

**2679 RADAR SPEED MEASUREMENT)**

This court recognizes that the speed measurement device used in this case uses a scientifically sound method of measuring the speed of motor vehicles. The (identify prosecuting agency)<sup>1</sup> is not required to prove the underlying scientific reliability of the method used by the measurement device.

The (identify prosecuting agency) is required to prove that the device was in proper working order and that it was properly operated by a qualified person.<sup>2</sup>

The weight to be given to the speed measurement in this case is for you, the jury, to determine.

**COMMENT**

Wis JI-Criminal 2679 was originally published in 1986. The comment was revised in 1987 and 1988 and republished without change in 1995 and 2010.

This instruction may be used in cases involving both moving and stationary radar. Regarding stationary radar see note 1, below.

The reliability of speed measurement by moving radar devices was considered by the Wisconsin Supreme Court in State v. Hanson, 85 Wis.2d 233, 270 N.W.2d 212 (1978). The court held that courts "may take judicial notice of the reliability of the underlying principles of speed radar detection that employs the Doppler effect as a means of determining the speed of moving objects. To this end, expert testimony is not needed to determine the initial admissibility of speed radar readings. The radar reading may be introduced by the operating law enforcement official, if he is qualified in its use and operation." 85 Wis.2d 233, 244-45. The court emphasized that the accuracy of a given speed reading is another matter – it depends on the particular conditions surrounding the reading.

A moving radar speed reading is admissible upon testimony of a competent, operating police officer that:

1. the officer operating the device had adequate training and experience in its operations;
2. the device was in proper working condition at the time of the alleged offense;

3. the road conditions at the site of the alleged offense were such that there was a minimum possibility of distortion;
4. the input speed of the patrol car was verified;
5. the patrol car's speed meter was expertly tested within a reasonable time following the arrest by means which did not rely on the radar device's own internal calibrations.

Regarding the verification of the speed of the patrol car, see Washington County v. Luedtke, 135 Wis.2d 131, 399 N.W.2d 906 (1987):

We hold that the fourth criterion of Hanson/Kramer is met by testimony that verification has been accomplished by a visual comparison of the speedometer with the radar read-out. It is unnecessary, indeed irrelevant to the prosecution's proof, to establish that the patrol car's speedometer has been separately checked and certified to be correct.

135 Wis.2d 131, 141-42.

The Hanson criteria, particularly those relating to testing the radar device, are discussed in State v. Kramer, 99 Wis.2d 700, 299 N.W.2d 882 (1981).

The VASCAR method of radar speed detection is also entitled to "a prima facie presumption of accuracy." Expert testimony is not required to establish a foundation for its admissibility. State v. Frankenthal, 113 Wis.2d 269, 335 N.W.2d 890 (Ct. App. 1983).

1. The instruction has been revised to include a blank where the identity of the prosecuting agency can be provided: the State, the county, the municipality, etc.
2. This sentence is not necessary in stationary radar cases. "Whether the test was properly conducted or the instruments used were in good working order is a matter of defense." City of Wauwatosa v. Collett, 99 Wis.2d 522, 299 N.W.2d 620 (Ct. App. 1980).

Collett held that the Hanson criteria apply only to moving radar devices and stationary radar devices are entitled to a presumption of accuracy without Hanson-type testimony.