

UPCOMING TRAININGS & CONFERENCES

- **NDAAs** is making its National Courses available virtually in light of health and safety concerns over COVID-19. Check out a full list of NDAAs' virtual learning sessions at <http://ndaa.org/wp-content/uploads/NDAAs-Offerings-Covid19.pdf>.
- **NDAAs' Mastering Masking Digital Course/On Demand Training** <https://ndaa.org/training/mastering-masking-2/>
- **NDAAs' Human Trafficking and the Impact on Commercial Driver's Licenses /On Demand Training** <https://ndaa.org/training/human-trafficking-and-the-impact-on-commercial-drivers-licenses/>
- **NDAAs' Prosecuting DUI Cases Online Course/On Demand Training** <https://ndaa.org/training/prosecuting-dui-cases/>
- **NDAAs' The Creative Visual Closing Argument** / November 16, 2020 Live webinar @ 11:45 am–1:00 pm EDT
- **NDAAs' Understanding & Utilizing 21st Century Forensic Evidence** / December 1–3, 2020 Live webinar @ 11:30 am–5:00 pm EDT each day
- **NDAAs' Prosecutor Well-Being—Work Hard, Play Hard** / December 8, 2020 Live webinar (NDAAs members only) @ 2:00 pm EDT

RESOURCES

- **Impaired Driving Resources**—<https://ndaa.org/programs/ntlc/>
- **CDL-Related Resources**—<https://ndaa.org/programs/ntlc/commercial-drivers-license/>



Laser, Radar Can Be Admitted in Court to Convict Speeders, Without Testimony About Their Science: Ohio Supreme Court

By Holly Reese, Ohio Traffic Safety Resource Prosecutor and Officer James A. Rease, Columbus, Ohio Division of Police

The world's first recorded speeding citation was issued to Harry Myers in 1904; he was traveling twelve (12) miles per hour (MPH) on West Third Street in Dayton, Ohio. Speed measuring devices (SMD), like Radar and Lidar, have long been used by law enforcement officers to deter unsafe behavior and the often-fatal results caused by speeding drivers. SMDs are operated by trained law enforcement officers to read the speed of vehicles within their jurisdictions. The scientific principles behind Radar

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The National Traffic Law Center is a division of the National District Attorneys Association. This document was prepared under Cooperative Agreement Number 693JJ91950010 from the U. S. Department of Transportation National Highway Traffic Safety Administration. Points of view or opinions in this document are those of the authors and do not necessarily represent the official positions or policies of the Department of Transportation or the National District Attorneys Association.



and Lidar technology are frequently challenged by defendants in court. The state of the law over the past several decades has allowed the admissibility of the device's results as long as the state offers expert testimony that establishes the device's reliability. Once a court within an appellate jurisdiction has determined the reliability of a device through expert testimony, prosecutors handling cases in that jurisdiction rely upon that case law for admission of results without having to provide expert testimony. In June, the Ohio Supreme Court decided that because the reliability of the technology is so well established and has been relied upon for over six decades, the state is no longer required to provide expert testimony to have the results admitted in trial. *Brook Park v. Rodojev, Slip Opinion No. 2020-Ohio-3253*.

The main purpose of the analysis was to update the Court's review of the admissibility of SMD technology since it had not done so since 1958. The Court's ultimate holding was that "the results of a speed-measuring device using either radar or laser technology are admissible in court without expert testimony establishing, or the court taking judicial notice of, the reliability of the scientific principles of that technology." The fact finder must still determine whether the evidence presented concerning the accuracy of the speed measuring device and the qualifications of the person who used it are sufficient to support a conviction based on the device's results. The procedural history of the case is as follows:

In May of 2017, the defendant was charged with exceeding the posted speed limit by 15 MPH. The Brook Park Police Officer who cited the defendant had measured his speed using an LTI 20/20 TruSpeed S laser speed detection device. During the defendant's bench trial, the trial court admitted into evidence and considered the results of the laser SMD without expert testimony establishing the reliability of the scientific principles underlying the device's technology. The trial court did not specifically take judicial notice of the device's reliability. The court convicted Rodojev of the charged offense; the Eighth District Court of Appeals affirmed the conviction. The Supreme Court then took the case under consideration as a conflict of the admissibility issue existed between other appellate districts. The Court had not addressed the reliability of the scientific principles underlying radar since 1958; it had never addressed the admissibility of the results of laser SMD based on the reliability of the scientific principles underlying the technology.

In its findings, the Court stated, "[w]e are satisfied that the scientific principles underlying laser speed measuring devices are sufficiently reliable and hold that the results of a laser speed measuring device are admissible in Ohio courts without expert testimony

establishing their reliability or the court taking judicial notice of the scientific principles underlying that technology. Our decision on this issue is in accordance with decisions from courts in several other states.” Other substantive challenges to the results of a laser SMD—including challenges involving the angle at which the officer held the device in relation to the targeted vehicle, the device’s accuracy-validation algorithms, the device’s calibration and maintenance schedule, and the officer’s qualifications to use the device—implicate the sufficiency and weight of the evidence, not its admissibility. Determinations involving the sufficiency and weight of the evidence are to be made on a case-by-case basis.

Basically, the decision allows prosecutors to use the device’s results at trial without having to rely upon a prior decision that admitted scientific expert testimony or having to subpoena an expert (usually from the manufacturer).

The Court noted that the National Highway Traffic Safety Administration and the International Association of Chiefs of Police test and approve SMD in accordance with the United States Department of Transportation standards and publish their findings in a Conforming Product List (CPL). Although state and local law-enforcement agencies are not required to purchase devices listed on the CPL, only devices on the CPL are eligible for purchase using federal Highway Safety Grant Program funds.

For an interesting read on the history of radar and laser technology, you can read the full case at <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2020/2020-Ohio-3253.pdf>.

Holly Reese is a Traffic Safety Resource Prosecutor for the State of Ohio through the Ohio Traffic Safety Office. Holly has over seventeen years of experience as a prosecuting attorney, having spent most of her career at the Barberton Municipal Court and the Summit County Prosecutor's Office. She has prosecuted thousands of cases, focusing her last few years as a courtroom prosecutor on drug and alcohol impaired driving, and in the classroom, training law enforcement, prosecutors, and judges on the DRE program. She conducted the first hearings in Stark and Summit Counties in which DRE Officers were recognized as an expert witnesses.

Holly holds a bachelor's degree in English from Rollins College in Winter Park, Florida, and a Juris Doctorate from the University of Akron School of Law. She is licensed to practice law in Ohio and Florida. She has authored articles, briefs, and many pleadings, and has argued in the Ninth District Court of Appeals.

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