REGINA EX REL. NEELY v. TAIT

[1965] 1 C.C.C. 16

York County Court, New Brunswick
Dickson, Co. Ct. J.

April 24, 1964

Evidence — Charge of speeding — Speedometer reading as evidence of speed — Whether reading sufficient evidence in absence of proof of accuracy of speedometer.

Evidence of a police officer that he clocked accused on his speedometer at a speed of 40 m.p.h. for a distance of three-tenths of a mile ***[page17]*** in a 30 m.p.h. zone is, if believed, sufficient evidence to support a speeding conviction and it is not necessary that the accuracy of the speedometer be proved to justify such conviction. A mechanical device such as a watch or speedometer is prima facie evidence of the time or speed recorded notwithstanding that no evidence is adduced as to the accuracy of the device.

[Nicholas v. Penny, [1950] 2 K.B. 466, *folld*]

APPEAL by the Crown from acquittal of accused on a charge of speeding.

Richard B. Cochrane, for informant, appellant.

William L. Hoyt, for respondent.

DICKSON CO.CT.J.:— This is an appeal by the informant from an order of the Magistrate of the County of York dismissing an information charging the respondent with the offence

> "... that Robert M. Tait of 865 Barker Street, Fredericton, in the County of York, in the Province of New Brunswick, did on the 3rd day of November, A.D. 1963, at the City of Fredericton in the County of York and Province of New Brunswick drive a vehicle on a highway in an urban district at a speed in excess of thirty miles per hour, contrary to section 123 (1)(a) of the Motor Vehicle Act, 1955."

The grounds of appeal as set out in the notice of appeal are as follows:

> "1. That the learned Magistrate erred in holding:
> (a) That personnel who set up and operate the speed clocks should be qualified to do so by having taken a course, receiving expert instruction thereon, or in some other suitable manner;
> (b) That the speed clocks should be periodically inspected by someone qualified to do so and familiar with its operation;
> (c) That the operator should test the speed clocks before and after it is set up to show that it is in proper working order.
>
> "2. A reading obtained from the speed clock, set up and operated in accordance with instructions received from the manufacturer, is prima facie evidence of the speed of vehicles checked by the person who operates the same, without any further evidence pertaining to the principle behind the operation of the speed clock, its accuracy or the qualifications of its operator. ***[page18]***

"3. That sufficient evidence was added at the trial on behalf of the Appellant to support a conviction under the aforesaid section of the Motor Vehicle Act."

Three witnesses, Constable Barr, Constable Laskey and Deputy Chief Barchard, all officers of the Fredericton Police Force, gave evidence on behalf of the prosecution on the trial before the Magistrate. No witnesses were called by the defence.

The evidence of Constable Barr is to the effect that he drove a police car behind a motor vehicle driven by the defendant on Union St. in Fredericton. While following the defendant's vehicle he maintained a distance of approximately 100 ft. between the vehicles for a distance of three-tenths of a mile and while travelling this three-tenths mile the speedometer on the police car registered a constant speed of 40 m.p.h. This evidence was not contradicted and I see no reason why it was not believed by the Magistrate.

The evidence of the witnesses Laskey and Barchard was offered for the purpose of establishing the accuracy of the speedometer of the police car at the time when Officer Bart followed the vehicle driven by the defendant, They gave evidence as to tests made by means of an apparatus known as a speedwatch on October 11, 1963 and December 11, 1963. These tests showed that the speedometer of the police car registered the speed of the car with reasonable accuracy at the time when the tests were made, the actual speed being a little greater than shown on the speedometer. In my opinion this evidence was not sufficient for the purpose intended without further expert evidence as to the working of the speedwatch.

The Magistrate apparently considered that evidence of the accuracy of the speedometer was necessary in order to justify a conviction and it was on this ground that he dismissed the information. In my opinion the evidence of Constable Barr, if believed by the Magistrate and in absence of evidence showing the speedometer to have been inaccurate or which raised a reasonable doubt as to its accuracy, was sufficient on which to convict. I would refer to Nicholas v. Penny, [1950] 2 K.B. 466, where the unanimous judgment of the Court was delivered by Lord Goddard, C.J. I quote the headnote:

> "If a mechanical device, such as a watch or a speedometer, records a particular time or speed, that is prima ratio evidence of that time or speed, notwithstanding that no evidence is adduced as to the accuracy of the device. ***[page19]***
>
> "Where, therefore, a police constable gave evidence that he drove a police-car at an even distance behind the defendant's motor-car for four-tenths of a mile along a road subject to a speed limit of 30 m.p.h., and that the speedometer of the police-car showed an even speed of 40 m.p.h., and also gave evidence (which was inadmissible on the ground that it was hearsay) of tests to show that the speedometer was accurate,
>
> "Held, that the constable's evidence was prima facie evidence on which the justices could convict the defendant of driving in excess of 30 m.p.h., if they were in fact satisfied that he had so driven, notwithstanding that no admissible evidence had been given as to the accuracy of the the speedometer.
>
> "Gorham v. Brice (1902), 18 T.L.R. 424, and Plancq v. Marks. (1906), 94 L.T. 577, followed.
>
> "Melhuish v. Morris [1938] 4 All E.R. 98, not followed."

In the Magistrate's judgment on dismissal of the information, he states:

> "At the conclusion of the trial I adjourned the case over to today for judgment. The facts are as follows: Constable Barr of the city police force gave evidence that he was driving a patrol car and followed a motor vehicle, subsequently found to be driven by the defendant. The Constable clocked him at approximately 40 m.p.h. in a 30 m.p.h. zone. The clocking covered a distance of about 3/10 of a mile which I find to be an ample distance for the purpose of proving the speed of the vehicle."

The Magistrate then deals with the evidence of the officers Laskey and Barchard and states:

"I do not feel any useful purpose would be achieved by going into a detailed description of the clock and its operation in this judgment and I am basing my judgment on two factors.

1) Personnel who set up and operate the speed clock should be qualified in the setting up and operation of said device by a course or expert instruction or in some other suitable manner.
2) In my opinion, evidence must be given to show that the clock has periodic inspections and that the operator can give the machine some type of test to show that it is in ***[page20]*** proper working order after it is set up and before it is used to check the speed of motor vehicles, e.g., radar speed trials -- operator must be qualified, radar must be checked with tuning fork specifically designed for this purpose before radar use as a speed checking device.

"I wish to make it clear that if suitable evidence of this was given at a trial, the speed clock would be found to be a proper device with which to check speeds. However, in this particular case, I find this evidence is lacking and I therefore find the defendant 'not guilty' of the charge."

While the Magistrate does not state specifically that he believes the evidence of Constable Barr, I can see no reason why it should not be believed. In any event, I accept his evidence.

I do order that the order for dismissal be reversed and I do remit the cause back to the Magistrate with instructions to enter a conviction. I do further order that the respondent pay to the appellant his costs of appeal, which I fix at $25.

On the hearing of the appeal it was argued by counsel for the respondent that I should not hear the appeal (1) because the affidavit upon which summons was issued did not set out that the appellant had paid the Clerk of the Court $5 as provided in s-s. (2) of s. 49 [enacted 1960, c. 72, s. 9] of the Summary Convictions Act R.S.N.B. 1952, c. 220, and (2) that the notice of appeal does not set out the ground of appeal upon which this decision is based. I find no merit in either argument.

Appeal allowed; conviction directed.