SUPREME COURT OF QUEENSLAND

CITATION:	*Osgood v Queensland Police Service* [2010] QCA 242
PARTIES:	**OSGOOD, Steven Edward** (applicant) **v** **QUEENSLAND POLICE SERVICE** (respondent)
FILE NO/S:	CA No 245 of 2009 DC No 72 of 2008
DIVISION:	Court of Appeal
PROCEEDING:	Application for leave to appeal s 118 (Criminal)
ORIGINATING COURT:	District Court at Cairns
DELIVERED ON:	7 September 2010
DELIVERED AT:	Brisbane
HEARING DATE:	24 August 2010
JUDGES:	Holmes, Muir and White JJA Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Leave to appeal is refused.** **2. The applicant pay the respondent's costs of the application.**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – INTERFERENCE WITH DISCRETION OF COURT BELOW – PARTICULAR CASES – OTHER MATTERS – QUALIFICATION OF EXPERT WITNESS – where applicant found guilty of speeding in Magistrates Court – where applicant's appeal to District Court dismissed – where speed of applicant's vehicle measured by mobile police radar device – where applicant challenged reading of device – where applicant challenged expertise of prosecution witnesses – where applicant challenged capability of judicial officers to examine scientific expert evidence – whether appeal has real prospects of success – whether leave to appeal should be granted APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – NATURE OF RIGHT – APPEALS IN THE STRICT SENSE AND APPEALS BY WAY OF REHEARING – APPEALS BY WAY OF REHEARING – SCOPE AND EFFECT OF REHEARING – whether District Court Judge conducted a

	thorough review of the evidence and a real rehearing – whether applicant demonstrated any flaw in the District Court Judge's approach – whether District Court Judge's decision was justified on the evidence
	District Court of Queensland Act 1967 (Qld), s 118, s 119 *Justices Act* 1886 (Qld), s 222, s 223 *Transport Operations (Road Use Management) Act* 1995 (Qld), s 112, s 124 *Transport Operations (Road Use Management – Road Rules) Regulation* 1999 (Qld), s 20 (repealed)
	ACI Operations Pty Ltd v Bawden [2002] QCA 286, cited *Ahmedi v Ahmedi* (1991) 23 NSWLR 288, cited *Allesch v Maunz* (2000) 203 CLR 172; [2000] HCA 40, cited *CSR Ltd v Della Maddalena* (2006) ALJR 458; [2006] HCA 1, cited *Fox v Percy* (2003) 214 CLR 118; [2003] HCA 22, cited *Osgood v Queensland Police Service* [2009] QDC 287, related *Rowe v Kemper* [2009] 1 Qd R 247; [2008] QCA 175, cited *Teelow v Commissioner of Police* [2009] 2 Qd R 489; [2009] QCA 84, cited
COUNSEL:	The applicant appeared on his own behalf M B Lehane for the respondent
SOLICITORS:	The applicant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

[1] **HOLMES JA**: I agree with the reasons of White JA and with the orders she proposes.

[2] **MUIR JA:** I agree that the application for leave to appeal should be dismissed with costs for the reasons given by White JA.

[3] **WHITE JA:** Mr Osgood seeks leave to appeal the decision of a District Court Judge made on 4 September 2009 in Cairns dismissing an appeal brought under s 222 of the *Justices Act* 1886 (Qld) from a decision of a magistrate. On 5 March 2008 the magistrate had found the applicant guilty of speeding on 23 June 2006 on the Kennedy Highway near Kuranda. The allegation was that the applicant drove his truck at 93 kilometres per hour in an 80 kilometre per hour zone. The speed of his vehicle was measured by a device on a police car travelling in the opposite direction to the applicant's vehicle. Mr Osgood challenges that reading.

The proceedings

[4] On 23 June 2006 Mr Osgood was given an infringement notice by police on the side of the Kennedy Highway near Kuranda which alleged that in breach of s 20 of the *Transport Operations (Road Use Management – Road Rules) Regulation* 1999 (Qld) he had driven his employer's motor vehicle (a Mazda T Series Diesel Pantechnicon MR class truck fitted with a refrigerator unit) at 93 kilometres per hour in an 80 kilometre per hour zone. Mr Osgood did not accept that he drove his

truck at 93 kilometres per hour or at any speed over the speed limit. He did not accept the correctness of the police radar device reading in relation to his vehicle.

[5] A trial was held on 8, 9 January and 5 February 2008 before his Honour Magistrate Comans in Cairns. His Honour delivered his decision on 5 March 2008, finding Mr Osgood guilty. On 11 March his Honour heard submissions and delivered his decision on penalty. He fined Mr Osgood $250 and ordered him to pay $65 in court costs and $7,209.13 as costs of the prosecution comprising, principally, the fee and expenses incurred by calling an expert in traffic radar devices, Mr Thomas Mulcare.

[6] Mr Osgood appealed as of right pursuant to s 222 of the *Justices Act* 1886 (Qld) to the District Court. His appeal was heard by Judge Bradley on 29 May 2009. Her Honour dismissed Mr Osgood's appeal and published her reasons on 4 September 2009 and ordered that Mr Osgood pay the respondent's costs fixed in the sum of $1,800.

[7] Mr Osgood was dissatisfied with that decision and has sought leave to appeal to this Court pursuant to s 118 of the *District Court of Queensland Act* 1967 (Qld).

[8] At a directions hearing held on 16 July 2010 Mr Osgood's application for leave to appeal was set down to be heard on 24 August 2010. Mr Osgood appeared by video link from the Cairns Court House to argue his application.

Leave to appeal

[9] A party who is dissatisfied with a judgment of the District Court exercising its criminal appellate jurisdiction pursuant to s 222 of the *Justices Act* 1886 (Qld) "may appeal to the Court of Appeal with the leave of that court".[1] Prior to mid-1997, s 118(3) required the Court of Appeal to be satisfied, before granting leave, that the appeal involved an important question of law or justice. But, as a result of amendment in August 1997, the discretion became at large. In *ACI Operations Pty Ltd v Bawden*,[2] McPherson JA doubted that "mere" error would be sufficient to justify the grant of leave and observed:[3]

> "It [the amendment] also, to my mind, does not mean that the former criterion in s.118 of an important point of law or question of general or public importance is entirely irrelevant to applications of this kind. It may be expressed by saying that the existence of such a consideration remains a sufficient, but not a necessary, prerequisite to a grant of leave to appeal."

[10] Mr Osgood was alert to the requirement that he had to show something more than mere error below for a grant of leave. He submitted that there was a sound public policy reason for granting him leave to appeal. That was because members of the driving public are regularly charged with speeding offences, the evidence in respect of which is usually obtained from a "radar" device utilised by police. Mr Osgood sought to demonstrate in his own case that there were shortcomings in certain circumstances in the use of those devices, and, if he were successful on appeal, the

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1 s 118(3).
2 [2002] QCA 286.
3 Ibid at 4.

decision would have widespread ramifications. Mr Osgood was also concerned that the several courts which have heard his matter have not had sufficient "expertise" to grasp the science that he was seeking to demonstrate.

[11] Whether leave should be granted can better be considered after Mr Osgood's grounds of appeal have been examined, for unless there are prospects of success, there is little purpose in granting leave.

Grounds of appeal

[12] A separate draft notice of appeal, if leave were granted, has not been included but the notice for leave reads:[4]

> "**2. The grounds of my application are** –
>
> a. With leave, by right.
> b. The Justice in the District Court appeal mistook the facts.
> c. The Justice in the District Court appeal gave consideration to irrelevant matters.
> d. The Justice gave insufficient weight to relevant matters.
>
> **3. The orders that I seek on the appeal are** –
>
> a. That leave be granted to hear the appeal.
> b. That the appeal be upheld.
> c. That the evidence in chief be reviewed in the court of appeal to enable a clear and proper interpretation of the circumstances concerned with the matter that the District Court justice failed or refused to recognise.
> d. That the previous conviction, judgement and costs be set aside.
> e. That the matter should be struck out and record no case to answer.
>
> **4. The reasons why the Court should grant leave for this further appeal to be brought are –**
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> a. The Acts and Statutes provide for a further appeal process to enable me to exhaust my administrative process and seek a remedy for my cause of action.
> b. I maintain my plea of "**NOT GUILTY**".
> c. Neither the Queensland Police Service … or the DPP … prove their case beyond a reasonable doubt.
> d. My application has factual merit not objected to by any party.
> e. The circumstances and nature of this matter is in the public interest."

[13] Mr Osgood's outline of argument makes clearer his complaints about the District Court Judge's reasons for dismissing his appeal from the magistrate. If it might be thought that the outline departs from the parameters of the notice for leave, Mr Lehane, who appeared on behalf of the respondent, made no objection. Central to Mr Osgood's concerns was the perceived want of expertise in the judicial officers comprising the several courts insofar as, he maintained, there was no proper understanding of the fundamental science of radio detection and ranging comprising

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[4] AR 592-3.

"radar" so as to enable them to see the weaknesses in the expert evidence adduced in the case against him. Mr Osgood contended not only that Mr Mulcare and the police officers were not shown to be experts in the field but that he, with his experience and background, was his own expert and, had provided video evidence, an Affidavit of Rebuttal[5] and had called a further expert in the person of Mr Scott Levine. Amongst Mr Levine's qualifications, he was an examination officer for Queensland Transport for roadworthy vehicles including trucks up to 16 tonnes.

[14] Mr Osgood tended to describe the failure by the courts to recognise that the prosecution had not laid a technical foundation for the acceptance of the radar device reading as "biased". He contended that the prosecution and his appeal ought to have been before a specialist court or a court constituted by appropriately technically qualified persons. Failing that, he contended, the court ought to have called its own independent expert in the field to eliminate bias.

[15] Courts do not, except in certain particular circumstances, consist of experts. It is an aspect of the judicial role to analyse evidence and subject it to careful scrutiny, looking for consistency, coherence and internal logic before accepting it. This process applies to lay and expert evidence alike. Of expert opinion evidence, Kirby P observed in *Ahmedi v Ahmedi*:[6]

> "… courts do not have to accept an expert opinion, simply because voiced by a person with expert qualifications. Courts, and parties before them, are entitled to test the opinion expressed, scrutinising the premises upon which it is based and evaluating its internal logic… In some cases, of course, each step in the logical process of reasoning cannot be demonstrated. In some cases, expert knowledge and the state of the scientific art fall short of a capacity to demonstrate conclusively the accuracy of the opinion expressed. But it is certainly open to a court, and to parties before a court to scrutinise the opinion, measuring it by its internal consistency and by the degree to which it appears to be sustained by the expressed factual premises on which it rests."

[16] These proceedings are criminal in nature and in the absence of legislative requirement to do so, courts will not call an expert.[7]

[17] A further complaint was the failure to substantiate the expertise of the prosecution witnesses, particularly Mr Mulcare, by some written certification rather than accepting his testimony about his qualification to give expert evidence. Courts may, and regularly do, accept oral evidence from the expert about their expertise and if there is challenge, that can take place in cross-examination and/or submissions, which occurred here.

[18] Mr Osgood complained that a video which he took of the road surface and surrounding topography, although viewed by her Honour, was described by her as of "little assistance to the court".[8] He argued that that observation indicated a failure:

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5 AR 553.

6 (1991) 23 NSWLR 288 at 291.

7 As may be in the case in civil proceedings, see Part 5 of Chapter 11 of the *Uniform Civil Procedure Rules* 1999 (Qld).

8 *Osgood v Queensland Police Service* [2009] QDC 287 at [9].

> "… to recognise the relevance and obvious non-compliance with Australian Standards, of the continuous deflection of the centre white line on the road on the driver's side, indicating a continuous right hand bend of 700 metres duration".

This was central to Mr Osgood's contention that the curve rendered the operation of the speed detection device in that area unreliable. Clearly when her Honour made that observation, she was referring to the evidentiary value of the video. It was helpful inasmuch as it showed the nature of the road.

Application for leave to appeal and appeal

[19] If the application for leave to appeal is granted, the appeal to this Court is an appeal strictly so called and not by way of rehearing.[9] The approach of this Court to an appeal from the District Court sitting in its appellate jurisdiction is set out in s 119 of the *District Court of Queensland Act* 1967 (Qld) which provides, relevantly:

> "**119 Jurisdiction of Court of Appeal**
>
> (1) On the hearing of an appeal the Court of Appeal shall have power to draw inferences of fact from facts found by the judge … or from admitted facts or facts not disputed provided that where the appeal is not by way of rehearing such inferences shall not be inconsistent with the findings of the judge…"

Approach to an appeal pursuant to s 222 of the *Justices Act*

[20] As the learned District Court Judge noted, an appeal to the District Court brought by way of s 222 of the *Justices Act* 1886 (Qld) from a decision of the magistrate is a rehearing on the evidence given at trial and on any new evidence adduced by leave.[10] Her Honour referred to observations by Muir JA in *Teelow v Commissioner of Police*[11] and, particularly, to his reference to *Allesch v Maunz*:[12]

> "… the powers of the appellate court are exercisable only where the appellant can demonstrate that, having regard to all the evidence now before the appellate court, the order that is the subject of the appeal is the result of some legal, factual or discretionary error … At least that is so unless, in the case of an appeal by way of rehearing, there is some statutory provision which indicates that the powers may be exercised whether or not there was error at first instance."

[21] Her Honour also referred to observations in *Rowe v Kemper*[13] where the President noted that s 223 required a District Court Judge to conduct "a real review of the evidence drawing his own inferences and conclusions"[14] and "… to make his own determination of relevant facts in issue from the evidence, giving due deference and attaching a good deal of weight to the magistrate's view".[15]

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9 *Rowe v Kemper* [2009] 1 Qd R 247; [2008] QCA 175 at [3] per McMurdo P.
10 *Justices Act* 1886, s 223.
11 [2009] 2 Qd R 489; [2009] QCA 84 at [3]-[4].
12 (2000) 203 CLR 172 at 180-181; [2000] HCA 40.
13 [2009] 1 Qd R 247; [2008] QCA 175.
14 Ibid at [5].
15 Ibid at [3]. See also *Fox v Percy* (2003) 214 CLR 118 at 126-7; [2003] HCA 22 at [25]-[26].

The District Court judge's approach

[22] Her Honour, mindful of the obligation to do so, undertook a review of the evidence adduced at the trial including viewing the video made by Mr Osgood of the subject stretch of road and the new evidence, Mr Osgood's Affidavit of Rebuttal, which her Honour permitted Mr Osgood to tender. The magistrate had not permitted him to tender it. Her Honour set out each ground of appeal and dealt with each. There is no complaint about how she dealt with the first ground about which no further mention need be made.

[23] Before her Honour, Mr Osgood complained, as he did before this Court, that neither the magistrate, nor the District Court (nor, it might be inferred, this Court), has jurisdiction to deal with the matter because those judicial officers lacked the expertise to make findings in matters involving the use of highly technical equipment and the application of scientific principles. Mr Osgood conceded that since there was no specialist court to determine those matters, the experts called needed to be scrutinised with care. Her Honour rejected the second ground of appeal about jurisdiction. A further aspect of Mr Osgood's complaint related to the admissibility of the evidence of the experts called by the prosecution. That complaint may be more usefully considered when analysing the evidence. Her Honour noted that prior to the trial, Mr Osgood had given the prosecution the necessary notice under the *Transport Operations (Road Use Management) Act* 1995 (Qld) to challenge the accuracy and operation of the speed measuring device.

[24] The third ground of appeal before her Honour was that the magistrate did not have regard to the Affidavit of Rebuttal sworn by Mr Osgood on 2 January 2008 and filed prior to the hearing. This was received as new evidence by her Honour and so there is no need to discuss this ground further.

[25] Her Honour noted the video tape referred to in the affidavit and that it had become an exhibit in the proceedings below, but that the magistrate did not refer to it in his decision. Her Honour viewed the video tape taken, presumably, from the front passenger seat of a vehicle showing the road in both an easterly and westerly direction, "apparently between the place of interception to the point where the defendant joined the highway and beyond". Her Honour concluded that Mr Osgood's affidavit did not add anything of relevance to the evidence that had been adduced orally before the magistrate so that the allegation of bias against the magistrate for refusing its admission was unfounded. There is no complaint about that ruling.

[26] Her Honour dealt with the fourth ground of appeal which, broadly, was that the prosecution had failed to prove its case. In order to examine that ground of appeal her Honour had regard to the nature and extent of the evidence given at trial.

[27] Part 7 of the *Transport Operations (Road Use Management) Act* 1995 (Qld) concerns detection devices. By s 112 when using a radar speed detection device or laser-based speed detection device, a police officer is required to comply with the appropriate Australian Standard for using the device then in force. If there is no Australian Standard then the police office must comply with the manufacturer's specifications. The evidence was uncontroversial that there was an Australian Standard for those devices. The radar device used by the Queensland Police Service was a Decatur and the laser device was described as a LIDAR device.

[28] Part 8 of the Act concerns proceedings and evidence. The facilitation of proving certain matters is provided for. Section 124(1)(pa) provides that a certificate purporting to be signed by the Commissioner of Police and stating that a particular stated "radar speed detection device":

> "(i) was tested at a stated time in accordance with –
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> (A) the appropriate Australian Standard for testing the device, as in force on the day of testing; …
>
> 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".

Subsection (1)(pb) provides:

> "a certificate purporting to be signed by a police officer stating a particular stated … radar speed detection device was used by the officer at the stated time in accordance with –
>
> (i) the appropriate Australian Standard for using the device, as in force on the day of use; …
>
> is evidence of the matters stated".

[29] Senior Constable Ridgeway gave evidence that he was the driver of the patrol car and the operator of the Decatur device that was used to measure Mr Osgood's vehicle's speed. He had been an operator of mobile radar for eight years and of the Decatur device for four years. He produced a copy of the certificate of course attendance and completion of the speed detection operator's course related to the Decatur Genesis II Select Mobile Radar, which was valid for three years. Mr Osgood challenged the manner in which the date was marked on the certificate. Senior Constable Ridgeway had tested the radar against the Australian Standard on the morning of 23 June 2006 before commencing duty. He checked the antennae to ensure that it was mounted correctly and aligned parallel with the road and with the vehicle. He powered the vehicle and went through a series of internal checks.

[30] Shortly after the mobile patrol commenced he and his partner, Constable Bartlett, were travelling on the Kennedy Highway through Kuranda and headed towards Laura. They checked the speed of a small car coming towards them as being 82 kilometres per hour. He and Constable Bartlett noted a truck (Mr Osgood's vehicle) coming around the bend towards them. They commented to each other on its speed. Senior Constable Ridgeway estimated visually that it was travelling at about 95 kilometres per hour, as did Constable Bartlett. Senior Constable Ridgeway activated the radar device which showed a display speed of 93 which was monitored for three seconds. Senior Constable Ridgeway gave evidence that he heard a "clear pure Doppler tone", explaining that it meant that there was no other vehicle in the beam of the radar. He heard that tone for about three to four seconds and had Mr Osgood's vehicle under observation for roughly five seconds. When he first observed the vehicle it was approximately 180 metres away. Senior Constable

Ridgeway then locked the speed off onto the device. The police car made a U-turn and intercepted Mr Osgood's vehicle just after the traffic lights at Kuranda, where they had a conversation with Mr Osgood in relation to the speed of his vehicle. There was some dispute about the content of the conversation. Police had activated an audio tape recorder when they got out of their police vehicle which her Honour found, having listened to that recording and noting that it was not possible to hear all of the conversation, was supportive of the police version of events.

[31] Senior Constable Ridgeway noted that the 80 kilometre signs were clear and unobstructed over the path of Mr Osgood's vehicle and that his vehicle was several kilometres inside the 80 kilometre an hour zone at the point of intercept. When Senior Constable Ridgeway arrived at Laura, he tested the device and it returned accurate results. Certificates pursuant to s 124 of the *Transport Operations (Road Use Management) Act* 1995 (Qld) were tendered, as were a series of photographs. Mr Osgood objected that there was insufficient identification of where the photographs were taken. A map of the area was tendered, again over objection by Mr Osgood as to its quality and accuracy.

[32] Senior Constable Ridgeway was cross-examined very closely by Mr Osgood and challenged minutely about many aspects of his evidence. For example, when testing Senior Constable Ridgeway about his evidence that the device was mounted correctly, Mr Osgood challenged him for certification that the tyres on the police vehicle were checked that day for their pressure. Mr Osgood played his tape of the relevant part of the road to many questions about the topography, and, particularly the validity of the reading on a bend. Senior Constable Ridgeway's operational guidelines permitted using the mobile radar on a bend but he noted that if an oncoming vehicle was at an angle to the radar "it works in the motorist's favour as it actually reduces your speed".[16] Senior Constable Ridgeway was aware of the scientific basis for this phenomenon.

[33] Constable Bartlett had received instruction and held qualifications in the operation of the Decatur mobile radar. He had observed Senior Constable Ridgeway conduct the earlier tests on the devices and saw him activate the radar device in relation to Mr Osgood's truck. He heard a clear audible Doppler tone to indicate a higher speed than that at which their vehicle was travelling. He noted the display of 93 on the window of the device and that their vehicle was travelling at 70 kilometres per hour. He noted Senior Constable Ridgeway lock this speed off and continue to monitor Mr Osgood's speed.

[34] Mr Rodney James gave evidence in the prosecution case that he had been employed by Queensland Police Service as a technical officer at the Radio and Electronic Section Calibration Laboratory and had worked in that position for about 12 years. His duties were the maintenance and calibration of all speed detection devices used by the Queensland Police Service in an accredited national transport laboratory. Prior to that employment he was a radio technician in the Royal Australian Air Force specialising in radar technology with 23 years experience. He had returned to Amberley to work for the Department of Defence in the calibration laboratory. He was involved in the technical evaluation and implementation of the Decatur Radar into the Queensland Police Service and had calibrated numerous devices. He tested the device used on Mr Osgood's vehicle and found it to be

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16 AR 86.

accurate at the time of testing. He explained in considerable detail about how the devices were tested as well as the LIDAR device used in connection with the testing of the speedometer on police vehicles. He explained how the Decatur radar unit worked and said:[17]

> "Well the decatur is a Doppler radar that transmits a continuous wave and KA band, which as I previously indicated, 35.1 gigahertz. Using the Doppler effect, … if there was a moving target within the beam it – the target reflects the radar wave and as the Doppler prints – well if the target's moving, it'll shift or change the frequency relevant to the velocity of that target. The radar then processes that speed and indicates it. It has two modes of operation. It can be used in a stationary mode where a patrol vehicle is stationary and it simply picks up vehicles travelling towards it or away from it and processes that one frequency or the – or the single frequency shift. In mobile mode, as soon as the antenna is activated, it picks up the reflection from the road in front and that is the relative speed of the patrol vehicle with respect to the stationary – the stationary road. It gives that frequency shift as the patrol speed. If there is a vehicle coming towards the patrol vehicle, that is the closing frequency, that also picks up that as a frequency shift. What it does it already has the patrol speed. It then substracts that closing speed, or subtracts the patrol speed from the closing speed, which is then displayed as the target speed."

Mr James explained the cosine effect which Mr Osgood maintained affected the accuracy of the reading because of the curve or bend in the road:[18]

> "… if there's a cosine effect on the target vehicle, if it's not directly within the centre of the beam, it can have a tendency to give you a lower speed to what the target vehicle's really travelling at, but it usually has to be at least 10 degrees off before it gives any noticeable difference."

Mr James was extensively cross-examined about his laboratory techniques and the training that he had undergone in order to qualify him to test the radar. He was asked about the cosine effect on the curve in the road where Mr Osgood's vehicle was the subject of the radar detection. In Mr James' opinion, it was not a tight bend but was well within the spread of the radar beam and any cosine effect would only result in a slight reduction of the target vehicle's actual speed. He explained the fail-safe nature of the Decatur device and that it would not produce a result if there was interference.

[35] The prosecution called Senior Constable Gregory Rose and Senior Constable Taylor who were qualified in speed detection instruments including LIDAR and had conducted the tests on the police vehicle.

[36] The prosecution called Mr Thomas Mulcare, a consulting engineer with a Bachelor of Electrical Engineering from the University of Queensland, a Fellow of the Institution of Engineers Australia and a Member of the Institute of Electric and

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17 AR 150.

18 AR 150.

Electronic Engineers of the United States who conducted a practice specialising in magnetic interference compatibility and radiation. He represented the Institution of Engineers on the Australian Standards Committee for AS2898, the radar speed detection standard, and for AS4691 for laser speed detection. He had extensive experience in testing mobile radars and laser devices for Victoria Police and in industry. He had tested all types of speed measuring devices used in police forces throughout Australia. Mr Mulcare explained the way radar devices operated and explained the "fail-safe" nature of the devices. He particularly described how the Decatur device worked, describing it as a "typical Doppler radar", and regarded it as "extremely accurate".[19] He was asked what could produce erroneous readings and responded:[20]

> "In relation to this particular site, there wasn't anything that could produce an erroneous reading".

[37] Mr Mulcare explained the cosine effect, adding that it was not uncommon in speeding cases for people to claim that the device had a cosine error but that error was "always in favour of" the charged motorist.[21] Mr Mulcare concluded that the cosine effect would have been negligible in the subject uncluttered area.

[38] At the close of the prosecution case, Mr Osgood made a "no case to answer" submission, which was rejected by the magistrate.

[39] Mr Osgood gave evidence. He described his job driving on a contract basis to deliver fruit and vegetables to clients around Cairns and outlying areas. He was paid by the hour and, accordingly, had no reason to be driving quickly. He described his employer's truck as not built for speed but for reliability. He described the part of the road where he was detected as uphill and curving. He challenged the capacity of the radar signal to measure his speed accurately. He was strongly of the view that he was not exceeding the speed limit because he doubted that his vehicle would be able to achieve 93 kilometres per hour in the distance in which he had to build up to that speed. He was unable to say at what speed his vehicle was travelling at the time.

[40] Mr Osgood called Mr Scott Levine, a security provider consultant who had a second class engineer's degree through the Institute of Mechanical Engineers. He examined trucks up to 16 tonnes for Queensland Transport for roadworthiness purposes and was familiar with trucks up to 30 tonnes. He had been asked by Mr Osgood to test Mr Osgood's truck along the stretch of road near Kuranda to see if it were capable of exceeding the 80 kilometre an hour speed. He examined the truck's capacity to do so from a rolling start and a standing start and was able to reach no more than 80 – 82 kilometres per hour. He explained that this was because the truck was a four cylinder diesel older vehicle. He thought it would be possible to do so going down a hill. Mr Levine said that he tested the truck using economy fuel, did not know if the load in the truck was the same as on the day in question or whether there were any vehicle modifications or other changes since then. He had done no speedometer tests and was not authorised to conduct speed tests outside the mandated speed limit. Mr Levine concluded that in the appropriate conditions the truck could "quite easily do the 100 kilometre an hour speed mark"[22] but could not do so on that particular stretch of road.

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19 AR 256.
20 AR 256.
21 AR 258.
22 AR 430.

[41] The District Court Judge examined the whole of the evidence as is apparent from her reasons. She was aware of the approach that the *District Court of Queensland Act* required her to take to an appeal from the magistrate. She paid due regard to the findings of the magistrate about the credibility of the witnesses and the reliability of their evidence. She said:[23]

> "There is nothing in the transcript of the proceedings in the Magistrates Court or in the submissions made before me that caused me any concern about adopting the Magistrate's findings in this regard. The Magistrate said that he had no doubt that the four police officers who gave evidence before him gave "honest and reliable and accurate evidence". He noted that cross-examination by the appellant failed to cast doubt on the validity and accuracy of the results produced by the testings of Constables Rose and Taylor."

[42] Her Honour noted that the magistrate found Senior Constable Ridgeway to be "an impressive witness, not just in his demeanour, in that he was able to answer all questions confidently, but the cross-examination did not expose one flaw in his testimony".[24] The magistrate found the appellant's evidence unreliable and described him as "constantly evasive in his answers to simple straight forward questions put by the prosecutor".[25] Her Honour accepted that assessment which may be readily verified by a perusal of the record.

[43] Mr Osgood had complained about the failure of the prosecution to prove the precise length of the road since he had been charged with driving above the speed limit "for the length of road". The magistrate and her Honour applied the provisions of ss 20 and 21 of the *Transport Operations (Road Use Management – Road Rules) Regulation* 1999 which provided:

> "**20 Obeying the speed limit**
>
> A driver must not drive at a speed over the speed limit applying to the driver for the length of road where the driver is driving."

and

> "**21 Speed limit where a speed limit sign applies**
>
> **(1)** The speed limit applying to a driver for a length of road to which a speed limit sign applies is the number of kilometres per hour indicated by the number on the sign.
>
> **(2)** A speed limit sign on a road applies to the length of road beginning at the sign and ending at the nearest of the following –
>
> (a) a speed limit sign on the road with a different number on the sign;
>
> (b) an end speed limit sign or speed derestriction sign on the road;
>
> (c) if the road ends at a T-intersection or dead end – the end of the road."

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23 *Osgood v Queensland Police Service* [2009] QDC 287 at [24].

24 Ibid at [25].

25 Ibid.

[44] Her Honour concluded:

> "[31] As I understand it, the appellant's argument is primarily that because the police vehicle was coming over the crest of a hill and around a bend, and because the police vehicle was not therefore parallel to his, the accuracy of the reading taken by Senior Constable Ridgeway must be in doubt. The overwhelming prosecution evidence however is that the device was operating accurately, being used in accordance with the statutory requirements and gave an accurate reading.
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> [32] On the evidence the following has been proven beyond reasonable doubt –
>
> - The Decatur speed measuring device was operated properly and produced accurate results at the relevant time.
> - The Decatur speed measuring device had been properly tested in accordance with the relevant Australian Standard.
> - The tests carried out by Mr James and Senior Constables Rose and Taylor were properly and accurately conducted.
> - The testimony of Mr James and Mr Mulcair [sic] sufficiently proved their qualifications and areas of expertise.
> - The appellant does not know what speed he was travelling at the relevant time.
> - There was no evidence to support the appellant's assertion that the truck he was driving was not capable of travelling at 93 km/h.
> - The tests conducted on the truck by Mr Levine did not prove that the truck the appellant was driving, was incapable of reaching speeds of more than 82 km/h.
> - The fact that the appellant was driving the truck around a sweeping bend at the time of detection and the consequent cosine effect did not cast doubt on the accuracy of the reading of the speed detection device.
> - A combination of the testimony of the witnesses and the certificates tendered under TORUM leads to the conclusion that the speed measuring device was operated according the relevant Australian Standard at the relevant time.

- The appellant was driving the truck at a speed of 93 km/h within an 80 km/h speed zone on 23 June 2006 and was guilty of the offence."

Conclusion

[45] Her Honour conducted "a thorough examination of the record and a real re-hearing"[26] and weighed any conflicting evidence and drew any necessary inferences and conclusions. Mr Osgood has not demonstrated any flaw in the approach of her Honour or failure to understand the scientific evidence adduced. Her decision, confirming the magistrate's finding of guilt, was amply justified on the evidence. No issue of public policy about the accuracy of the devices used by police to detect breaches of the speed limits on Queensland roads is raised on the evidence which would suggest that leave to appeal ought to be granted. An appeal from her Honour's decision has no real prospect of success.

[46] I would refuse leave to appeal. The applicant should pay the respondent's costs of the application.

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[26] *CSR Ltd v Della Maddalena* (2006) 80 ALJR 458 at 465; [2006] HCA 1 at [16] per Kirby J, with whom Gleeson CJ agreed.