



STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
820 NORTH FRENCH STREET, 11TH FLOOR  
WILMINGTON, DELAWARE 19801

NORMAN A. BARRON  
CHIEF MAGISTRATE

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POLICY DIRECTIVE 80-006

TO: ALL JUSTICES OF THE PEACE  
STATE OF DELAWARE

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: July 28, 1980

RE: K55 POLICE RADAR UNIT; MOVING MODE

On June 27, 1980, I sent out a memorandum directing that all speeding cases in which the K55 Radar unit was being contested because the unit had been employed in the moving mode be continued for a period of thirty (30) days so that I could have time to research the issue and advise you of my findings. The thirty (30) day period expires today; therefore, the time is ripe to promulgate a policy with regard thereto. First, the background:

In the case of State v. Harper, Del. Super., 382 A.2d 263 (1978), Judge Joseph J. Longobardi heard expert testimony by the manufacturer of the K55 Radar unit and concluded that:

"So long as the unit was functioning, tests were made to check its calibration, the Defendant's automobile was the closest automobile in line with the police radar unit when it was being checked and the police operator was trained in its use, there was no basis to exclude his testimony. It is left to the jury to determine from the testimony of the police utilizing the

unit whether it was operating properly, that it was accurate to a degree allowing but minor error and that it was the defendant's automobile's speed that was checked."

The K55 Radar unit, in the Harper case, supra, had been employed in a stationary mode. Although it could be argued that Judge Longobardi's decision in Harper is applicable to both the stationary and moving modes since the Court did not specifically limit its applicability to the stationary mode, the better practice in such cases, and the one with a view towards protecting the constitutional due process rights of a Defendant is to resolve any such doubts in favor of the Defendant. Such doubts were recently resolved in a Defendant's favor in the Court of Common Pleas case of State v. Edwards, CCP, Cr.A.No. 80-03-0390, letter opinion by Judge Arthur F. DiSabatino dated May 19, 1980. There, the K55 Radar unit had been employed in the moving mode. Distinguishing Harper, supra, on the facts, Judge DiSabatino held that "the issue of whether the K55 is reliable and trustworthy when used in the moving mode remains an open question in this State." A finding of not guilty was, therefore, entered on behalf of the Defendant.<sup>1</sup>

Subsequent to Judge DiSabatino's ruling, the Superior Court of New Jersey, Appellate Division, three judges sitting, ruled in a per curiam opinion on June 19, 1980, in the case of State v. Wojtkowiak, N.J. App. Div., \_\_\_\_\_ A.2d \_\_\_\_\_ (A-1874-79, opinion dated June 19, 1980), that

"the K-55 Radar is completely reliable as a speed measuring device provided that

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<sup>1</sup>An appeal has been taken to the Superior Court by the Department of Justice from the Edwards decision. The Justice Department has apparently also selected a pool of potential test cases so that this issue might be brought to a swift resolution.

it is properly operated by an individual who is competent to operate the radar after having been trained in its use...

In future cases involving the use of the K-55 Radar as the speed measuring device, the State should adduce evidence at the municipal court level as to (1) the specific training and extent of experience of the officer operating the radar, (2) the calibration of the machine in which at least two external tuning forks both singly and in combination should be employed, and (3) the calibration of the speedometer of the patrol car in cases where the K-55 is operated in the moving mode. We are also satisfied that the radar should be operated in the manual position at all times."

A review of the trial court's opinion in the case of State v. Wojtkowiak, N.J. Super., Law Div., \_\_\_\_\_ A.2d \_\_\_\_\_, 170 N.J. Super. 44 (opinion dated August 2, 1979), from which an appeal was taken to the Appellate Division, shows clearly that the K55 Radar unit had been employed in the moving mode in the Wojtkowiak case.<sup>2</sup> Also noteworthy is the fact that one of the experts who testified before the trial court in Wojtkowiak, supra, was one "Edward Walker Sergeant". In the Harper case, supra, we read that:

"The State called Edward W. Sergent, Vice President of the manufacturer of the K-55 unit, as an expert."

It is not unreasonable to conclude that Edward Walker Sergeant and Edward W. Sergent are one and the same. In any event and in spite of the Wojtkowiak decision, supra, what Judge DiSabatino held in the Edwards case, supra, remains applicable up to the present time: "The issue of whether the K55 is reliable and trustworthy when used

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<sup>2</sup>Wojtkowiak's conviction rested on a speed reading displayed by the K55 in a State Trooper's patrol car as he and the Defendant approached each other, the trooper in a northbound lane and Defendant in a southbound lane, on Route 295.

in the moving mode remains an open question in this State."

(Emphasis added.) While it would be the expedient course for our Justices of the Peace to rely upon the holding in Wojtkowiak, supra, I conclude that it would be the prudent and fairer course to await word from a Delaware judge who, in an actual case with expert testimony offered, could settle once and for all the issue of the K55 Radar unit's reliability and trustworthiness when used in the moving mode on the highways and roads of this State.

Until such a ruling is made, I reluctantly request that you enter a dismissal on all moving K55 Radar cases where the issue of the device's reliability and trustworthiness is contested. Any ruling from the Superior Court on said issue shall be promptly disseminated to all Courts of the Justices of the Peace. This policy shall remain in effect until further notice.

NAB:cw

cc: The Honorable Daniel L. Herrmann  
The Honorable William Marvel  
The Honorable Albert J. Stiftel  
The Honorable Robert H. Wahl  
The Honorable Robert D. Thompson  
The Honorable Alfred Fraczkowski  
The Honorable Richard S. Gebelein  
The Honorable Lawrence M. Sullivan  
The Honorable William J. O'Rourke  
The Honorable Richard McMahon, State Prosecutor  
Harold Schmittinger, Esquire, Pres., Delaware State Bar Assoc.  
Vance A. Funk, III, Esquire, Chief Alderman  
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