

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

_____ /

Trial by Declaration

Comes now, the Defendant, xxxxx, by and through himself and files this **REQUEST FOR A TRIAL BY DECLARATION** and would show,

1. that this Honorable Court has jurisdiction in all matters pertaining to this case.
2. that the Defendant received a Traffic Citation on xxxxxxxxxx for unlawful speed.
3. that there was no vehicle contact and no property damage, and no personal injury and that the Defendant has not had a moving violation in over (20+) twenty years.
4. that the Defendant has himself entered a written plea of NOT GUILTY on xxxxxxxx and so also did his Council on xxxxxxxx and further, vehemently DENIES the allegation.
5. that the Defendant has requested discovery and a public records request from the Police Officer on xxxxxxxx which the Defendant has not yet received.
6. that the Defendants' Council has filed a MOTION TO DISMISS/SUPPRESS on xxxxxxxx which has not been ruled upon by this court.
7. that the Defendant has in good faith completed a Driving Safety School even before any adjudication in this case on datexxxxxxxxxx.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXXXXXX
_____ /

8. that the Defendant has filed his own Motion to Dismiss on xx/xxxxx (via fax) which has also not been ruled upon.
9. that the court has set a date to hear the Defendant's Council's xxxxxx Motion to Strike Evidence/Motion to Dismiss for xxxxxxx.
10. the Defendant is compelled to take this action and file this Request for Trial by Declaration due to the extreme financial costs of transportation to and from the courthouse as the Defendant lives in XXXXXXX, not XXXX County, as well as costs involving my Council of record that will FAR EXCEED the assessment schedule penalty (xxxxxx) should this court find either for or against the Defendant should the Defendant's appearance be necessary.

Defendants Statements of Fact

DEFENDANT'S PURPOSE ON ROADWAY

Defendant XXXXXX was traveling southbound on Interstate 275 to visit hisXXXXX XXXXX and XXXXX in XXXXXXX, Florida.

DEFENDANT'S DESCRIPTION OF HIS VEHICLE

Defendant XXXXXX was driving a XXXXXXXXXXXXX sedan in good aesthetic, mechanical and electrical condition. Defendant XXXXX was utilizing his cruise control mechanism at all times.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXXXXXX
_____ /

LOCATION OF DEFENDANT ON ROADWAY

Defendant XXXXX was in the center lane of Interstate 275 south-bound highway, which yields multiple lanes and is divided by a concrete dividing wall at prox. three (3) feet in height with moderate traffic in both the north and south-bound lanes. Defendant XXXXX noticed a larger S.U.V./truck style vehicle quickly coming up behind him and flashing it's headlights and for no known apparent reason.

**VEHICULAR CONFRONTATION AT
THE DEFENDANT**

Defendant XXXXX remained in his lane while other larger S.U.V./truck vehicle continued to flash it's lights for no apparent reason. Larger vehicle pulled up alongside Defendant XXXXXX vehicle and two (2) white adult males and one (1) white adult female made an obscene gesture with their hands while abruptly slowing and moving to the farthest right hand lane after making the gesture.

**DEFENDANT'S VERIFICATION OF HIS
VEHICLE'S LOCATION, RATE OF TRAVEL, AND AWARENESS OF
FLORIDA HIGHWAY PATROL CAR**

Defendant XXXXX remained traveling southbound where he observed a clearly marked Florida Highway Patrol car parked, and facing south-bound at the three (3') foot dividing wall separating the north and south-bound lanes. Defendant XXXXX continued past the parked State vehicle while maintaining his lane and his cruise control speed of 65 miles per hour, which is the posted speed limit.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXX
_____ /

TRAFFIC (VEHICLE) DETAINMENT BY OFFICER

Defendant XXXXX observed the State patrol car leave it's parked status and proceed to come up at the rear of the defendant's vehicle and subsequently, effectuated a traffic stop on Defendant XXXXX vehicle.

REQUEST BY OFFICER FOR DOCUMENTATION

Defendant was asked for his Drivers License and Vehicle Registration, which he presented to the Officer. When the Officer asked Defendant XXXXX if I knew why he was being stopped, the Defendant replied, "No I don't".

**STATEMENT BY OFFICER TO DEFENDANT XXXXX
AS REASON FOR DETAINMENT**

The Officer stated that the Defendant was "clocked" doing 78 miles per hour in a 65 miles per hour zone. Defendant denied driving his vehicle in such a manner and attempted to explain that it was not him and that the Officer was mistaken but, was most likely another vehicle. However, the Officer walked away with Defendant's Drivers License and Registration in hand w/o Defendant being able to finish his statement.

ISSUANCE OF CITATION TO DEFENDANT

The Officer, after a brief stay in his State vehicle, walked back to the Defendant's vehicle and had Defendant sign for the reception of Traffic Citation and indicated that the signing was not an admission of guilt. Consequently, the Defendant signed as having received the citation and NOT as any admission of guilt.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXX
_____ /

DEFENDANT'S ARGUMENTS

First,

Research by the Defendant has yielded factual evidence that the placement/location of the Officer's vehicle on the side of the roadway as well as the presence of the other larger moving vehicle next to and directly behind the Defendant with (3) three occupants and, the radar beam itself are mitigating circumstances that caused the Officer to mistake the Defendant's vehicle as one in violation.

Second

When two vehicles are traveling in the same direction and comes in contact with a radar beam, the radar will reflect the speed/signal of the LARGER VEHICLE back to the transmitter/receiver radar unit as there is more of a "footprint" and a larger signal reflective surface area than the smaller vehicle causing the speed calculating device to "read" the larger of the two signals received (SEE ILLUSTRATIONS). In effect, the smaller vehicle's reflection signal DISAPPEARS in the larger reflected signal of the larger vehicle. This is sometimes referred to as a "LOOK PAST ERROR". Even if the operator aims his antenna properly, radar is still subject to "look-past" error.

This is caused by the radar looking past a small reflection in the foreground to read a larger reflection behind. This error is all the more insidious because poorly trained operators assume it can't happen. Texas instructors warn, "It is a widely-held misconception that the reflected target signal received by the radar antenna will always be that of the closest vehicle to the antenna. There are times, due to traffic conditions, that the closest vehicle is not returning the strongest signal."

Evidence of the potential size of this error appeared in Car and Driver (October 1979). The author measured the effective range of a Kustom Signals KR11 traffic radar against various vehicles. The typical small sedan did not show up on the radar until it was less than 1200 feet away from the antenna, but the same radar unit locked on to a Ford 9000 at 7600 feet. This shows how common vehicles reflect microwaves differently.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXXXXXXXX

The Texas instructors confirm this problem with radar, saying "It is not unfair to say that the reading you register could be a larger, better target three-quarters of a mile down the road."

Third,

A radar beam/signal emitted from a radar gun/source is NOT selective in that, it CANNOT PINPOINT OR SELECT A SPECIFIC VEHICLE unlike lidar/laser which can, nor can it be aimed down any specific lane or traffic.

Fourth,

The TYPICAL RADAR BEAM WIDTH is approx 11-18 degrees and can be as much and GREATER THEN 212' FEET WIDE (a 12-degree beam will measure 287 feet in width at a distance of 1,000 feet while a 24-degree beam will measure 574 feet in width) emanating down the road/traffic area/surface and surrounding areas. That width of the radar beam CAN and WILL encompass ALL and more of the actual road surface and traffic and in this case WILL also include radar beam coverage of BOTH the NORTH-BOUND and SOUTH-BOUND lanes of traffic based on the Officer's positioning of his State car at the center 2' foot dividing wall and using REAR radar as previously indicated and, will include all the vehicles in that scope of view.

Fifth,

Since the radar unit/transmitter/receiver has NO electronic symbol or any other audible error alarms or visual designation to warn the Officer that an error is/has occurred, the officer would not be aware that he is getting a false reading of speed of an object on his speed calculating device.

Sixth,

Radar CANNOT DISTINGUISH THE DIRECTION OF THE TRAFFIC it "reads" and this too reinforces my argument that, since the Officer's car was parked at the center stone highway divider as previously mentioned and, that radar cannot be aimed at a -

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXXXXXX

- single object and be selective, as well as the radar beam reading BOTH the north and south-bound lanes of Interstate 275 being that the radar beam width is so wide, the officer obtained a reading from an object/vehicle other than the Defendant.

Seventh,

There is no screen on ANY radar unit that shows the positions of vehicles nor does it rotate or sweep an area. There is no screen showing a number of “blips” (representing a vehicle or object) with data beside each one. It is single point radar that only displays a speed-reading and a number from a target. The radar beam goes out in a fan pattern. The further away from the transmitter the radar beam travels, the wider it gets. Generally, radar guns send out a beam at an initial angle of between 11 and 18 degrees. ANY vehicle moving within the beam can reflect the signal. The radar gun can only display one speed at a time and does not show the radar operator which vehicle is being tracked. Traffic radar, unlike airport radar, does not give the location of the target, just a speed.

Eighth,

As stated before, radar, due to the wide fan pattern of the radar beam (SEE - ILLUSTRATIONS), is not lane selective on multi-lane roads. The operator cannot pick out a target vehicle when there is another vehicle going in the same direction in the immediate vicinity of the target. To a certain extent, two vehicles going in opposite directions can also affect the returns. If the operator claims his radar is “lane selective”, then he is not competent to operate traffic radar and any citations he issues are questionable.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

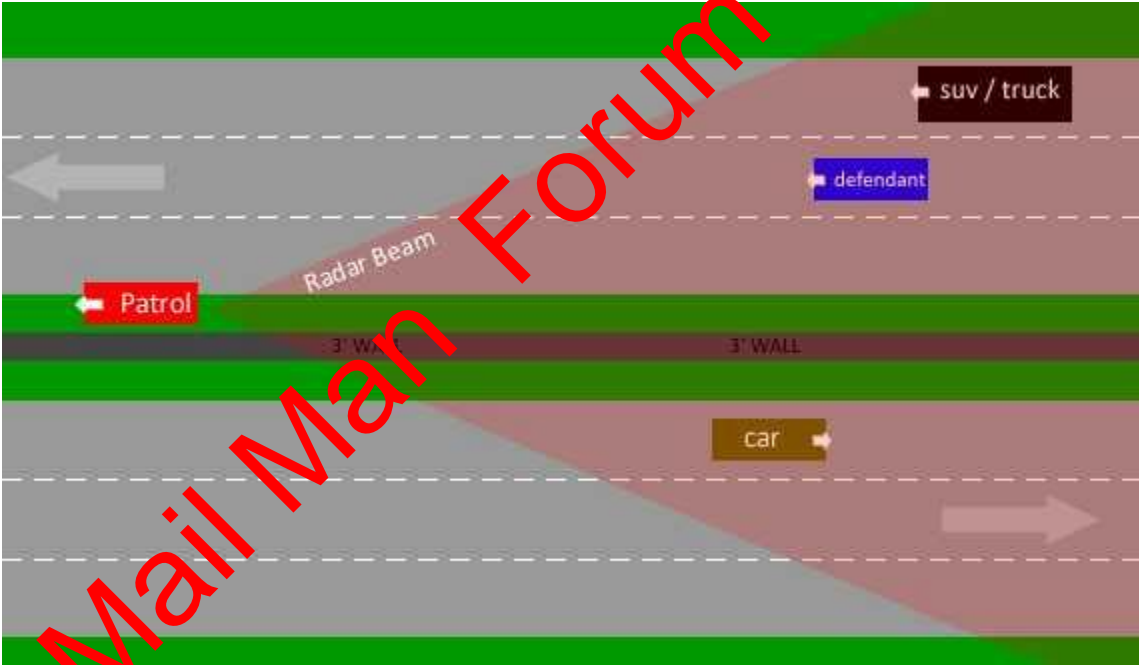
STATE OF FLORIDA

vs.

XXXXXXXXXXXXXXXXXX

CASE NO.:
CITATION NO.:
DIVISION:

Illustration/Exhibit #1



IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

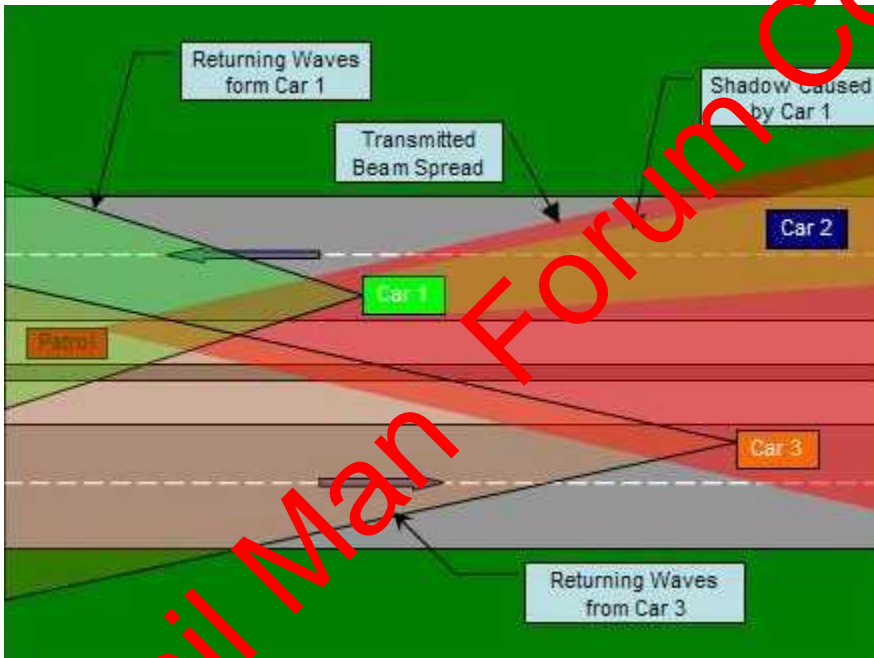
STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXXXX

Illustration/Exhibit #2



Nine,

“Shadowing” is an aspect that can result in undeserved citations. Larger vehicles will return a stronger radar signal than small vehicles. For example; tractor-trailer rigs, with their larger surfaces send back very strong signals. A car, in front, behind or to the side of a tractor trailer rig (or larger vehicle) can be moving along faster than the truck but will not be detected by a radar unit until it gets well in front of the truck because the smaller vehicle (such as in my case) will simply “disappear” electronically and have no reading.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:

CITATION NO.:

DIVISION:

_____ /

On the other hand, a speeding truck or S.U.V. coming up from behind or along side a slower moving car will cause a strong signal to be returned, overshadowing the car's speed which could be much lower, and this is what the Defendant believes happened to him, not to understate the high probabilities that the Officers radar beam may have very well registered the speed of the vehicles going in the opposite direction. Even though the car is out front, the truck's or S.U.V's larger surface area and speed returns a stronger signal than is reflected from the car.

Objections

***I would object to the Officer producing ANI radar speed calculating device' calibration certificate into evidence as that would in my opinion, be HEARSAY without the technician whom calibrated the unit not only to being present to authenticate his signature on that document but, to also produce his certification to operate the electronic calibration equipment that did indeed calibrate the speed calculating device utilized in the Defendant's case.

I would object to the admissibility of any evidence that states that any equipment used to calibrate the radar gun was itself calibrated accurate without the technician present to authenticate his/her signature on any documentation pertaining to that equipment.

I would object to any evidence or witness in the particular field of R/F and audio electronics, without having been first qualified as an expert witness and, having extensive experience with the particular model of the radar device as well as the actual equipment used to calibrate same, and without first establishing some degree of skill or expertise in that particular field, would be an improper expert opinion if so admitted.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXXXXXX
_____ /

If the electronic calculating device was NOT certified accurate on the day that the radar speed-calculating device was calibrated, the accuracy of that radar device is surely at question. I am aware of the "business records" acceptance of certain types of evidence however, if the court were to allow the calibration certificate of the radar unit to be included/accepted as evidence in this case, those certificates WOULD NOT establish that the electronic machinery used to do the calculations for the correct and accurate calibration of the radar unit are themselves accurate.

If a "bad" tree yielded fruit, not only is the tree bad but, so is the fruit. Further, anything made from that fruit is also "bad". Using that scenario, if ANY electronic calibration equipment cannot be certified and established to be itself calibrated and accurate, it should not arbitrarily be considered as being accurate. So, then any equipment it calibrates too MUST be considered inaccurate and suspect. One cannot bring their car in to have their speedometer calibrated and expect it to be accurate especially when the equipment used to do the job isn't or has not been proved to be accurate in itself.

I would object if the Officer attempted to introduce ANY evidence pertaining to his use of any tuning forks as a required calibration method unless they were accompanied by the calibration certificate AND the technician whom calibrated the unit, being present to authenticate his signature on that calibration certificate and also to produce his certification to operate the actual electronic calibration equipment used to calibrate the tuning forks. (same in part as above).

(State of Connecticut v. Tomanelli (1966))

In this case, the Supreme Court of Connecticut ruled that "outside influences may affect the accuracy of the recording by a police radar set sufficient to raise a doubt as to the reliability of the speed recorded." The court also stated that tuning forks must be proved to be accurate to be accepted as valid tests of a radar unit. In order to establish the –

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXXXXXX

_____ /

- accuracy of the radar unit the operator must testify to the following
- 1. That he made tuning fork tests before and after the defendant's speed was recorded.
- 2. That the tests were made by activating 40, 60 and 80 mph tuning forks and by observing that the unit responded correctly in each case.

.....

State of Florida v. Allweiss (1980)
The Pinellas County Court ruled that the testing methods for radar equipment are legally insufficient. "The use of such a tuning fork furnished by the manufacturer in this court's opinion is tantamount to allowing the machine to test itself. A tuning fork furnished by the manufacturer is merely an extension and part of the total speed measuring apparatus that is furnished by the manufacturer upon delivery.

.....

(State of Minnesota v. Cordes (1971))
The Supreme Court of Minnesota ruled that where the only means of testing the accuracy of a radar unit is an internal mechanism within the unit, and there is no other evidence of the motorist's speed other than the radar reading, the conviction cannot be sustained. The court also established the following conditions for proving the accuracy of the radar unit.

1. The officer must have adequate training and experience in the operation of the radar unit.
2. The officer must testify as to how the unit was set up and the conditions the unit was operated under.
3. It must be proven that the unit was operated with a minimum possibility of distortion from external interference.

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXX

_____ /

4. The unit has to be tested with an external source, such as a tuning fork or an actual test run with another vehicle with an accurately calibrated speedometer.)

I would so move this Honorable Court to issue a finding in favor (not guilty) (“Nolle Prosequi”) of Defendant XXXXXX and/or dismiss the allegation of unlawful speed.

XXXXXXXXXX
Defendant

XXXXXXXXXX
Date

Da Mail Man Forum Contribution

via faxvia fax***via fax***

IN THE COUNTY COURT, SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

STATE OF FLORIDA

vs.

CASE NO.:
CITATION NO.:
DIVISION:

XXXXXXXXXXXXXXXXXX
_____ /

Re: Citation # XXXXXXXXXXXX
CASE NO.: XXXXXXXXXXXX

Certificate of Service

I, XXXXXXXXX, by my affixed signature below, hereby state that this Trial by Declaration has been filed (XXXXXX) and mailed via regular U.S. Mail to Honorable Judge XXXX, c/o the Pinellas County Courthouse, Clerk of the Court, SXXXXXX, Florida this XX day of XXX 200X.

XXXXXXXXXXXX
(Defendant)

Da Mail Man Forum Contribution