

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES
JUDICIAL DISTRICT OF THE NORTHWEST TERRITORIES

HER MAJESTY THE QUEEN, upon the
information of Constable R.L.
Julyan, sworn the 15th day of
August A.D., 1970, Informant,

(Respondent)

18-Aug-1970

and

DAVID KEIR, Defendant,

(Appellant)

Thomas J.

REASONS FOR JUDGMENT (ORAL)

First

I want to ~~first~~ thank both counsel for their frankness and assistance in this appeal. I want to ~~particularly~~ thank *particularly* Mr. Troy ^{for} showing his usual willingness to speed up the ends of justice. Instead of ~~coming down and perhaps making an application to temporarily suspend the suspension until the appeal is heard,~~ *for a temporary* he has now ^{made it possible to} disposed of the whole ^{matter,} thing which is, of course, streamlining the ends of justice, ~~which is~~ ^{and} what we are all supposed to do. I also want to say that since this is the first appeal with respect to speeding that I have had in this jurisdiction, I am going to say a little more than I normally would.

I have every sympathy with the public authorities such as the Mayor and the Councilmen of the City of Yellowknife. I, myself, have observed a tremendous number of traffic violations,

particularly in the last eighteen months. Included in the
~~violators have been~~ ^{here seen!} Some of the City's own trucks and
vehicles, particularly in the way they block traffic; and
perhaps the Police might do well to consider that all vehicles,
whether ~~Government or private, or whether City,~~ are subject to
the law. I agree that something should be done, and it is ~~wise~~ ^{good}
to know and note that the public authorities are doing some-
thing about cutting down on these violations. However, I do
think it is a mistake that municipal bodies particularly, ^{as well as}
the ~~minor~~ ^{lower} courts particularly, sometimes observe a rash of a
certain type of offence taking place, and they then 'crack down'.
Now, that may mean, to me, that a person who otherwise was
doing very little wrong suddenly finds that he picked the
wrong week to be caught, and therefore he pays the penalty for
all the other people who are not caught. I am just putting ⁱⁿ ~~out~~
a caution ~~in my remarks~~ that this is not the way the system
works, and if the authorities start to act this way they will
undo more than they are attempting to do. They will get the
very same public that respects the law, and expects ^{to} ~~the~~ en-
forcement and protection, to lose respect, because that same
public will begin to realize that the authorities are exceed-
ing the limits of natural justice and hitting minor infrac-
tions more severely than serious infractions.

I am mindful of the fact that not so many years ago, one
of the first things I did in this jurisdiction was ^{to} ~~to~~ preside
over a Royal Commission, where ~~where~~ ^A great number of complaints

about the handling of minor offences in another part of the Northwest Territories, ^{had} resulted in that Commission. On another Royal Commission with which I was involved, the Porter Royal Commission, a considerable amount of testimony was given with respect to police practice, ~~and my~~ ^{and} recollection of the evidence at that time, ^{given} ~~taken~~ on oath ^{by} ~~from~~ the Chief of Police of the City of Edmonton, (a City of four hundred thousand people) ^{with respect to speeding charges,} was that his instructions, ^{and I understand the same} ~~were the~~ instructions, ^{were} given to the ^{R.C.M.P.} ~~Mounted Police~~ in Alberta) ^{*} were to allow a five-mile leeway to cover the fact that, particularly in cities and towns, the modern vehicles' ⁺ automatic transmission accelerates to thirty-five miles an hour in such a short time that a ^{driver} ~~person~~, even starting from a cold start, is exceeding the speed limit before he has actually had time to regulate his car. ⁺ Also, because of the possible errors in speedometers and the machinery testing the speed. // So, I have always understood a certain amount of leeway was allowed, ~~and~~ it seems to me that, if this man was clocked at thirty-two ~~miles~~ ^{miles} an hour, that is getting to what one can almost call the ~~nut~~ ^{nut}-picking stage. However, the fact is he has pleaded guilty. He has broken the law as it stands, ~~and~~ must be punished.

^{Conversely} ~~Again~~, I would ~~also~~ suggest that serious consideration, ^{should} be given, ⁱⁿ to instructing the City Solicitor of Yellowknife to review the ticket, because if the Police are using a ticket under the ~~Motor Vehicles Ordinance~~ for violations under the

By-law, I can ^{you} see some lawyer one of these days taking the position that ^{his client} the man has been improperly summonsed. ~~So~~, I think consideration should be given ^{to} about the ticket because there should be no doubt in a man's or a woman's mind, if they receive a ticket for an offence, ^{as to} whether they go to court, or whether they go and pay a fine somewhere, or whether they have an option. That should be very clearly set out on the document, and I think, if the cases, certainly in the Court of Appeal of Alberta, are reviewed, it will be found ^{the problem} that has been battled out at that level, and certiorari, or whatever the proper writ was, ^{had} been granted to set aside convictions.

Similarly, ^{I want to comment on} this idea about whether a ^{system} scheme has ^{originated} arisen amongst the public ^{because} that they find it easier to go in front of a Justice of the Peace, ~~I~~ I don't think that should in any way occupy the thinking of the Police or the authorities. If the authorities have provided an alternate type of punishment, and ^{people} the public want to gamble on one or ^{the} another, that, surely, is up to them, because, if the law is applied fairly, ^{the result} it should ^{be} come out the same. We are practical enough to know it may be a dollar out one way or another, but, surely, we are not worried about that, and I should hope that the Justices of the Peace, if they have heard rumours that people are coming to them because they are ^{lenient} soft, ^{not} aren't deliberately becoming tough. I hope they are applying ^{proper} normal judicial principles in assessing the fine ⁱⁿ on a given case on the ^{given} facts, and not also punishing because ~~someone else may be speeding a lot worse.~~
~~others may be committing more flagrant infractions.~~

So much for my general remarks. In this particular case, I think Mr. Keir, in view of the fact he has been caught speeding once before, and particularly where his livelihood depends on having a licence ~~he can~~ ^{to} drive ~~under~~, had better be careful from now on in what he does. I can't understand a man whose livelihood depends on driving taking any chances. Maybe he should get his wife to drive him to and from work and save his driving for the tow truck. I do think that for thirty-two miles an hour, and a second offence ~~with~~ ^{after a} two-years' interval (as I understand the facts of this situation), ~~that~~ it is too severe to cancel a man's licence. I think that is the last thing that should be considered in this type of offence, and certainly, even though it may be that the ~~Motor~~ Vehicles Ordinance permits it, I would think the Justices of the Peace should be very reluctant to take a man's licence away when there is the opportunity of punishing him in other ways.

Accordingly, on appeal, on reconsidering the ~~sentence~~ ^{penalty}, I am not suspending the licence, but I am increasing the fine to fifty dollars, plus the costs in the lower Court. // There will be no costs in this Court.

J. T. C.

 J.T.C.

Yellowknife, N.W.T.
 August 18, 1970.

Counsel:

O.J.T. Troy, Esq., for the Crown (Respondent)
 M.M. deWeerd, Esq., Q.C., for the Defendant (Appellant)