

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**JOHN WILLISTON**

**Appellant**

-and-

**HER MAJESTY THE QUEEN**

**Respondent**

**MEMORANDUM OF JUDGMENT**

[1] This is an appeal from a verdict and sentence rendered in Justice of the Peace Court on October 22, 2013.

[2] Both parties prepared and filed written submissions, which I had an opportunity to read prior to the scheduled hearing.

[3] Mr. Williston did not attend to argue his appeal at the scheduled time, nor did anyone attend on his behalf. There is nothing to suggest he sought an adjournment or intended to abandon the appeal. He was paged in the courthouse by the Clerk, but there was no response.

[4] Mr. Williston was charged with speeding on June 13, 2013, pursuant to the City of Yellowknife's *Highway Traffic By-Law No. 4063* (the "By-law"). The Municipal Enforcement Officer, Constable Fudge, who stopped Mr. Williston gave him at Summary Offence Ticket Information (the "ticket") at the time. It indicated on its face a fine amount of \$75.00 if paid voluntarily, in accordance with Schedule "D" to the By-law.

[5] Mr. Williston contested the ticket and the matter went to a hearing before a Justice of the Peace in Yellowknife on October 8<sup>th</sup>, 2013. Mr. Williston was represented by an agent.

[6] Constable Fudge testified at the hearing. He said he observed Mr. Williston's vehicle travelling over the speed limit, which was 45 km/hour. He confirmed this using a RADAR device, which reflected Mr. Williston was traveling at 68 km/hour. Constable Fudge also testified about his experience in traffic control, his qualifications and training in operating RADAR equipment and the specific steps he took on the day in question to ensure the RADAR device was operating correctly.

[7] Constable Fudge made an audio-video recording of the encounter with Mr. Williston, which was admitted into evidence. It confirmed Constable Fudge advised Mr. Williston at the outset that the event was being recorded. It contained an exchange between the officer and Mr. Williston in which the process and options for dealing with the ticket were explained to Mr. Williston. Mr. Williston is heard saying he would fight the ticket in court. He also told Constable Fudge that “. . . City By-Law is an absolute joke and the fact you work for them is [indistinct] your problem. I'm sure there's jobs elsewhere. Thank you very much for pulling me over . . .” (*Transcript of Trial*, p. 12, lines 11-13).

[8] Mr. Williston's agent objected to the recording being admitted into evidence because Mr. Williston was not advised the recording could be “used against him in a Court of law.” (*Transcript of Trial*, p. 10, line 10). The Justice of the Peace allowed it in, however, on the basis that it was regular practice for Municipal Enforcement Officers to record interactions at traffic stops this way and that Mr. Williston was advised it would be recorded. (*Transcript of Trial*, p. 10, lines 17-21).

[9] Constable Fudge was then cross-examined extensively on his qualifications and how he had gone about preparing and testing the RADAR equipment that day as well as his interactions with Mr. Williston. He was also questioned about whether he himself had been driving over the speed limit prior to stopping Mr. Williston.

[10] A number of exhibits were entered pertaining to the operation of RADAR equipment and the training required.

[11] Mr. Williston did not testify. He called one witness, another Municipal Enforcement Officer, who was responsible for training others in the operation of

RADAR equipment. That witness testified that he had personally trained Constable Fudge in the use of RADAR equipment and he stated that so long as an officer uses the RADAR equipment regularly, it is unnecessary to take additional or ongoing training in this area.

[12] The Justice of the Peace rendered a verdict on October 22, 2013, finding Mr. Williston was speeding and that the ticket was properly issued to him. He imposed a fine of \$150.00.

[13] From the context of Mr. Williston's factum, it is apparent that the basis for the appeal from the conviction is that the verdict is unreasonable or cannot be supported by the evidence, pursuant to s. 686(1)(a)(i) of the *Criminal Code*, RS 1985, c.C-46. Specifically, Mr. Williston disagrees with a number of factual findings made by the Justice of the Peace respecting the processes the officer followed in ensuring the RADAR equipment was functioning properly as well as the credibility of the officer who issued the ticket.

[14] The legal test for determining if the verdict is reasonable or supported by the evidence is whether the verdict is one that a properly instructed trier of fact could reasonably have rendered: *R v Yebe*, [1987] 2 SCR 168 at para 25; *R v Biniaris*, [2000] 1 SCR 381 at para 36.

[15] With respect to findings of credibility, the Supreme Court of Canada concluded in *R v Gagnon*, [2006] 1 SCR 621 that absent demonstrated palpable or overriding error, an appeal court must defer to the credibility findings of the trial judge.

[16] It is clear from his reasons that the Justice of the Peace considered, but did not accept, Mr. Williston's suggestions that Constable Fudge was not qualified to operate RADAR equipment or that he tested it improperly. He found, rather, that the officer was qualified, through both formal training and experience, to operate the RADAR device; that the RADAR device was tested that day prior to the ticket being issued; and that it was operating properly and therefore, reliable. He also found that Mr. Williston was speeding.

[17] There is nothing on the record to suggest the Justice of the Peace should have questioned Constable Fudge's credibility. Reduced to writing as it is on the transcript, his evidence appears straightforward and internally consistent. The Justice of the Peace made no error in accepting his evidence.

[18] The record shows clearly that there was ample evidence to support the conclusions reached by the Justice of the Peace and, ultimately, his finding that

Mr. Williston was speeding. Therefore, I find the verdict he rendered is one that a properly instructed trier of fact could reasonably have rendered.

[19] I now turn to the sentence.

[20] Section 687(1) of the *Criminal Code* provides that on an appeal from sentence, the appellate court shall consider the fitness of the sentence appealed against and may vary the sentence within prescribed limits or dismiss the appeal and leave the sentence as it is.

[21] The standard of review is high: in the absence of an error in principle, a failure to consider relevant factors or undue emphasis on certain factors, or unless the sentence itself is demonstrably unfit, a trial court's sentencing decision should not be disturbed: *R v Shropshire*, [1995] 4 SCR 227.

[22] As noted, Mr. Williston did not appear to make oral submissions on any of the issues, including the sentence, at the time scheduled to hear this appeal.

[23] Mr. Williston states in his factum the basis for appealing the sentence is that his agent was denied the opportunity to make submissions on sentencing. This, in turn, caused him to incur additional financial costs by pursuing the appeal. Combined with the consequent demerit points, no further punishment is warranted.

[24] The City of Yellowknife made submissions at the hearing in support of its request that Mr. Williston receive a fine in the amount of \$150.00, double the \$75.00 "voluntary" payment under the By-law. In addition to setting out broadly the goals and principles of sentencing, its counsel pointed to an absence of remorse or other mitigating factors as well as Mr. Williston's conduct towards the officer at the time the ticket was issued, as captured by the recording. Finally, she tendered into evidence Mr. Williston's driving record, which at the time contained three convictions for speeding, two convictions for failing to wear a seatbelt and one conviction obstructing an officer. The driving record also showed Mr. Williston's driver's license was suspended in 2011, for unspecified reasons.

[25] In imposing sentence, the Justice of the Peace focused on the goals of denunciation and deterrence. He also took into account the exchange between the officer and Mr. Williston during the traffic stop, which he characterized as "vitriolic", "negative" and "caustic", and he noted Mr. Williston's lack of remorse. Finally, he pointed to Mr. Williston's driving record as an aggravating factor.

[26] Unfortunately, the Justice of the Peace made and rendered his decision on sentence without first hearing submissions from Mr. Williston's agent. Mr.

Williston's agent raised this after sentence was imposed. The Justice of the Peace appeared to agree with this by saying "that's right"; however, he did not clearly invite further submissions.

[27] Mr. Williston's agent then stated the following:

I will advise, there will be an appeal of this, but I also want to bring on the record the driver's abstract that was entered in by the City of Yellowknife, Motor Vehicles deletes fines or convictions after two years. You'll note on the – one, two, three, four of those convictions should be removed from the driving record. It's an old record. The City has not updated, upon the review. So, we will stand with the decision made here tonight but [indistinct] pending – pending the appeal, I just wanted those on the docket tonight that we weren't provided the opportunity of sentencing to speak to it.

*Transcript of Sentencing, p. 8, lines 20-26*

[28] In failing to allow Mr. Williston's agent an opportunity to provide submissions on sentencing before rendering his decision, the Justice of the Peace erred in principle.

[29] I also find the Justice of the Peace erred in relying on Mr. Williston's conduct during the traffic stop as an aggravating factor. Mr. Williston's conduct at the time indicated clearly that he was annoyed at being stopped for speeding, and he expressed himself accordingly. He did not, however, do anything illegal. For example, he did not threaten or physically hurt Constable Fudge. He did not refuse to provide Constable Fudge with proof of insurance and a driver's license. He did not do anything to interfere with Constable Fudge carrying out his duties. All Mr. Williston did was tell Constable Fudge he planned to fight the ticket in the courts and he expressed a negative opinion about Constable Fudge's choice of occupation and workplace. It may well be that Mr. Williston was rude, but bad manners are not a valid consideration on sentencing.

[30] Despite the errors committed by the Justice of the Peace in the sentencing process, however, I find fine of \$150.00 imposed by the Justice of the Peace is nevertheless a fit sentence in the circumstances.

[31] Mr. Williston's driving record was a valid and extremely important consideration which, by itself, justifies the imposition of a fine higher than the voluntary amount set out in the By-law.

[32] I pause to note that the Justice of the Peace did not at any point consider the argument made by Mr. Williston's agent that convictions on a driving record are to

be removed after two years. This is a moot point, however, because the argument is incorrect. It is the demerit points that attach to those convictions which, subject to certain exceptions, are to be removed after a two year period. The convictions remain. (*Driver's License Demerit Point Regulations*, R-093-93, made pursuant to the *Motor Vehicles Act*, RSNWT 1988 c M-16). Thus, the Justice of the Peace was entitled to take the entire record into account.

[33] Traffic laws are aimed at making streets and roadways orderly and, more importantly, safe for all users. While a ticket is often the only legal result of breaching a traffic law, there are far greater potential consequences, including personal injury and death caused by a motor vehicle accident, which may ensue.

[34] The evidence established Mr. Williston was driving 68 km/hour in a 45 km/hour zone. That he has sustained six convictions for driving offences as well as a suspension indicates a more significant penalty than the amount of the voluntary payment under the By-law is required for the punishment to be meaningful to him. It is also important that the penalty sends a message to society in general that traffic laws, which are there for the safety and protection of all of us, are to be obeyed.

[35] For these reasons, the appeals from conviction and sentence are dismissed.

Justice K. Shaner  
J.S.C.

Dated in Yellowknife, NT this  
18<sup>th</sup> day of June, 2014

Appellant: Self-Represented  
Counsel for the Respondent: Kerry Penney

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