

06/80

SUPREME COURT OF VICTORIA

PENNO v CRAIG and ORS

Murray J

12 November 1979

MOTOR TRAFFIC – SPEEDING – AMPHOMETER – PROOF OF TESTING, SEALING, AND USE IN MANNER PRESCRIBED – PERSONS AUTHORIZED TO TEST – SCIENTIFIC MEASURING DEVICE – PRESUMPTION OF REGULARITY: MOTOR CAR ACT 1958, S91A.

Four defendants had been charged with speeding, the speeds having been determined by means of the amphotometer. The Magistrate apparently held that the evidence tendered by the Prosecution, particularly in regard to the matters referred to in s91A of the *Motor Car Act*, was inadequate, and dismissed the informations.

MURRAY J: ... The section seems to me to be clear that evidence can be given of the speed indicated by the amphotometer when, and only when, the amphotometer is shown to have been tested and sealed and used in such a manner as is prescribed." ...

(i) The fact that the Police car had been driven over the amphotometer prior to and after the interceptions and that the amphotometer had thus been found to be operating correctly, (the speedometer being a scientific instrument recognized by the Courts), did not assist the informant's case. ... The difficulty I see about this argument arises out of the terms of the Act itself, in that the two sections plainly involve, in my view, that evidence of the speed of a motor car given by an amphotometer must be subject to the limitations that the sections lay down. What is attempted, by means of the first ground, is to say that the Prosecution could always give evidence of the speed of a vehicle as measured by an amphotometer provided there was some evidence that the amphotometer was functioning correctly. In my opinion, this argument must fail, unless it can be said that an amphotometer is itself a scientific instrument which would be acknowledged by the Courts.

Ground 1 does not allege this, nor does it depend upon it and it appears to me clear, from the terms of the statute, that one cannot prove speed by means of an amphotometer without, at the same time, conforming and complying with the provisions of the sections.

(ii) As to the contention that the amphotometer is a scientific measuring device of a recognized type, if an amphotometer has reached that status, it is somewhat curious to find the elaborate protecting provisions, which still remain in the legislation. By 'protective provisions' I mean, of course, provisions in protection of the public. It appears to me that, on no basis, could it be said that, at this stage at all events, an amphotometer has reached the status when it can be likened to a speedometer, a watch or, as in one of the cases referred to, a measuring tape.

[(iii) As to the sufficiency of the 70th Schedule Certificate, tendered in evidence although the persons signing it did not indicate by which University or College of Advanced Education they were employed, His Honour, (after referring to the amendment to s91B extending the class of such personnel), pointed out the differences between the present circumstances and those in *Mallock v Tabak* [1977] VicRp 7; (1977) VR 78, wherein the presumption of regularity was applied and continued] ...

I have already indicated that I do not know whether all colleges of advanced education are affiliated with the Victorian Institute of Colleges, and said that he doubted that one could say that such was a matter of general knowledge. He made the point that a Constable may take the amphotometer, in good faith, to an ineligible College or Government Authority with testing laboratories, and that he may receive a signed Certificate when the tests were carried out.

His Honour concluded: "In those circumstances I do not see any compelling reason, particularly

having regard to the fact that this is a quasi criminal – or these were quasi criminal cases, and to the various aspects of the matters referred to by the Magistrate, why a presumption should be called into operation. He pointed out that the Prosecution could have had the defects in the Certificates rectified before the hearings by the addition of the appropriate descriptions, to wit, the occupation and the name of the institution. He upheld the Magistrate's orders.
