislature has certified many of the radar and laser detectors used.

It is not up to you to know if judicial notice exists and it will be very hard for you to find out. When the laser evidence is being introduced object this way:

“Your Honor, the prosecution is introducing evidence based on a laser type of device. This State has not taken judicial notice as of yet concerning Laser. Unless the prosecution presents foundation with the introduction of expert witnesses on laser I object to the introduction of this evidence”.

You have a good chance of being in a State where there is no Judicial notice of laser. The worst that can happen is that you are in a state where judicial notice exists. Apologize for your misunderstanding and then continue with your defense (Note: You must object as soon as the officer or prosecutor mentions the word laser).

Laser is a narrow beam of light generally invisible. It is effected by moisture and any medium through which it passes. Glass, and moisture will bend the beam. Most states have not taken Judicial Notice that Laser is accurate. Check with your state. If no Judicial Notice exists then the prosecution must present an expert witness to testify as to the workings of the specific laser gun.

In most instances the Laser was set up as a stationary unit. This requires testimony as to how it was set up and the testing of the accuracy of the set up. The only way to test it is to have a specific car with a calibrated speedometer pass through the area at various speeds and determine if the speed reading on the car and the laser unit agree.

If used by an officer in a car the unit must have been in free air as shooting through the windshield will cause the light to bend and give a reading that can not be certified as being correct or even that of the correct vehicle.

Bending of light is basic science, when light is passed through a prism it bends at different angles depending on the frequency of light, Thus the rainbow or more specifically the light spectrum. The rainbow is light passing through moisture and being bent. The different frequencies present us with the colors of the Rainbow. Remember this is visible light, all light bends depending on the frequency. If you the light is in a frequency range that the human eye can not see, the human eye can not see where the beam is pointing to or how much it is bent.

Bent light travels a different distance and the Laser gun measures a specific return from a specific distance. If the light is bent, there is no assurance of accuracy as there is no calculation or compensation as to the bent light.

Assume the state has taken Judicial notice. There will be a requirement for such Judicial notice and it will have the following criteria.

1. The Laser was used in open air.
2. The moisture content of the air was below a certain range.
3. The operator was properly trained.
4. The accuracy of the unit was checked by a verifiable method (a pace car).

Questions:

Q. Officer, how did you determine the unit you used was accurate (he will testify to an internal check of the electronics and may state that it was tested on a pace car)

If No Pace Car:

Q. Officer, the self check of the unit is an electronics check is it not?

Q. Other then the self check what other check did you perform?

Q. Can you see the beam of light with the naked eye. (He may be able to see where it reflects off of an object, but not the beam itself.)

Q. Without checking the unit against a moving object where the speed of the object is known can you with a legal degree of certainty, and based on your detailed engineering knowledge of the workings of the unit state that the unit worked that day as per engineering specifications. (Note engineering knowledge and engineering specifications)

If he says yes:

Q. Officer please describe to the court your engineering qualifications. (Do you have a engineering degree specializing in Laser spectrometry ?) (Have you done scientific research into the specific unit etc.)

If he says no: **Ask for dismissal**

If the unit was tested against a moving object:

Q. Officer, is it important that the moving object you tested it against have itself an accurate ability to determine the speed the object was traveling at. (In this case it would most likely be another police car)

Q. Officer please present to the court documentation as to the last time the speedometer on the car used was tested and certified by an approved speedometer facility.

If he can not present this, **Ask for dismissal.**

If he shot you through the glass of his car:

Q. Officer have you ever seen a rainbow?

Q. I school, like every school child you were taught that light bends when passed through a medium and this makes a rainbow?

Q. Did the school teacher ever let you see a prism and the colors that the prism produces when light passes through.

Q. Did the school teacher explain that the different frequencies bend at different angles, separating the light into blue, violet and yellow.

Q. Glass, water, water moisture like in a rainbow bends light does it not?

Q. When you used the unit through the windshield, do you know how much the light was bent? Could you see the beam?

Q. If you could not see the beam, and you know the light was bent, how did you determine with a legal degree of accuracy where the reflection with which to determine the speed came from?

Q. Does the unit you used compensate for all the possible bending of light when passed through a medium such as the curved windshield of your car?

Q. The curve of the windshield of your car is not consistent is it? At some places it curves more then others is that not correct?

Q. Without compensating for the exact curvature, the type of glass, and the layers to the glass and bending of the light, is not logical that there will be a different reading from that of a straight shot through clear air?

At this point, **Ask for Dismissal** as the prosecution has not proven beyond reasonable doubt that errors introduced by shooting the laser through a window have resulted in an accurate speed.

If the shot was through an open window.

Q. Remember the rainbow, and how light is bent by the moisture in the air making the rainbow. Moisture bends light does it not.?

Q. What was the moisture content of the air at the time of the arrest?

Q. Did you make any compensation for the moisture content?

Again, you have to ask your question based on the circumstances. the bottom line is that the arresting officer will have to show that the unit was tested

against a moving object and that the moving object must have had a calibrated instrument with which to determine its speed. Documentation is required if you ask for it.

Remember, the prosecution presented the evidence. They have to defend that evidence, you don't. If the evidence is brought into question the prosecution must present the back up. It is the prosecution's responsibility to back up its evidence. If they didn't bring it to court and it is challenged, well too bad, the prosecution should have known better.

Laser has many more problems than radar. That is why most courts have not taken Judicial notice that it works correctly every time.

The problems with Laser are moisture, the bending of light and a independent verification that the unit is working correctly (pace car).

The advantage of Laser is that it is so quick that most radar/laser detectors will not give the warning until it is too late.

Bad News: Certified professionals usually calibrate a Laser.

Good News. To calibrate laser requires a certified technician or someone with specialized training.

Like the radar, first find out how they calibrated it (from the testimony of the officer) then go after the certification of the unit that did the calibration. Basically use the radar defense modified towards whatever they used to calibrate the Laser.

Did they calibrate the laser both before and after timing you?

When was that calibration device last calibrated? Ask the prosecution to produce the calibration documentation and if they can't, ask for a motion to dismiss.

Photo Laser is usually used in stationary traps where a picture of your license plate may be taken along with your speed. In this case the person that testifies must be the person that set up the site, accept no substitute. Documentation as to the calibration is also required.

Unfortunately you will have to defend yourself here by ear. Use "[*Case Dismissed*](#)" as you see where it will fit the best.

Review and Additional Pointers

1. **DO NOT** motion before trial as to the evidence the prosecution will use. You already know what they will use, any motion of this type will tip them off. Remember this is “**Trial by Ambush**”. I know other sites and books recommend you get all of the prosecution’s information before hand. **DO NOT DO THIS**, this is not a major case, only someone with something up their sleeve will ask for the information. The prosecution expects you to be a simpleton, unprepared just like the thousands before you and after you. The prosecution will spend absolutely no time in preparing for your case. Remember if the prosecution is tipped off, and prepares itself, they may just turn up with documentation you don’t want.

2. **DO NOT, ABSOLUTELY NOT,** under any circumstances testify yourself. Do not take the stand, do not say anything about your own speed. Do not come up with a story, like my car had four cylinders not firing so it is impossible for me to have gone at that speed. **I GUARANTEE YOU WILL LOSE.** If you take the stand the prosecutor is allowed to cross examine you. Believe me he will trap you and you will be found guilty from your own mouth. Remember you are not here to prove your innocence. Everyone knows you are guilty, the Judge, the police officer, the prosecutor and you yourself know you are guilty. All they need is evidence to prove your guilt, don’t give them any evidence.

3. Remember the object: **Make the evidence inadmissible**: if that fails **Make the evidence unreliable**: If the evidence is not reliable to the degree of legal certainty, it can not be used to convict you. **With the evidence gone**: The prosecution has nothing.

4. Do not attack the arresting officer’s honesty. Even if he lies do not go for his honesty. Remember if he lies in your case he has lied hundreds of time before, he is good at it. However, if you prove that he failed to do something, that is OK.

5. **Your only target is the evidence.** The main target is the calibration of either the speedometer or the radar unit. On the radar unit your main target is calibration of the tuning forks. On Laser, it is the calibration of the laser itself, or the machine that calibrated it.

6. There is a thing called “The chain of evidence”. Break one link and the entire evidence disappears. Your only job is to break one link.

7. Motion for dismissal every time you have broken a link.

8. When the prosecution rests its case, it is over for the prosecution. Unless you let them, they may not enter any more evidence or call any other witnesses. **DO NOT LET THEM** if they try. Once you rest your case, the trial is over except for closing arguments. This is important to remember because the

prosecution may ask for time to get the documents you requested.

9. Accept it as being truthful when the officer says his unit or speedometer read a certain speed. That is what he read and the court assumes he is telling the truth. Accept it as the truth yourself. What you must show is that what he read may not have been accurate. The key word is **MAY**. May does not ascend to the degree of legal certainty for conviction. You do not have to prove that the reading were inaccurate, do not even try to prove the readings as being inaccurate. They have to prove the readings were accurate. All you want to do is show that they **MAY** be wrong.

10. To show that they may be wrong all you have to do is ask for proper calibration. Without accurate calibration, the court must take judicial notice that the readings may be wrong and you win.

11. Things happen fast in court. The court does not have much time for each trial. However you can take as long as you need to defend yourself. Do not let the court rush you. If you need a moment to think or read something, tell the court that you need a moment. Do not let the court push you; ask for a recess if you need more time.

12. Do not stray off of the beaten track. If the officer says something that does not relate to the calibration of the unit, but you feel is interesting to attack, avoid the temptation. Remember anything that alters your focus from what you prepared for is a distraction, it will negatively affect your defense. Focus only on the calibration, it is the only thing you are prepared for, everything else can be, and probably is a trap. The calibration is the only thing that will win the case for you, so focus on it and nothing else.

13. The violation you are charged with is specific. "Speeding, 75 MPH in a 50 MPH zone". The word speeding is like the word "theft". If you were charged with theft the charge would be theft of something specific. If the prosecution cannot prove you stole that specific thing, they lose. If the charge were "murder" it would be the murder of a specific person. You may have killed someone else, but if you did not kill that specific person, or that person is not really dead then, case dismissed.

In your case you are charged with a specific speed. That speed is written on the ticket (citation). The prosecution must prove that speed. Like a murder trial where you allegedly killed Fred. The prosecution can prove you killed Sam, Harry and Peter. They can prove you are a murderer, but unless they can prove you killed Fred, you go free. The same in the speeding ticket, they can prove you are a person that speeds, but unless they can prove you were going 75 MPH (the speed you are charged with) they have nothing.

Caution: Remember the murder trial, if you admit or agree to killing Sam, Harry and Peter, the prosecution can amend the complaint and charge you with their murder, even if you did not kill Fred. On the other hand the prosecution can

show you killed Sam, Harry and Peter, the court can assume that you are a murderer, but unless they have a Dead Fred, a dead Harry or a John will not do. You walk because the charge was for a dead Fred.

Some additional reading: Not necessary for you to win, you already know "*Case Dismissed*"

For those of you interested, every State in the USA and Province in Canada has volumes of legal reference books. The books I am talking about concern Case Law. This is previous cases that have been brought to the supreme court of the state or province where a ruling has been handed down. These books can be found in most major libraries and are available to the public.

Every State or Province has cases that went to its Supreme Court relating to Radar and speedometers. If you quote case law, only the case law in your state or province applies. So "San Jose vs. Joe Shmo" in California has little or no bearing on your court in Montana.

Since the volumes of these books are in the hundreds with thousands of cases in each book and dozens of cases relating to each subject you will need some help. A lawyer learns how to look this up in law school and a law clerk is specialized in looking up cases. You are not. However here is a hint. If go to the most recent index and look up the word "speeding" or "Radar" you will see dozens of headings like " Radar, unit to test must itself be tested, Orange Co. Vs. Joe Blow 1982 SW 23, 2, 13.5. OK you may have to ask someone how to find that in all the books. Generally there will be someone at the library to help you. **See also the reference to caseclerk.com below.**

This is interesting reading. And making copies of some of the recent ones and bringing them to court will not hurt you. They certainly will help you in understanding the thinking of why calibration is so important. You might even impress the Judge. There is too much case law out there and to publish herein all the cases relating to speeding for all 50 states and 10 Canadian provinces is beyond the scope of this exercise. Besides, it is not critical to your defense.

What is important is that every state and every province has ample case law relating to speeding and the fact that there is a requirement that the speedometer and radar be calibrated and checked within a reasonable period of time. Additionally, as mentioned before, the unit which checks the radar itself must have been checked by a certified facility within a reasonable period of time, generally 6 months.

Addendum 1: Important to Read

1. If at any time the Judge says something to the effect that the tuning fork testing or speedometer testing is not important say:

“Your Honor, before you, you have copies of case law where high courts around the country have clearly and unanimously ruled that this is essential if brought up by the defense.”

2. For a Laser (Lidar) defense print out three copies of In the MATTER OF the ADMISSIBILITY OF MOTOR VEHICLE SPEED READINGS PRODUCED BY the LTI MARKSMAN 20-20 LASER SPEED DETECTION SYSTEM.. Hand a copy to both the Judge and the prosecutor before the trial begins then state.

“Your Honor, less than 5% of jurisdictions have taken Judicial notice of laser. Before you are findings by appellate Judges concerning laser evidence. This finding deals with the Marksman laser gun, however the principals apply to all laser type speed measuring devices and the defendant draws your attention to this Judges ruling after careful investigation with expert testimony from many expert witnesses.”

Remember to read both the laser section and this section (the ruling can be found in Case-Law/New Jersey. It should have expanded (unzipped) when you downloaded *Case Dismissed*. If not go back to the web page and download the folder. There are 39 rulings from 13 States.

3. If you were attacked by Photo Radar, got to the Alaska folder in Case-Law
4. If you are from California, read all the case laws in the California section of Case law. You most probably will find a situation that you can apply to your situation and use it by asking the questions outlined in the case law.
5. If you have the time and fortitude I suggest that you read as much of the case law you can stomach. If your State is listed then read all the case law that is there. This will prepare your mind.
6. I have checked the books in all 50 States. There are only 13 States that have case law where the speeding conviction was overturned and a record is made. If your State has no case law regarding speeding tickets then don't panic. It means that no one ever managed to bring it to the highest court. In these situations it is the State Supreme Court that made these decisions. The next step would be the US Supreme Court and they never have heard a speeding appeal. Judges from other States will respect the rulings for States not their own because they know that these were made at the highest court level. For a case to make it all the way to a

ruling by a State's Supreme court it had to have gone through many appeals before it ever got there. Thousands of cases are appealed and overturned every day. This does not mean they got anywhere close to being heard by a State's Supreme Court. Remember only cases heard by a State's Supreme Court make case law. These 39 cases are all there is my friend. They are all that deal directly with a speeding violation where a conviction was overturned.

7. If you bring case law to court remember you have to give a copy to both the Judge and prosecutor. Bring whatever case law you think will do you the most good. Remember the prosecutor will have brought none. (This is a speeding trial and no prosecutor is going to do legal research on a simple conviction.)
8. The prosecutor, after reading the case law, will try to argue and state that it does not apply. Argue back stating:

“Your Honor it is obvious that the prosecution does not like the rulings that have been handed down by higher courts. These rulings have been well thought out and they apply directly to speeding convictions. I request that the court consider these rulings in applying the law in my case.”

Addendum 2: Special Section- Important

When the Judge says that you should have subpoenaed the requested information before trial. (Hint, read this to the Judge, it may be too long to memorize)

“Your Honor, the requested items go to foundation as to the evidence presented. Any responsible prosecutor would have come prepared with the documentation necessary to lay a proper foundation as to the evidence he is presenting. It is not up to the defendant to provide foundation for the prosecution’s evidence. It is only reasonable that if a measuring device is used that the prosecutor be able to show within a legal degree of certainty that the device was both accurate and functioning properly. This requires foundation as to recent testing or certification of the measuring device and in the case of radar that the tuning forks, which are measuring devices themselves, have been tested and certified as well.”

Addendum 3: When the Judge acts as Prosecutor

Where there is no prosecutor: (this has happened several times in past years and may happen to you)

You may find yourself in court with no prosecutor. This is a sham trial, the Judge is acting as both prosecutor, Judge and Jury. It may be unconstitutional but it is done anyway. Under no circumstances allow yourself to be tried this way. The following are recommendations as to what to do or say. (This can happen in municipal court, If you request the trial be moved to circuit court, which is usually a higher court, the Judge should not refuse.)

“Your Honor, I see no prosecutor, Who is presenting the people’s case?”

If he says that he will serve as the prosecutor, say:

“Your Honor, I object to you acting as prosecutor, Judge and Jury. I request this case be either dismissed or moved to circuit court.”

If he says that the ticket itself is the prosecution:

“Your Honor, Unless the ticket has a law license and is certified to practice law in this state, I motion for dismissal or having the trial moved to circuit court.”

If either of these motions fails then:

“Your honor, I request that the record reflect my objection to having yourself act as both prosecutor and Judge. I further request this case be moved to a higher court or dismissed and that the record reflect this”

If all else fails and the case is not dismissed then:

“Your Honor I demand a Jury trial”

(This is the only time you make such a demand.)

If this is denied then:

“Your Honor, my motions for a fair trial have been denied, the court has decided to ignore my constitutional right to a trial by my peers and an unbiased Judge. I object to the constitutionality of this hearing and agree to move ahead only for the purpose avoiding contempt of court proceeding against myself.”

If everything fails you will have to go ahead with the trial and expect to lose. You will have to appeal. By having made these motions your appeal is

assured. In all eventuality the appeals court will throw out the case. The appeal usually is for trial in a higher court. You will have to find out the proper appeals procedure for the district you are in yourself. I can not help you here.

Actual Trial Transcript

This is an actual transcript of a actual trial where the defendant was prepared. The defendant was the daughter of the original author of the information on which Case Dismissed is based. She is a registered nurse with no legal experience whatsoever.

IN THE MUNICIPAL COURT OF WEBSTER GROVES MISSOURI, THIRD CIRCUIT, ST. LOUIS
COUNTY

CASE NUMBER: 24-99-8736J

Hearing Date: June 3, 2001

Defendant. (Blank)

Reported by: Peter Knap: Court Reporter

Trial Judge: Hon. Fredric M. Potts

COUNSEL OF RECORD: Adam P. Fornbe Esq.

For the Defendant: Pro Se

The Municipal Court calls Sergeant Francis Jones as witness, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. Fornbe

Q Officer, Please state your name and spell your last name for the record.

A Sergeant Francis Jones, J O N E S

Q How are you employed, sir?

A By the City of Webster Groves Police department.

Q On 03/11 of 2001 did you issue a speeding Citation No. 42-2687-9696 ?

A Yes, I did.

Q To whom did you issue that Citation?

A To the Lady at the Defense table Mrs. (name-blank)

Q Why did you issue her a Citation?

A On the date of the violation, March 3, 2001, on or about 11 AM, I was driving along Big Bend Blvd. when I had occasion to observe a Blue Toyota Four Runner enter the street from the right

and proceed at what appeared to be a great rate of speed. I followed the defendant for several blocks and noted the speed at 46 MPH. the speed limit on Big Bend Blvd is 25 MPH.

Q And how is it that you ascertained this speed, using which device?

A The speedometer on the Police car that I was driving.

Q To your knowledge was that speedometer functioning properly and recording accurately on the day and at the time of the arrest?

A Yes

Q If the speedometer should fail or not read accurately, are there any indications that such may be the situation?

A Yes, the speedometer would start fluctuating, stick or go to zero if it failed.

Q On the date of the arrest, before and within a reasonable time after the arrest did you observe any such failure indications on your speedometer?

A No.

Q Did Mrs. (name blank) say anything at her arrest that may be noteworthy to bring to the court's attention?

A. She said that she knew she was going fast and did not realize she was going 46 MPH

THE COURT: Without objection the statement is Admitted .

Mr. Fornbe: I have no further Questions.

THE COURT: Mrs. (name blank) You may take the stand or ask questions if you wish.

THE DEFENDANT: Yes. Sergeant Fornbe, do you have any formal training in either speedometer repair or calibration?

A: No.

THE DEFENDANT: Does your police department regularly check and certify the speedometers used on the departments police cars?

A: I am certain that they do.

THE DEFENDANT:: Do you have any direct knowledge as to that fact?

A: No, but I am certain that the department does do these checks.

THE DEFENDANT: Sergeant Fornbe, then please present to the court a certification from such a facility as to the last time the speedometer on the car you used that day was calibrated and certified?

PROSECUTOR: The witness has testified as to the accuracy of the speedometer

THE DEFENDANT: Your honor the witness has testified that he has no formal training in either speedometer repair or calibration and as such can not testify as to the accuracy of the Speedometer.

THE COURT: Sergeant Fornbe, do you have such documentation as requested by the defense?

A: I am certain that we do, the police department is in the basement of this court house, we have our records there.

PROSECUTOR: Your Honor, had the witness wanted such records she should have requested them prior to trial.

DEFENDANT: Your Honor, it is not the function of the defense to present foundation as to the prosecutions evidence.

PROSECUTOR: Your Honor, I notice the Defendant reading from material, copies of which have not been made available to the Prosecution. I request the court order the Defense to make available for review the papers from which she is reading?

DEFENDANT: Your Honor, these are my trial notes and I object to turning over to the prosecution my notes. they are not presented as evidence and contain my defense strategy.

THE COURT: Motion denied,

DEFENDANT: Does this mean I have to turn over my notes to the prosecution your honor?

THE COURT: No, it means the prosecution at present has no right to see your notes. However you may show them to him if you so wish.

PROSECUTOR: Your Honor the prosecution requests this trial be continued next week in order for the Prosecution to find the paperwork requested by the defense?

DEFENDANT: I object your honor, the trial is today and if the prosecution failed to bring documents necessary for foundation the prosecution should move on without them.

PROSECUTOR: Your Honor, may we have thirty minuets to search for them in the police station?

THE COURT: Are you asking the court to take a thirty minuet recess. We have twenty people here waiting for their trial. Sergeant Jones, do you believe you can find the requested paperwork in thirty minutes?

A: I don't know your Honor, I don't even know if we have them here or if they are located somewhere else.

THE COURT: Motion denied, please continue.

DEFENDANT: The defense motions for dismissal as the prosecution has failed to prove to a legal degree of certainty that the measuring device used was accurate and functioning properly at the time of the arrest.

PROSECUTION: Your Honor, the defendant admitted to speeding to the officer at the time of the arrest.

DEFENDANT: Your Honor, the defendant is charged with traveling at 46 mph, something the prosecution has failed to prove.

THE COURT: Case dismissed, Please call the next case Mrs. Cleary

Last recommendation: The Pinellas Police Department in Florida has put out a web page describing the thoroughness of their testing of radar, speedometers, tuning forks and laser. (Nonetheless two defendants that had trials in the last few weeks there still beat them) I recommend that you go to the site and print out the site on your printer. Take it to court with you and in the event the Judge or the prosecutor questions your questioning concerning anything in calibration bring the printed pages to the attention of the court. You should take three copies with you. Do it this way.

“Your Honor, if I may (hand one copy to the Judge and one to the prosecuting attorney). Pinellas County Police have chosen to publish on the web what they do regarding calibration and the legal requirements for calibration. I realize this is not Pinellas County however the calibration requirements are universal. A radar gun or speedometer is no different in Pinellas County then it is here. Calibration should not be any different.”

This should shut up any motions by the Prosecution that calibration is not necessary.

The web site address is: <http://www.pinellas-park.com/police/traffic.html>

How to Conduct Legal Research into Speeding Tickets

As you have read above, specifically in the laser section, Judicial Notice of the admissibility of laser readings has not been granted in every state. This is changing rapidly.

The best way I have found to research case law is a web site called www.caseclerk.com. This web site allows you to search for any case law relating to your particular state. For example, you can search for Appeals Court Rulings in the State of New York that contain the word "laser".

You can get a 24 hour subscription to caseclerk.com for \$19.95 as of this writing. I suggest that this might be valuable additional information for you.

Although *Case Dismissed* comes with abundant case law, the more ammunition you can amass in your defense, the better. Since it is now so easy to use the internet to collect the relevant information, it makes sense to do so.

By using any case law you find in conjunction with the principles you have read here, you will be a well-prepared defendant. Preparation and knowledge are the keys to the dismissal of your charges.

You are now prepared to fight and beat your speeding ticket. You know the principles of law necessary, you know how to act and what to say in court. You are equipped with case law and in the event you need more, you know exactly where to get it easily and conveniently.

Your chances of beating your speeding charges are excellent. You are fully prepared, while the prosecution is overwhelmed and under-prepared. They are counting on you being another faceless number. You are not.

You still have one decision to make. Should you get a lawyer? Only you can answer that and I certainly would not advise against it. An attorney with experience fighting speeding tickets will have specific knowledge of the laws in your jurisdiction. If you were honestly NOT speeding at all, and the police officer clearly made a mistake, it may be wise to consult with an attorney. Perhaps you can get the charges dropped based on the facts of the case without resorting to the techniques in *Case Dismissed*.

The odds are highly in your favor now. So go to court, argue your case, and use the justice system to your advantage. And when you are done, listen for those words we all love to hear, "**Case Dismissed**".