

ROAD RACING

The defendant is charged with (operating a motor vehicle on a bet or wager or in a race) (speeding to set a record). Section 24(2)(a) of chapter 90 of our General Laws provides as follows:

“Whoever

upon any way

or in any place to which the public has a right of access,

or [in] any place to which members of the public have

access as invitees or licensees,

operates a motor vehicle . . .

(upon a bet or wager or in a race)

(or) . . .

(for the purpose of making a record and thereby violates

[the speeding laws]) . . .

shall be punished”

In order to prove the defendant guilty of this offense, the Commonwealth must prove three things beyond a reasonable doubt:

First: That the defendant operated a motor vehicle;

Second: That he (she) did so (on a way) (or) (in a place where the public has a right of access) (or) (in a place where members of the public have access as invitees or licensees); and

Third: That the defendant (did so upon a bet or wager or in a race) (violated the speeding laws for the purpose of making a record).

See Instructions 3.200 (Operation of a Motor Vehicle) and 3.280 (Public Way).

SUPPLEMENTAL INSTRUCTIONS

1. "Race." A motor vehicle race is a competition between the drivers of two or more vehicles to excel in the rate of acceleration or in the speed of their respective vehicles. Direct evidence of an agreement to race is not required if the circumstances support an inference that the defendant entered into an agreement, either express or implied, to engage in a race.

Nelson v. Nelson, 343 Mass. 220, 222, 177 N.E.2d 887, 888 (1961).

2. "Violated the speeding laws". It is a violation of the speeding laws to operate a motor vehicle at a rate of speed that is faster

than is reasonable and proper at that particular place and time, considering the traffic conditions at the time, the use to which that particular road was put at that particular time and at other times, and the safety of the public at all times. In determining this, you may consider such specifics as the time of day, the weather conditions, the volume of traffic, the length and width of the street, what sort of road it is, the type of neighborhood, the number of pedestrians, and any other factors which you believe are relevant to the reasonableness of a driver's speed.

To aid you in that determination, our law provides that if a driver operates faster than the speed limit posted for that stretch of road, you may consider that as evidence that the driver was operating faster than is reasonable and proper.

If no speed limit was posted, it is evidence that the driver was operating faster than is reasonable and proper if the driver operated more than

(30 miles per hour for 1/8 of a mile in a thickly-settled or
business district)

**(50 miles per hour for 1/4 of a mile on a divided highway
outside a thickly-settled or business district)**

**(40 miles per hour for 1/4 of a mile on any road outside a
thickly-settled or business district, other than a
divided highway)**

**(20 miles per hour within a school district established
under regulations of the Department of Public Works).**

See Instruction 3.260 (Prima Facie Evidence).

G.L. c. 90, § 17; *Conrad v. Mazman*, 287 Mass. 229, 234-235, 191 N.E. 765, 767 (1934) (error to instruct on prima facie factors without supporting evidence); *Commonwealth v. Bosworth*, 257 Mass. 212, 218, 153 N.E. 455, 456 (1926) (statutory factors include actual traffic at time, potential as well as actual road use, and safety of public at all times).

3. "Making a record". The word "record" here has its ordinary

**meaning; that is, the best performance, surpassing all others
involved in that event.**

NOTE:

Separate offense of drag racing. General Laws c. 90, § 17B defines a separate offense of operating, or permitting operation of, a motor vehicle "in a manner where the owner or operator accelerates at a high rate of speed in competition with another operator, whether or not there is an agreement to race, causing increased noise from skidding tires and amplified noise from racing engines." A violation of § 17B is a criminal offense for a licensed operator (¶ 1), but a civil motor vehicle infraction for a holder of a junior operator's license or learner's permit (¶ 2).