

NOVA SCOTIA
COUNTY OF HALIFAX

To wit:

C.H. 44345

I N T H E C O U N T Y C O U R T
O F D I S T R I C T N U M B E R O N E

BETWEEN:

HER MAJESTY THE QUEEN, by
her Attorney General for
Nova Scotia,

Respondent

- and -

VLADO OSTARCEVIC,

Appellant

The appellant appeared in person.
Ms. Jane Greig, for the Attorney General, respondent.

1984, March 21, O Hearn, J.C.C.:— The defendant was clocked by Constable Brian Carter, R.C.M.P., driving his taxi at 141 km an hour on Highway 118, in a zone where the posted speed limit is 100 km an hour.

The defendant, who is a landed immigrant and has considerable difficulty in explaining himself in English, said that he doubted that he was going over 100 km an hour but that his car had been in an accident. When it was repaired the speedometer was not adjusted properly and gave false readings, especially at high speeds. He did not discover this until after he was apprehended by Constable Carter but had it fixed.

He was charged and convicted before Chief Judge How of speeding in excess of 100 km per hour contrary to Motor Vehicle Act s.96(2). The trial judge held that the offence was one of absolute liability but imposed the minimum penalty of \$50.00 and costs plus the mandatory week's suspension of driving privileges.

In his notice of appeal the defendant adds as a ground that the car was not capable of travelling at the rate of speed registered by the radar gun. There was, however, no real evidence of this

offered at the trial, so that it is not allowed to be used as a ground of appeal.

As the defendant argued his appeal himself and is not able to understand the English language completely I will try to make these reasons as understandable as possible.

In Canada offences are grouped into three different classes according to the state of mind that goes with them. First, are offences that require that the defendant have a guilty mind. If after hearing the evidence the judge has a reasonable doubt that the accused knew the circumstances making up the crime or a reasonable doubt that the accused intended the consequences of his conduct or was reckless, the accused is entitled to be freed from the charge—acquitted. If the accused honestly makes a mistake of fact concerning the circumstances and if he were not guilty if the mistake in fact had been true then the court must acquit if it has a reasonable doubt on this point.

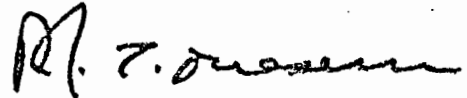
In the second class of offence, if the accused can prove that he acted because of a reasonable and honest mistake of fact or that he took the proper care in the circumstances, he is entitled to be acquitted. This class of offences are called strict-liability offences.

In the third class of offences, mistake of fact is not a defence however honest or reasonable, just as the taking of precautions is not a defence. These are called offences of absolute liability. Even in cases of absolute liability there are certain defences that are possible just as they are possible in all classes of offences. Those directly in point here would be necessity, compulsion, duress or absence of volition.

The Nova Scotia Supreme Court Appeal Division has held in *R. v. Naugler* (1981), 49 N.S.R. (2d) 677, that speeding in excess of 100 km an hour contrary to Motor Vehicle Act s.96(2) is an

offence of absolute liability. The defendant's speeding in this case was not something imposed on him by some extraneous force so that it could not be said to be his own conduct; it was due purely to a mistake of fact as to the correctness of his speedometer. In the circumstances the decision of the trial judge, Chief Judge How, was the only possible one in law and, accordingly, the appeal must be dismissed.

In view of the defendant's circumstances there will be no order as to costs.



A Judge of the County Court of
District Number One