No. 4998
Smithers Registry

IN THE COUNTY COURT OF PRINCE RUPERT

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| BETWEEN:<br><br>JOHN HILTON MORRIS<br>Appellant<br><br>AND:<br><br>HER MAJESTY THE QUEEN<br>Respondent | REASONS FOR JUDGMENT OF<br>THE HONOURABLE JUDGE R.T. ERRICO |

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| Place of Hearing | Smithers, B.C. |
| Date of Hearing | November 25, 1985 |
| Counsel for Appellant | Dick Byl, Esq. |
| Counsel for Respondent | B.A. Bruser, Esq. |

REASONS FOR JUDGMENT

The appellant appeals from his conviction on the offences arising out of his driving on the 24th of November, 1984. The first conviction was on a charge of dangerous driving and the second on a charge laid under s. 92.1 (1) of the Motor Vehicle Act that he, being the driver of the motor vehicle that was signaled or requested to stop by a peace officer, who is readily identifiable as a peace officer, did fail to come to a safe stop and a peace officer pursued him in order to require him to stop. The appellant abandoned his appeal against conviction for dangerous driving at the hearing of the appeal.

The appeal against the conviction for the offence under 2. 92.1 (1) of the Motor Vehicle Act, is based on a narrow ground of interpretation of that section. At the hearing of the appeal, decision was reserved and written submissions were ordered. These have now been filed.

The facts are not in dispute and may be taken from the written submission of the appellant. They are as follows:

> "The facts before the learned trial Judge were that a police officer, in a marked police vehicle, chased the accused for a distance of in excess of forty kilometers, with his red and blue dome lights flashing and his siren going for the period of the chase. The evidence further indicated that the accused was speeding, was driving too fast for the road conditions, ran a stop sign, fishtailed on a number of occasions and drove on the wrong side of the roadway. The evidence is that ultimately the accused came to a stop when his vehicle "semi-rolled" off a road known as the Fulton Logging Road.

Counsel for the respondent, in his written submission, agrees with these facts with a slight modification that the siren ceased to function approximately half way through the pursuit.

The issue before the count on the appeal is not the safeness of the stop, although the facts might give one some cause to wonder whether the stop was in fact a safe one. The issue addressed by counsel was, whether the learned trial Judge was in error in finding that the accused failed to come to a safe stop by interpreting the meaning of the section as a prompt, safe stop.

S. 92.1 (1) of the Motor Vehicle Act reads as follows:

> 92.1(1) A driver of a motor vehicle commits an offence where
> (a) he
> (i) is signalled or requested to stop by a peace officer who is readily identifiable as a peace officer, and
> (ii) fails to come to a safe stop, and
> (b) a peace officer pursues the driver in order to require him to stop.

This issue arose at the trial when counsel for the defence at the close of the Crown's evidence, applied to have the charge dismissed on the ground that there was no evidence that the accused failed to come to a safe stop. Of course, as one can see from the facts, the accused only came to a stop after being chased for approximately one half an hour by the pursuing police officer.

The motion was dismissed by the learned trial Judge and no evidence was called by the defence. The trial Judge then convicted the appellant of the charge. In so doing, he did not again comment on the interpretation of the section as he had done on the no evidence motion. It is implicit in his decision that the was so interpreting the section in convicting the accused.

In dismissing the motion for non-suit, the learned Provincial Court Judge said as follows:

> "It is interesting that the other recent amendment to the Motor Vehicle Act dealing with similar circumstances as Section 92.1(1) does require, in explicit terms, an immediate safe stop. And it isn't readily apparent to me why some such word as 'immediate' wasn't drafted into section 92.1. But I think in considering the motion, the rules applicable to the strict instruction (sic) of statutory offences are applicable and on reading and re-reading section 92.1. I am unable to see that any other construction than that the motorist in question, the accused, must come to a prompt stop is (sic) possible.
> And I think it does derive from the three elements of the offence; the signal to stop, the failure to come to a stop in such a circumstance as pursuit is required to bring the driver to a stop. Accordingly, I dismiss the motion."

In his submission, counsel for the appellant said the learned trial Judge was in error in that this being a penal statute it must be strictly

interpreted, that any ambiguity must be resolved in favour of the appellant and that the learned trial Judge, in coming to the interpretation that he did, made an error in law by inserting words such as "immediate" or "prompt" into the words of s. 92.1.

In re Garron, 1949, 2 W.W.R., 21 a decision of the British Columbia Supreme Court, Whittaker J. quotes with approval the decision of the Privy Council in Dyke v. Elliot; The "Gauntlet", (1872) LR 4 pc 184, at 191, 8 Moo PC (NS)428, 41 LJ Adm 65, 17 ER 373 as follows:

> "No doubt all penal statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a casus-omissus, that the thing is so clearly within the mischief that it might have been intended to be included and should have been included if thought of. On the other hand, the person charged has a right to say that the thing charged, although within the words is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there is a penal enactment is to be construed, like any other instrument, according to the fair common-sense meaning of the language used and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

Whittaker, J., in the Garron case refused to interpret the Government Liquor Act, and the padlocking power contained therein, to add a power to evict as well as a power to padlock and prevent entry.

Similarly, in re Edmonton Hide and Fur Co, (1919) 3 WWR 53, a decision of the Alberta Supreme Court, the court refused to add the words "fur bearing animal or pelt thereof" in the Game Act in grounds that it was an obvious omission by the legislature.

The submission of the appellant here is firstly that the learned trial Judge has inserted the words "prompt" or "immediate" into the relevant section to remedy an obvious omission by the legislature.

I do not view the learned trial Judge's interpretation of the section as being an addition of a term which was obviously omitted by the legislature. What he has done, is to interpret the words "come to a safe stop" as they are contained in this legislation and the question remains whether the learned trial Judge did so in accordance with the accepted rules of statutory interpretation as it applies to penal statutes.

In Tuck & Sons v. Priester (1887), 19 Q.B.D. 629 at p 638, Lord Esher said:

> "We must be very careful in construing that Section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal Sections."

In Paul v. The Queen, (1982) 138 D.L.R. (3d)455, S.C.C. Lamer J.A. makes the following statement at p 464:

> "The ordinary rules for interpretation would have us then look to discovery parliament's purpose and given those words whatever meaning within reasonable limits that would best serve the object parliament set out to attain. When dealing with a penal statute the rule is that, if in construing the statute there appears any reasonable ambiguity, it be resolved by giving the statute the meaning most favourable to the persons liable to penalty."

It is to be noted that in both of these passages the reference is to

"two reasonable constructions" or to "any reasonable ambiguity".

In Whimster v. Dragoni; Whimster v. Mills and Mimster v. Northern Club & Cafe Company, Limited (1922) WWR 185, a decision of the British Columbia Court of Appeal, p 187 Martin, J.A. says as follows:

> "The way penal statutes must now be construed was laid down by the full Court of this province, affirming the decision of Mr. Justice Duff, in McGregor v. Canadian Consolidated Mines Ltd. (1907) 12 B.C.R. 116, 373, 4 W.L.R. 101, 2 M.M.C. 428":
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> The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important; and it is by the light which each contributes that the meaning must be determined. Among them is the rule that the sense of the words is to be adopted which best harmonizes with the context, and promotes in the fullest manner the policy and objects of the Legislature. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent; and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are indeed frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Lord Coke's words to suppress the mischief and advance the remedy'.
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> "In that case the Court felt justified in reading the word section' as rule' in order to give effect to the manifest intention of the Legislature ..."

The learned Provincial Court Judge here, in his reasons for dismissing the no evidence motion, does make comment about the words "immediate" not being drafted into the section and that he is unable to see any other construction other than that the motorist must come to a prompt stop as possible. However, on reading the entire passage, it becomes apparent that the learned trial Judge, while effecting a strict interpretation of the section, is interpreting in the manner which best harmonizes with the context and which promotes in the fullest manner the

policy and objects of the legislature.

In my view, there is no ambiguity nor are there two reasonable interpretations of this section. If this section were to be interpreted that a safe stop means a safe stop at whatever point in time, then the section itself would become totally meaningless. The words "safe stop" relate in time to the signal of or the request of the peace officer and the safe stop must be such that does not require a peace officer to pursue the motorist in order to require him to stop.

While such an interpretation may not require the word "prompt" to be applied in interpreting the section, in the circumstances of this case, I do not consider the learned trial Judge's interpretation of this section which included the use of the word "prompt"as being in error. What the trial Judge did do was interpret the section which best harmonizes with the context.

For these reasons, the appeal against the conviction on this charge must be dismissed.

The appeal against the conviction for dangerous driving having been abandoned, it is dismissed.

January 7, 1986

R.T. Errico, County Court Judge