

Case Name:
R. v. Chau

Between
Her Majesty the Queen, and
D. Vinh Chau

[2006] O.J. No. 5508

Court File No. 74673949

Ontario Court of Justice
London, Ontario

G.A. Pockele J.

Oral judgment: May 18, 2006.

(21 paras.)

Charges: Section 128 Highway Traffic Act -- Speeding.

Counsel:

D.G. Cribbs: Municipal Prosecutor.

D. Chau: In Person.

1 G.A. POCKELE J. (orally):-- This is an appeal of a decision made by His Worship Justice of the Peace Seneshen after a trial on February 14th, 2006. Mr. D. Vinh Chau was charged with the offence of speeding doing 130 kilometres an hour in a 100 kilometre zone.

2 The prosecution evidence came from Police Officer T. Reinholt and Mr. Chau testified in his own defence. The grounds for the appeal are that the Justice of the Peace erred in law in ruling that the police officer had to offer evidence of speedometer calibration for the police vehicle because this was an incidence where the speed is determined by pacing another vehicle. The second ground of appeal is that the Justice of the Peace erred in determining or making a ruling that the peace officer could not pace another vehicle while driving in front of the vehicle.

3 The transcript would indicate at pages five and six that Officer Reinholt observed the vehicle directly behind him about 25 metres behind when Officer Reinholt's initial patrol speed was 110 kilometres per hour as determined on his speedometer. The officer indicated that he increased his speed to 130 kilometres an hour and by implication, this is determined by looking at his speedometer and that the motor vehicle behind him ultimately proved to have been driven by Mr. Chau, stayed with officer Reinholt at that speed for about one point two kilometres.

4 The bottom of page six, the police officer says that he has regularly driven the subject police cruiser, he has monitored the speed along with the radar and never had any problems with the speedometer, and that it is a certified calibration.

5 Mr. Chau testified and gave the same information to Justice of the Peace Seneshen as he gave to me today that he was driving in a lane and he was getting clipped by stones and he sped up to get into another lane and that he was no doubt exceeding the speed limit. Justice of the Peace Seneshen then in his analysis beginning at page 18 makes a series of statements indicating he has weighed and assessed the evidence and has no doubt in his mind that Mr. Chau was exceeding the speed limit, yet despite that weighing of the evidence, he enters an acquittal.

6 Line eight, Justice of the Peace Seneshen states, and this is outlined in one of the grounds of appeal:

The officer has indicated that it [meaning the speedometer] was certified calibrated, but there's been no evidence tendered as to which I have heard in other cases which an officer has checked that speedometer against a radar or laser to determine the accuracy of the speedometer.

7 The Crown has countered that by providing the court with the Ontario Court of Appeal decision of The Queen and Bland given in December 20th, 1974. This is the benchmark decision concerning speedometers and the use of speedometers on police cruisers to determine speed of offending motorists. The headnote reads and I really need say nothing more:

Where evidence is given that over a measured level distance the police officer's speedometer recorded steadily at the speed alleged, this is prima facie evidence that the accused was driving at that speed, in the absence of some evidence, elicited either on cross-examination or by defence witnesses, which would suggest that the police speedometer was inaccurate.

8 Accordingly, the concerns raised by the Justice of the Peace, while they are concerns that are validly held by the citizenry, are concerns that have been resolved in the realm of law, and this speedometer must be deemed to be prima facie accurate. If the Justice of the Peace through his ruling were indicating that he felt it might not be accurate, he has no evidence through cross-examination by defence witnesses that would suggest it was inaccurate and this statement would constitute an error of law.

9 Going on from that at line 13, Justice of the Peace Seneshen says:

If the officer had been following behind you, sir, and I'm quite sure that the reading that she indicated that you were going of 130 kilometres would in my estimation be more accurate.

10 By that statement, the Justice of the Peace is conceding that the speed of 130 is accurate

particularly if Mr. Chau had been paced from behind.

11 Line 27, the Justice of the Peace says:

The problem I have here sir, is I'm quite sure you were speeding. And the problem I'm having is what speed that was sir, and based on the evidence that I have today I'm not satisfied as to the pacing of the vehicle from the front or to the accuracy of the speedometer in that it had not been - the officer was unable to give any evidence and she was very candid and that she did not know if it was to be calibrated.

12 But once again, the comments on the calibration and the speedometer are a result by the decision of The Queen and Bland. So the second ground of appeal in a matter which seems to be in the mind of Justice of the Peace Seneshen is his concern about the pacing of the vehicle from the front.

13 Continuing on with the quotation which is now onto page 19:

I have some reasonable doubt in this matter sir, as I've said, I'm quite sure you were speeding, but I'm not sure that you were speeding at the rate of 130 kilometres an hour.

14 The inconsistency here is that the Justice of the Peace has already weighed the evidence and feels that going 130 kilometres would be in my estimation be more accurate if paced from behind. That he says that he is quite sure that Mr. Chau was speeding. That he is not satisfied as to the evidence because speedometer is not calibrated, which is not the law, and therefore the only reason to disregard the police officer's evidence is that he is not satisfied as to the pacing of the vehicle from the front.

15 This does constitute an error of law. The Justice of the Peace cannot impose a procedural rule upon police officers when pacing vehicles without some factual, logical, scientific or evidentiary basis for doing so. If this precedent were to be followed, then no police officer could pace any vehicle from behind. And while it may be possible for some court to make such a proclamation, it has to do so on the basis of evidence and not on unfounded opinions. Accordingly, there is an error of law and this appeal will be granted. Prosecution seeking a new trial? I don't know what my options are here?

16 MR. CRIBBS: Prosecution would be content with a new trial, however, it is my submission that this is not a strict liability offence, but an absolute and if all elements of an absolute liability offence are made out, the result must be a conviction.

17 THE COURT: Maybe, but I am not quite sure Mr. Chau understands why this appeal has been successful.

18 MR. CRIBBS: Very well, in that case, I'd be quite content with a new trial date.

19 THE COURT: I am going to order a new trial Mr. Chau. You are going to have to go to 824 Dundas, room 103. Monday in June - pick a day in June.

20 MR. CRIBBS: Is there a Monday in June, either the 5th, or 12th?

21 THE COURT: Twelfth. Mr. Chau, you are going to have to setup a new trial date. You are going to have to go to 824 Dundas, the provincial offences court, courtroom 103 on June 12th, and then set a new

trial date in this matter. I think the Justice of the Peace made a mistake and the only way it can be solved is by having a new trial.

qp/s/qlgxc/qllkb