

Case Name:
R. v. Giacomelli

**IN THE MATTER OF The Provincial Offences Act R.S.O.
1990**

**Between
Her Majesty the Queen, and
Fabrizio Giacomelli**

[2008] O.J. No. 5701

File No. 4863 999 84471295

Ontario Court of Justice
Toronto, Ontario

C.P. Mutuma J.P.

Heard: October 6, 2008.
Oral judgment: October 6, 2008.

(6 paras.)

Charges: S. 128 Highway Traffic Act Speeding

Counsel:

Ms. K. Peterkin, Municipal Prosecutor.

Mr. M. Riddell, Agent for the Defendant.

1 C.P. MUTUMA J.P. (orally):-- Now in the matter of Fabrizio Giacomelli, who did commit the offence of Speeding 87 kilometres in a 50 kilometre zone, contrary to Highway Traffic Act, section 128 and that's in the City of Toronto, on the 1st day of January, 2007 at 11:39 a.m. The officer testified that he was on Bay Street - Bay (sic) Avenue, when he observed the vehicle travelling at

the high speed, which was 87 kilometres in a 50 kilometre zone and that is according to the instrument that the officer was using, which is the laser; which he described as an instrument that is designed to measure the speed of a moving vehicle at a certain distance and that he was trained to operate the instrument and that he tested it before and after to ensure that it was operating at the manufacturer's specifications.

2 Now having listened to a number of case law's presented before this Court and also listened to the officer's testimony, the Court finds that although the officer was credible in his testimony with regards to the manner in which he conducts his work and the tests that he conducted to ensure that the instrument that he operates on a daily basis, specifically in the same location as he says that he has been in that location a number of times, the Court finds that the officer did what he normally did and that he finds his testimony credible. However, the Court finds that the issue is raised - there are two issues now. Initially the issue was Speeding which is 87 kilometres in a 50 kilometre zone. Now there was no dispute with regards to that given that the agent decided that he would focus on the - not so much on the reliability of the laser but the process that was conducted in order to ensure that the laser was reliable.

3 And he also focused on the training that the officer received; which the Court does not have any issue with given that the officer, in receiving his training, it is not known how they had received training in a group as officer's or as an individual and the Court is not putting weight on that matter.

4 But however, during the cross-examination by the, by the agent, there were areas that were rather inconsistent and that given the number of case law's that have been presented here regarding the note taking and, yes, regarding the note taking and also information that is not included in the notes but provided through the use of the memory by the officer: The Court is - finds that there were a number of inconsistencies and for that matter the Court is dismissing the case at this point in time.

5 MS. PETERKIN: Thank you, Your Worship.

6 MR. RIDDELL: Thank you, Your Worship.

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