

## HOW TO WIN ALMOST ANY SPEEDING TICKET

**Nobody tells you but the judges, cops, prosecutors and lawyers all know this is true. Just ask anyone of them. Speeding is not unlawful unless there are aggravating circumstances such as hazardous road, children or other pedestrians at risk etc. This case is the basis for defending all speeding cases in all states.**

### **263 N.E. 2<sup>nd</sup> 803 – Applies to 50 of the united States of America**

Where a speeding law is identified as “**prima facie**” and not at a “**prohibition**” All anyone needs to do is challenge the summons. This is a major case that can be cited nationally because it is in a national reporter. The lesson in this case is the legal theory of a prima facie law, its presumption and the right to rebuttal as a defense. This case applies to driving fast but it applies to all such prima facie laws.

**Applies to New Jersey violation of 39:4-98 which states that speeding is “prima facie unlawful” See attached NJ statutory law.**

**Columbiana County Court of Ohio.**

**The STATE of Ohio**

v.

**NEDELKOFF.**

No. 9309.

April 15, 1970.

Prosecution for operating motor vehicle at an unreasonable and improper speed. The County Court, Columbiana County, MacDonald, J., held that where highway on which defendant physician was driving while en route to hospital to attend patients was dry and straight and traffic was light, defendant's speed of 60 miles per hour in posted 45-mile-per-hour zone was reasonable and proper. Charge dismissed.

**(Ed. Note: The fact this was a doctor in an emergency had nothing to do with this case. Editors note not in the original case reporter)**

Even though a defendant is shown to have been operating motor vehicle at speed determined by director of highways to be prima facie unlawful, if speed was reasonable and proper under circumstances the defendant must be found not guilty. [R.C. § 4511.21.](#)

Where highway on which defendant physician was driving while en route to hospital to attend patients was dry and straight and traffic was light, defendant's speed of 60 miles per hour in posted 45-mile-per-hour zone was reasonable and proper. [R.C. § 4511.21.](#)  
Syllabus by the Court

Although the defendant is shown to have been operating a motor vehicle at a speed determined by proper procedures of the Director of Highways to be prima facie unlawful on that portion of the highway involved, where the trier of the facts determines that, at the time and place and under the circumstances and all conditions existing, his speed was reasonable and proper, the defendant must be found not guilty of violating [R.C. s 4511.21.](#)

Thomas N. Fannin, East Liverpool, for plaintiff.

George Aronson, East Liverpool, for defendant.

## **RULING OF THE COURT**

MacDONALD, Judge.

The defendant, Jeko M. **Nedelkoff**, was charged with a violation of [R.C. 4511.21](#) on an affidavit in the form of a uniform traffic ticket signed by Patrolman D. Baker of the Ohio State Highway Patrol. The affidavit was sworn to and filed in this court on March 16, 1970, in which affidavit it was charged that on March 15, 1970, at 10:45 p. m. the defendant operated a motor vehicle on State Route 45 north of the village limits of Lisbon, Ohio, at an unreasonable and improper speed, to wit, a speed of 60 miles per hour in a posted 45 mile-per-hour zone.

The defendant was arraigned in this court on March 17, 1970, and entered a plea of not guilty. On the issues joined, the case came on for trial before this court on April 15, 1970.

[R.C. 4511.21](#) is entitled Speed Limits; Modifications and is the section of the motor vehicle traffic laws which is designed to regulate the speed of motor vehicles upon the **\*154** streets and highways of the state of Ohio. The section provides:

'No person shall operate a motor vehicle, trackless trolley, or streetcar in and upon the streets and highways at a speed greater, or less than is reasonable or proper, having due regard to the traffic, surface, and width of the street or highway and any other conditions \* \* \*.'

The section, then, provides that it is prima facie lawful for the operator of a motor vehicle to operate the same at a speed not exceeding certain limits under certain situations and locations. For example, 60 miles per hour during the day time and 50 miles per hour during the night time on highways outside municipal corporations. State Route 45, which runs in a northerly direction from the municipal limits of the village of Lisbon is a duly established state highway, and the provisions of the statute providing that it is prima facie lawful to operate a motor vehicle at a speed not exceeding the limits designated would apply to State Route 45; with certain exceptions. [R.C. 4511.21](#) provides further that it is prima facie unlawful for any person to exceed any of the speed limitations established by the statute.

In addition to the prima facie limits set forth in the statute, the statute provides further that whenever the Director of Highways determines upon the basis of an engineering and traffic investigation that any prima facie speed set forth in Divisions (A) to (I), inclusive, of this section is greater, or less, than is reasonable or safe under the conditions found to exist at any place upon any part of a state route, the director is authorized to determine and declare a reasonable and safe prima facie speed limit, which shall be effective, when appropriate signs giving notice are erected on such part of the state route.

The records indicate that the Director of Highways of the state of Ohio, having followed the procedures set forth in the authorizing statutes, has reduced the prima facie speed limit on State Route 45 for a distance of three miles north of the village

limits of the village of Lisbon, Ohio, and has by appropriate action established such prima facie limit to be 45 miles per hour, and this stretch of highway bears appropriate signs giving notice of such prima facie limit, such signs being placed approximately a quarter of a mile apart on each side of the highway.

(1) The evidence in this case establishes the fact that, at the time and place charged in the affidavit, the defendant was exceeding the prima facie limit so established. The officer's testimony was that the defendant was followed for a distance of some mile and a half to two miles, and that, during the time he was observed, his speed was 60 miles per hour. It is not seriously controverted by the defendant that he was operating at the time and place at a speed in excess of the prima facie limit.

The words 'prima facie' are Latin in origin, although they have now been included in Webster's Standard Dictionary and have been defined as meaning 'at first sight; on first view before further examination; and in law, adequate to establish a fact, or raise a presumption of fact unless refuted.'

'Prima facie evidence is merely proof of the case upon which the jury (or court) may find a verdict unless rebutted by other evidence. In other words, **prima facie evidence is not conclusive**, but such as may be overcome by evidence to the contrary; and such evidence is to be weighed together with the other evidence, and in connection with the reasonable doubt and presumption of innocence which obtain in all criminal trials.' In the case of [State v. Schultz, 1 Ohio Misc. 81, 205 N.E.2d 126, 30 O.O.2d 420](#), the court held as follows: '\* \* \* in the State of Ohio, under the provisions of 4511.21 of the Revised Code of Ohio, there is no fixed speed limit.' (Emphasis added.) In the case of [Tenhunfeld v. Parkway Taxi Cab Co., 105 Ohio App. 425, 152 N.E.2d 770, 6 O.O.2d 182](#), the court stated:

'The statute ([R.C. 4511.21](#)) continues by making it prima facie unlawful for a person to operate a motor vehicle at a speed greater than (those speeds set forth in the **\*156** statute). It is conceded that plaintiff was driving at a prima facie unlawful speed, but whether he violated the statute \* \* \* was a question of fact for the jury, in the light of all attendant circumstances. A prima facie unlawful speed may be rebutted by evidence, which a jury might find would bring such speed within lawful limits.' In the case of [Cleveland v. Keah \(1952\), 157 Ohio St. 331, 105 N.E.2d 402, 47 O.O. 195](#), decided by the Supreme Court of Ohio, Syllabus 1 is, in part, as follows: '\* \* \* Such a provision as to speed is merely a rule of evidence raising a rebuttable presumption which may be overcome by evidence that in the circumstances the speed was neither excessive nor unreasonable.'

See also [City of North Ridgeville v. Munkacsy, 4 Ohio App.2d 389, 212 N.E.2d 826, 33 O.O.2d 488 \(Lorain County\)](#), and [Lehman v. Westhoven, 10 Ohio App.2d 66 \(Allen County\)](#).

The evidence in the case under consideration was that the defendant **Nedelkoff** is a doctor of medicine, and, at the time and place of the alleged offense, he was on his way to the Salem City Hospital to attend two patients. Dr. **Nedelkoff** testified that the

patients he was attending were serious cases, and that he was attempting to get to Salem as soon as possible. Whether or not an emergency actually existed is certainly not for this court to say. The defendant, Dr. **Nedelkoff**, being a physician and doctor of medicine, would certainly be in a better position than this court, or the arresting officer, to say.

The evidence further was and is not controverted that the highway was perfectly dry. There was no snow, or wet condition to cause a hazard; that the highway is a modern highway with a hard, paved surface 24 feet wide. The court takes judicial notice of the fact that said highway is a perfectly straight stretch. Although it is what might be termed rolling, there are no exceptionally steep grades, and there is nothing to indicate any other particularly hazardous situation in regard to this stretch of highway. The arresting officer testifies that there was no evidence, and that he did not observe any reckless operation whatever; and, with the exception of the fact that the defendant was exceeding the prima facie limit, he was not in violation of \*157 any other traffic law. The evidence was that the amount of traffic on the highway at this particular time and place was very light.

Route 45 north of the corporate limits of the village of Lisbon for a distance of some 2 1/2 to 3 miles is considerably built up with business establishments and rural residences. There are some intersecting township roads and numerous driveways leading into private residences and business establishments. It is assumed that, because of this condition, the Director of Highways deemed it advisable to reduce the prima facie limit to 45 miles per hour. However, the court must take into consideration in this case the fact that the offense charged was at the hour of 10:45 p. m. At that hour, there are few, if any business establishments open, and at that particular hour, there would be relatively few vehicles proceeding into private driveways, or out of private driveways.

(2) Taking all these matters into consideration and considering all the facts of the case, as established by the evidence, this court finds that the defendant **Nedelkoff** has successfully rebutted the presumption referred to, and the court, therefore, finds that, at the time and place and under the circumstances and all conditions existing, that the defendant's speed was reasonable and proper.

The court, therefore, finds the defendant not guilty. The charge is, therefore, dismissed. Ohio Co. 1970.

State v. **Nedelkoff**,  
263 N.E.2d 803, 24 Ohio Misc. 153, 53 O.O.2d 200

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\* 39:4-97.2  
UNSAFE DRIVING  
NO POINTS

39:4-94.2

MOTOR VEHICLES AND TRAFFIC

person who without the permission of the commissioner or governing body of the county, or municipality, as the case may be:

a. Mutilates or removes the notice, or damages, destroys or removes any warning sign or signal, or removes the barricade placed or posted by the commissioner or county or municipal governing body, at any point along the highway, road or street in connection with or relating to the closed portion thereof; or

b. Drives a vehicle over or upon the closed section of the highway, road or street which he knows or should have reason to know has been closed to traffic; or

c. Violates any rule or regulation for the use of the highway, road or street duly made by the commissioner or county or municipal governing body, as authorized by law, he shall be subject to a fine of not more than \$100.00. L.1981, c. 229, § 1, eff. July 27, 1981.

ARTICLE 12. SPEED

39:4-95. "Vehicle" defined

As used in this article, the word "vehicle" includes street cars.

39:4-96. Reckless driving; punishment

A person who drives a vehicle on a highway heedlessly, in willful or wanton disregard of the rights or safety of others, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of reckless driving and be punished by imprisonment in the county or municipal jail for a period of not more than 60 days, or by a fine of not less than \$50.00 or more than \$200.00, or both.

On a second or subsequent conviction he shall be punished by imprisonment for not more than 3 months, or by a fine of not less than \$100.00 or more than \$500.00, or both. Amended by L.1955, c. 220, p. 868, § 1; L.1982, c. 45, § 3, eff. Sept. 1, 1982.

39:4-97. Careless driving

A person who drives a vehicle on a highway carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of careless driving. Amended by L.1951, c. 23, p. 87, § 54; L.1955, c. 220, p. 869, § 2.

39:4-97a. Motor vehicle operation causing property destruction; prohibition; exception; recreational property defined

No person shall operate a motor vehicle, except a motor vehicle operated for emergency purposes by a fire department or ambulance or rescue squad, in a manner which causes the destruction of agricultural crops, fences, fields or other agricultural or recreational property. "Recreational property" means any public or

private property used as a golf course, park, or other similar purpose. L.1985, c. 154, § 1, eff. April 25, 1985.

39:4-97.1. Slow speeds as blocking traffic

No person shall drive a motor vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with law. L.1955, c. 220, p. 869, § 3.

39:4-98. Rates of speed

Subject to the provisions of sections 39:4-96 and 39:4-97 of this Title and except in those instances where a lower speed is specified in this chapter, it shall be prima facie lawful for the driver of a vehicle to drive it at a speed not exceeding the following:

a. Twenty-five miles an hour, when passing through a school zone during recess, when the presence of children is clearly visible from the roadway, or while children are going to or leaving school, during opening or closing hours;

b. (1) Twenty-five miles an hour in any business or residential district;

(2) Thirty-five miles an hour in any suburban business or residential district;

c. Fifty miles an hour in all other locations.

Whenever it shall be determined upon the basis of an engineering and traffic investigation that any speed heretofore set forth is greater or less than is reasonable or safe under the conditions found to exist at any intersection or other place or upon any part of a highway, the Commissioner of Transportation, with reference to State highways, may by regulation and municipal or county authorities, with reference to highways under their jurisdiction, may by ordinance, in the case of municipal authorities, or by ordinance or resolution, in the case of county authorities, subject to the approval of the Commissioner of Transportation, except as otherwise provided in R.S. 39:4-8, designate a reasonable and safe speed limit thereat which, subject to the provisions of R.S. 39:4-96 and R.S. 39:4-97, shall be prima facie lawful at all times or or at such times as may be determined, when appropriate signs giving notice thereof are erected at such intersection, or other place or part of the highway. Appropriate signs giving notice of the speed limits authorized under the provisions of paragraph (1) of subsection b. and subsection c. of this section may be erected if the commissioner or the municipal or county authorities, as the case may be, so determine they are necessary. Appropriate signs giving notice of the speed limits authorized under the provisions of subsection a. and paragraph (2) of subsection b. of this section shall be erected by the commissioner or the municipal or county authorities, as appropriate.

The driver of every vehicle shall, consistent with the requirements of this section, drive at an appropriate reduced speed when approaching and crossing an

Urban  
Suburban  
Rural  
Urban  
Suburban  
Rural

intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

The Commissioner of Transportation shall cause the erection and maintenance of signs at such points of entrance to the State as are deemed advisable, setting forth the lawful rates of speed, the wording of which shall be within his discretion. *Amended by L.1939, c. 211, p. 607, § 1; L.1951, c. 23, p. 87, § 55; L.1983, c. 227, § 2, eff. June 27, 1983; L.1993, c. 315, § 2, eff. Dec. 23, 1993.*

**39:4-98.1. Designation of lower maximum speed limits for trucks of registered gross weight of 10,000 pounds and over**

In accordance with the provisions of section 39:4-98 of the Revised Statutes, the State Highway Commissioner may, by regulation and identification by appropriate signs, designate lower maximum speed limits for trucks of a registered gross weight of 10,000 pounds and over, at a differential of 5 miles per hour, on State highways, or appropriate portions thereof, having 4 or more traffic lanes, where the legal speed limit is 50 miles per hour or greater. *L.1960, c. 100, p. 588, § 1.*

**39:4-98.2. Counties or municipalities; reduction of regular speed limit for 72 hours for maintenance or repairs; notice to commissioner**

Any county or municipal governing body may adopt an ordinance or resolution, as appropriate, designating a county or municipal official who may order a reduction of a regular speed limit for periods not to exceed 72 hours on segments of highways under its jurisdiction for the purpose of maintenance or repairs. Any resolution or ordinance adopted pursuant to this act shall specify the circumstance under which a speed limit may be reduced.

An order reducing the speed limit pursuant to this act shall not require the approval of the Commissioner of Transportation; provided, however, that it shall be the duty of the designated county or municipal official to notify the commissioner of the affected segment of highway no less than 7 days before any reduced speed limit takes effect; except that in cases of emergency situations the notification period may be waived by the commissioner. It shall be the duty of the designated county or municipal official to place one or more signs indicating the reduced speed limit along the affected highway.

Any speed limit established pursuant to this act shall be prima facie lawful and subject to the provisions of R.S. 39:4-96 and 39:4-97 when appropriate signs giving notice thereof are erected. *L.1981, c. 237, § 1, eff. July 27, 1981.*

**39:4-99. Exceeding speed limitations; speed specified in charge**

It shall be prima facie unlawful for a person to exceed any of the foregoing speed limitations or any speed limitation in effect as established by authority of section 39:4-98 of this Title.

In every charge of violation of section 39:4-98 of this Title, the complaint and the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven and the speed which this article declares shall be prima facie lawful at the time and place of the alleged violation. *Amended by L.1951, c. 23, p. 88, § 56.*

**39:4-100. Rate of speed across sidewalk**

No vehicle or horse shall be driven or ridden across a sidewalk at a rate of speed greater than four miles per hour.

**39:4-101. Speedways**

Nothing in this article shall apply to a speedway, constructed with the permission of the local authorities or the board of freeholders, as the case may be, of the county or counties in which the speedway is located, and built or intended for the exclusive use of motor vehicles, if the speedway at no point crosses a highway, railroad or railway at grade.

**39:4-102. Speeding by physicians in emergencies**

If a physician's motor vehicle is stopped for exceeding the speed limit while in the act of responding to an emergency call, the registration number of the vehicle and the driver's license number may be inspected and noted and the physician shall then be allowed to proceed in the vehicle to his destination. Such proceedings may be taken subsequently as would have been proper had the person not been a physician.

**39:4-103. Exemptions from speed regulations**

Motor vehicles belonging to the military establishment, while in use for official purposes in time of riot, insurrection or invasion; all police officers, while the officers are engaged in the apprehension of violators of the law, or of persons charged with, or suspected of, a violation, are exempt from the provisions of this chapter relating to speed. *Amended by L.1951, c. 23, p. 89, § 57; L.1983, c. 403, § 16, eff. Dec. 23, 1983.*

**39:4-103.1. Use of photo radar to enforce speeding laws prohibited**

a. Notwithstanding any law, rule or regulation to the contrary, a law enforcement officer or agency shall not use photo radar to enforce the provisions of chapter 4 of Title 39 of the Revised Statutes.

b. As used in this act, "photo radar" means a device used primarily for highway speed limit enforcement substantially consisting of a radar unit linked to a camera, which automatically produces a photograph of