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R. v. Karmadi

Between
Regina, and
Karmadi

[1998] B.C.J. No. 390
DRS 98-07661
Vancouver Registry No. SA01685083 Vancouver Registry No.
Vancouver Registry No.

British Columbia Provincial Court
(Traffic Division)
Vancouver, British Columbia
Hayes J.P.

Heard: October 24 and November 26, 1997.
Judgment: January 28, 1998. Filed: January 28, 1998.
(17 pp.)

Motor vehicles — Regulation of vehicles and traffic — Rate of speed, evidence and proof — Evidence, signs regulating speed — Observance of signs and traffic control signals — Requirement that sign be clear.

Trial of the accused on a charge of speeding. The accused was detected by a photo radar device to be travelling 43 kilometres per hour in a school zone where the speed limit was 30 kilometres per hour. The accused did not deny her speed. However, she claimed that the sign posting the school zone must have been obstructed, otherwise she would have seen it. She had no specific recollection of the obstruction as she was not aware of the charge until the speeding ticket was mailed to her a week after the event. She presented photographs which showed a van parked on the street near the restricted speed zone. The photographs indicated that there were no parking restrictions of any kind along the approach to the school zone sign. The police officer operating the photo radar device gave evidence that the sign was clear and unobstructed at the beginning and at the end of the deployment, but could give no evidence that the sign was clear at the time of the alleged violation.

HELD: Accused acquitted. It was open to the accused to call into question whether or not she was afforded adequate notice of the speed restriction. The Crown failed to prove beyond a reasonable doubt that the school zone signs were clear and unobstructed at the time of the offence.

Statutes, Regulations and Rules Cited:

Motor Vehicle Act, ss. 82, 83.1, 83.2, 138, 139, 140, 146(1), 146(3), 146(5), 146(7), 147, 147(1), 147(2), 148(1).
Motor Vehicle Act Regulations, B.C. Reg. 26/58.

Counsel:

S. Lakshaman, for the Crown.
R. Karmadi, appeared in person.

HAYES J.P.:—

The Facts

¶ 1 On April 31 vehicle registered to Ms. Karmadi was photographed by a 'photo radar camera' while being clocked by the radar component thereof at a speed of 43 km/h in a 30 km/h posted school zone.

¶ 2 On May 6, 1997 Violation Ticket No. SA01685083 was completed by Enforcement Officer, Greg Kuhn for the offence of speeding in a school zone contrary to Section 147(1) of the Motor Vehicle Act

¶ 3 Service was affected by regular mail in the early part of May, 1997 and Ms. Karmadi subsequently filed a Notice of Dispute and attended at the location of the alleged offence during the middle of May on two occasions to take photographs.

¶ 4 Proceedings commenced on October 24, 1997 where the Crown established by way of photographic and certificate evidence that Ms. Karmadi's vehicle was exceeding the speed limit in a posted school zone. Ms. Karmadi contends that the school zone sign which she had to pass when entering this restricted speed zone was obstructed either by foliage from trees located on the boulevard in the 100 block of West 59th Avenue, Vancouver or, alternatively; by a parked vehicle. A number of photographs were submitted in support of her position.

¶ 5 At the close of defence's case Crown applied to call rebuttal evidence on the issue of obstruction and also to provide time to receive a transcript of a recent and unreported British Columbia Supreme Court decision which was felt to be on point. The application was approved.

¶ 6 Proceedings reconvened on November 26, 1997, at which time, Enforcement Officer, Harmesh Pall, who was operating the photo radar van on the date in question, testified on behalf of the Crown that;

(a) Ms. Karmadi would have passed one school zone sign with regulatory 30 km/h tab attached when entering the restricted speed zone, eastbound in the 100 block of West 59th Avenue.

(b) A regulatory sign was in place, and clear and unobstructed at the start of the photo radar deployment (13:59 hrs.) and at the end of the deployment (16:34 hrs.)

(c) Whether or not the regulatory signs remained clear and unobstructed throughout the three and a half hour deployment, the officer has no knowledge, as his function during the course of the deployment is to monitor the photo radar equipment not to gather evidence.

SUBMISSIONS

¶ 7 Ms. Karmadi admits to the act of driving at 43 km/h in a posted 30 kph school zone but submits that there was a lack of notice of the restricted speed zone by virtue of a possibly obstructed sign. She has no recollection of the event, having not been notified of the alleged violation at the time of the offence but rather was notified over one month later when the violation ticket was received in the mail.

¶ 8 Photographs were submitted by Ms. Karmadi which she took on two separate occasions in mid-May, 1997, showing the roadway leading up to, within, and beyond the posted school zone. The photographs did show a boulevard area which was generally heavily treed with some trees showing signs of pruning. The school zone sign (warning sign) with the attached 30 kph tab (regulatory sign) was shown in one photograph mounted on a lamp standard. There are no trees obstructing the view of this sign at the point it was taken, nor are there any trees in close proximity.

¶ 9 Another photo shows a cube van parked on the street near the restricted speed zone which Ms. Karmadi contends supports her argument that a large vehicle may have been parked on the street approaching the school zone in such a manner as to completely obstruct her view of the one regulatory sign.

¶ 10 Crown contends that the regulatory sign is not obstructed by foliage in the photographs submitted by Ms. Karmadi. Furthermore, since the photographs were taken in mid-May, 1997, they cannot be given significant weight in terms of whether or not any pruning was done specifically to improve views of signs. Similarly, the degree of foliation present in the photographs cannot be extrapolated back to the time of the offence.

¶ 11 Regarding the possibly obstructed regulatory sign, the Crown submits a recent unreported decision of the B.C. Supreme Court, R. v. Davey (Victoria Registry, No. SA00797857, September 24, 1997 (B.C.S.C.). Mr. Justice Edwards ruled that it was a "manifest absurdity" to require the Crown to prove that a defendant had passed a speed control sign in order to succeed in a speeding prosecution. He further ruled that "it cannot have been the intention of the legislature in designing this legislation" (page 5).

ISSUES TO BE DECIDED

¶ 12 1. Is the Crown required to prove, as an essential element, that a speed zone sign, in addition to being in place; was also clear and unobstructed at the time of an alleged violation?

¶ 13 2. Is the assertion by Ms. Karmadi that the regulatory speed sign must have been obstructed, in the absence of any recollection or other evidence to that effect; to be dismissed as mere speculation or accepted as a fact that could reasonably be true?

JUDICIAL CONSIDERATIONS

Legislation

¶ 14 Photo radar prosecutions are 'registered owner' offences pursuant to Motor Vehicle Act, Section 83.1 making the owner of a vehicle liable for any contravention of sections 140, 146(1), (3), (5) or (7), 147 or 148(1) where evidence is gathered by way of a prescribed speed monitoring device (photo radar camera). By definition, this device is given a legislated 'presumption of accuracy', similar to 'approved instruments' such as breathalyzers.

¶ 15 Pursuant to Motor Vehicle Act, Section 82 and 83.2 certain certificates may be entered as evidence to establish the primae facie case for the Crown without the necessity of having enforcement officers attend to give viva voce testimony. Evidence relating to any required signage is made out by way of statements included in the certificates only. This evidence is based on personal observations made by the officer at the scene of the deployment and does not form a part of the 'captured image' which records the vehicle and the rate of speed at which it is travelling.

¶ 16 None of the certificate evidence submitted by the Crown is in dispute. The certified vehicle ownership document proves that Ms. Karmadi was the registered owner of the British Columbia licence plate VLH979 on April 3, 1997, the date of the alleged violation.

¶ 17 Enforcement Officer Harmesh Pall states in his Certificate of Enforcement Officer, Qualified Operator that at the date, time and location of the alleged violation that;

a) he was deployed monitoring vehicles traveling in the vicinity (as indicated by displayed signs) of a school,
b) that on that date there were signs displayed in the vicinity of that school stating a speed limit of 30 km/h.

¶ 18 The aforementioned certificate does not state that the speed zone signs were clear and unobstructed at all times during the deployment. Officer Pall did give viva voce testimony that such was the case at the start (13:59 hrs.) and end (16:34 hrs) of his deployment.

¶ 19 The Certificate of Enforcement Officer, Photographic Evidence (Receding from Speed Monitoring Device) establishes the actual 'crime in progress' by means of an attached Vehicle image page. This has affixed

to it a 'captured image' composed of a photograph with a one-quarter inch black strip along the bottom edge imprinted with encoded data. The data line is translated on page one of the certificate to the effect that on April 3, 1997, at 15:07:17 hrs. a vehicle bearing B.C. licence plate VLH979 was traveling at 43 km/h at a location determined to be a 30 km/h school zone in the 100 block of West 59th avenue Vancouver, B.C..

¶ 20 The photograph shows only one vehicle receding from the speed monitoring device and the licence plate is clearly VLH979 issued in the Province of British Columbia. The vehicle also matches the description set out in the Vehicle Ownership Certificate. What does not appear in the photograph is any image of either the school or the school zone sign in question but this is understandable. Often the presence of schools is not readily apparent and unless there were additional regulatory signs in the restricted speed zone, none would be expected to be seen due to the nature of the deployment.

CASE LAW

¶ 21 The case of R v. Davey (supra) dealt with the issue of signage requirements and I have no fundamental disagreement with this judgment and its application to speeding offences under Section 146 of the Motor Vehicle Act of which the Davey case was one such matter (Section 146(7)). Can the same be said of a blanket application of Davey to all speeding offences?

¶ 22 Consider the following "speeding" section from the Motor Vehicle Act

> Work in Progress
>
> 138. On a highway where new construction, reconstruction, widening, repair, marking or other work is being carried out, traffic control devices must be erected indicating that persons or equipment are working on the highway.
>
> Erection of speed sign
>
> 139 On a highway where new construction, reconstruction, widening, repair, marking or other work is being carried out, traffic control devices must be erected to limit the rate of speed of vehicles or to restrict the manner in which the vehicles are to proceed on the highway.
>
> Obedience to speed signs
>
> 140 Where traffic control devices as indicated in section 138 or 139 are erected or placed on the highway, a person must not drive or operate a vehicle at a greater rate of speed than, or in a manner different from, that indicated on the signs.
>
> (my emphasis and underling).

¶ 23 The signs which govern the rates of speed are described in Schedule 1, B.C. Reg. 26/58 of the Motor Vehicle Act Regulations. One such sign"

> "CREW WORKING MAXIMUM SPEED (Regulatory)
> This sign creates a temporary speed zone and indicates the maximum speed permitted of 30, 40 or 50 kilometres per hour.
> Colour: Top; Black on orange. Bottom; Black on white.
> Background reflectorized."

¶ 24 The relationship to the location of this type of sign to the speed zone it seeks to regulate was considered by the British Columbia Court of Appeal in R v. Christie (1992) 20 B.C.A.C. 61 (B.C.C.A.). At page 63, paragraph [7] Chief Justice Seaton states;

> "I agree with the trial judge and with the Supreme Court judge. In my view a construction zone, continues from the placing of the first sign until there is a sign indicating that the zone has ended or a point is reached at which a driver can reasonably say "That is the end of the area in which construction is taking place."

¶ 25 Thus, we have a restricted speed zone of indeterminate distance and duration which is strictly confirmed to an area bounded by signs.

¶ 26 Another speeding regulation found outside of Section 146 of the Motor Vehicle Act is Section 147(2) as follows;

> 147.(1) A person driving a vehicle on a highway must drive the vehicle at a rate of speed not exceeding 30 km/h when approaching or passing, between dawn and dusk, a public playground for children where signs are displayed stating a speed limit of 30 km/h, or on which the numerals "30" are prominently shown.

¶ 27 Signage requirements for playground zones are set out in Schedule 1, B.C. Reg 26/58, Motor Vehicle Act Regulations and has two components;

1. A (60 cm x 60 cm) diamond shaped sign showing a person chasing a bail (onto a roadway) which is described in the schedule as;

> Playground Area (Warning)
>
> A playground area is located nearby. Children may be walking along or crossing over the highway.
>
> Colour: Black on yellow reflectorized background.

2. A (45 cm x 30 cm) rectangular sign stating "30 km/h" is described in the schedule as;

> 30 KILOMETRES PER HOUR TAB (Regulatory)
>
> When used below the "Playground (Warning)" sign the tab establishes a maximum speed zone of 30 kilometres per hour from dawn to dusk.... In either case, the back of the sign assembly erected for the opposite direction of travel designates the end of the restricted zone.
>
> Colour: Black on white background.

¶ 28 Many playground areas are marked with playground signs (warning) while others become restricted speed zones by virtue of the presence of the "30 km/h" tab (regulatory).

¶ 29 Lastly I considered Section 147(1) of the Motor Vehicle Act, the very section under which Ms. Karmadi appears before the court;

> 147(1). Every person driving between the hours of 8 a.m. and 5 p.m. on a day school is regularly held, a vehicle on a highway where signs are displayed stating a speed limit of 30 km/h or on which the numerals "30" are prominently shown, must drive at a rate of speed not exceeding 30 km/h while approaching, passing or in the vicinity , as indicated by the signs, of the school to which the signs relate.

¶ 30 The signage requirements for school zones as set out in Schedule 1, B.C. Reg. 26/58 Motor Vehicle Act Regulations have two components;

1. A (60 cm x 60 cm) pentagon shaped sign showing a male and a female person walking with books under their arms. It is described in the schedule as:

> SCHOOL AREA (Warning)
>
> A school is located nearby and school children may be walking along or crossing over the highway.

2. A (45 cm x 30 cm) rectangular sign stating "30 km/h" is described in the schedule as:

> 30 KILOMETRES PER HOUR TAB (Regulatory)
>
> When used below the "School children (Warning)" sign this tab establishes a maximum speed zone of 30 kilometres per hour between 8 a.m. and 5 p.m. on school days... In either case, the back of the sign assembly erected for the opposite direction of travel designates the end of the restricted zone.
>
> Colour: Black on white background.

¶ 31 As with playground zones, school zones occur at random locations with vicinities demarked sometimes by warning signs only, and other times by regulatory signs creating an enforceable speed zone. Sometimes the facilities to which these zones apply are not visible or apparent to the driving public, thus making the presence of signs which give fair notice to the driving public even more critical. The potential for obstruction of these signs on residential streets with heavily treed boulevards cannot be ignored. I would follow R. v. Christie (supra) and apply the same clear standard of delineating a speed enforcement area in construction zones to school and playground zones. In light of the fact that the legislature saw fit to create speeding regulations outside of Section 146 and clearly specify the signage requirements and boundaries of the enforcement zones, it cannot be a "manifest absurdity" to hold that a vehicle must pass a speed control sign in certain regulated speed zones before enforcement action can be taken. In answer to question one; the Crown must prove that the regulatory signs were in place, and that the vehicle was within the regulated area.

[Paragraph number 32 was not assigned by the Court.]

¶ 33 Ms. Karmadi was driving in a regulated school zone and she had passed a regulation zone sign as described by Officer Pall. Ms. Karmadi states that the sign must have been obstructed in some manner otherwise she would have seen it and had fair notice of the regulated speed zone. This leads us to a secondary question in relation to the first issue;

> Is it also for the Crown to prove that the regulatory sign was clear and unobstructed at the material time of the offence?

¶ 34 The Certificate of Enforcement Officer, Qualified Operator which is filed as Document #2 outlines two critical facts:

1) that the speed monitoring device was monitoring vehicles traveling "in the vicinity (as indicated by displayed signs) of a school".
2) that "on that date there were signs displayed in the vicinity of that school stating a speed limit of 30 kilometers an hour"

The first statement establishes that photographed vehicles are within a restricted speed zone; the second statement establishes there were signs in place to create the regulated area and demark its boundaries.

¶ 35 By virtue of the fact that the Crown has led evidence to the effect that the requisite signs are in place, that is prima facie evidence that the signs were there to be observed by the driving public. The presence of a vehicle within the restricted speed zone is also prima facie evidence that the vehicle passed a regulatory sign to arrive at the enforcement location.

¶ 36 It is open to the defendant to rebut these presumptions; either that the regulatory signs were obstructed or that they entered the restricted speed zone via a route that did not provide notice by way of the requisite signage. I will distinguish R v. Davey (supra) in its application to speed zones outside of Section 146 of the Motor Vehicle Act, in particular, school and playground zones under Section 147. These zones differ from other speed regulated areas in several ways;

a) signage requirements are very specific,
b) boundaries of speed zone are to be clearly demarked,
c) speed zones may occur at random locations and may be of very short duration,
d) facilities which these speed zones are put in place to protect may be set back from the street or otherwise not visible to the driving public
e) facilities may have no speed zones (signs), or only warning signs. The same warning sign becomes an enforceable regulatory sign with the addition of a "30 km/h" tab below it.

¶ 36a Sitting Justice of the Peace Makhdoom has considered essential elements of the Crown's case vis-a-vis signs, for speeding offences under Section 146. (R. v. Etherington, [1997] B.C.J. No. 3042, Squamish Registry No. SA0089052). I may not agree with his position that the Crown must prove that signs are clear and unobstructed as an essential element in relation to charges under Section 146., having had an opportunity to review R v. Davey (supra). I do however, concur with his ultimate finding that the defendant had successfully rebutted the Crown's evidence relating to signs. In paragraph 46 he states;

> "46. The underlying purpose and value of the Motor Vehicle Act is public safety. In the overall scheme of this Act, signs play a vital role and in Division 23 of the Motor Vehicle Act Regulations fair elaboration is made as to quality of signs emphasizing their visibility. Such statutory emphasis on visibility and clarity of signs ought to be reflected in the standards of evidence with respect to the signs. "

[Paragraph number 36a was assigned by QL]

¶ 37 Setting aside the "essential element issue for the moment, the second question I must address is whether or not, given all of the circumstances, that Ms. Karmadi's speculative evidence can be given any consideration. She feels that the regulatory sign must have been obstructed, preventing her from having fair notice of the regulated speed zone; thus causing her to exceed the posted limit.

¶ 38 In addition to the rationale of the necessity for adequate notice to the driving public by way of signs, Ms. Karmadi points out that she was not given notice of the alleged violation by a police officer at the scene on April 3, 1997 but rather was served with notice by regular mail in early to mid-May, 1997. While there is no requirement at law for notice of the violation to be served at the time of the offence, she could have pointed out to the officer, or gathered evidence to the effect that the requisite signage was obstructed. Having no independent recollection of the event when she received the ticket six (6) weeks after the alleged incident Ms. Karmadi can only speculate as to the obstruction of the school zone sign. Upon returning to the area of the 100 block West 59th Avenue, Vancouver in mid-May. Ms. Karmadi took photographs of the heavily treed boulevard area on the street leading up to the restricted speed zone. While these photographs generally support her case regarding potential obstruction due to foliage it must fail when photos No. 16, 17, & 18 are viewed. These show that in Ms. Karmadi's eastbound direction of travel there is a regulatory school zone sign in place on the south side of the street. It is approximately seven (7) feet above road level and there are no trees within at least one

hundred feet (100') of the approach to this sign. There is also no evidence on the boulevard area of any trees having been recently removed on the approach side of the sign.

¶ 39 What the photographs do clearly show is that there are no regulatory parking signs located along the approach to the school zone sign nor are there any driveways or fire hydrants present to otherwise restrict parking. The Crown has led evidence through Officer Pail's viva voce rebuttal testimony that the regulatory school zone sign was clear and unobstructed at the start of the photo radar deployment (3:59 hrs.) and at the end of the deployment (16:34 hrs.). At the time of the alleged violation (15:07 hrs.), the Crown can offer no evidence that the requisite regulatory sign was clear and unobstructed.

¶ 40 The Crown contends that Ms. Karmadi's inability to recall any events surrounding the alleged violation should be given no weight in assessing whether her speculation, that the regulatory school zone sign was obstructed at the time she passed its' location; could reasonably be true. Crown submitted the case of R v. Hedayat [1992] 41 MVR (2d) 218 Alta Q.B.) a photo radar case where the Alberta Court of Queens Bench overturned a trial judges decision to enter a judicial stay of proceedings based solely on a delay of twenty-five (25) days in the service of a violation ticket. This was held to constitute an "abuse of process," on the assumption of the trail judge that the defendant could not recall any details surrounding the alleged violation by virtue of the delay alone. The defendant gave no evidence on this point.

¶ 41 The following excerpt (citing R v. Rourke [1978] 15 C.R. at 1040-1O41) from the judgment of Chumkra J. at pp. 320-241 of Hedayat (supra) is relevant:

> "Does the Charter now insulate accused persons from prosecutions solely on the basis of the time that has passed between the commission of the offence and the laying of the charge? In my view, it does not.
>
> Staying proceedings based on the mere passage of time would be the equivalent of imposing a judicially created limitation period for a criminal offence. In Canada, except in rare circumstances, there are no limitation periods in criminal law. The comments of Laskin C.J.C. in Rourke are equally applicable under the Charter.
>
> Section 7 and 11(d) of the Charter protect, among other things, an individual's right to a fair trial. The fairness of a trial is not, however, automatically undermined by even a lengthy pre-charge delay. Indeed, a delay may operate to the advantage of the accused, since Crown witnesses may forget or disappear. The comments of Lamer J. (As he then was) in R v. Mills...are apposite:
>
> > 'Pre-charge delay is relevant under ss. 7 and 11(d) because it is not the length of the delay which matters but rather the effect of that delay upon the fairness of the trial'
>
> Courts can not, therefore, assess the fairness of a particular trial without considering the particular circumstances of the case. An accused's rights are not infringed solely because of lengthy delay is apparent on the face of the indictment.
>
> The trial judge, before hearing any testimony on the question of delay, appeared to assume that because of the passage of 25 days from the date of the alleged offence to the date of notice thereof being given, that no accused could or would likely remember sufficient details to properly defend him or herself. In my view this is a conclusion that should not be reached on the basis of delay alone. The conclusion that should be arrived at only if there is an evidentiary basis supporting such a decision. A trial judge should not conclude that, by reason of delay alone, no accused can remember sufficient details of the circumstances surrounding an alleged offence to properly defend him or herself against the allegation."

¶ 42 Chumkra J. Held that the delay in service of twenty-five days did not preclude this registered owner of the vehicle from raising defences of "due diligence" in consenting to let another person drive the vehicle or conversely that another person had taken the vehicle without consent. It is also open to the registered owner to

establish that there is an error on the violation ticket or that the Crown has provided insufficient or no evidence of some essential element of the charge indicated.

¶ 43 On the impact of the delay in service on the defendant's ability to exercise these defences Chumkra J. States at p 243:

> 41. The respondent submits that although personal service of the violation tickets is statutorily mandated, there was no salient reason why service could not have been effected sooner. The delay, he asserts, has unfairly impacted upon his right to make full answer and defence as the passage of time has impaired his ability to recall the circumstances surrounding the alleged offence. In the trial much was made of the fact that such mundane matter as driving along a street in Calgary on any given date are matters which are easily forgotten and this problem is exacerbated by a delay in service of the violation ticket.
>
> 42. The respondent was not charged with driving the motor vehicle photographed by the Multanova. The issue of whether he can recall who was driving the motor vehicle, where, and at what specific time is not of primary importance. It was conceded at the trial and noted in the trial judge's reason for judgment that:
>
> > "Upon receipt of a summons twenty-five days after the event, the accused and perhaps most other members of the community will remember whether their motor vehicles were stolen or being used without consent at the particular time. If not stolen or being used without consent the statutory defence is closed to the individual."

¶ 43a The British Columbia legislature has provided by statute a "presumption of accuracy" for the photo radar camera, as well as the authority for the Crown to proceed by way of certificate evidence in place of viva voce testimony from police officers. This relaxation of the burden of proof on the Crown has been recognized by the Supreme Court of Canada under the concept of 'legislative intent'. In the present case, Ms. Karmadi has not challenged the accuracy of the photo radar device, rather she has challenged another element of the Crown's case that relies on human input; namely signage requirements. She speculated that; due to lack of direct recall of events, that the regulatory school zone sign which she passed may have been obstructed by foliage or a large vehicle resulting in lack of notice to her of the regulated speed zone. The Crown has called rebuttal evidence to the effect that the requisite sign was clear and unobstructed at the beginning and end of the photo radar but can offer no evidence to that effect regarding the time at which the alleged violation took place. The officer who attended at the deployment, although in a position to gather the relevant evidence, did not, as his function is to set-up, monitor, then shut down the photo radar equipment.

[Paragraph number 43a was assigned by QL]

Summary

¶ 44 Were this a standard prosecution for the offence of speeding in a school zone, in addition to the fact that the defendant would have been served with the violation ticket at the time; the officer will state in direct evidence that the regulatory school zone sign was clear and unobstructed at the time of the violation. In this case Ms. Karmadi has raised the question and the Crown has been unable to answer affirmatively.

¶ 45 As previously noted, the one regulatory school zone sign facing Ms. Karmadi's direction of travel was approximately seven (7) feet above the roadway, the approach to which was not governed by any parking restriction. On any given day on any given street large vehicles may be found parked or stopped at the edge of the roadway such as buses, delivery vans, garbage trucks, dump trucks, even motor homes. The height and length of these vehicles are capable of blocking the view of the regulatory sign located in the 100 block of West 59th Avenue, Vancouver. It could therefore reasonably be true that the regulatory sign in question was obstructed at 15:07 hrs. on April 3, 1997 when Ms. Karmadi entered the school zone.

¶ 46 R v. Hedayat dealt with the issue of delay in service as an "abuse of process" which adversely affected the defendant's ability to make full answer and defence due to the effect of the passage of time on the defendants' ability to recall facts. While that case is applicable to the case before this court, I do not wish to rule on this second issue without the benefit of submissions from proper defence counsel. This case will be decided on the first issue only, as raised in cross-examination, as to whether or not the the Crown has proved that the regulatory sign was clear and unobstructed. Unlike the due diligence defences open to Ms. Karmadi which require her to demonstrate on a "balance of probabilities" their applicability; challenges to the sufficiency of evidence require only that she raise a "reasonable doubt". The Crown's prima facie evidence that the regulatory sign was clear and obstructed by virtue of its presence at the beginning and end of the photo radar deployment has been challenged under cross-examination and the rebuttal evidence does not bolster the Crowns case. Acquittal would normally follow such an evidentiary pattern in a non photo radar prosecution but here I will first consider the "legislative intent" of the statute.

¶ 47 The "legislative intent" to relax the burden of proof on the Crown clearly applies in relation to the "presumption of accuracy" provided to the photo radar camera as well as the administrative concession of allowing prosecutions to proceed by way of certificate evidence instead of viva voce testimony. "Legislative intent" cannot however; be extended to relaxing the standard of "proof beyond reasonable doubt," to all elements of the Crown's case.

FINDINGS

¶ 48

1. Motor Vehicle Act prosecutions for the offences of speeding in construction, playground and school zones, which require proof of signs, must establish the following as essential elements;

    a) signs were in place demarking the boundaries of the restricted speed zone,
    b) the defendant was within the restricted speed zone, and;
    c) the signs were clear and unobstructed at the time of the alleged violation.

2. It is open to the defendant to call into question whether or not the signage was clear and unobstructed at the time of the violation. or to demonstrate that they entered the restricted speed zone via a route that did not afford notice of the speed restriction.
3. Regarding Violation Ticket SA01 6883 issued to Ms. Karmadi on April 3, 1997 for the offence of speeding in a school zone contrary to Section 147(1) of the Motor Vehicle Act I find that the Crown has not proved beyond reasonable doubt, that the requisite regulatory signs were clear and unobstructed at the time of the offence. Subsequently, I will enter an acquittal on behalf of Ms. Karmadi.

[Paragraph number 48 was assigned by QL]

HAYES J.P.

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