DISTRICT COURT OF QUEENSLAND

CITATION:	*Crossman v Queensland Police Service* [2020] QDC 123
PARTIES:	**IAN NORMAN CROSSMAN** (appellant) **v** **QUEENSLAND POLICE SERVICE** (respondent)
FILE NO/S:	3 of 2020
DIVISION:	Appellate
PROCEEDING:	Appeal
ORIGINATING COURT:	Magistrates Court, Cairns
DELIVERED ON:	17 June 2020
DELIVERED AT:	Cairns
HEARING DATE:	29 May 2020
JUDGE:	Fantin DCJ
ORDER:	**1. Appeal dismissed.** **2. The appellant pay the respondent's costs of the appeal fixed in the sum of $1800, to be paid to the Registrar of the District Court at Cairns within 90 days of today, to be paid over by the Registrar to the respondent.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AGAINST CONVICTION – where the appellant was convicted after summary trial of exceeding the speed limit – where the appellant gave a Notice under ss 124(4) and (5) of the *Transport Operations (Road Use Management) Act* 1995 (Qld) of intention to challenge or dispute the way in which the laser speed detection device was used – whether the laser speed detection device was used and tested in accordance with the manufacturer's specifications – whether there was no appropriate Australian Standard in force **Legislation** *Justices Act 1886* s 223, s 225, s 226 *Transport Operations (Road Use Management) Act 1995* s 112, s 124 *Transport Operations (Road Use Management – Road Rules) Regulation 2009* s 20

Cases

Crossman v Queensland Police Service [2020] QDC 122
Crossman v Queensland Police Service [2018] QDC 267
Ring v Commissioner of Police [2019] QDC 32

SOLICITORS: The appellant appeared on his own behalf

Cairns Office of the Director of Public Prosecutions for the Respondent (T Grasso)

[1] The appellant appeals against his conviction by an Acting Magistrate in Cairns on 3 December 2019 of disobeying the speed limit pursuant to s 20 of the *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Qld).

[2] On 28 July 2018 the vehicle he was driving was captured by a laser speed detection device driving at 51 kilometres per hour in a 40 kilometres per hour zone. He was received an infringement notice and elected to go to trial.

[64] The appellant gave a Notice pursuant to subsections 124(4) and (5) of the *Transport Operations (Road Use Management) Act 1995* (Qld) (the '*TORUM Act*') of intention to challenge or dispute ('the Notice'). The appellant challenged 'the time at, or way in which the radar or laser speed detection device was used'. He did not challenge the accuracy of the device. Ordinarily if there is a challenge to the accuracy of a device, the prosecution calls expert evidence about that issue. The prosecutor accepted that the Notice had been given but did not tender it as part of the prosecution case. The appellant sought to rely upon the Notice, and provided a copy to the Acting Magistrate, although it was not formally tendered or marked for identification. In the appeal, the appellant attached a copy of the Notice to his outline of argument. He did not apply pursuant to s 223(2) of the *Justices Act 1886* (Qld) (the '*Justices Act*') for leave to adduce the Notice as new evidence. Nonetheless, I am prepared to consider the Notice on the appeal because it was a document considered by the Acting Magistrate. The respondent did not oppose that course.

[4] The matter was heard in the Magistrates Court on 11 November 2019. The appellant was self-represented in the court below and on appeal. He cross-examined the prosecution witness, gave evidence and made submissions.

[5] On 3 December 2019 the Acting Magistrate delivered his decision. He convicted the appellant and fined him $450. A conviction was recorded.

Ground of appeal

[6] The appellant is a mature man employed as a professional driver of limousines for a local transport service. He is an experienced self-represented litigant. He has

appeared in several summary trials in the Magistrates Court, in several appeals to this Court, and in the Court of Appeal, seeking to challenge speeding fines.[1]

[7] In the notice of appeal under "grounds of appeal", the appellant stated:

> "Magistrate erred in respect to:-
>
> Human Rights Act 2019 (Qld) Part 2 Division 2 Section 35
>
> Penalties and Sentences Act 1992 Part 2 Section 9
>
> Legislative Standards Act 1992 "Fundamental Legislative Principles" 4(3)(d) and 4(4)(c)
>
> TORUM's Section 112, 120, 124
>
> Traffic Regulation 1962 Section 210C, 210F".

[8] This appeal was heard by me on the same day as another appeal by the same appellant: proceeding 2 of 2020, *Crossman v Queensland Police Service* [2020] QDC 122.

[9] The appellant filed a joint outline of argument for both appeals, although different issues were ultimately raised in each appeal. The outline was difficult to understand. It referred to documents not in evidence at the trial, the relevance of which was not immediately apparent.

[10] During oral submissions, the disputed issues narrowed considerably. The appellant:

(a) confirmed that he appealed against his conviction but not sentence;

(b) abandoned all grounds of appeal save for a single ground that the laser speed detection device was not used in accordance with the appropriate Australian Standard for the device in question and that the Acting Magistrate erred in accepting the accuracy of the device; and

(c) abandoned reliance on the documents referred to in the outline, save to the extent I refer to any such document in these reasons.

[11] In the appellant's outline, he articulated it in this way:

> "QPS does not have authority to delete Australian Standards from operating/testing regime of Lidar speed detection devices without new legislation."

[12] The respondent submits that there was no effective challenge at trial to the way in which the device was used, or to its accuracy, and that on the basis of the unchallenged evidence at trial, the Acting Magistrate was entitled to find the elements of the offence proved.

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[1] *Crossman v Queensland Police Service* [2019] QDC 132, *Crossman v Queensland Police Service (No. 2)* [2019] QDC 2, *Crossman v Queensland Police Service* [2018] QCA 169, *Crossman v Queensland Police Service* [2018] QDC 267, *Crossman v Queensland Police Service* [2017] QDC 257, *Crossman v Queensland Police* Service [2016] QCA 75, *Crossman v Queensland Police Service* [2015] QCA 115, *Crossman v Queensland Police Service* [2015] QDC 265.

Nature of appeal

[13] The applicable principles for the hearing of such an appeal are not in dispute. I refer to my summary of those principles at paragraphs [15] – [19] of *Crossman v Queensland Police Service* [2020] QDC 122.

Evidence and submissions at trial

[14] In order to meet the Notice given by the appellant, the prosecutor relied upon two evidentiary certificates pursuant to s 124 of the *TORUM Act*. The relevant provisions of that section facilitate proof of the testing and use of a laser speed detection device.

[15] The prosecutor called a single witness, Senior Constable Haberland. He gave evidence that he had been a road policing officer for three years and before that, a general duties officer. As a traffic officer, he conducted speed detection tests for a minimum of 30 minutes of every operational shift.

[16] He gave evidence that on 28 July 2018, he was tasked to conduct speed enforcement on the Esplanade in Cairns. At about 10:30am he conducted his usual LiDAR check at Road Policing Command before going on the road. He was using a LiDAR, or laser speed detection device, namely a Kustom ProLaser 4. Senior Constable Haberland had been trained in the use of LiDAR devices, specifically the Kustom ProLaser 4. He explained his experience in using this device. Exhibit 1 comprised two documents certifying that he had attended training in the use of laser speed detection devices, including the Kustom ProLaser 4 device in October 2016.

[17] Before starting speed detection on that day, he conducted checks of the device in line with his training. He removed the device from its protective case and did a physical inspection to check that its seals were intact. He checked that the calibration date was within one year. He checked for any damage. He conducted a self-test, by switching the device on and watching the start sequence to see there were no errors displayed. He checked the rear display to ensure it was functioning correctly. He checked the other displays. Upon being satisfied the device was working correctly, he went outside and conducted further testing. He used a calibrated range to conduct a fixed distance zero velocity test, referred to as a "range test". He conducted a test to calculate the difference between two measurements to check the device was working within the required tolerances. He conducted an alignment test to check the device was pointing correctly at, and detecting, an object. The device passed the tests and he recorded these results in his notebook. He also recorded in his notebook his position at the Esplanade and his post-deployment checks of the device conducted at 3:45pm and at the end of his shift. The device was also operating correctly at those times.

[18] Exhibit 2 comprised three pages of the police officer's notebook in which he had summarised the testing conducted on the device that day.

[19] Exhibit 3 was a certificate in accordance with s 124(1)(pb) of the *TORUM Act*. Senior Constable Haberland certified that laser speed detection device serial no. LFO7991 was used by him at the Esplanade, Cairns at 11:45am on 28 July 2018 in

accordance with the manufacturer's specifications, there being no appropriate Australian Standard for testing the device in force on the day of testing.

[20] Senior Constable Haberland gave evidence that at about 11:45am at the Esplanade he observed a car he believed was exceeding the speed limit. It was not in dispute that the relevant speed limit was 40 kilometres per hour. He had been in position for about 30 minutes watching cars in the area. He took aim and activated the device at a distance of around 150 metres. The device returned a speed of 51 kilometres per hour. He did a second measurement at approximately 125 metres distance. The device returned the same speed, 51 kilometres per hour. As the car approached, he signalled to the driver to stop. He activated his body-worn camera. The driver was the appellant.

[21] The body worn camera footage was tendered, without objection, as Exhibit 5, and played. The officer gave evidence that it was an accurate depiction of events and his conversation with the appellant.

[22] I have viewed the video footage. It showed the detection of the appellant's car and the exchange between the officer and the appellant. The appellant indicated to the officer that he thought 51 kilometres per hour was not speeding and gave answers that suggested he thought that the speed limit was 40 kilometres per hour. Later, he said he did not think that he was doing 51 kilometres per hour anyway.

[23] There was a further video which showed the officer driving through the relevant part of the Esplanade, which showed multiple signs indicating the speed limit was 40 kilometres per hour.

[24] The prosecutor then tendered two documents, without objection, as Exhibit 4. He described them as "two further certificates … tender[ed] under s 124(1)(pa) … They are the calibration certificate for the device and the certificate from Senior Sergeant Preben Farbaek, who was the officer in charge of Cairns Road Policing Unit at the time. His certificate is in compliance with that section 124(1)(pa), indicating that the device was providing accurate results at the time of testing. And for one year under the relevant provision of the Act".

[25] The appellant cross-examined Officer Haberland very briefly and about only one issue. He asked the officer if the only daily speed test conducted on the device was the fixed distance zero velocity test, that is, the one which recorded zero velocity only. The officer accepted this.

[26] The appellant did not cross examine the officer to challenge the way in which the officer used or tested the device, nor did he challenge the accuracy of the device, or the certificate which was Exhibit 3.

[27] The prosecutor did not call any expert evidence with respect to the accuracy of the device, because the appellant had not put that fact in issue in his Notice. The prosecution then closed its case.

[28] At the start of the trial the Acting Magistrate had explained to the appellant the trial process. After the prosecution closed its case, the Acting Magistrate explained to the appellant his right of election. The appellant elected to give evidence.

[29] Before doing so, he sought to hand up the Notice and other documents he was relying upon. He told the Acting Magistrate he was challenging the "validity" of the certificates themselves. The prosecutor objected on the basis that the attached documents were hearsay and that none of them had been put to Senior Constable Haberland.

[30] The appellant submitted that the Laser Speed Detection Device – Test Certificate (Exhibit 4) was inaccurate in its statement that there was no appropriate Australian Standard for testing the device in force, and therefore the device's reading could not be relied upon as accurate. The appellant submitted that there were in fact applicable Australian Standards in force for the device, and that the certificate was wrong when it certified otherwise.

[31] The Acting Magistrate initially declined to entertain that argument because it sought to challenge the accuracy of the device, and no notice of that had been given by the appellant (as required by s 124 of the *TORUM Act*). However the Acting Magistrate ultimately allowed the appellant to give evidence about this issue, and took it into account. So there was no unfairness to the appellant at trial.

[32] The appellant gave evidence to the effect that, based on time and measurement of distance on the video of Officer Haberland's body-worn camera footage, his vehicle could not have been travelling at 51 kilometres per hour. The prosecutor objected on the basis that there was no evidence of measurement of the distances in question. The appellant then sought to give oral evidence about the distance based upon the number of parking spaces and driveways he could see in the video. He adduced no evidence with respect to actual measurements. He said that at one point in the footage there were no numbers showing in the device's display. He argued that it was "not an adequate capture". He adduced no evidence in support of his submission that there was in fact an appropriate Australian Standard in force for the device at the relevant time.

[33] The prosecutor cross-examined the appellant. During cross-examination, the appellant conceded that:

(a) He had no expert qualifications with respect to calculating distance from a video device and had no experience operating the laser speed detection device in question;

(b) when Senior Constable Haberland said that he was doing 51 kilometres per hour the appellant had responded "that's not speeding" because he thought the speed limit was 50 kilometres per hour (rather than 40 kilometres per hour);

(c) he had seen the number "51" showing on the display of the device; and

(d) there was no specific Australian Standard for the Kustom ProLaser 4 device.

[34] The Acting Magistrate reserved his decision, which was delivered on 3 December 2019.

The Acting Magistrate's decision

[35] The Acting Magistrate noted that that there was no dispute that the appellant was the driver, that the car was a vehicle as defined, that the appellant was driving it on a road as defined, and that the applicable speed limit was 40 kilometres per hour.

[36] The Acting Magistrate summarised the relevant evidence.

[37] He made findings consistent with the evidence in Exhibit 3 and the first page of Exhibit 4.

[38] He found that there was no appropriate Australian Standard for the device in force at the time.

[39] He found that the words spoken by the appellant to the office captured on the body-cam footage were indicative of someone who had erroneously assumed that the speed limit was 50 kilometres per hour, and that the appellant did not offer any plausible explanation for why he said that.

[40] The Acting Magistrate found all elements of the offence proved beyond reasonable doubt and convicted the appellant.

Consideration

[41] For the reasons that follow, the appellant has raised no matter which would suggest any error by the Acting Magistrate in his determination of the summary hearing. The evidence was sufficient to prove the charge beyond reasonable doubt.

[42] The certificates tendered were prima facie evidence of their contents. Subject to notice being given of an intention to challenge them, they could be challenged and disproved. The appellant gave such a notice but challenged only "the time at, or way in which, the … laser speed detection device was used", not the accuracy of the device. To meet that challenge, the prosecution adduced the oral and documentary evidence above. The appellant did not effectively challenge or disprove the certificates, or any of the oral or documentary evidence adduced at trial. Construing the relevant statutory provisions strictly (as the court is required to do in such a case), the Acting Magistrate was entitled to accept the evidence of the prosecution witness and the evidence contained in the certificates tendered.

[43] The *TORUM Act*, Part 7, Detection devices, distinguishes between speed detection devices which are radar or laser-based (in Division 1) and photographic detection devices (in Division 2).

[44] In the *TORUM Act* Division 1, for a radar or laser-based speed detection device, a police officer must comply with the appropriate Australian Standard for using the device, if there is one in force at the time of use. Section 112 of the *TORUM Act* relevantly provides:

> "112 Use of speed detection devices
>
> (1) When using a radar speed detection device or laser-based speed detection device, a police officer must comply with—
>
> (a) the appropriate Australian Standard for using the device, as in force from time to time; or

(b) if there is no appropriate Australian Standard for using the device in force at the time of the use—the manufacturer's specifications for the device."

[45] Section 124(1) of the *TORUM Act* provided, relevantly:

"**124 Facilitation of proof**

(1) In any proceeding under or for the purpose of this Act, the following apply—

…

(pa) a certificate purporting to be signed by the commissioner and stating a particular stated induction loop speed detection device, laser-based speed detection device, piezo strip speed detection device or radar speed detection device—

(i) was tested at a stated time in accordance with—

(A) the appropriate Australian Standard for testing the device, as in force on the day of testing; or

(B) if there is no appropriate Australian Standard for testing the device in force on the day of testing—the manufacturer's specifications; and

(ii) was found to produce accurate results at the time of testing;

is evidence that the device was producing accurate results when so tested and for 1 year after the day of testing;

(pb) a certificate purporting to be signed by a police officer stating a particular stated laser-based speed detection device or radar speed detection device was used by the officer at a stated time in accordance with—

(i) the appropriate Australian Standard for using the device, as in force on the day of use; or

(ii) if there is no appropriate Australian Standard for using the device in force on the day of use—the manufacturer's specifications;

is evidence of the matters stated…"

[46] Exhibit 3 was a certificate in accordance with s 124(1)(pb) of the *TORUM Act*. Senior Constable Haberland certified that laser speed detection device serial no. LFO7991 was used by him at the Esplanade, Cairns at 11:45am on 28 July 2018 in accordance with the manufacturer's specifications, there being no appropriate Australian Standard for testing the device in force on the day of testing.

[47] Exhibit 4 comprised 2 pages. The first page was a certificate in accordance with s 124(1)(pa) of the *TORUM Act*. Senior Sargeant Farbaek, an authorised delegate of the Commissioner of the Queensland Police Service, certified that the laser speed detection device serial number LFO7991 was tested at 12pm on 5 July 2018 in accordance with the manufacturer's specifications, there being no appropriate Australian Standard for testing the device in force on the day of testing, and was

found to produce accurate results at the time of testing. The Acting Magistrate was entitled to rely upon the first page of Exhibit 4, the evidentiary certificate, as prima facie evidence of the matters certified in it. That evidence was not challenged. Under s 124(1)(pa) of the TORUM Act the certificate was evidence that the device was producing accurate results when so tested *and for 1 year after the day of testing,* which included the date of the alleged offence.

[48] The second page of Exhibit 4 was a document entitled "Queensland Police Service Calibration Laboratory Test Sheet – LTI Speed Camera System (model: LTI20-20 TruCAM)" serial number TC001912 dated 28 September 2017. This document related to calibration testing performed on a different kind of device: a photographic detection device with a different serial number. In fact, it was a duplicate of Exhibit 14 in the appellant's other appeal, *Crossman v Queensland Police Service* [2020] QDC 122. It appears to have been included in error as part of Exhibit 4 in the other proceeding.

[49] That error was not detected by the parties or the Acting Magistrate at trial, or by the parties in this appeal. The upshot is that the second page of Exhibit 4 was irrelevant and should not have been admitted at trial. This did not affect the first page of Exhibit 4, which referred to the correct device and serial number. There was no oral evidence about the second page of Exhibit 4. The Acting Magistrate did not refer to the second page of Exhibit 4 at all in his reasons. Reading his reasons as a whole, there is nothing to suggest that the inclusion of page 2 of Exhibit 4 affected his findings. In my view, the admission of that page did not cause any unfairness to the appellant and did not occasion a miscarriage of justice.

[50] The appellant's submission that Australian Standards applied to the device cannot be accepted. The certificates tendered were prima facie evidence of their contents – including that there was no appropriate Australian Standard for the device in force at the relevant time. There was no evidence before the Acting Magistrate which contradicted that evidence. The Acting Magistrate was entitled to proceed on the basis of the certificate.

[51] The appellant made the same argument unsuccessfully in relation to a laser speed detection in *Crossman v Queensland Police Service* [2018] QDC 267.

[52] In the appellant's outline on appeal, he submitted that: "QPS does not have authority to delete Australian Standards from operating/testing regime of Lidar speed detection devices without new legislation."

[53] He relied upon the *Explanatory Note to the Transport Legislation and Another Act Amendment Bill* 2006 at page 42. That dealt with earlier amendments to s 112 and 124(1) of the *TORUM Act.* It does not assist the appellant. It states:

"Clause 62 [which amended ss 124(1)(pa) and (pb)] also removes reference to specific Australian Standards and replaces them with a reference to the appropriate Australian Standard, or if there is no appropriate Australian Standard, the manufacturer's specifications. The reason for this amendment is to cater for the possibility that there is no relevant Australian Standard in force for a stated speed detection device. In this case, the testing must be done in accordance with the manufacturer's specifications."

[54] It seems that the appellant objects to the policy basis for the current version of ss 124(1)(pa) and (pb) of the *TORUM Act*, and considers that each speed detection device should be tested in accordance with Australian Standards. Unfortunately for him, that is not what the legislation provides.

[55] The ultimate issue in the proceedings before the Acting Magistrate was whether it was shown beyond reasonable doubt that the appellant had exceeded the speed limit. A subsidiary issue was whether the evidence from Senior Constable Haberland of the reading from the LiDAR device was evidence of the appellant's speed at the time of the alleged offence. That depended upon the acceptance of the evidence of Senior Constable Haberland in relation to his use of the device on that occasion; and a conclusion about the reliability of the reading obtained from the device.

[56] On the latter issue, Exhibit 4 included a certificate signed by an authorised delegate of the Commissioner of Police stating that the device was tested on 5 July 2018 in accordance with the manufacturer's specifications, there being no appropriate Australian Standard for testing the device, and was found to produce accurate results at the time of testing.

[57] It will also be recalled that Senior Constable Haberland tested the device before commencing duty on 28 July 2018, and found it to be working properly. Moreover, the Notice given by the appellant did not notify an intention to challenge the accuracy of the laser device. Accordingly, no basis has been identified for not accepting the accuracy of the reading of the device.

[58] At trial, the appellant argued that he could not have been travelling at 51 kilometres per hour, based on the video footage. The appellant did not adduce any expert evidence of the time interval and proper measurement of the distance travelled at the scene, based on the video footage or otherwise, from which it would be possible to independently calculate his speed (see, for example, *Ring v Commissioner of Police* [2019] QDC 32). Therefore there was no evidence capable of challenging the accuracy of the device.

[59] The prosecution evidence established that at the date and time of the offence:

(a) the relevant device was producing accurate results;

(b) the device was tested and used correctly by Senior Constable Haberland;

(c) the device was used to detect a vehicle travelling at 51 kilometres per hour in a 40 kilometre zone; and

(d) the appellant was the person in charge of the vehicle at that time.

[60] The Acting Magistrate was entitled to find, beyond reasonable doubt, that the appellant had committed the offence. The appellant has failed to establish a legal, factual or discretionary error.

[61] On my own assessment of the sufficiency and quality of the evidence, I would have reached the same conclusion as the Acting Magistrate.

Costs

[62] Pursuant to section 226 of the *Justices Act,* the Court may on appeal make such order as to costs as the Court may think just.

[63] The respondent seeks its costs of the appeal, calculated in accordance with section 232A(1) of the *Justices Act* and Schedule 2, Part 1(4) and Part 2(1) of the *Justices Regulation 2014* in the sum of $1800.

[64] The appeal had no merit. I am satisfied that it is appropriate to order costs against the appellant in the amount sought.

Conclusion and Orders

[65] I order that:

(a) The appeal is dismissed; and

(b) The appellant pay the respondent's costs of the appeal, fixed in the sum of $1800, to be paid to the Registrar of the District Court at Cairns within 90 days of today, to be paid over by the Registrar to the respondent.