

40/89

SUPREME COURT OF VICTORIA

BROOKS v PARENTE

Nathan J

20 April 1989 — (Judgment Certified: 8 August 1989)

MOTOR VEHICLES – SPEEDING – MEASUREMENT BY SPEEDOMETER – WHETHER SPEEDOMETER PRESUMED TO BE ACCURATE – WHETHER PRESUMPTION AFFECTED BY PROVISIONS OF THE NATIONAL MEASUREMENT ACT 1960 (CTH.); ROAD TRAFFIC REGULATIONS 1984, R1001; NATIONAL MEASUREMENT ACT 1960 (CTH.), SS4, 10.

Where a measurement is made by a scientific or quasi-scientific instrument such as a speedometer, a court may presume, in the absence of evidence to the contrary, that the instrument and measurement are accurate. This presumption is not rebutted solely by evidence that a speedometer's accuracy had not been recently checked, nor is it affected or compromised by the provisions of the *National Measurement Act 1960* (Cth.)

Thompson v Kovacs [1959] VicRp 40; [1959] VR 229; [1959] ALR 636, applied.
Re White 89 FLR 444; (1987) 9 NSWLR 427; 31 A Crim R 194, referred to.

NATHAN J: [1] In December 1987, the respondent Parente, drove his car at 105 kph along a suburban road. That speed was measured by a motorcycle policeman, the applicant Brooks, by referring to the speedometer on his cycle as he followed Parente. At the relevant time and place the *Road Traffic Regulations 1984* restricted permissible speeds to 60 kph (reg 1001.1.C). Brooks laid an information against Parente alleging a breach of the Regulations and it came on for hearing before a Magistrate at Moonee Ponds on the 20th October 1988. The magistrate dismissed the information. He accepted a no case submission from Parente's counsel which asserted there was no evidence that Brooks' speedometer was accurate and as its accuracy had been questioned, the burden of proving its accuracy shifted to the informant. Brooks was required to establish that its accuracy complied with the requirements of the *National Measurement Act 1960* (Commonwealth) "the Act".

The order nisi for review recites two grounds -

- "(1) that no reasonable magistrate on the evidence before him could have dismissed the information and
- (2) the magistrate erred and misdirected himself in rejecting the evidence of Parente's speed as measured by Brooks."

The order will be made absolute on both grounds for the following reasons. The presumption of law that accuracy is to be presumed in respect of scientific and quasi scientific instruments unless there is evidence or material to challenge that accuracy, should have been applied. I concur the observations in *Thompson v Kovacs* [1959] VicRp 40; [1959] VR 229; [1959] ALR 636 made by Sholl J at 233:

- [2] "The speedometer had not been tested but, in my opinion, the magistrate was entitled to regard a speedometer as a known type of technical, if not scientific, instrument, the accuracy of which might be presumed, in the absence of any evidence to the contrary."

That stated epitome of the law was approved in *Porter v Kolodziej* [1962] VicRp 11; (1962) VR 75 and has been accepted in other jurisdictions viz. *Skalde v Evans* (1966) SASR 176 (a breath analysing instrument), *Barker v Fauser* (1962) SASR 176 (weighbridge scale), *Zappia v Webb* (1974) WAR 15 (an amphotometer) and the more ancient authority of *Bond v Hall* (1938) SASR 59 which also concerned a speedometer.

In this case there was no evidence whatsoever which impugned the accuracy of the motorcycle policeman's speedometer. The only evidence which touched upon the point was the

concession by Brooks that the speedometer on the cycle had not recently been checked. That concession, with nothing more, does not rebut the presumption of the accuracy of scientific instruments. To accept that it did would imply the acceptance of a further presumption namely, that scientific instruments necessarily become inaccurate unless checked. That conclusion is absurd and directly contrary to the legal presumption of accuracy, unless there is material or evidence to the contrary. In this case, a mere question as to its accuracy was raised; no material nor any evidence was put forward to challenge the reading of the speedometer.

The regulation prohibits a person driving in excess of 60 kph. It is not incumbent upon an informant to establish the minute accuracy of the speed in excess of that benchmark, at which a defendant may have travelled. [3] The informant must establish beyond reasonable doubt that it was in excess of the 60 kph prohibition but that onus does not extend to establishing the exact speed at which the defendant was travelling when the limit was exceeded.

I turn to the *National Measurement Act* (the Act) and the second ground of the order nisi. In my view the operation of the presumption of accuracy is in no way affected or compromised by the provisions of the Act. The Act, which relates to weights and measures, recites as part of its objects:

"s4(1)(d) To bring about the use of the metric system of measurement in Australia as the sole system of measurement of physical quantities; and (a) to establish a national system of units and standards of measurement of physical quantities".

Section 4(3) recites:

"Without limiting the generality of sub-section (2), this Act and the regulations shall not be taken to apply to the exclusion of any law of a State or territory.

(a)... (b)...

(d) prohibiting or restricting the use of a unit of measurement of a physical quantity either generally or in respect of particular transactions..."

The Act sets up Australian Legal Units (ALU's) for the measurement of time, distance and velocity: *National Measurement Regulations* Schedules 7, 1 and 9 respectively. It was put the informant had to prove the speed as measured had been established by reference to the Act, see Act s10, which as appropriately edited reads:

"When, for any legal purpose, it is necessary to ascertain whether a measurement of a physical quantity for which there are ALU's ... that fact shall be ascertained ... by reference to ... (the ALU) ... and not in any other manner".

[4] Reference was made to a New South Wales District Court decision *Re White* 89 FLR 444; (1987) 9 NSWLR 427; 31 A Crim R 194 in support of the contention. In fact the decision is to the contrary and to my mind correct. I make reference to it, not because it has any persuasive effect but because its inappropriate quotation apparently drew the magistrate into error. The Act is limited to establishing uniform multiplicands of measurement of physical quantities and in effecting the metrification of those measurements throughout Australia.

It has no application to the existing presumptions of law relating to the accuracy of quasi scientific instruments such as a speedometer. It could be used as a reference point if material or evidence were advanced to challenge that accuracy. It has no effect upon the onus of proof to be discharged by an informant. Section 10 in no way abrogates or diminishes the legal presumption relating to measuring devices; the fact is that the speedometer purported to operate in accordance with an ALU and thus it is presumed to accord with the ALU "by reference to it".

The matter will be remitted to the magistrate for further hearing in accordance with this judgment. I shall grant a certificate under the *Appeal Costs Fund Act* to the applicant.

APPEARANCES: For the applicant Brooks: Mr G Maguire, counsel. Victorian Government Solicitor. No appearance for the respondent Parente.