

Pa. Cmwlth. , 448 A.2d 106 (1982) The Commonwealth does not seem to take exception to this, having opted to amend the citation but argues that even without knowing the correct section and subsection number defendant knew the charges against him.

When the Commonwealth was permitted to amend a citation which did not allege a crime, assuming the amended citation does allege a crime, it was permitted to transform the citation into one that did and that is prohibited. *United States v. Milestone*, 626 F.2d 264 (U.S. 3d Cir. 1980). Even the amended citation does not seem to allege a crime. In *Hill*, supra a charge against a defendant brought under a penalty section of an ordinance was dismissed, the Court observing that the citation was ineptly drawn.

We need not consider defendant's other contention that the bridge was improperly posted.

The motion to dismiss will be granted.

ORDER OF COURT

January 31, 1983. The motion to dismiss the case is granted and the costs are placed on the County of Franklin.

COMMONWEALTH V. CUMMINGS, C.P., Franklin County
Branch, Miscellaneous No. 3 - 1982

Vehicle Code - Speeding - Certificate of Accuracy - Photocopy

1. Under 75 Pa. C.S.A. Sec. 3368 (d), a certificate of accuracy from the testing station where tests were made on a timing device is competent and prima facie evidence of the facts set forth in the certificate.
2. A photocopy of a certificate of accuracy is not admissible in evidence as proof of the facts contained in the original certificate.
3. A certificate of accuracy is not a business record as contemplated by 42 Pa. C.S.A. Sec. 6108 (b), which permits the use of photocopies of business records at trial.

John F. Nelson, Esquire, Attorney for Commonwealth

Philip S. Cosentino, Esquire, Attorney for Defendant

OPINION

EPPINGER, P.J., February 4, 1983:

At the beginning of the summary hearing in this case on appeal from the District Justice of the Peace, the District Attorney announced that there was a substantial legal question as to some of the Commonwealth's evidence. Apparently in this speeding charge a stop watch was used to check the time it took the defendant to pass between two lines on the highway. The watch was being used by a trooper in a state police aircraft.

The Commonwealth proposed to introduce "what purports to be a photostatic copy of a certificate of mechanical speed time and device accuracy." The photocopy was said to be of a certificate issued October 19, 1981 under 75 Pa. C.S.A. Sec. 3368(d). That provides that a certificate from the testing station that tests were made on the timing device and the device was accurate, shall be competent and prima facie evidence of those facts in these cases.

The Commonwealth contends that absent the certificate, a photocopy may be introduced under 42 Pa. C.S.A. 6109. Section 6109 permits the introduction of photocopies of memorandum, writing, entry, print, representation, or combination thereof of any act, transaction, occurrence or event which in the regular course of business has been recorded, copied or photostated.

A state trooper was to identify the photostat of the certificate, the original of which he had not seen. He was not able to testify that the copy the Commonwealth proposed to introduce was a true copy of the original. All he could say was that it is customary for the State Police to send a form such as the one proposed to be introduced to the testing station to be returned to Troop Headquarters where it was photostated and copies sent to different stations. There was no representation that the original certificate was not available for use in the trial of this case.

If Commonwealth claims this to be a business record, then before the photocopy could be admitted, it would have to be identified first by a qualified witness, 42 Pa. C.S.A. Sec. 6108(b). The trooper's testimony would not fulfill that requirement.

But we do not view it as a business record. Special legislation was passed to admit the certificate of the testing station. Ordinarily to show that the testing device was accurate, the person who made the test would have to be called to say what he did and what he found. That could be cumbersome. In light of that problem, the legislature permitted the issuance of a certificate. It seems to be no burden or hardship on the Commonwealth to produce the original certificate with the original signature on it. As to admissibility of business records, generally they are not made in contemplation of a law suit. However, these certificates are made with the full knowledge of the Commonwealth that the accuracy of the testing device will be called in a trial. *Commonwealth v. Gerscheimer*, 276 Pa. Super 418, 419 A.2d 528, 530 (1980) has spoken clearly on the matter in a case involving the testing of radar devices, saying:

[The Commonwealth] must introduce a Certificate of Electronic Device (radar) Accuracy into evidence. The Certificate of Electronic Device (radar) Accuracy must be signed by the person who performed the tests and the engineer in charge of the testing station, must show that the device was accurate when tested. . . .”

This Opinion is filed in support of our decision to dismiss the case because the Commonwealth was not prepared to introduce a certificate of timing device accuracy as required by law.

SHAW ESTATE, C.P., Franklin County Branch, No. 74-1982

Defeasible Life Estate - Agreement to Sell Real Estate - Unascertained Remainderman

1. Where a testator bequeaths a life estate in real estate conditioned on the beneficiary residing in the house as a sole, single adult, he creates a defeasible life estate.
2. The beneficiary of a defeasible life estate does not have a life tenancy which is alienable.
3. In reviewing a proposed agreement between the executor of the decedent's estate and the conditional life tenant, the Court has a duty to

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