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## PROOF OF SPEEDING IN PENNSYLVANIA

Speeding in a motor vehicle in Pennsylvania is a summary offense. The offense has only a physical element, the mental intent of the driver being immaterial.<sup>1</sup>

The driver of a motor vehicle in Pennsylvania may be arrested while speeding under two sections of the Motor Vehicle Code.<sup>2</sup> Section 1001 provides for the arrest of a motorist whose driving endangers life, limb, or property. The information in that case will charge the driver with reckless driving. Section 1002 contains two subsections dealing with speeding. One pertains to where the motorist is driving "too fast for conditions" and the other to where the motorist is exceeding the established speed limits for that particular zone.<sup>3</sup>

One charged with reckless driving may or may not have been exceeding the legal speed limit, although in most cases he has been. A motorist charged with driving too fast for conditions may or may not have been exceeding the legal speed limit, and usually he has not been.

But under the third charge, speeding, the motorist must have been exceeding the legal maximum speed limit, and there are certain requirements which must be met to prove this speeding. The scope of this note is confined to the proof necessary for the conviction of one accused of violating the legal speed limit.

Different maximum speeds apply to trucks than to automobiles, of course. These are set out in the code and involve interesting problems in themselves, but the topic here is confined to automobiles. Automobiles are also subject to different speed limits, depending upon the type of area where the car is being driven. Hence, on the open highway in Pennsylvania, the maximum speed is fifty miles per hour<sup>4</sup> whereas in business and residential districts the limit is that which is posted in that particular district. Not only will the maximum speed allowed depend upon the surroundings, but the method of proving the speed is also determined by these circumstances.

Enforcement of the various limits established by the code is left largely to the Pennsylvania State Police<sup>5</sup> who derive their authority from statute.<sup>6</sup>

According to the Motor Vehicle Code, as amended,<sup>7</sup> a motorist who exceeds the legal speed limit in a business or residential district may be arrested and convicted if:

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<sup>1</sup> 61 C. J. 642.

<sup>2</sup> This article omits reference to exceptional instances of reduced speed such as approaching an intersection, passing an omnibus, etc.

<sup>3</sup> Act of May 1, 1929, P. L. 905, 75 P. S. 501.

<sup>4</sup> Exception—the speed limit on the Pennsylvania Turnpike is seventy miles per hour.

<sup>5</sup> 114 Pa. Super. 473, 174 A. 907 (1934).

<sup>6</sup> Act of April 9, 1929, P. L. 177 as amended by Act of June 29, 1937, P. L. 2436, 71 P. S. 250.

<sup>7</sup> Act of May 1, 1929, P. L. 905 as amended by Act of June 5, 1947, P. L. 399, 75 P. S. 501.

1. Official speed limit signs are erected and
2. He has been clocked within a measured stretch (1/8 of a mile) by a peace officer at one end of the stretch and another at the other end. (Thus, two officers must be present to prove the speeding.)

A motorist who exceeds the legal speed limit on the open highways may be arrested and convicted if he has been clocked for 1/4 of a mile by a peace officer whose speedometer has been checked within thirty days of the alleged violation.<sup>8</sup> The common opinion that two officers must be present to make the arrest on the highway is erroneous. This opinion arises from the fact that the uncorroborated testimony of one officer is not enough for conviction where the violation occurs in a business or residential district.

It has been held that these provisions are penal in nature and subject to strict construction.<sup>9</sup> Thus where a motorist is arrested in a residential district and charged with speeding, the Commonwealth must show that appropriate signs indicating the maximum speed were erected in this district.<sup>10</sup> Again, where the defendant was arrested in a residential district, the court said the eighth of a mile must be "measured" and that although they do not require one officer to be "exactly" at the beginning of this stretch and the other to be "exactly" at the end of it, if one of them is one hundred feet away, that is too far and will be grounds for acquittal.<sup>11</sup>

However, some liberality in interpretation has been noted. In a case where the defendant was charged with reckless driving,<sup>12</sup> it was held that the Commonwealth need not prove that he was driving so as to "actually" endanger life, limb or property. About the greatest departure from the strict interpretation trend is evidenced by a case where the defendant was timed for a speed greater than fifty miles per hour for a distance fractionally less than 1/4 of a mile and was still convicted.<sup>13</sup> This appears to be a singular exception to an otherwise uniform rule.

The rule of strict interpretation is also evidenced by what is required in the information. In a recent case in Franklin County an information charging speeding was found to be fatally defective when it failed to state the exact speed at which the defendant was travelling.<sup>14</sup> That there is some conflict on this point can be seen in an even later case in Montgomery County where the opposite conclusion was reached, *i. e.*, the information was not fatally defective for failing to state the speed.<sup>15</sup>

<sup>8</sup> Exceptions are made, of course, in both instances, for fire trucks, ambulances and police cars.

<sup>9</sup> Commonwealth v. Wolfgang, 120 Pa. Super. 252, 182 A. 109 (1933).

<sup>10</sup> Commonwealth v. Anspach, 134 Pa. Super. 369 (1938).

<sup>11</sup> Commonwealth v. Patterson, 31 D. & C. 470 (1938).

<sup>12</sup> Commonwealth v. Raber, 46 D. & C. 411 (1943).

<sup>13</sup> Commonwealth v. Kurtz, 33 D. & C. 661 (1938).

<sup>14</sup> Commonwealth v. Fry, 65 D. & C. 551 (1948).

<sup>15</sup> Commonwealth v. Hazy, 66 D. & C. 451 (1949).

A great deal of controversy seems to have arisen regarding the provision in the code for checking the speedometer of the arresting officer's vehicle. Prior to 1939 the Motor Vehicle Code required the arresting officer to be present at the testing station when his speedometer was checked. The purpose of this requirement was to assure the court (and the defendant) of the accuracy of the test. That this worked a hardship on the enforcing officers is obvious, for a failure to allege in the information that the arresting officer was present when the speedometer was tested, would have been fatal. Some courts recognized this apparent unfairness and said that although the speedometer check was inserted in the act to protect the users of the highway by preventing unwarranted arrests, it was not designed to hamper the Commonwealth in its proof.<sup>16</sup> To alleviate this undue burden, several attempts were made to introduce into evidence a certificate from the testing station, certifying the accuracy of the test, in lieu of the officer's being present. This was held to fall short of the proof required.<sup>17</sup>

Under the provisions of the Code as amended in 1939, the Commonwealth may introduce a certificate in lieu of the officer's being present at the time of the test. The speedometer must be checked within thirty days of the arrest. If the officer was present at the time the speedometer was checked, this method of proof is still accepted, and a certificate is not required in addition thereto<sup>18</sup> (but apparently it will be admissible as corroborative evidence).<sup>19</sup> When the certificate is presented as proof of the test, the certificate must state three things: (1) that the speedometer was tested for accuracy; (2) that the speedometer was adjusted for accuracy and (3) the degree of accuracy after adjustment.<sup>20</sup> It might be mentioned in passing that approved testing stations are available for these checks. The practical advantage of the certificate in place of a personal appearance by the garage owner or mechanic doing the checking is readily seen because the checker would be a travelling man of the first order in order to testify at all the cases involving speeding.

The certificate has been enough in some jurisdictions for a *prima facie* case where the arrest is made in a business district<sup>21</sup> but such a holding violates the letter of the act. The majority of county courts will not sustain an arrest made in a business district by a single officer even though the speedometer was certified.<sup>22</sup>

Suppose a driver has been exceeding the speed limit in a residential district but is charged with driving too fast for conditions? A late county court case<sup>23</sup>

<sup>16</sup> *Commonwealth v. Parish*, 138 Pa. Super. 593, 10 A.2d 896 (1939).

<sup>17</sup> *Commonwealth v. Mehelic*, 21 Wash. 109.

<sup>18</sup> *Rhodes Appeal*, 63 D. & C. 425 (1948).

<sup>19</sup> *Commonwealth v. Parish*, 138 Pa. Super. 593, 10 A.2d 896 (1939).

<sup>20</sup> *Commonwealth v. Loos*, 67 D. & C. 586 (1949).

<sup>21</sup> *Commonwealth v. Feyka*, 62 D. & C. 351 (1948); *Commonwealth v. Klick*, 164 Pa. Super. 449, 65 A.2d 440 (1949); One of defendant's defenses here was that the "driving too fast for conditions" section was unconstitutional because of indefiniteness. The court upheld the section saying that it was merely a matter of reasonable judgment, similar to that in reckless driving.

<sup>22</sup> *Commonwealth v. Cole*, 61 D. & C. 548 (1947).

<sup>23</sup> *Commonwealth v. Frisco*, 67 D. & C. 51 (1948).

said that the defendant must be charged with speeding. The nature of the charge is left somewhat to the discretion of the arresting officer in such a situation.

In conclusion, to make out a prima facie case against a motorist arrested for speeding on a highway:

1. The information should state the speed at which the defendant was travelling.
2. The arresting officer must allege that he followed the defendant for at least one quarter of a mile.
3. The arresting officer must allege that his speedometer was tested within thirty days. He may prove that fact
  - a) By alleging that he was present when the test was made.
  - b) By a certificate from the testing station.

Where the defendant is arrested in a business or residential district, the act says and the majority require that two officers make the arrest over a 1/8 mile zone. But a few counties seem to make no distinction in the method of proof.

Speeding is a factor in an arrest for driving too fast for conditions or reckless driving, and it is a matter of judgment as to how fast the motorist must be travelling.

In general, the courts are in accord as to the interpretation of the statute, but there are exceptions, as have been noted. The tendency in the past has been to give the motorist a fair chance to prove his innocence. Whether that tendency will change in view of the increasing amount of automobile accidents, a substantial number of which may be attributed to speeding by one or both parties, remains to be seen.

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