Indexed as:

# R. v. Hunt (Ont. C.A.)

Between
Her Majesty The Queen, Appellant
and
Keith Hunt, Respondent

Ontario Judgments: [1986] O.J. No. 1210

**Supreme Court of Ontario - Court of Appeal**
**Toronto, Ontario**
**Brooke, Martin and Morden JJ.A.**

Heard: November 4, 1986
Judgment: November 19, 1986

*Provincial Offences Act — Driving offence — Speeding — Proof of identity of driver — Signature on certificate of offence.*

Appeal by Crown from judgment allowing accused's appeal from conviction on charge of speeding. At trial, the only viva voce evidence called was that of police officer who testified that while operating radar he stopped a motor vehicle for speeding. Accused sought to have charge dismissed on basis that he had not been identified as driver of vehicle. Held by Court of Appeal that scheme of Provincial Offences Act, R.S.O. 1980, c. 400, depends on signature of person charged on certificate of offence to establish driver's identity. A court has at all times the power to look at its own records and to take notice of their contents. Evidence of police officer and records of the court provided sufficient evidence to constitute prima facie proof of identity. Appeal allowed, conviction restored.

Jocelyn Van Overbeek, for the Appellant, Crown.
John Collins, for the Respondent.

---

The judgment of the Court was delivered orally by

**BROOKE J.A.**:— The Attorney General for Ontario appeals by leave pursuant to s. 122 of the Provincial Offences Act R.S.O. 1980, c. 400 from the judgment of His Honour Judge Wilch allowing the respondent's appeal from his conviction on a charge of speeding. The respondent had been convicted following his trial by a justice of the peace at Toronto on his plea of not guilty on a charge that he

> on the 6th of November, 1985 at 2:15 a.m., at westbound Fred Gardiner Expressway in the Municipality of Toronto, did commit the offence of speeding, 137 kilometres an hour in a 90 kilometre an hour zone, contrary to the Highway Traffic Act, Section 109.

The respondent's appeal against his conviction was allowed.

On September 22nd a member of this court allowed an application by the appellant for an extension of time within which he might file an application for leave to appeal and granted leave to appeal. The question of law that was raised by the notice of appeal is

> Did the learned provincial offences appeal Judge err in law in concluding that the facts as found by the learned trial Judge were incapable in law of constituting prima facie evidence of identification?

The only viva voce evidence called was that of the police officer who had stopped the driver in question. The officer testified that he was operating a radar device on a highway in Toronto and as a result of the reading of the device he pursued and stopped a motor vehicle for speeding. The driver identified himself and produced his valid class G Ontario driver's licence issued to Keith D. Hunt who lived at 7 English Street, Apartment 7 in Brampton.

It appears from the record of the court which was before the trial judge that the police officer prepared and the person charged signed a certificate of offence which was filed in the office of the court named in the certificate. At that time, the officer certified on the certificate of offence that he personally served the offence notice on the person charged. The offence notice was subsequently returned to the court. It appears that the person charged had determined to plead not guilty to the offence and accordingly he signed the not guilty plea on the offence notice which stated "I plead not guilty. I will appear at the time and date set for my trial. My mailing address is as shown on the front of this form unless different information is noted below." In the space provided he filled in his name and his new address at 84 Winterfold Drive, Brampton and set out the postal code. The notice of trial was sent to Mr. Hunt at his new address. The respondent appeared before the court in response to that notice.

At the conclusion of the Crown's case, counsel for the respondent requested that the charge be dismissed on the basis that his client had not been identified as the driver of the vehicle. The trial judge concluded that the evidence adduced was sufficient to identify the respondent and convicted him.

The judge in appeal held that the evidence fell short of a prima facie case identifying the accused and set aside his conviction.

From the above, it appears that the provisions of the relevant sections of Part I of the Provincial Offences Act were complied with. These sections make provision for the laying of a charge against an offender found committing the offence, serving him at the time he is apprehended with the offence notice and securing his attendance before the court should he, under his signature, elect to plead not guilty and undertake to appear. The scheme depends to a great extent on the signature of the person charged to establish his identity and s.10 provides for proof of the signature.

This is the scheme of the statute.

In our respectful view, the judge in appeal was wrong. The court has at all times the power to look at its own records and take notice of their contents. See Craven v. Smith (1869), L.R. 4 Ex 146. In the circumstances, having regard to the evidence of the police officer, the records of the court and in view of the provisions of the statute referred to, there was sufficient evidence to constitute prime facie proof of the identity of the respondent as the driver when he appeared in response to the notice of trial to answer to the charge.

Accordingly, the appeal must be allowed. The judgment of His Honour Judge Wilch is set aside and the conviction is restored.

It was a condition of the order granting leave to the Crown that the Crown pay the reasonable solicitor and client costs of the respondent. We do not propose to depart from that order.

BROOKE J.A.

MARTIN J.A.

MORDEN J.A.