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APPEAL APPLICATION

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BEFORE THE HONOURABLE MADAM JUST CE M E LANE

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APPEARANCES:

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MR. GUNNESS: Next is the matter of Manras Grewal.

MR. BROWN: Good afternoon, Your Honour. Todd Brown.

THE COURT: Good afternoon, sir.

MR. BROWN: B-R-O-W-N, first initial T, agent for that person. The person is not here. I'm ready to proceed. This is a matter of a speeding offence, Your Honour. We're moving against the conviction. There was a trial.

THE COURT: Right.

MR. BROWN: And it dealt with a speed measuring device, known as the LTI 2020.

THE COURT: Right. All right.

MR. BROWN: I think this may have been before you once before, so you may be familiar, to some extent, with the issue.

THE COURT: Yes, I notice that I have made comments on the -- I noticed before that I'm in -- okay, so, why was it not dealt with on the last day? Why didn't I deal with it last time?

MR. BROWN: I think that there wasn't enough time and then it went in front of one of your brother judges and he saw that you had made a notation on the file and he directed that it be put back in front of yourself.

THE COURT: I see. Okay. So, that's fine So, it' been up a couple of times?

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MR. BROWN: Right.

THE COURT: All right. So, go ahead, then, and continue to make your submissions, then.

MR. BROWN: Right. Just very briefly. The issue in the trial was found at approximately page 12. At page 12, on the trial transcript, at the bottom of at approximately line 25, the investigating officer embarks on his evidence with regard to the testing of the LTI 2020. He indicates that he's done a number of things, primarily a comparison test or what's commonly known as a comparison test.

The issue that I bring, Your Honour, is that we didn't hear a number of things. One, that the person using the LTI 2020 was, in fact, a trained laser operator or that he was trained and qualified to operate that particular piece of machinery. We didn't hear that evidence.

We didn't hear that the officer was trained in the use of a radar unit, which is relevant to these proceeding, because when you make a comparison test to the laser and a radar you also have to be qualified to operate the radar unit as per the authorities that I'm going to refer you to momentarily

Excuse me. Court's indulgence.

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So, it is just a contentious issue today as it was prior to the Court of Appeal ever addressing it. So

THE COURT: All right. So, you are saying that these -- the issues that are mentioned here are not included in the evidence of the Crown on this trial?

MR. BROWN: Precisely, and I'll also add to that, just for clarity, that the Court of Appeal in **Vancray** set out, that because these things were present, that a prima facie case had been established by the Crown.

THE COURT: Right.

MR. BROWN: There was no evidence to the contrary called, and I bring that to your attention because, notably, the Court of Appeal didn't say that there was an abundance of evidence or that the conviction can't be doubted. The Court of Appeal simply stressed that there was a prima facie case based on all of the testing and the other elements that were set out in the **Vancray** decision.

So, given that, I think, it's well worded in that it can't -- it can't be taken to mean anything else than it's incumbent on the Crown to lead evidence of these essential ingredients when using the LTI 2020.

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laser is modern technology now, and above -- on paragraphs above he made reference to what modern technology is now being used, "forces going back to World War II, as it relates to physics, is one of the most accurate means with regards to you applying this laser device in measuring the speed," and the fact that your brother Justice Fairgrieve made reference to all the cases that was presented to you by Mr. Brown, the outcome in every matter was the same.

In the case at bar before you, it's the same procedure. No defence was called. The Crown has established a prima facie case in every one of these cases and the outcome was a conviction.

So, in this case before you at bar the justice of the peace clearly indicated that a prima facie case was established by the Crown.

THE COURT: I'm just looking at the facts in the case determined by my brother Justice Fairgrieve. In the facts there indicated that he was a qualified laser operator and that he tested the device prior to setting it up on that date and after taking it down, he found it to be in proper working order and the tests were conducted in accordance with the manufacture's specification. Isn't that the

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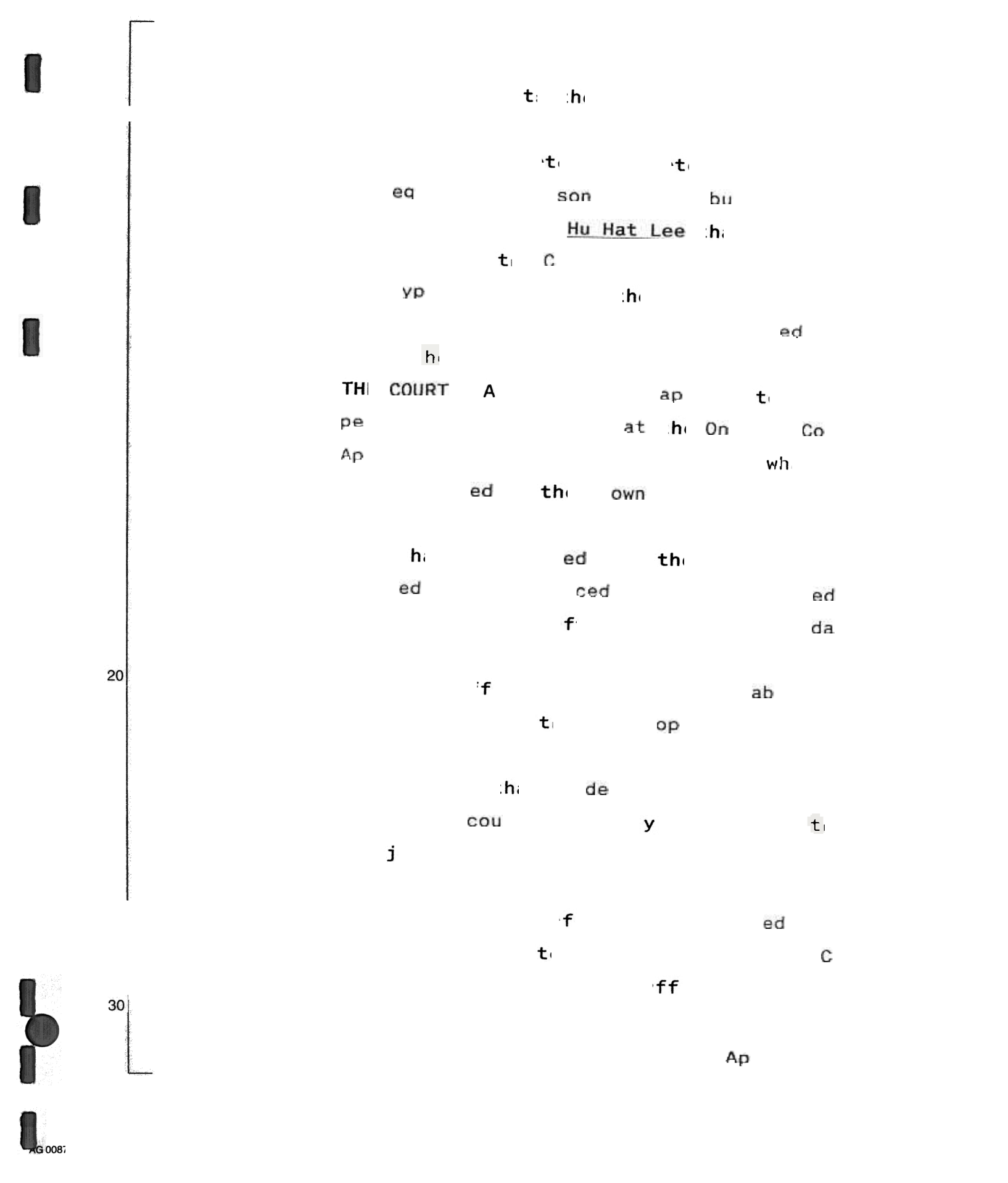

circumstances and to require the defendant to explain may be a reversal of the onus.

In this case there doesn't seem to be adequate information that meets the basic requirements and there will be an acquittal.

I will grant the appeal and I will enter an acquittal.

MR. BROWN: Thank you, Your Honour. I thank my friend.

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This is to certify that the foregoing is a true and accurate transcript of my recordings to the best of my ability and skill

Jacqueline M. Johnston
Official Court Monitor

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