



## DEPARTMENT OF MOTOR VEHICLES COUNSEL'S OFFICE

### OPINION OF COUNSEL (#1-09)

**Subject:** Window Tinting

**Date:** June 12, 2009

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Question: Whether a window tinting conviction may only be sustained if the police officer testifies that a tint meter was used to test the level of tint on the motor vehicle's window.

#### **Discussion**

The Appeals Board has issued several decisions reversing window tinting convictions under Vehicle and Traffic Law §375(12-a). In these cases, the officer has testified that he/she observed very dark tint and that he/she could not see into the vehicle at all. The Board concluded that this testimony was not sufficient to sustain the conviction because a tint meter was not used. For example, in the case Kim Hinkson, the Board wrote:

“The officer did not clearly establish what the transparency was for the windows and offered only a visual estimate that the windows were illegally tinted without using a tint meter to support that visual estimate. Therefore, the officer's testimony was insufficient to sustain the conviction.”

This and other similar decisions imply that a window tinting conviction can only be sustained if the officer uses a tint meter to test the windows' transparency. For the reasons stated below, Counsel's Office respectfully disagrees with the Board's conclusion. In People v. Tompkins, 6 Misc. 3d 30, the Appellate Term, Second Department, wrote:

Defendant was charged with driving a vehicle which had excessively tinted side windows (see Vehicle and Traffic Law § 375 [12-a] [b]). At trial, the officer testified that he estimated that the windows only permitted about 15% light transmittance. Although such a percentage of light transmittance is below the legal threshold (*id.*), the officer did not establish that he possessed any experience in visually determining the amount of light transmitted through a window, or some other satisfactory reason or basis, such as a "tint-meter," for his opinion. As a result, the evidence was legally insufficient to establish the defendant's guilt beyond a reasonable doubt (*cf.* People v Olsen, 22 N.Y.2d 230, 239

[N.E.2d 354, 292 N.Y.S.2d 420 \[1968\]](#)). Although defendant did not properly preserve his objection to the sufficiency of the evidence, we nevertheless review it in the exercise of our interest of justice jurisdiction (*see* [CPL 470.15 \[6\] \[a\]](#)).

Although the court reversed the conviction, it is clear from the above quoted language that a conviction would be sustained if the officer did “establish that he possessed any *experience in visually determining* the amount of light transmitted through a window, or *some other satisfactory reason or basis* for his opinion” i.e., a tint meter is not the *sole* means to establish a window tinting violation. The phrase *other satisfactory reason or basis* affords a court broad discretion to accept credible evidence, other than a tint meter, to establish a prima facie case for a window tinting violation. Thus, if the officer presents credible testimony that the window(s) did not meet the statutory standard(s) for light transmittance, the court could accept such evidence to sustain the conviction.

In further explaining its position that a tint meter is not necessary to sustain a conviction, the [Tompkins](#) court cited [People v. Olson](#), 22 NY2d 230, where the Court of Appeals, in deciding whether a mechanical device must be used by the police to sustain a speeding conviction, stated that:

“The rule is well settled in this State that *opinion evidence* with regard to the speed of moving vehicles is admissible provided that the witness who testifies first shows some experience in observing the rate of speed of moving objects or some other satisfactory reason or basis for his opinion... we fail to perceive any reason why it should be held to be insufficient as a matter of law to sustain a conviction for speeding in *every* case. It is true, as the defendant argues, that a police officer cannot testify with precise accuracy as to speed of a vehicle. (See, also, [People v. Dusing](#), 5 N Y 2d 126, *supra* [concurring opn. of Van Voorhis, J.].) This does not mean, however, that his estimate of speed, based upon considerable experience, must be ignored in all cases.” (Emphasis added)

Thus, the Court opined that experience and opinion evidence may be sufficient to sustain a conviction, even though there exists a mechanical device that can measure speed with greater certainty.

For the reasons stated above, we conclude that a tint meter is not the sole means to establish a window tinting violation if the officer offers other credible testimony to sustain such a conviction.

NWS/ILT/hb