

# OREGON CASE UPDATE

## When is Police Officer Testimony Admissible?

case in point...

**From the desk of Josh Hayward:** Under the Oregon Evidence Code (“OEC”), certain evidence is considered to be “scientific evidence” and requires that the offering party lay a proper foundation before the trial court will allow the evidence to be admitted. If a police officer responds to an accident call and arrives at the scene, will the officer be permitted to testify regarding the speed of the vehicles before impact and the vehicles’ movements following the impact? Read on to find out.

**Claims Pointer:** In this criminal case arising out of a car accident, the Oregon Court of Appeals held that a police officer’s testimony about the speed of a vehicle before the moment of impact and the movement of the vehicles following the impact was not “scientific evidence.” The court therefore held that the police officer could testify as an expert witness regarding the speed of the vehicle and movement of vehicles even though the police officer was not a certified accident reconstructionist. This case is a reminder that in some circumstances police officers are permitted to testify on important matters based on their training and observations at the accident scene.

### State v. Rivera-Ortiz, 288 Or App 284 (2017)

Joel Rivera-Ortiz (“Defendant”) and R were involved in a motor vehicle accident. R was stopped at a stop sign and was ready to make a right-hand turn when she saw Defendant’s vehicle approaching from the left. R believed there was sufficient distance for her to make a turn. As she pulled out to make the turn, Defendant’s car hit the front of her car. The impact spun R’s car 270 degrees and her vehicle ended up 35 feet away from the point of impact. Defendant’s car rolled side-over-side and slid on its roof, coming to rest 388 feet from the point of impact. Sergeant Flem (“the police officer”), arrived at the accident scene. He observed a trail of scuff marks and took measurements. Based on his observations, the police officer concluded that the accident occurred when R pulled forward from the stop sign to turn right, and that the Defendant was driving at a high rate of speed. He issued Defendant a citation for misdemeanor reckless driving.

At trial, the State of Oregon (“the State”) intended to call the police officer to testify about the movement of the vehicles after impact and Defendant’s speed before impact. Defendant objected to the police officer’s proposed testimony, arguing that the testimony constituted scientific evidence for which the State failed to lay a proper foundation. Further,

Defendant argued that the police officer could not testify regarding such evidence because he was not a qualified accident reconstructionist. The trial court allowed the police officer to testify as an expert witness. The officer testified that based on his training and observations, Defendant’s vehicle hit the front driver’s side of the truck, spinning R’s car, and that Defendant’s vehicle was traveling at a “higher rate of speed.” The jury found that Defendant was guilty. Defendant appealed, arguing that the trial court erred by allowing the police officer’s testimony.

The Oregon Court of Appeals affirmed the trial court’s decision. The court first considered whether the police officer’s testimony was scientific testimony. The court admitted the difficulty of setting a definitive boundary between scientific evidence and technical or other specified knowledge. According to the court, because evidence perceived as scientific by jurors possesses an unusually high degree of persuasive power, courts must ensure that the persuasive appeal is legitimate. As such, if evidence to be offered is scientific, the party offering the evidence must lay a proper foundation with scientific validation.

The court noted that a jury is likely to consider evidence to be scientific if the testimony “rests on a scientific underpinning that is unfamiliar to



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the jury or if it is phrased in scientific terms.” In cases where the expert’s testimony was based on the expert’s professional background and where the expert used vocabulary of scientific research, courts previously determined that the jury would have perceived the testimony to be scientific. The court noted that in the current case, the jury would not likely perceive the police officer’s testimony to be scientific. The police officer testified based on his training and experience of investigating more than 100 traffic collisions. According to the court, the police officer did not state that he had scientific training, refer to any scientific principles, or use scientific terms. He used no calculations to determine Defendant’s speed and did not provide an exact rate of speed. Nor did he tell the jury that his opinions were based on calculations, scientific modeling or scientific principles. The court concluded that the police officer’s testimony of how the impact occurred was not scientific evidence. As such, the state was not required to lay a foundation in order to admit the police officer’s testimony.

The court next considered whether the trial court erred in allowing the police officer’s testimony as expert testimony, even though the officer was not a certified accident reconstructionist. Under OEC 702, “a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.” The court explained that in order to be an expert witness, the witness must have the knowledge, skill, experience, training or education to testify regarding the particular topic on which the witness claims expertise.

In this case, the police officer’s testimony was narrow, and focused on the fact that Defendant’s car was moving at a “higher rate of speed” at the moment of impact and on the movements of the vehicles after impact. According to the court, such testimony was within the scope of the police officer’s training and experience. The police officer’s testimony was based on (1) an eight-hour training at the police academy, (2) two more full-day practical

training courses in traffic collision investigation, which included mock crashes and instruction, (3) two four-hour instructional classes in which he was taught to read markings and debris to make conclusions about the point of impact and the movements of vehicles during an accident, (4) and investigations of over 100 traffic accidents. Thus, even though the officer was not a certified accident reconstructionist, he was qualified to testify about the physical evidence and his conclusions from such evidence.

In sum, the Oregon Court of Appeals agreed that the police officer’s testimony was not scientific expert testimony, and upheld the trial court’s decision to allow the police officer to testify about the movements of the vehicles following the impact and that Defendant was driving at “a higher rate of speed” before impact.

View full opinion at: <http://www.publications.ojd.state.or.us/docs/A157427.pdf>

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