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R. v. Redden

Between
Her Majesty the Queen, appellant, and
Martin Andrew Redden, respondent

[1978] N.S.J. No. 55

Nova Scotia Supreme Court - Appeal Division
Halifax, Nova Scotia
Cooper, Macdonald and Pace JJ.A.

Heard: October 13, 1978.
Judgment: October 17, 1978.

Counsel:

Reinhold M. Endres, for the appellant.
TheThe respondent was not represented.

The judgment of the Court was delivered by

¶ 1 **COOPER J.A.**:— The Crown has appealed by way of stated case against the acquittal of the respondent by His Honour Kenneth L. Crowell, a judge of the Provincial Magistrate's Court on a charge that he at or near Brickton in the County of Annapolis, Nova Scotia, on or about the 10th day of April, 1978, did unlawfully commit the offence of speeding in excess of 90 kilometres per hour contrary to s. 96(2) of the Motor Vehicle Act.

¶ 2 The relevant facts may be stated very shortly. At approximately 12.25 p.m. on April 10, 1978, Constable L.C.M. Dell of the Royal Canadian Mounted Police was patrolling in a westerly direction on Highway Number 1. As the police motor vehicle entered the eastern edge of Brickton, Annapolis County, the constable observed a 90 kilometer per hour sign posted. He saw three cars ahead of him travelling in the same direction as he was. One of the three was a half-ton truck being driven by the respondent. It was the last vehicle in the line of three. It pulled out and passed the car ahead and thereafter the lead car. Constable Dell then followed the half-ton truck at about 20 metres behind it for a distance of approximately one kilometre and the speed registered on the speedometer of the police car was a steady 113 kilometres per hour for the entire distance. Constable Dell pulled the half-ton truck over to a stop and informed the respondent that he was being charged for speeding. The place where the truck was stopped was approximately three miles away from the posted speed limit sign.

¶ 3 Section 96(2) of the Motor Vehicle Act, R.S.N.S. 1967, c.191, reads:

> 96(2) The Minister may fix rates of speed in excess of sixty miles per hour, but not in excess of seventy miles per hour for certain highways and may erect and maintain signs containing notification of such rate of speed and the driver of a motor vehicle who exceeds the rate of speed so fixed, shall be guilty of an offence against this Act.

¶ 4 The short decision of the learned trial judge is as follows:

> As stated earlier the Court does not agree with the Decision of R. v. Vining by the Nova Scotia Supreme Court, Appeal Division, that the sign must be erected at the place where the offence occurred. The Court finds that there was not a sign at the place. The nearest sign was some three miles or more, taking judicial notice of the distance between Middleton and Lawrencetown as being approximately six miles. At the time that the accused's vehicle was in fact travelling the 113 kilometres and based upon the evidence which is subject, of course, to evidence to the contrary, I find as a fact at this point in time that there was not a sign at this place and therefore I am bound by the Nova Scotia Appeal Court and the Motion for a directed verdict is granted and the accused is found not guilty. And I state that, in fact, I am pleased and prepared to sign a Stated Case.

¶ 5 The question stated for the opinion of this Court is:

> Did I err in law in holding that a speed sign, erected some three miles prior to the place of the offence, was not a sign 'at the time and place of the alleged violation', as required by Section 79(5) of the Motor Vehicle Act?

¶ 6 With respect, the learned trial judge misconstrued the decision of this Court in R. v. Vining (1977), 28 N.S.R. (2d) 629. The charge in that case was unlawfully driving a motor vehicle on a highway at a speed in excess of the maximum rate of speed of 65 miles per hour contrary to s. 96(2) of the Motor Vehicle Act. I quote from the decision of Chief Justice MacKeigan, speaking for the Court:

> We have had some difficulty in determining from the learned judge's decision whether he held that s. 79(5) of the Motor Vehicle Act, respecting the posting of signs, applied or did not apply to a charge under s. 96(2), such as that involved in the present case. We construe his decision, however, as applying s. 79(5) to such a charge and thus as requiring proof of the posting of a sign, as required by that section, and with that interpretation we respectfully agree.
>
> The learned trial judge went on to find on the facts that there was evidence that a 65 m.p.h. sign was posted as required by s. 79(5).

¶ 7 Section 79(5) of the Act reads:

> 79(5) No provisions of this Act for which signs are authorized or required shall be enforced against an alleged violator if, at the time and place of the alleged violation, the sign therein authorized or required is not in proper position and sufficiently legible to be seen by an ordinary observant person. Whenever a particular Section does not state that signs are authorized or required, the Section shall be effective without signs being erected.

¶ 8 All that R. v. Vining decided was that s. 79(5) applied to a charge under s. 96(2) "and thus as requiring proof of the posting of a sign." There was in the instant case proof that a 90 kilometre per hour sign was posted. In no way can R. v. Vining be said to have interpreted s. 79(5) so as to require that there be a posted sign at the exact spot where the violation occurs. If that were so speed signs would be required in a continuous line along the highways of the Province to enable adequate and proper enforcement of maximum speed limits - a manifest absurdity which could never have been intended by the legislature. Here there was a sign "in proper position and sufficiently legible to be seen by an ordinary observant person." It governed the maximum speed at which the respondent might travel until another posted sign appeared and there is nothing before us of any such other sign throughout the three mile stretch.

¶ 9 The appeal is allowed, the question stated to us answered in the affirmative, the order of acquittal set aside and the matter remitted to the summary conviction court with this opinion for the entry of conviction and the imposition of sentence.

¶ 10 In view of the fact that the respondent did not appear before us either by counsel or in person I think I should add that we satisfied ourselves at the commencement of the hearing of this appeal that the respondent had received and had acknowledged notice of the date, time and place of the hearing.

COOPER J.A.
Concurred in:
MACDONALD J.A.
PACE J.A.