

21/8

NZLR

M. 105/81

X

No Special
Consideration

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

573

BETWEEN MICHAEL GEORGE MCINTOSH

Appellant

AND MINISTRY OF TRANSPORT

Respondent

Hearing: 6 August 1981

Counsel: Mr McIntosh in Person
Mr McDonald for Respondent

Judgment: 4 AUG 1981

JUDGMENT OF GREIG, J.

This is an appeal against the conviction and sentence on a charge of failing to pay a speeding infringement fee. The appellant throughout these proceedings has appeared in person.

The speeding infringement notice was given to the appellant on 21 September 1980 when he had been stopped out of Putaruru. The appellant did not pay the speeding infringement fee. He informed me that he had written to the Ministry of Transport but as will appear from the effect of the relevant section in the Transport Act 1962 that correspondence does not matter.

The notice of prosecution for the minor offence, namely the failure to pay the speeding infringement fee was issued on 3 December 1980 and was finally heard before

Justices of the Peace on 30 April 1981 at the District Court, Tokoroa.

The procedure and the offence fell to be dealt with under s.42 of the Transport Act 1962 as it was then in force. That section has now been repealed and substituted by other provisions which came into force on 1 April 1981. The offence is provided for under s.s.9 of the former s.42 but it is clear at least by way of implication from s.s.6 (f) that on prosecution for failing to pay the fee the defendant may defend the charge on the ground that he did not exceed the speed limit and did not therefore commit the alleged speeding infringement which was the subject of the speeding infringement notice. In effect then the appellant was entitled to defend the speeding charge on the charge of failing to pay the speeding infringement fee. In fact, this is precisely what happened.

Before the Justices of the Peace, the Traffic Officer concerned gave evidence of his operation of a microwave unit, his check of the speed of the vehicle on that unit and his pursuit and stopping of the vehicle. The evidence showed that the microwave unit indicated a speed of 103 k.p.h. and there was produced a certificate of accuracy for that unit. The pursuit was over some kilometres and in that pursuit the traffic officer was at times at least a kilometre away from the defendant's vehicle. The defendant's vehicle was described as a red and black Triumph Stag and the traffic officer had

identified the two letters and the first number of the registration number of the vehicle. When the vehicle was stopped, the driver was the appellant and he identified himself as the appellant.

There was a lengthy cross-examination of the traffic officer by the appellant and a number of matters were raised in that and were repeated before this Court in submissions by the appellant. The crucial matter was the identification of the appellant and his vehicle. On that the Justices of the Peace were satisfied to accept the traffic officer's evidence and in the circumstances, notwithstanding the somewhat lengthy pursuit there was more than enough evidence to allow the Justices of the Peace to find against the appellant.

The appellant raised the matter of his correspondence with the Ministry of Transport but as I have already said that does not matter in the circumstances of this case and can in no way have prejudiced the appellant in his defence of the charge. There was a challenge of the accuracy of the microwave unit. The certificate of accuracy related to a check of the unit on 26 August 1980 prior to the offence. That is sufficient in my view and there was no need to provide a certificate of accuracy for the date of the offence. In any event, there was evidence from the traffic officer in his pursuit of the vehicle that the appellant had exceeded 103 k.p.h.

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In all the circumstances of this case the appellant was rightly convicted of the offence having failed to satisfy the Justices of the Peace that he had not committed the alleged speeding infringement and it being clear that he had failed to pay the speeding infringement fee.

The penalty imposed was the requirement that he pay the amount of a speeding infringement fee. That is an obligatory penalty under s.42 s.s. 12 of the Act. The only other penalty was that the appellant pay costs of Court, \$10.00. There can be no suggestion that the penalty imposed was excessive or inappropriate.

In the result, the appeal against conviction and sentence is dismissed.

W. J. J.

Solicitor: Crown Solicitor for Respondent