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IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

VS

POINTS NORTH TRANSPORTATION INC.

Transcript of the Oral Judgement delivered by His Honour Judge
T.B. Davis sitting at Inuvik in the Northwest Territories on
Tuesday, May 28, A.D. 1985.

APPEARANCES:

M.E. ZIGAYER, Esq., On behalf of the Crown
R. REID, Esq., On behalf of the Defense



CHARGE READ: Agent
Jan 15, 1985 T.B. Davis
 DATE JUDGE OR JUSTICE

CROWN ELECTION:
 Summary Conviction: Indictment:

ACCUSED ELECTION:
 Magistrate: Judge & Jury: Judge:

DATE JUDGE OR JUSTICE

PLEA: Guilty: Not Guilty:

Jan 15, 1985 T.B. Davis
 DATE JUDGE OR JUSTICE

FAILURE TO APPEAR:
 Bench Warrant Issued:

DATE JUDGE OR JUSTICE

EVERY TIME THIS INFORMATION IS DEALT WITH APPROPRIATE ENTRIES SHALL BE MADE ON THE REVERSE

DISPOSITION
 Convicted: Dismissed: Withdrawn:

FINE: _____
 J.P. COSTS: _____
 POLICE COSTS: _____
 RESTITUTION: _____
 TOTAL: _____
 DEFAULT: _____
 TIME TO PAY: _____
 SUSPENDED SENTENCE:
 CONDITIONAL DISCH: ABSOLUTE DISCH:
 PROBATION FOR: _____
 IMPRISONMENT FOR: _____

Mar 28/85 T.B. Davis
 DATE JUDGE OR JUSTICE

COURT NUMBER

J.P. or Judge's Number 50/5/D

THIS IS THE INFORMATION OF Mark SCHAUERTE
 (Insert full name, residence and occupation of informant)
Highway Transport Inspector
 OF Inuvik, Northwest Territories

HEREINAFTER CALLED THE INFORMANT

THE INFORMANT SAYS THAT he has reasonable and probable
 (If the informant has not personal knowledge, state that he has reasonable and probable grounds to believe and does believe and state the offence)

grounds to believe and does believe that
 POINTS NORTH TRANSPORTATION INC.
 did on or about the seventh day of December, A.D. 1984 at or near the Hamlet of Ft. McPherson in the Northwest Territories, notwithstanding anything in this section, operate a vehicle or combination of vehicles in excess of a posted weight restriction contrary to Section 18(6) of the Large Vehicle Control Regulations pursuant to the Vehicles Ordinance.

STATISTICS
 DATE OF BIRTH: _____ M F
 DRIVER'S LICENCE: _____
 MARITAL STATUS: _____

Sworn before me this 10 day of Dec
 A.D. 19 84
 at Inuvik, N.W.T.
Mark Schauerte
 Signature of Informant

A Judge or Justice of the Peace in and for the Northwest Territories

Appearance Notice Promise to Appear Recognizance

Mark Schauerte
 (Mark SCHAUERTE)
 Signature of Informant

confirmed _____, 19 _____ Justice of the Peace

1 THE COURT: There are two matters for the Court to consider
2 with regards to the statements on which we have now had a
3 voir dire to determine the circumstances in which they were
4 made by the driver of the vehicle of the accused's truck.

5 The first is whether there was anything that the
6 Court would consider to be indicative of circumstances where
7 the statements were made in an involuntary way. In other
8 words, whether there was anything done by the weigh scale
9 officers or the department officers that would have caused
10 the driver to make statements which were not made
11 voluntarily. Ordinarily voluntariness is determined upon
12 whether there has been any promise of hope of anything, or
13 any form of threat or oppression that existed which would
14 cause the driver to make statements.

15 Having heard the evidence of the Witness at the
16 voir dire, I am satisfied that in asking the routine
17 questions that were asked, there was no state of oppression
18 and no promise or threat made by the officer in charge to
19 the driver and therefore I believe the statements which were
20 made would have been volunteered by the driver without him
21 feeling that he was being forced into making them.

22 The second question that the Court should consider
23 and which may be very restricted in the form that I can
24 consider today is whether it was necessary for the officer
25 in charge -- who was in uniform -- to warn the driver
26 that it was unnecessary for him to make any statements
27 since the driver was a person in authority and in uniform



1 and appeared to be a person who had the control of the
2 vehicle because he had the authority to stop and therefore
3 detain the vehicle that was passing by or through the scales.

4 The Supreme Court of Canada has recently upheld
5 the Therens decision from the Appeal Court in Saskatchewan
6 which said that generally speaking when police officers or
7 persons in authority stop a driver of a motor vehicle for
8 the purposes of inquiring on their ability to drive --
9 usually related to alcohol -- that they must do certain
10 things and make sure that the driver of the motor vehicle is
11 protected under the terms of the Charter because the
12 Supreme Court of Canada has found that stopping a driver
13 because of their authority to do so is, in fact, detaining
14 of a driver and therefore the terms of the Charter come
15 into effect.

16 In this instance, however, I do not believe the
17 weigh scale operators would be put in the same position as
18 a police officer stopping an individual driver of a vehicle
19 when the driver is being stopped for the purposes of
20 checking as to his ability to drive the vehicle. I don't
21 think that the same interpretation for detaining commercial
22 vehicles being stopped at weigh scales would be made by the
23 Supreme Court since it is customary in the business to stop
24 and be weighed for business purposes and for the protection
25 of the highways throughout the country.

26 On that distinction because the circumstances
27 are such that it is different to have a truck go through a



1 weigh scale and a person driving along a highway without any
2 obvious signs or reasons for stopping him, there would be a
3 distinction as to whether one is detained under the Charter
4 and one is not. I am, today, prepared to make a finding
5 that vehicles stopped for the purposes of weights being
6 taken of commercial vehicles at weigh stations are not
7 detained in a way that would interfere in their general
8 progress and therefore not be detained which by being
9 detained would have required certain warnings to be given
10 and therefore I find that the statements made can be accepted
11 by the Court today as voluntary and not in violation of the
12 Charter.

13 That, however, being the finding of the Court, I
14 will recognize that I can hear what was said but of course
15 if it is only hearsay evidence it does not require that the
16 Court put any weight on the evidence. Just so I won't be
17 misunderstood that I am allowing the evidence to be heard by
18 the Court, I do not want either Counsel to think that by
19 hearing it I necessarily will have to accept it or give it
20 any weight but I will find that the statements were
21 voluntary and I will allow that evidence to be made part of
22 the trial evidence here today.

23 (AT WHICH TIME THE VOIR DIRE CONCLUDED)

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1 I, K.N. Killey, Court Reporter, hereby certify that I
2 attended the above Oral Judgement and took faithful and accurate
3 shorthand notes and the foregoing is a true and accurate
4 transcript of my shorthand notes to the best of my skill and
5 ability.

6 Dated at the City of Calgary, Province of Alberta, this 17th
7 day of June, A.D. 1985.

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10 Kathy Killey
11 K.N. Killey,
12 Court Reporter

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14 KNK/mjp

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Judge T. B. Davis

