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R. v. Grainger

Between
Regina, and
Grainger

[1958] O.J. No. 218

Ontario Supreme Court - Court of Appeal
Toronto, Ontario
Porter C.J.O., Roach and Gibson JJ.A.

Heard: April 16, 1958.
Judgment: May 15, 1958.
(6 pp.)

Counsel:

J.D. Ross, for accused (appellant).
E.R. Pepper, for the Attorney General for Ontario (respondent.)

The judgment of the Court was delivered by

¶ 1 **ROACH J.A.**:— This is an appeal by the accused from the decision of Aylen, J., dated March 27, 1958, on an appeal by way of a case stated by Mr. James Murphy, as follows:

"STATED CASE

The accused man appeared before me in Police Court at Toronto on the 28th day of February 1958 upon a charge that 'on January 13, 1958 in the Municipality of Toronto, in the County of York, he unlawfully did drive upon a highway within the said municipality, to wit, upon King W., a vehicle bearing license No. N 63310, at a greater rate of speed than thirty miles per hour, namely, at about 45 miles per hour, at about 11:10 a.m. contrary to Sec. 28 of the Highway Traffic Act'.

I convicted the accused on the charge an it appearing that the accused had a record of previous convictions for speeding I fined him $50.00, or 10 days.

The accused was represented by Counsel who has applied to me to state a case upon the grounds that 'the only evidence against the accused was evidence of data obtained from a radar speedmeter and this device not having been properly proved, such evidence was incompetent and inadmissible'.

The evidence of the Police Officer was to the effect that the accused had driven through the beam of a radar speedmeter at 45 miles per hour. Counsel for the accused made a preliminary objection to this kind of evidence being given unless the Crown was prepared

> to qualify the witness as an expert. On cross-examination, the Officer admitted freely that he was not an electronics expert but he claimed that the radar machines are well maintained by the Police technicians and that they were very simple to operate; that he had spent two weeks as an observer to familiarize himself with the use of the machine; that he calibrated it on setting up a tuning fork; and that it was his belief that the data furnished by his radar speedmeter was extremely accurate and that it was accurate on the action in question.
>
> For some time past I have been making convictions on evidence obtained from these radar speedmeters. What I right in convicting in the circumstances herein?"

¶ 2 Mr. Justice Aylen answered the question submitted in the affirmative, affirmed the conviction and dismissed the appeal with cost. In doing so he followed an unreported decision of McLennan, J. in a somewhat similar case of Regina v. Magson.

¶ 3 The substance of Mr. Ross's argument in this Court was that the record supplied by the radar speedmeter amounted to nothing unless and until it was first established that such a machine, when properly used, was capable of registering the speed of a motor vehicle on a highway, that the machine at the relevant time was in good working condition and was properly used.

¶ 4 In my respectful opinion, it is implicit in the Police officer's evidence as summarized in the case stated, that this particular radar speedmeter, when properly used, is capable of registering the speed of a motor vehicle and that, at the time in question, it was being properly used and was in good working order. True, the Officer admitted that he was not an electronics expert and, therefore, could not explain all of the scientific mechanism that made up the machine and that resulted in it recording accurately the speed of a motor vehicle. He was, however, familiar with the manner in which the machine was intended to be used, and from his familiarity with it over a two-weeks' period he stated that the date furnished by it was extremely accurate.

¶ 5 It is possible for any machine to get out of order. On the day in question, however, the Officer calibrated this machine by the use of a tuning fork and testified that by the use of that device he ascertained that the machine was in good working order. Although he could not give a scientific explanation of the operation, he stated that when the vibrations of a given tuning fork set up certain results in the machine, that in the light of his experience the machine was in good working order and capable of recording the speed of a motor vehicle. If the machine was subject to all the weaknesses and inaccuracies which Mr. Ross enumerated in argument in this Court, the accused could have called evidence to show those facts. He did not. On the only evidence that was before the Justice of the Peace, it was open to him to convict the accused.

¶ 6 This is not a case of no evidence, but is a case in which the only quester was the weight of evidence. I would dismiss the appeal with costs.

ROACH J.A.
PORTER C.J.O.:— I concur.
GIBSON J.A.:— I agree.

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