

**FILED: July 20, 2011**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

HOWARD MARK JAFFE,  
Defendant-Appellant.

Clackamas County Circuit Court  
08T16092

A142114

Thomas J. Rastetter, Judge.

Argued and submitted on January 25, 2011.

Richard E. Oberdorfer argued the cause and filed the brief for appellant.

Ryan Mack, Certified Law Student, argued the cause for respondent. On the brief were John R. Kroger, Attorney General, David B. Thompson, Interim Solicitor General, Patrick M. Ebbett, Assistant Attorney General, and Randall Szabo, Certified Law Student.

Before Schuman, Presiding Judge, and Wollheim, Judge, and Nakamoto, Judge.

PER CURIAM

Affirmed.

1 PER CURIAM

2 Defendant was convicted of speeding. He appeals, assigning error to the  
3 trial court's admission of scientific evidence of defendant's speed derived from  
4 measurements and calculations made with a light detection and ranging (lidar) device,  
5 because the state failed to establish an adequate foundation for admission of the evidence.  
6 Defendant also assigns error to the trial court's denial of his motion for judgment of  
7 acquittal. While this appeal was pending, this court decided [State v. Branch](#), 243 Or App  
8 309, \_\_\_ P3d \_\_\_ (2011), and concluded that lidar evidence for measuring distance is  
9 admissible scientific evidence. Because we conclude that the reasoning in *Branch*  
10 applies to this case, we affirm.

11 In *Branch*, we concluded that the scientific principles and the means of  
12 applying those principles to the lidar device "are so clearly apt for the end of measuring  
13 distances that those principles and their use for that purpose are indisputably valid." *Id.*  
14 at 320. Accordingly, we held that the admission of evidence derived from the lidar  
15 device presented a "clear" case under *State v. O'Key*, 321 Or 285, 899 P2d 663 (1995),  
16 and, consequently, that the state was not required to present foundational evidence to  
17 satisfy the *O'Key* multifactor test in order to establish the admissibility of the evidence.

18 The only difference between *Branch* and this case is what the lidar devices  
19 were measuring: distance as compared to speed. However, the underlying scientific  
20 principles are the same for both. See Mark Fischetti, *Working Knowledge: Radar Guns*,  
21 *Sci Am*, Mar 2001, at 76, 77. Therefore, the holding in *Branch* is controlling in this case,

1 and the trial court did not err in admitting the evidence or in denying defendant's motion  
2 for judgment of acquittal.

3 Affirmed.