

COURT FILE NO. 1960-999-00-2051073B-00

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

Anne-Marie Sherk

P R O C E E D I N G S A T T R I A L

BEFORE HIS WORSHIP JUSTICE OF THE PEACE R. SCULTHORPE

on July 17, 2013

at BROCKVILLE, Ontario

APPEARANCES:

G. McDougall

J. Sherk

Provincial Prosecutor

Representative for the Defendant

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July 17, 2013

THE COURT: Number 44, Anne Sherk.

MR. SHERK: I'm here for that matter, sir.

MR. MCDOUGALL: We're ready, Your Worship.

THE COURT: Sorry?

MR. MCDOUGALL: We're ready to go.

THE COURT: Were you in the vehicle, sir?

MR. SHERK: Yeah, I'm her husband. And there was a fax sent back stating that I would be representing her.

THE COURT: Okay. But, my question was, are you - were you in the vehicle?

MR. SHERK: Oh, yes I was.

THE COURT: You'll have difficulty giving evidence about speeding if you weren't the driver.

MR. SHERK: I won't be testifying.

THE COURT: Well, in that event, you need to know that if the officer's here and gives evidence under oath, the only evidence I will have under oath will be that of the officer's, and that carries far more weight than you standing there making a statement.

MR. SHERK: Okay, yes sir.

THE COURT: Okay?

MR. SHERK: I understand.

THE COURT: All right.

THE COURT: Anne Sherk. You are her husband, you said sir?

MR. SHERK: Yes, I am.

THE COURT: Jeff?

MR. SHERK: That's correct.

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THE COURT: Okay.

CLERK OF THE COURT: Could you spell Jeff, please?

MR. SHERK: J-E-F-F.

CLERK OF THE COURT: Thank you.

MR. MCDOUGALL: And Your Worship, on this matter just before we get start, I think you could probably caution him again in relation to amendments on the evidence heard.

THE COURT: Well, there's a motion. Have you been given a copy of the motion?

MR. SHERK: There was a motion I originally faxed in, but then I sent another cancellation of the motion.

MR. MCDOUGALL: Yeah, I think we're just at a trial stage now.

MR. SHERK: I do have another motion to verbally, to be heard ahead of time, but....

MR. MCDOUGALL: Not a problem.

MR. SHERK: I'm just - to confirm the - it was the notice of motion with the affidavit attached.

THE COURT: It appears here.

MR. SHERK: Yeah, on July 2nd, I faxed another thing I was not going to do anything with that motion. I was going to....

THE COURT: Oh yeah, okay, I see. Okay. All right, Anne-Marie Sherk is charged on the 18th of February, 2013, Highway 401 eastbound, Augusta, drive a motorized vehicle...

MR. SHERK: Excuse me, sir...

THE COURT: ...on a highway...

MR. SHERK: ...I do have another verbal motion to make before we do the arraignment.

THE COURT: Go ahead.

MR. SHERK: I'd like to motion to dismiss the charges, because I did not receive the disclosure that I had requested, and therefore can't make full answer or prepare a proper defence for this case today.

THE COURT: Mr. McDougall?

MR. MCDOUGALL: Well, my understanding is disclosure was requested; disclosure was fulfilled. I don't have any other requests for disclosure that we would be providing. I think there was a request for the full manual, the repair history; that's not part of it, and records or certificate of calibration. They're not a disclosure issue, they're questions that can be put to the officer. And the training for the officer, again, that's a question that can be put to the officer. As far as the disclosure for this case, Your Worship, that's been provided, the evidence that we're going to rely on at trial.

THE COURT: Okay. Mr. Sherk, what are you missing, according to you?

MR. SHERK: On the initial - I did send the initial disclosure request, and I did receive some of the disclosure, and then on June 12th, I sent another request. One of the things that I requested was a copy of the original certificate of offence, both sides, which was not provided to me. However, I did ask the court clerk this morning, and I looked at that, and I'm satisfied with what is on that particular issue.

THE COURT: Mhmmm.

MR. SHERK: I had asked for the make, model and serial number of the radar laser unit, and the officer's notes state radar Genesis 11 Select G2517312, but it

5 wasn't clear what's the make, what's the model, what's the serial number. So I had requested further clarification on that. I had initially requested the manuals for the radar unit, training operators, user/owner's manual, and all I received was the front and back cover and one page which had some testing procedures on it. But it did not have additional information regarding operator operations of the unit.

10 THE COURT: You're not entitled to the full manual in any event.

MR. SHERK: But how am I to question the officer if I don't have the manual to use?

15 THE COURT: Go to the library and look up the manual there. The province isn't going to provide everybody with a full copy of the manual, sir.

MR. SHERK: Okay. I had requested any repair history or maintenance records or anything like that regarding the unit and didn't receive anything with regards to that.

20 THE COURT: I don't see that as being a necessity to towards the defence.

MR. SHERK: All right. I didn't get any - I had requested any operator test procedure per unit testing or operator training standards that the OPP might have, and I did not received anything with regards to that.

25 THE COURT: That's usually given by the officer in testimony.

30 MR. SHERK: Okay. And also, I had requested his training record, and did not receive that with regard to...

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THE COURT: That's the OPP's property, not something that's brought to Court. Anything else?

MR. SHERK: That's it.

THE COURT: All right. Motion....

MR. MCDOUGALL: Just for the record to respond there. I know the Court's made - but again, I guess I come back to these many times, a lot of those issues are questions that he can put to the officer on the stand. It's not the prosecutor's position to establish and lay a foundation for anyone's case. If a person had an issue with things that the officer has control over, mainly his training, his history - he can put those questions to the officer, whether there's any history to it.

If this was the case on every radar case, we would spend probably eight or 10 hours, just putting together evidence and then sending it out, and we'd be building a case; there wouldn't be any need to have anybody do a defence. The Crown would be doing it for them. And that's not what the process is all about.

MR. SHERK: Thank you for clarifying that. I also had mentioned in the initial facts, in order to get an audio recording after the trial, there needs to be an order from the presiding justice of the peace.

THE COURT: You can have whatever is recorded today.

MR. SHERK: Thank you.

THE COURT: I have no problem with that.

MR. SHERK: Thank you, and I would also like to record today's hearing myself with my own recording device.

THE COURT: No, you will not be allowed to do that.

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MR. SHERK: Okay, can I pass you a copy of a recent....

THE COURT: Recent ruling, sir, has said it's up to me whether I will grant you that permission, and I'm not granting you permission.

MR. SHERK: Okay, well, but it does suggest - it goes back to the days of the former - it suggests that there's - I'd like a ruling from you then - a written ruling on your reasons for denying that today, please.

THE COURT: I'm not going to give you a written ruling.

MR. SHERK: Well, I believe it's my wife's right to have me record her trial for her...

THE COURT: No, it's not.

MR. SHERK: ...to supplement her notes.

THE COURT: The use of recording devices other than the standard Liberty system that's provided by the Court is up to the discretion of the presiding judicial officer.

MR. SHERK: Okay.

THE COURT: And I'm saying you don't need it, because every word that has been said so far in here, has been recorded. It can be duplicated for you and any of the evidence at the trial can be duplicated.

MR. SHERK: Certainly.

THE COURT: Your recording device is not going to record anything other than what's already been recorded.

MR. SHERK: Yes, however, it's for my note-taking purposes and so my wife can hear the trial without having to pay for a fee to get a copy of the recorded

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transcript.

THE COURT: You're going to have to order a transcript in an appeal anyway. The court's not going to hear any appeal without you ordering...

MR. SHERK: Right.

THE COURT: ...the transcript...

MR. SHERK: Right.

THE COURT: ...from here.

MR. SHERK: But if my wife wants to hear what went on in trial today...

THE COURT: Then she should have been here.

MR. SHERK: ...and I want to review my notes....

THE COURT: Your wife should have been here.

MR. SHERK: Well, she has (inaudible) kids, so....

THE COURT: She's going to hear what went on.

MR. SHERK: Okay, so, I just - so you know I object to your - the denial, that's all.

THE COURT: Your objection is well noted, I'm sure.

MR. SHERK: Okay, thank you.

THE COURT: Anything else?

MR. SHERK: No.

THE COURT: Thank you. Anne M.L. Sherk is charged on the 18th of February, 2013, Highway 401 Eastbound, Augusta, drive a motorized vehicle bearing Ontario plate BHLK 639, commit the offence of speeding, 115 kilometres per hour in a posted 100 kilometre an hour zone, contrary to section 128 of the Highway Traffic Act. The plea on behalf of Miss Sherk, Mr. Sherk, guilty or not guilty?

MR. SHERK: Not guilty.

THE COURT: Have a seat, please.

MR. MCDOUGALL: I'll call Officer Crowe.

DANA CROWE: AFFIRM

EXAMINATION IN-CHIEF BY MR. MCDOUGALL:

5 Q. Officer Crowe, you're a member of which police service?

A. The Ontario Provincial Police, sir.

10 Q. And as a member of the police service, are you required to keep duty notes?

A. Yes, I am.

Q. Did you keep duty notes?

A. Yes, I did.

Q. Could you qualify those notes?

15 A. The notes were made by myself as soon as practical during, and during the incident.

Q. Are they in ink?

A. They are in ink.

Q. Any additions or deletions?

20 A. No, sir.

Q. And the notes will be used for what purpose?

A. Just to refresh my memory. I have an independent recollection of the event.

25 MR. MCDOUGALL: Okay. I ask that he use his notes, Your Worship.

THE COURT: You disclosed the notes?

MR. MCDOUGALL: Yes.

THE COURT: No objection, Mr. Sherk?

MR. SHERK: No objections.

30 THE COURT: All right. Go ahead officer, please.

A. On Monday, the 18th of February, 2013, I was working a day shift from 07:00 to 19:00, or 7 a.m. till 7 p.m.

I was assigned a marked police unit, 03-551, and commenced my duty as assigned to general law enforcement that particular day. On this day at 9:35 a.m. I conducted a test on a radar unit. It's a radar Genesis 11 Select, and the serial number is G2S17312. At that time, the unit was tested as per the manufacturer's written instructions and was working properly. I was conducting law enforcement throughout the day, and at 16:05, or 4:05 p.m. I was posted at Merwin Lane and the Highway 401. I was facing the eastbound traffic. The radar unit was set to be picking up the eastbound traffic at that time. And at this time, I observed a lone red SUV travelling eastbound at a high rate of speed. I activated the unit, the front radar, and it showed that the vehicle was travelling 133 kilometres in a posted 100 kilometre per hour zone. The tone on the unit and my observations were consistent with the speed that was shown on the unit. I did not lose sight of this lone motor vehicle. The vehicle was stopped at mile marker 716, Highway 401 eastbound, and that's the Prescott exit. The vehicle was a motor vehicle; it was a Ford SUV, as defined under the Highway Traffic Act. It had Ontario marker BHLK 639.

I approached the vehicle. There was a female driver, who identified herself with a valid Ontario driver's licence. And the driver's licence matched the individual who was driving. Her name was Anne Sherk, date of birth, [REDACTED]. Also in the vehicle was an adult male passenger, in the passenger seat, and two children in the rear of the vehicle. She was told the reason for the stop, and the speed that she was going. She admitted to the speed to me.

THE COURT: Don't get into any conversations without a voir dire.

5 A. Okay. The highway, it was a slight downgrade. It was on a straight level, where the offence happened. The weather at the time was minus seven degrees. It was clear. It was medium traffic flow, but at this time, she was the only vehicle that entered the radar beam. At the time, she was the lone vehicle that passed me at that particular moment. She was issued a PON for - at a reduced amount of 115 in a 100 kilometre an hour zone. At the conclusion of my shift at 19:00 hours, 7 p.m., I again tested the same radar unit as per the manufacturer's written instructions and it was again working correctly.

Q. Officer, Highway 401...

A. Yes, sir?

15 Q. Is it a highway as defined in the act?

A. Yes.

Q. And officer, which municipality did this take place in?

A. Augusta Township.

20 Q. And you said that you had tested the Genesis 11 both before and after the incident. What tests did you do? You said the manufacturer's tests. Are they a certain series of tests? Could you tell us what those are?

25 A. Yes. You first power on the unit and then you press the test button on the hand unit. First it does a display test, which shows that all the LED lights are working correctly on the display. It's followed by a circuitry - internal circuitry test, which tests the ROM and the RAM and each time it says pass, pass, pass. In this particular case, it said pass for everything. It does then a speed simulation test which is a
30 synthetized Doppler frequencies that go 25, 50, 75, 100, at - they're accompanied by different tones that are proportionate

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5 to the speed. All this went correctly, and at that time I also did a field test, which you test - this particular unit had a front and rear radar unit. So at this time, you do, you test, you initiate the radar and the speed given on my patrol is - has to be within three kilometres of the speedometer and the unit, which it was.

10 Q. Okay, and where did you do those tests? Do you recall?

A. It was on Highway 401.

15 Q. Okay. And those are all recommended by the manufacturer?

A. Yes.

20 Q. Okay. Have you ever been trained in the use and operation of the Genesis 11?

A. Yes, I've been trained several times, most recently I was trained on the 18th of December, 2011, by Constable Pryor, who is a trained radar instructor, and those tests are....

25 Q. And do you know if Constable Pryor is a member of, which service?

A. He's a member of the Kemptville detachment of the Ontario Provincial Police.

30 Q. Okay. And you said that was in December, 2011?

A. Yeah, 18th December of 2011, yes.

Q. Now, his training and the manufacturer's instructions for the use and operation, were they the same?

A. Yes.

Q. Okay. Now, you initially saw the vehicle at 133?

A. Yes.

Q. And you gave a ticket for 115?

A. Yes.

Q. So would it be fair to say you used some discretion?

A. Yes.

Q. And that was a result of your investigation?

A. Yes.

Q. Thank you.

THE COURT: Mr. Sherk.

CROSS EXAMINATION BY MR. SHERK:

MR. SHERK: Thank you. Can I assume by your comments, sir, that you did not accept his comment about admit to speed into evidence?

THE COURT: Mr. McDougall has a right to *voir dire* any statement made by the defendant to the officer. If you want the officer to disclose what the statement was, that's up to you. It may be beneficial to you, it may not be beneficial.

MR. SHERK: Okay, thank you. A. Okay, so I had some questions about training, but some of those have already been answered. How many - when you were trained...

A. Yes, sir?

Q. ...how many different makes and models of radar units were you trained on?

MR. MCDUGALL: Well I - we're dealing with the Genesis 11, and that was what my question was.

THE COURT: Yeah.

MR. MCDUGALL: No other radar unit.

THE COURT: This officer has qualified on this particular unit and he's not using any other unit, so this particular charge, this individual, your wife, is restricted to the Genesis 11 Select version of the

speed measuring device in question. Okay?

MR. SHERK: Okay, thank you. Q. Did you receive any kind of certificate or other form of recognition that you had successfully completed that training?

A. No, sir.

Q. And was there any reason that wasn't provided to you? Do they not provide certificates for people who pass the course?

A. No, there's never a certificate you get. The instructor tells you that you have....

Q. Simply a verbal...

A. Yes.

Q. ...way to go? And did you prepare the disclosure that was sent to me, or some of the items in the disclosure?

A. Yes.

MR. SHERK: May I approach the officer?

THE COURT: Go Ahead.

Q. Do you recognize this letter from disclosure?

A. Yes.

Q. Can I enter this into evidence?

THE COURT: For what it's worth, sir, go ahead, show a copy to Mr. McDougall. Exhibit 1, for today's purposes.

EXHIBIT NUMBER 1: Letter dated April 9 from OPP - produced and marked

Q. So you recognize this letter, and you said that you included it with the disclosure?

A. Yes.

Q. So, my question is, it has some information about

your training, but the letter's not actually signed by anybody.

A. Okay.

Q. So who actually wrote the letter?

A. The - when I was - attempting to facilitate the disclosure you requested, I had the officer that trained me, just to write the letter, because we - I never received, ever received a certificate indicating so. So this was just to help facilitate your disclosure.

Q. So that was - that letter was written by...?

A. Written by PC Perry Pryor.

Q. Okay, and any reason you didn't sign it, though?

MR. MCDUGALL: I think you would have to ask him.

THE COURT: I believe that would be true.

MR. SHERK: Okay.

THE COURT: I don't know whether the OPP computers, sir, have the facility to attach an electronic signature to them.

MR. SHERK: Okay, I mean there's faxes and things like that too, but all right.... Q. On your first - you state in your testimony at 9:35 a.m. that you tested the radar unit?

A. Yes sir.

Q. And, I see you went through those testing procedures in fairly good detail. And those testing procedures for that unit, you learned those at the training session?

A. Yes.

Q. And, you also have read through the manual?

A. Yes.

Q. And followed what's in the manual?

A. Yes.

Q. Okay. So they're the same ones that are listed in the manual for that device?

A. Yes.

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Q. Okay. Where did you perform those tests again, that day?

A. On - to my recollection, it would be on the 401. I can't tell you specifically where, but somewhere between...

Q. Okay.

A. ...in the Augusta Township.

Q. Okay.

A. So, so you didn't note in your notes where you did that?

A. No.

Q. So, so do you recall if the road would have been straight and level, curvy, up and down? Any recollection as to what the road was like when you were doing the tests?

A. I know that the highway is, where I patrol, is generally straight and level, but there are some fluctuations to it.

Q. Okay. So you don't really know....

A. I, I, I don't recall exactly where I did the tests.

Q. You don't recall where you did that test, okay. And, so for each of these tests there was - there's the power line test, then you press the test button?

A. Yes.

Q. That was the first test? And then there's the circuitry test?

A. Yes.

Q. Is that - do you initiate that one as well, or is that part of that whole testing sequence?

A. You press the test button, and all these tests...

Q. All that stuff happens by itself? Okay.

A. ...initiate themselves, and you watch the unit, which is right in front of you to ensure everything is....

Q. And in the morning, how many times did you

perform that test?

A. Once.

Q. Just one time? And then you said you did the field test, which is where you're driving down the road?

A. Yes.

Q. And how many times do you perform that test?

A. I just did it the one time, during testing procedure.

Q. Just the one time? Okay, thank you.

A. For the front and rear radar. So....

Q. So it....

A. On the - in the vehicle, there's a radar on the front...

Q. Yeah.

A. ...and there's one at the back, to get traffic from both directions.

Q. Okay.

A. All right, so on the hand-held unit you can - there's a button to activate either or. They don't run simultaneously.

Q. Okay.

A. So I activate the front one and I look at my patrol speed on the unit, and I look at the speedometer.

Q. Okay.

A. And I ensure that they're...

Q. (inaudible) what's in three.

A. ...they're in - like, you know, they correspond to each other, and then I turn that one off, and I activate the rear one, and do the same.

Q. Okay.

A. I takes seconds to do both.

Q. So you did it once with each antenna?

A. Yes.

Q. Okay. This is for the officer again. Do you recognize this information? That's what you included with the...?

A. Yes.

Q. ...disclosure?

THE COURT: Exhibit 2.

EXHIBIT NUMBER 1: Testing Procedures - produced and marked

MR. SHERK: I'd like to enter this into evidence as well. Q. And again, that's the testing procedure that you followed?

A. Yes.

Q. That morning? Okay. And you testified that the unit that you were both trained on and the unit that you used that morning was a Genesis 11 Select?

A. Genesis 11 Select, yes.

Q. Okay. Can you read what it says on the cover of that manual, please?

A. Genesis 11 Select Directional.

Q. So are you aware that the Genesis 11 Select and the Genesis 11 Select Directional are two distinct and separate models?

A. Yes.

Q. Okay. So, is there any reason you used the testing procedures for that particular model, the Genesis 11 Select Directional, instead of the testing procedures for the Genesis 11 Select?

A. I'm not sure I understand your question.

Q. They're two distinct models.

THE COURT: Mr. Sherk appears to be picking up on the fact that in your evidence you gave it as a Genesis 11 Select...

A. Yes.

THE COURT: ...and didn't say Directional.

A. Okay.

THE COURT: So is there two separate units, is what he's asking.

A. They are two separate units. The testing procedures for both are the same.

Q. How would we know that? Because, do you have a - you didn't submit a copy of the other - of the manual for that other model.

A. The manual is the same manual for each unit.

Q. Well, why would they have - why wouldn't they put both names of the device on one manual then?

A. I can't...

THE COURT: I'm sure the officer can't answer that, sir.

A. I can't...

THE COURT: He would have no reason....

Q. So, is it possible that the testing procedures for the other model are different than this model?

A. Not that I'm aware of, no.

Q. But is it possible?

A. I would say no.

Q. Because you said that you were only trained on the other model, not on this particular model.

A. Sir, I'm not sure I - is there a question there, or....?

5 MR. MCDOUGALL: We - no, I'll just object there,
because I just - you're asking a question that's
really not - unfair. Because, as we said when you
first asked about evidence, the question was, he was
asked the question whether he was trained on this
unit. And that was the answer, it was yes. We didn't
ask him if he was trained on other radars. But now
10 Mr. Shrek, or Sherk, is putting in, asking him
questions about other things, but that's not the
evidence the officer gave in his evidence. That we're
only still dealing with this same instrument. If we
want to go into all the other instruments, then we
would have to one by one, go through them with the
officer. But we're dealing with the Genesis 11 for
15 this event, that day, that's what the officer is
talking about. Not something else, something
different.

20 MR. SHREK: Okay but, the officer testified that it
was a Genesis 11 Select, but he also testified that
he used the testing procedure in this particular
manual, which is a different model, and there was no
evidence brought forward, that the testing procedure
for the two models are the same.

25 MR. MCDOUGALL: But you did ask him that question and
he answered that question, sir. That's what I'm
getting at. You asked him that question, he answered
to the best of his knowledge and he would say, no,
it's the same. So I would say he's answered your
30 question.

Q. So it's not possible in your mind at all that
these two models could have a different testing procedure?

A. This is the manual for both units.

Q. So, but, so there's no manual for the other unit?

The other manual for the other unit, does it have a manual?

5 A. This is - my understanding is that's the manual for both units.

Q. But it says that it's for the Genesis 11 Select Directional.

10 THE COURT: Well, you've made your point. Okay? You're flogging a dead horse here.

MR. SHERK: Okay, thank you. Q. You also, in your notes here, it says, the weather, it was minus seven degrees Celsius, clear, and there was medium traffic?

A. Yes.

15 Q. That's related to the time of the incident?

A. That's related to the highway in general.

Q. Okay. So...

A. At.... sorry.

20 Q. My question was, what does medium mean? When you say medium traffic.

A. That's kind of interpreted by every one's own....

Q. Sure.

25 A. You might think medium is different than I think is medium. I just say the traffic flow that particular day was medium traffic flow.

Q. Okay, and so how do you describe that? Is that one car every minute? Is that, you know, five cars on the highway at a time? Is it - it's your notes and your reference, so that's why I'm asking you to explain what it is.

30 A. There's no particular number. It's just how that I look at it and be able to distinguish, okay, you know, light is little to none. Medium is the odd car going by. Heavy is

wall-to-wall traffic, is how I would describe it.

Q. Okay, so medium traffic is the odd car going by?

A. Yes.

Q. Okay.

A. In my - I what I believe. And like I said, that's...

THE COURT: Is there a point to the question, Mr. Sherk?

A. ...that's different for every person.

Q. Okay. I'm just trying to establish what he means by that.

THE COURT: We're dealing with a speeding charge, sir.

Q. Yes, yes we are. So, based on you stating that there was medium traffic at that time, how many vehicles were coming toward - you were facing into traffic, correct?

A. I was facing the eastbound traffic.

Q. Okay, so....

A. I would have been facing westbound...

Q. Right.

A. ...in the, by the overpass.

Q. So how many vehicles were coming towards you at the time you observed Mrs. Sherk's vehicle?

A. I believe I stated that, at that time, she was the lone vehicle that went by me. The only vehicle in the radar beam.

Q. So you stated that your light would be one to none? If you said it was light traffic, then medium would be more than that.

A. Okay.

Q. So is it possible there was other vehicles on the road at the time?

A. There were other vehicles on the road, yes, but not at that particular moment, when....

Q. So all you could see was one vehicle on the road, and no other vehicles at all?

MR. MCDOUGALL: That isn't - Your Worship, I'm going to object. He's just twisting it around. The officer is quite clear. There's other vehicles on the road. In the beam, when he gave the test, it was the lone vehicle in the beam. I, like if there was more - you can ask him - more than one vehicle in the beam. But I think the answer - the question has been answered, that there was one vehicle in the beam. A lone vehicle.

Q. Is that what you're stating by that?

A. Yes.

Q. There's only one. Okay. So how far away was Mrs. Sherk's vehicle when you said you first observed it?

A. I would say approximately 200 metres.

Q. Two hundred metres, okay. And was the radar unit already turned on and giving you readings before you observed the vehicle?

A. When other vehicles had passed, but not until I observed this vehicle, which I activated the antenna in the front.

Q. Okay.

A. And then....

Q. So there was no tones, nothing that gave any indication....?

A. No because the unit isn't constantly in a state of being on.

Q. Okay.

A. I turn it on when I see a vehicle which I believe is travelling at a high rate of speed.

5 Q. Okay. What is the - what's the range setting you have set on that antenna, for that day?

A. The range that it was set at the time? It was....

Q. Is there range settings for....

A. Yes, it was set at the maximum.

Q. At the maximum? And what is that range?

10 A. There is no exact range. The beam could - the radar beam is infinite.

Q. So it could be a kilometre or two kilometres when it's set to max?

A. If nothing is entering the beam, then yes.

15 Q. Okay, so as we stated earlier, you were stating that she was the lone vehicle in the beam.

A. Yes.

Q. However, you don't know the range of that beam, and you said there were other vehicles on the road. So is it possible that the beam was picking up other vehicles that were further down the road behind her?

A. No, sir.

Q. Why not?

A. Because the way the unit is, functions, is it picks up the strongest, strongest motor vehicle that's in - and it sends out a known frequency and it - it accurately determines the speed and sends it back to the unit. Your vehicle was the only vehicle in the line of sight of that, which would have been the strongest frequency that it - when it was sent out, it came back, so there's....

30 Q. Is it possible there was a vehicle further back that could give a stronger signal?

A. No, because, your vehicle was the closest to the unit.

Q. But is it always the closest vehicle that gives the strongest signal?

A. Yes.

Q. Isn't sometimes a bigger vehicle a - a truck or something....

A. It's possible, but there was no other vehicles.

Q. Okay, but you're saying there were other vehicles further down the road.

A. I don't....

THE COURT: He said that, sir, when he said medium traffic.

Q. Right, so there could - it's possible that there could have been another vehicle further in the range of the beam. Maybe you weren't looking at it because you weren't paying attention that far down the road. But it's possible that the radar could have picked that up.

A. I would say no.

Q. But you said you don't know how far the maximum distance of the range setting is.

A. Well, I didn't say that I don't know the range setting. I said that the beam will - the beam could go for infinite, but it's not designed that way.

Q. Right, but you said it was set to the maximum range setting.

A. Yes.

Q. And you said you don't know what that is. You don't know what that range is.

THE COURT: He's already stated several times, it's infinite.

Q. Okay. So very well, there could have been a bigger vehicle further down the road that could have caused that....

A. No.

Q. You just said that the beam is infinite, that the bigger vehicles could give a stronger signal.

A. But sir, I also said that the way the unit is designed, that it picks up the vehicle that's...

Q. Giving the strongest signal.

A. Giving the strongest signal.

Q. Right.

A. Which was your vehicle.

Q. But how do you know that? Does the unit tell you which vehicle is giving the signal?

A. No, because it goes by my visual observations.

Q. Right.

A. And I could tell that that vehicle was travelling at a high rate of speed.

Q. Mhmmm.

A. And that that was the vehicle that the unit was picking up.

Q. So it's not possible - it's not even remotely possible there was something further down the road, in your opinion...

A. No.

Q. ...that could have set off that beam?

A. No.

Q. Okay, well I would suggest to you that it is possible, because as you stated, the maximum range goes way beyond that. So just because you weren't looking past that vehicle, doesn't mean there was not another vehicle.

THE COURT: Well, you're not arguing with the officer, sir. You're going to be making submissions to me after. Okay, not to the officer.

5 Q. All right, thank you. Could there have been another vehicle travelling at a 133 kilometres per hour, further back down the road?

A. I don't know. I didn't see any other vehicles.

Q. But it's possible?

10 A. I guess there's probably hundreds on the highway right now travelling at 133.

Q. All right. So it's possible, thank you. Can you tell me more when you turn the radar unit on - sorry, I'm just going through my notes here, sir.

15 A. No problem.

Q. You stated in your notes that you observed a vehicle at a high rate of speed?

A. Yes.

Q. Then you turned the antenna on?

20 A. Yes.

Q. And that's when you received a reading?

A. Yes.

Q. Okay. So you didn't make a visual observation of the speed prior to....

25 A. Yes, I did.

THE COURT: Sir, the officer said that (inaudible) vehicle at a high rate of speed was consistent with what he got on the radar. That was his evidence.

30 MR. SHERK: No, his evidence was that he had, he observed a vehicle at a high rate of speed, and then he turned the radar unit on, and it said 133 kilometres per hour...

THE COURT: Consistent with his observations.

MR. SHERK: ...and that that was consistent, but he never made a visual - he never made a visual observation estimate of the speed prior to turning the radar unit on.

A. Yes, I did. When I observed the red Ford SUV, I observed the vehicle to be travelling at a high rate of speed.

Q. At a high rate of speed.

A. And then I activated the unit.

Q. Right, but you didn't estimate that speed.

A. No.

Q. Okay, thank you. So in your notes, you testified that Mrs. Sherk admitted to speeding?

A. Yes.

Q. But you don't have anything in your notes as to what exactly she said.

A. Okay. Am I able to proceed with....?

THE COURT: He brought the subject up. You're allowed to....

Q. So, so my...

A. When I, I....

Q. ...my question is, you don't have anything in your notes exactly to what she said?

A. No, but I...

Q. Is that correct? Okay.

A. ...I have an independent recollection of what was said.

Q. So how many other vehicles have you pulled over since that date, do you think?

A. A lot.

Q. Hundreds?

A. Yes.

Q. So you have independent recollection of conversations you had with all these people?

5 A. Yes. There's a reason why I do, and if that's something you want me to say why, I can answer it.

Q. Okay, thank you.

THE COURT: Go ahead officer, the door's been opened; I want to hear it.

10 A. Okay.

THE COURT: Clarify it for me.

A. I approached the vehicle and I, as I always do, I tell the driver the reason for the stop and the speed given. At that point, she said, yes, we're rushing back from Midland from - and this was Family Day, or it was that weekend of family weekend, and the main reason that I remember the conversation so well is that, is that when the traffic stop ended, I issued the provincial offence notice, I started to walk back from the vehicle and Miss Sherk - is that right? Sherk?

20 MR. SHERK: Sherk, yes.

A. Okay, called me back to the unit - or, called me back to the driver's side window, and she looked at me and said, "God bless you." Which was abnormal for me, so that's why I kind of recall this one more than normal. Because I usually don't get called back after I've issued the ticket and something of that nature said.

Q. So is it possible that when she answered your question, she had misunderstood the actual question? Is it possible that when she - because she said - you even wrote it in your notes, she was travelling from Midland to home in Morrisburg, so is it possible she misunderstood your question? Just to be aware where you're going?

5 THE COURT: I'm not going to allow that question, Mr. Sherk. I don't believe the officer knows what was in your wife's mind at the time. And I can't - he can't, in all fairness, answer that question, sir.

Q. Okay. But are we not allowed to suggest possible scenarios, when I'm cross-examining the witness?

10 THE COURT: You may be able to do that, but you also have had the ability to have your wife here to counteract what the officer is saying.

MR. SHERK: Okay.

15 THE COURT: So, you're opening - you're trying to get me to take conjecture on your part into account. Which I can't do. I can only base my decision on the evidence I've heard.

MR. SHERK: Okay.

20 THE COURT: And as I've explained to you at the start of the trial, your wife's not here to give evidence and you can't give evidence. So I'm going to be bound by what the officer is saying, basically.

MR. SHERK: Okay.

THE COURT: Okay?

25 Q. So what exactly did you say to her, then? Do you remember exactly what your words were?

30 A. I say this generally, the same thing every time, and I, if you're asking me, do I know exactly word for word, no. But I know that I approached her, I identified myself and indicated that she - I stopped her for speeding, and that she was travelling 133 kilometres in a 100 kilometre an hour zone. And at that time she acknowledged to me that she agreed with me.

Q. Okay.

5 A. And that she was travelling back from Midland. And then I said, "Where are you coming from?" You know. I notice that your family was in the vehicle. And she indicated you guys were coming back from Midland, and you're almost home, and that....

Q. So you don't remember the exact question that you asked her? You said you generally ask....

10 A. I said specifically that, that you were travelling 133 kilometres....

Q. But that's not what you just said. You said you generally - you didn't recall exactly what you asked. You said you generally ask a similar type of question. So is that exactly the word you used that day?

15 MR. MCDOUGALL: Again, I'm going to object. Because the officer clarified that he couldn't say for sure. He usually says this statement to a person and asks that series of questions. And I don't think that's really completely out of the norm. You wouldn't have 50 different responses for the same event. These are speeding cases, not murder trials.

20 Q. Okay. So it's possible you could have said, "Why were you driving so fast"?

A. No, I never say that.

25 Q. Okay, it's not possible you ask a different question, that you didn't specify? It's possible that you asked the question without specifying how fast she was going?

A. I always tell the person....

Q. Okay, but you didn't write it in your notes that day that that's what you said.

30 A. Okay.

Q. So is it possible that you forgot that day?

A. No.

Q. You never forget anything?

A. Of course, I'm human.

Q. Okay, so it is possible then that you forgot to
state....

A. No, because I remember the conversation with her.

Q. But you just said you didn't - you don't remember
the exact thing that you asked her.

A. Sir, I always indicate to people the speed that
they were travelling.

Q. Yes?

A. And the zone that they are in.

Q. Right. But in....

A. And at that time, your wife indicated to me that
she realized she was speeding and you guys were almost home.

Q. Right. But my question is, it's possible that you
did not state what speed she was travelling.

A. I would say no.

Q. But you just said you forget things sometimes.

THE COURT: You made your point again. Okay?

Q. Okay. So it is possible then?

THE COURT: Anything's possible, Mr. Sherk.

Q. Anything's possible, yes. Okay, let's go to the
testing of the unit at the end of the day.

A. Yes, sir.

Q. The last entry in your notes is: off duty, radar
tested, 17:00 hours?

A. Yes.

Q. What does off duty mean?

A. It means that I am off duty.

Q. So....

A. I'm done my shift.

Q. So, what, you're back at the station, getting in your car to go home?

A. No, as I was leaving the highway, it was near the end of my shift, and I looked at my watch, and it was 19:00, so I did the test....

Q. Okay, so....

A. Indicated to the Comm Centre that I was booking off duty for the day.

Q. Okay. So where did you perform those - so where did you perform those tests?

A. That was on the 401 heading back to Prescott.

Q. Okay, and you're saying you did the same...

A. I did the same, the exact same...

Q. ...tests?

A. ...tests that I did at 9:35 a.m.

Q. Okay so, you did that. Do you have to power the unit down and power it back on again, or you just push the test buttons?

A. It was already on at that time.

Q. So you just push the test button again?

A. Yes.

Q. Go through that particular set of tests?

A. Yes.

Q. And then you did the driving test?

A. Yes.

Q. And you performed that with....

A. Somewhere between Merwin Lane and the detachment.

Q. Okay. And you performed that test how many times?

A. Once for the front antenna and once for the rear antenna.

Q. Okay.

A. If you're talking about the speedometer test.

Q. Yes, the speedometer test, yeah.

A. The drive test.

5 Q. So when you testified in the morning, your notes state that you - the test was okay for the Radar Genesis device.

A. Mhmmm.

10 Q. But this afternoon test, you just put radar test, but you didn't specify whether the test actually was - everything was working properly or it passed all the tests.

A. Mhmmm.

15 Q. So is it possible that you didn't put that, because it didn't actually pass the tests, or you forgot the tests?

A. No, if it wouldn't have passed the tests, then I would have noted that.

Q. Okay.

A. My notes are for my personal memory.

20 Q. Right.

A. And....

Q. So why would you put in the morning that it tested okay, but then make no note of the actual, of how the tests came out?

25 A. It's just how I've been writing notes since I've been a police officer.

Q. So you agreed for the afternoon, that you did not state one way or the other....

30 A. I did not say okay or fail, no. But I know that it passed or I would have noted that.

Q. Okay, so is it possible that it...

A. No, because I....

Q. ...you didn't, and you didn't note it?

A. No, because I wouldn't put another officer on the oncoming shift in that type of situation where the unit was disabled or not working properly.

Q. Okay. I have a couple case laws here I would like to....

THE COURT: Well, we're not at that stage yet, sir.

MR. SHERK: Does case law come in the submission section?

THE COURT: Yes.

MR. SHERK: Okay, so it has nothing to do with this section. Okay. All right. Q. So I just want to clarify that at that evening shift, you did not actually write down whether it passed or failed? Is that correct?

A. That's correct.

Q. Okay. And I want to clarify that you don't recall exactly the words that you asked Mrs. Sherk when you asked her, supposedly, if she was speeding. You don't recall the exact words of the question that you asked?

A. I don't recall the exact words...

Q. Okay, thank you.

A. ...but I know what I said to her. If that makes sense.

MR. SHERK: Okay. No further questions.

THE COURT: Officer, just in line with that last couple of questions from Mr. Sherk, just clarify for me, were you in the same motor vehicle with the same speed measuring device that you started off your day with?

A. Yes, it was the same vehicle.

THE COURT: All right.

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A. Yes.

THE COURT: Thank you. Mr. McDougall, any redirect?

MR. MCDUGALL: No, Your Worship, I'm fine with what we have.

THE COURT: All right. Thank you, officer.

OFFICER: Thank you, Your Worship.

THE COURT: You can stand down. Mr. McDougall, any submissions as to amendments?

MR. MCDUGALL: Yes, on the evidence heard, Your Worship, it would be the prosecution's position that there's been evidence of 133 kilometres an hour in a hundred zone, on Highway 401 on that date, by this particular individual. I'll ask that the - if the Court rules in favour of the prosecution for a conviction - that we would ask that the conviction be at the rate of speed of 133 in a 100.

THE COURT: Mr. Sherk, anything to say?

MR. SHERK: Yes. I'd like to point out there's - well, first of all, I have a couple case laws I'd like to offer which have some points.

THE COURT: At this point, sir, it's - we know for a fact that you're not giving evidence. But I have to ask you, is there any evidence you want to put before the Court, at this point under oath? Is your wife here to give evidence?

MR. SHERK: My wife is not, no.

THE COURT: Okay. So there's no evidence to be given under oath. At this point then, the onus is on the Crown. I will ask the Crown for submissions, and then you can give me your submissions.

MR. SHERK: Oh, so, what? That was not the submissions part?

THE COURT: Not at this point.

MR. SHERK: What was that part?

THE COURT: This was Mr. McDougall, as I said at the beginning of the court, if anyone was here for a speeding - going to trial on a speeding offence, they needed to be aware that if the evidence came out at a trial, that they were actually doing a higher rate of speed than the speed indicated on their certificate, the prosecutor has a right to ask for and I must grant, an amendment to the higher speed.

MR. SHERK: Okay.

THE COURT: Which is what Mr. McDougall has done.

MR. MCDUGALL: That was just our motion.

MR. SHERK: Oh, that was a motion?

THE COURT: Yes.

MR. SHERK: Okay.

THE COURT: His motion, yes.

MR. SHERK: Well, I'd like to object to that motion.

THE COURT: Okay, what's your objection to it?

MR. SHERK: I don't want a higher speed or higher fines or....

THE COURT: Well sir, as I said....

MR. SHERK: As today was the trial date that was set, that's a significant change in the charge, as well.

THE COURT: Well, no it's not.

MR. SHERK: Based on....

THE COURT: The charge is speeding, sir.

MR. SHERK: Yes, but....

THE COURT: The rate of speed is not....

MR. SHERK: But the rate and the amount...

THE COURT: No, the rate of speed is not....

MR. SHERK: ...and the number of demerit points could

cause quite a difference in....

5 THE COURT: You seem to have done some research, sir, to defend your wife on the speeding charge. You should have also been able to come up with a case or a couple of cases at this point saying that the speed itself is not important. The person, the individual is here to defend against the charge of speeding. Not the rate of speed. And they are not caught by surprise if the amendment is allowed. So, I'm allowing the amendment. So you're now facing, on a conviction, a much greater fine of course, and a much greater loss of points. So, I'll hear Mr. McDougall's submissions, and then we'll hear from you.

10 MR. SHERK: Thank you.

15 CROWN SUBMISSION:

MR. MCDOUGALL: Yes, Your Worship, there's no question that the evidence of the officer is the only evidence that's before the Court and the questions that were asked of the officer, I think fulfill all the requirements of a speeding case in the Province of Ontario. There's no - there's been quite an elaborate cross-examination of the officer on a lot of points.

20 And I would have to say the officer was very straight forward on all his answers. I think he knows where he was that day and he knows what he did that day, using a tested unit on a highway, qualified to use to use it. Targeted a vehicle, got a rate of speed of 133. Some discretion was used, issued that ticket. There's nothing in a cross-examination that I would think

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Crown Submission

Defence Submission

5 would bring out any doubt. The only issue that I may look at, and it's probably going to be raised, is over the manual issue. The officer testified when asked, that it was the same. There's no evidence before the Court that it's anything different than that. If that's something that the Court looks at then, it would be left up to the Court to decide. But I think the question was asked and answered, and there's no other evidence before the Court.

10 THE COURT: All right. Thank you. Mr. Sherk, your submissions, please.

15 DEFENCE SUBMISSION:

MR. SHERK: I'd just like to point out first regarding officer training, that all he has was he stated that he attended some training and he has a letter that's not even signed by anybody, stating he, you know, supposedly stating he completed his training. You know, I would suggest that if, you know, if somebody like myself showed up trying to pass that off as proving they were certified or trained in something, that wouldn't be acceptable. So I'd like to put 20 reasonable doubt on the - on his training.

25 Again, the radar manual, he stated he used that particular testing procedure, which was for a model that is different than the model he was trained on and was in the vehicle that day. So that casts some reasonable doubt on the testing procedure. He also 30 stated that the range of the beam of the radar could

quite go to infinity, and so it is quite possible that there was other vehicles further away that were travelling that speed.

With regards to the officer's statements about what Mrs. Sherk admitted to, you know, he basically said he generally asked that, but he doesn't have it written in his notes. And also, this case is Regional Municipality of Durham vs. Zhu (2011 ONCJ 193). And I have a copy for you. And this case goes through quite a bit on what's required of the officer in his notes. So this applies to both him stating what he believes he said without having it written in the notes with regards to the admit to speed, as well as not writing down whether the radar tested at the end of the day actually passed or failed. And as an example, paragraph 118, the Court agrees with the Justice of the Peace Cuthbertson in Schlesinger supra, that the standard to be applied in testing, before and after to manufacturer's specifications, to ensure speed measuring devices are working properly, capable of accurately measuring the speed of a moving motor vehicle, standards of evidence necessary to establish a *prima facie* case include that the speed measuring device tests have been completed according to manufacturer's specifications by an officer who is both trained and that the device passed the test, and that there is either evidence in the officer's notes to provide through *viva voce* that the tests were done both before and after the speed enforcement stop, and that they indicated the machine in question was

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Defence Submission

Crown Reply

5 functioning properly. So again, this case, there's quite a lot of other stuff in here, but it relates to the notes and what needs to be in the notes in order for that to be applied against, you know, accepted face value for what it said.

10 So I would submit that there's no - there's reasonable doubt to what was said to her and what she was actually agreeing to. There's reasonable doubt to whether the radar unit itself was actually tested properly. And here's another case as well. This is R. vs Hofland (2011 ONCJ 40). And again, this goes against the radar device too. And this one I would point out paragraph 82 and I'm looking at the, sort of the last paragraph, or the last sentence of paragraph 82, applies to the manufacturer's requirement for enforcement, is an essential element, because only with strict compliance to the manufacturer's mandatory specifications can the Court be assured that reliability and accuracy of readings obtained through the operation of the device beyond a reasonable doubt. And that again, goes to using the proper manual to actually follow the testing procedure by. And I believe that's all I have.

25 THE COURT: Mr....

CROWN REPLY:

30 MR. MCDUGALL: Okay, just a response to the case law that was presented. I'll start at the end and go in reverse here. This last case of Hofland. That would

5 make some sense - the analysis of that would make
some sense if there had been a manual entered into
evidence by the defence. The questions were put to
the officer, whether it's the same, and his evidence
is the evidence before the Court. So I don't see
where that's an issue at all. That's not relevant to
this particular case, because there's no other
evidence but the evidence of the officer.

10 And then in the Zhu matter, if we look at the idea of
the statements. Well, the statement of what Mrs.
Sherk said to the officer is irrelevant. She could
have said she was the Queen of France and it wouldn't
15 make any difference. The issue is speeding, and so
again, that part of it makes no sense. And then, the
pass or fail component that he talked about in 118,
in usual practice, I know this case inside-out,
having argued it in both directions, if there had
20 been no evidence by the prosecution or the officer,
saying the he had retest at the end of the day, then
I think you would have some merit in this.

25 But the officer puts the time that he made the test,
knows where he made the test. The only thing missing
is whether it says pass or fail and the officer's
notes are for his recollection of the events. And I
think that the notes that he has makes his
30 recollection pretty good and I think that he gave a
pretty clear reason of why he would know it because
he said he wouldn't leave an officer in the lurch
with a broken instrument at the end of the day. And

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5 I think that he's used the notes for the purpose
they're supposed to be used for. It wasn't just a
case that he made a statement that, "oh, I always
test the radar," with nothing to back it up. He's
made that. And in that case, Zhu, that's exactly what
the officers did. They just said, this is the way I
usually do it; I have no notes to say that, but
10 believe me, that's the way I do it. But that isn't
what Officer Crowe's done. He's got notes and he has
them to refresh his memory, Your Worship. Other than
that, there's nothing that's been raised.

R E A S O N S F O R J U D G M E N T

15 SCULTHORPE, J.P. (Orally):

20 All right, thank you. It's quite clear, then, on the
18th of February, 2013, approximately 4:05 p.m. on
Highway 401 in Augusta Township, the 401 being a
highway as defined by the Highway Traffic Act,
Officer Crowe dealt with one Anna M.L. Sherk, who was
driving a motorized vehicle as defined by the Highway
25 Traffic Act.

30 The officer was working a shift that particular day
from 7 a.m. to 7 p.m. He was in a marked police unit
using a Genesis 11 Select version of the speed
measuring device which he tested according to
manufacturer's specifications, and found to be
working properly, at 9:35 a.m. that day and again, I
think end of his shift at 7 p.m. Again, both times it

5 was found to be working, the officer used the term, correctly, at the afternoon testing, instead of working properly, but in the opinion of the Court, both would be the same.

10 The officer was at Merwin Lane facing eastbound, picking up eastbound traffic, sees a lone red SUV at a high rate of speed. He activated his front radar and got a reading of 133 kilometres per hour, which was consistent with his observations. It was the lone vehicle; no other vehicles in the immediate area; never lost sight of the vehicle. The driver identified herself with a valid Ontario driver's licence with photo that matched her. There was a male passenger in the vehicle and two children in the rear. The officer said it was a clear, minus seven day, medium traffic flow, in his estimation. The officer is qualified by Constable Pryor, in December 18, 2011, on the particular unit before - used in this case, by the officer. And the officer has demonstrated by his knowledge of testing procedures and functioning of the radar that he would be qualified to use the radar in any event.

25 Mrs. Sherk did not testify in this matter; Mr. Sherk running the defence for her. As I indicated to Mr. Sherk at the beginning of this matter, the only evidence I would have under oath given the circumstances of today's trial, would be that of the officer. There is no evidence to the contrary to -
30 for the Court to rely on in making its decision.

5 The exhibits filed by Mr. Sherk in relation to the
qualifications of Constable Crowe by Constable Pryor,
Mr. Sherk did put up quite a vigorous defence to the
charge before the Court, and appears to have done
some research into the matter. If he was dissatisfied
with the disclosure in the letter as indicated from,
being from Constable Pryor, he could have subpoenaed
Constable Pryor to court to verify. As is usual with
10 most written letters, the author would have to be
present. In this instance, the letter was entered by
the defence and for what good it would be, at this
point, without the author, I'm not sure. I am
satisfied, however, that Officer Crowe, with his
15 knowledge of the equipment involved, is qualified to
use the unit.

As far as the Genesis 11 Select Directional manual
cover that was provided in disclosure, the officer
indicated in his evidence that he used a Genesis 11
20 Select; did not mention Directional. The indication
from Mr. Sherk and the evidence of the officer might
suggest that there would be two different units.
However, the officer's units - officer's evidence,
sorry, is that both units, if there is a Genesis 11
25 Select and a Genesis 11 Select Directional, would be
- the testing procedures would be the same for both
units involved.

30 I'm satisfied on all of the evidence I've heard, and
having some knowledge of the cases before the Court,
again, I am satisfied in looking at the Jialin Zhu

5 case, that paragraph 120, I agree that the best
practice would be for the officer to have made the
note in his daily log, that the radar, the tested
radar was working properly. However, in this
instance, the officer did have an independent
recollection of his doing the required test and as he
indicated to the Court, he did the test on the 401;
10 he would not put a fellow officer in a position of
being on the road with a unit that was not working
properly. I'm satisfied that Zhu has no particular
benefit to the defence in this matter.

15 I'm satisfied that whatever statement was made to
Mrs. Sherk, I'm not prepared to put any weight on
that particular statement. In looking at the case of
Andrew Hofland, in the paragraph itself, compliance
with the manufacturer's requirements from enforcement
is an essential element, because only strict
20 compliance to the manufacturer's mandatory
specifications can a Court be assured of the
reliability and the accuracy of the readings obtained
through the operation of the device beyond a
reasonable doubt. There is no evidence to the
25 contrary that the device is not working properly, and
in fact the officer did testing both before and
after.

30 On all of the evidence before the Court, I'm
satisfied a conviction should be registered and will
do so. The conviction is registered at the 133
kilometres per hour. The fine is then \$198. Mr.

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Sherk, do you require time to pay the fine?

MR. SHERK: Ninety days, please.

THE COURT: Ninety day to pay. As indicated the Court
will provide you with a copy of today's recordings.

MR. SHERK: Thank you.

THE COURT: Okay. Thank you, sir.

FORM 2

Certificate of Transcript
Evidence Act, subsection 5(2)

I, Monica Mroz, certify that this document is a true and accurate transcript of the recording of R. v. Anne-Marie Sherk, in the Ontario Court of Justice, Provincial Offences Court, held at Brockville, Ontario, taken from Recording No. lcr-July17,2013.dcr, dated July 17, 2013, which has been certified in Form 1.

October 11, 2013
October 11, 2013

Monica Mroz
(Signature of authorized person)