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R. v. Traveline Leasing Ltd.

Between
Traveline Leasing Limited, and
Her Majesty the Queen

[1985] O.J. No. 1961

Ontario Provincial Court - Criminal Division
Judicial District of Durham - Oshawa, Ontario
Dodds Prov. Ct. J.

April 18, 1985.
(11 paras.)

Provincial Offences Act Appeal -- overweight.

Leave to appeal denied September 5, 1985.

Counsel:

M. Forbes, for the Crown.
A. Bolotenko, for Traveline Leasing Ltd.

¶ 1 **DODDS PROV. CT. J.**:— This is an appeal by the Crown following the dismissal of a charge which alleged that a motor vehicle and trailer were operating on the highway in Ontario carrying a load that did not conform with the requirements of the Highway Traffic Act. The scale weight was 50,975 kilograms, the permissible gross weight 39,700 kilograms and the excess weight was 11,275 kilograms.

¶ 2 The Inspector took the vehicle in question to a yard operated by a private company with weight scales, a commercial property, and he there watched the vehicle being weighed and he made note of the results, he watched the scales being centered to "0", the procedure was, based on his experience in handling scales of this type, appropriate. He made not of the results of the weighing which gave rise to the charge and he also made note of the fact that the scales had been certified. Now, the Justice of the Peace found, quite properly, that the evidence pertaining to the certification of the scales by a Federal Inspector amounted to hearsay evidence and there was no basis upon which it could be introduced. The Justice of the Peace in her judgment drew the analogy that I referred to, that the weighing of this vehicle was similar to the clocking of a speeding vehicle by a police officer in a pacing cruiser. The officer maintains a constant distance between the two vehicles, checks the speed of the car he's following on his own speedometer and comes up with the results providing the necessary evidence. The Justice of the Peace said there should be a certificate that the speedometer of the officer's vehicle was correct and I agree with the analogy because the speedometer and the scales are simply measuring devices, but I disagree with her with respect to her decision insofar as she concludes that a Certificate is needed on a speedometer to prove speed. That isn't so. There is a case on the subject, it's Regina v. Bland, reported in (1975) V.20 C.C.C. 2d 332. It deals with speedometers. Mr. Justice Arnup in the course of his decision on behalf of the Court referred to a Nicholas v. Penny, an English case in the Court of Kings Bench and he quotes Lord Justice Goddard:

> "... that if evidence is given that a mechanical device such as a watch or speedometer recorded a particular time or speed, which it is the purpose of that instrument to record, that can by itself

be prima facie evidence, on which a Court can act, of that time or that speed."

Mr. Justice Arnup went on to say:

> " I find the reasoning of the Court in Nicholas v. Penny highly persuasive and I am prepared to follow it."

and further:

> "In short, I would hold that where evidence is given that over a measured level distance the speedometer recorded steadily at 95 m.p.h., this is prima facie evidence that the offence of driving at 90 m.p.h. was committed, in the absence of some evidence, elicited either on cross-examination or by defence witnesses, which would suggest that the speedometer on the police vehicle was inaccurate."

And the case of Nicholas v. Penny was then followed in a New Brunswick Court and I believe Regina v. Bland represents the law pertaining to measuring devices generally in Ontario.

¶ 3 We have a set of weight scales in a commercial yard, we have an experienced Inspector look at them, the procedure by which the vehicle is weighed appears to him to be normal in these circumstances and that is sufficient to give rise to a prima facie case. Now, a prima facie case involves a rebuttable presumption of fact, the prima facie case can be rebutted, it wasn't. There was no defence evidence called, there is nothing that touches on the accuracy of the weighing in the cross-examination, rather the cross-examination deals primarily with the absence of a Certificate of a qualified person that the scales were accurate. The method of weighing was not called into question, there is no reason to believe that the accuracy of the scales or the method of weighing was inaccurate of improper. There is no evidence of nay history of difficulty with these scales. There was no defence evidence called to bring the scales or the method of measurement into question. There is, therefore, an unrebutted prima facie case and in the absence of any other evidence the Justice of the Peace was wrong. Her decision is against the weight of evidence and accordingly the appeal will be allowed and there will be a conviction.

¶ 4 MR. FORBES: Thank you, Your Honour, subsection 1 of section 6 of the Highway Traffic Act, do you wish submissions on that?

¶ 5 **THE COURT**: Yes.

¶ 6 MR. FORBES: The penalty for 10,00 kilograms or more over is up to $8.00 per hundred and the minimum is $50.00. The Crown would suggest perhaps half of that, half of $8.00, that's $4.00 per hundred would be appropriate, which is $448.00.

¶ 7 **THE COURT**: Do you have anything to say?

¶ 8 MR. BOLOTENKO: No, I don't have any submissions to make to sentence.

¶ 9 **THE COURT**: There will be a fine of $448.00.

¶ 10 MR. BOLOTENKO: I wonder if the accused could be entitled to 90 days to pay that fine?

¶ 11 **THE COURT**: Certainly. Yes.

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