

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

against

MALKEET SINGH

A P P E A L P R O C E E D I N G S

BEFORE THE HONOURABLE MADAM JUSTICE E.A. READY
on July 13, 2001 at BRAMPTON, ONTARIO

CHARGE: S.175(12) H.T.A.

APPEARANCES

R. Craig, Ms.

Prosecutor

T. Brown

Agent for the accused

(ii)
Table of Contents

ONTARIO COURT OF JUSTICE
T A B L E O F C O N T E N T S

WITNESSES:

Exam. Cr. Re-Ex.
In-Ch. Exam. Exam.

Put On Page

Submissions by Mr. Brown 2
Submissions by Ms. Craig 15
Submissions in Reply by Mr. Brown 19

Reasons for Judgment 24

FRIDAY, JULY 13, 2001

MS. CRAIG: Turning to the appeal list, we can deal with number five, Malkeet Singh.

MR. BROWN: Thank you. Good morning again, Your Honour.

THE COURT: Good morning.

MR. BROWN: Todd Brown. I appear as agent for Mr. Singh. He's not before you. I'm here with his instructions. This is a conviction appeal and I'm ready to proceed. I don't know if the court's had the opportunity to peruse the transcripts.

THE COURT: No, I haven't. But, if it's going to proceed, it can proceed and then I'll take an opportunity to review them. I only have one transcript here.

MR. CRAIG: Yes.

MR. BROWN: I think we could effectively make our way through it under the circumstances, Your Honour. Most of the facts aren't really in dispute. If I could begin. The charge that was before His Worship Justice of the Peace Biss, was one of failing to stop for a school bus while overtaking. The authority for that charge, Your Honour, is found in S.175(12) of the *Highway Traffic Act*.

It sets out, and I'll paraphrase that a motorist approaching the rear of a stopped

school bus which has its overhead red flashing lights activated, that activation of the lights triggers an obligation by the motorist to stop his vehicle.

THE COURT: Could you just enlighten me as to which lanes we're talking about? Who has an obligation when that happens to stop? Would it be, for example, northerly traffic, southerly, depending on which direction or both?

MR. BROWN: Understood. Understood. This is the charge dealing with overtaking traffic. There's a separate charge that would deal with vehicles approaching...

THE COURT: Oncoming.

MR. BROWN: ...oncoming.

THE COURT: Okay. This is overtaking.

MR. BROWN: Quite strictly overtaking. That's the charge that was before the court.

THE COURT: Yes.

MR. BROWN: The obligation on the motorist is -- any motorist, regardless of the lane, if they're approaching a school bus from the rear and that they are to be overtaking the bus, then it is incumbent upon them to stop their motor vehicle once the safety equipment is activated, i.e. the overhead flashing lights and there'll typically be an automatic stop arm with a stop sign on it that comes out from the side of the bus. The section 175(12) clearly

stipulates that the motorist, under these circumstances, is required to stop his vehicle at least 20 metres from the rear of the bus. So, to put it shortly, in very simple terms, motorists driving along, sees a stopped school bus, the moment the lights come on, he's required to stop his motor vehicle at least 20 metres from the rear of the bus. At least in my view means you could stop 20 metres or 21 metres or 22 metres.

THE COURT: But, no closer?

MR. BROWN: No, closer than 20 metres.

THE COURT: Yes.

MR. BROWN: The issue that this appeal presents deals with this 20 metre stipulation. It's my view that given the very clear mandatory language in the Act, dealing with the 20 metre stipulation, that that forms an essential ingredient in the Crown's case. So, I think effectively, it's incumbent on the Crown, in the successful prosecution of a charge such as this, that they place the defending motor vehicle at least 20 metres from the rear of the bus at the time that the lights were activated. And I'll go on to suggest that as a matter of law, if the vehicle is by example, ten metres from the rear of the bus, at the material time, which is when the lights are activated, it would be my submission that a court could not

5
10
15
20
25
30

register a conviction under those circumstances. Clearly it's impossible for the defending motorist to stop his vehicle at least 20 metres from the rear of a bus if the lights aren't activated until he's, let's say in this example ten. So, I think much turns on that issue and that's essential going to be the central point argued today.

I don't think in reading the transcripts that Justice of the Peace Biss agrees with me, my take, on what the state of the law is on that point. I know that my friend doesn't agree with me either. At any rate, Your Worship, the evidence that was presented to the Justice of the Peace in the trial was that the defending motor vehicle, Mr. Singh's vehicle was approaching the rear of a stopped school bus.

THE COURT: All right. Where is that in the...

MR. BROWN: That would be...

THE COURT: ...transcript please?

MR. BROWN: ...that would be the second Crown witness in-chief. Probably the best place to look would be about page 19. He indicates in-chief, he starts at approximately...

THE COURT: All right.

MR. BROWN: ...line 20.

THE COURT: Yes.

MR. BROWN: He indicates this vehicle was approaching behind his vehicle approximately

50 feet et cetera. I found that evidence to be a little vague and I think it would be of help if we could perhaps just fast forward a little to the beginning of the cross-examination where I clarified exactly what was going -- and that's page 21. Pardon me, it's not page 21, it's page 22 at line ten. In fact, it's the first question I put to the officer. This is in attempt to clarify who was where at the appropriate times. We find from his answer at line 15, he was 20 feet behind the school bus. Okay. Now, when the officer gave his evidence in-chief, he had stated that the defendant's vehicle was 20 feet from the bus when the lights were activated. I didn't understand whether the officer meant that he first began his observations when the vehicle was 20 feet behind the bus or if he was saying that at 20 feet behind the bus that's the time when the lights came on. And I wasn't clear about that, so I clarified that under cross-examination.

THE COURT: Where is this?

MR. BROWN: Okay. That's at line 15 where I put the question to him....

THE COURT: What page, please?

MR. BROWN: Again, 22. I put to the officer that,

"the lights had been activated, the lights were activated. And I'm meaning already

activated when the vehicle that we're referring to is approximately 20 feet from the rear of the bus. Is that correct?"

He says,

"No. When I initially saw the school bus, which would have been 70 feet behind the bus",

which is himself being 70 feet behind the bus,

"the vehicle was approximately 20 feet behind the school bus. At that stage the lights were activated."

I don't know how clear I'm making myself. I think what was hammered out in that portion of the cross-examination is that the Singh motor vehicle was 20 feet behind the rear of the school bus when the lights first were activated. So, it's not an example where the officer began his observations when the vehicle was 20 metres from the bus and that they had been on for some time and they could have been on for any period of time. I think it's clear from the cross-examination that yes indeed, at 20 feet, that's when the lights were first activated.

THE COURT: All right. Yes.

MR. BROWN: Sorry, that was difficult to explain. Now, that's the officer's direct evidence on that point. The Crown also called evidence from the school bus driver who was -- her name is, I believe, Ms. Piatkowski[ph]. Her evidence in-chief -- she's -- I'll do this

backwards again. The first question I asked her under cross-examination....

THE COURT: Where does that start?

MR. BROWN: That would be at page 14.

THE COURT: Yes.

MR. BROWN: She's driving the bus. Okay, it's page 16. Forgive me please, Your Honour.

The top of the page, there's the second half of a question.

"You've indicated that a vehicle passed your bus. Do you know how far that vehicle was from your bus at the time that your bus came to a stop?"

"No, sir. It was generally back behind. When we activate the lights, we take a look back and there was nobody right at the back bumper of the bus."

So, my take on that is that Ms. Piatkowski's, the bus driver's evidence, on the location of the Singh vehicle is that she doesn't know.

THE COURT: All right. So, she activates as a practice, the lights, if there's nobody at her back bumper, but she said there was nobody there...

MR. BROWN: Right.

THE COURT: ...and she couldn't tell you exactly where Singh was, his vehicle.

MR. BROWN: Right.

THE COURT: All right.

MR. BROWN: That's my take on the evidence. This witness went on to say, and I think this is going to be the point of contention, this

witness went on to say and from memory I think it's page 13 and this was in-chief.

THE COURT: Page 13?

MR. BROWN: Page 13. I know we're jumping around. Half way down the page at approximately line 18, in-chief, she answers a question put to her by the prosecutor, Mr. Francis[sic] and he is trying to illicit from her how long she had been stopped or how long the safety equipment had been activated prior to this vehicle passing the school bus. Her answer, in my view, is problematic. She sets out, initially, that she would say at least half a minute. And then she goes in this answer to seem to deduce in her own mind why she comes to this half a minute time. She sets out,

"Okay, already had one child that was ready to set out or had stepped out and there's a second child, there's two. And it takes them a minute to get off their -- you know, a few seconds to get off their seat and walk down the aisle. They're little kids."

So, my take on that answer, Your Honour, isn't that the witness is explicating saying that she was there for half a minute. I think it's favourable to view that evidence in it's entirety as opposed to just the first sentence. I note with interest that she indicates and I take it as almost a correction, the second sentence in that answer, which is line 18 or

19. It says,

"And it takes them a minute",

and I've underlined that,

"To get off off their -- you know",

and then she seems to correct herself and say,

"A few seconds to get off their seat and walk down the aisle. They're little kids."

So, I don't know what conclusions can safely be drawn from that answer. I think at best, it's sketchy as to whether or not the vehicle was in fact there for half a minute. I think it would have been favourable if we'd heard some explicit and direct evidence from that witness saying yes, I know I was there for half a minute. And if the issue were to rest there, I would have little to complain about. But, she goes on to enlighten the court as to how it is that she came to that half a minute conclusion. And in the course of her answer, she's concluding that it's half a minute based on how long it typically takes the children to get off the bus. But, she seems to correct herself and say it takes them a minute. But, she then she goes on to say a few seconds to get off their seat and walk down the aisle.

THE COURT: Yes, I can see that.

MR. BROWN: Yes, okay.

THE COURT: There's a number of ways she's

described it. So, I see that. Now, can we move on?

MR. BROWN: Absolutely. The issue I made at the end of the evidence, an application for non-suit in front of the justice of the peace, my argument, as it is today, was that the Crown has not effectively put the defending motor vehicle behind this 20 metre threshold at the material time, in my view, that being when the lights were activated.

THE COURT: All right. Apart from the evidence of the officer who said that and I thought we had come to a determination of what his evidence meant....

MR. BROWN: I should have stressed, Your Honour, that he said feet.

THE COURT: Yes.

MR. BROWN: Right.

THE COURT: All right.

MR. BROWN: We're dealing in metres.

THE COURT: Yes. All right. So, his evidence is that it was the Singh motor vehicle was 20 feet behind the bus when the lights...

MR. BROWN: Absolutely.

THE COURT: ...equipment was activated. So, what is the equivalent of feet to metres?

MR. BROWN: Well, there's approximately three feet in a metre.

THE COURT: Yes.

MR. BROWN: So, it's substantially less,

essentially is what the whole appeal is about.
The....

THE COURT: So, you divide the 20 feet by approximately three and you might be talking may be around, at the most, seven metres behind?

MR. BROWN: I always use the formula ten feet is three metres. That's six metres, in my view and that's an approximation. There's some decimals in there. But, if ten feet is three metres, I'm sorry. Yes, that's correct. If ten feet is three metres and we have 20 feet, that makes six metres. So, the officer's direct evidence is that the defending vehicle is six metres from the rear of the bus at the time that the overhead lights are activated.

THE COURT: So, based upon that....

MR. BROWN: Well, that's my complaint in it's entirety. The section mandates very clearly that you have to stop at least 20 metres and....

THE COURT: But if you're already that close to the vehicle, it's impossible is it not.

MR. BROWN: That's my argument in it's entirety.

THE COURT: All right. Carry on then.

MR. BROWN: A good parallel to draw is a motorist approaching a red light is required to stop at a stop line. In fact, any time the Act requires a driver to stop his vehicle, it

5 stipulates where. At stop signs, red lights
and so on. Any instance. In a red light
scenario, if the Crown doesn't effectively put
the defendant behind or at the stop line when
the lights red, the case typically fails. If a
person is going through an intersection and the
light turns red half way through, you can't
very convict them of failing to stop for a red
light when....

10 THE COURT: Did your client ever stop his
vehicle anywhere near the bus?

MR. BROWN: No.

THE COURT: He went right by.

MR. BROWN: No. And I'll give....

15 THE COURT: So, why didn't he stop right there.

MR. BROWN: He should have. He should have.
Absolutely. And I've actually in my
discussions with my friend, I said look, any
reasonable driver operating a motor vehicle,
whether they're over the 20 metre threshold
or this imaginary line ought to stop their
vehicle.

THE COURT: He went right by.

20 MR. BROWN: He did, very slowly albeit. In
fact, that was submitted as part of my
submission to sentence that he "crawled" by
is the word used by Ms. Piatkowski.

25 THE COURT: And shall not proceed until the
bus moves or the overhead signal lights have
stopped flashing.
30

MR. BROWN: Understood.

THE COURT: So, what's the basis for your argument then?

MR. BROWN: Well, I think common sense would dictate that, okay, given the nature of the school bus stopping, even if you're over the 20 metre threshold, it would make sense to stop your vehicle. I think, and this may be beyond what I should be submitting, but I mean, let's take this example to the extreme. Let's say you're one metre from the rear of the bus when the lights come on and you're travelling 40, 50, 60 kilometres an hour. It's inconceivable that a driver could even be expected to see the overhead lights let alone stop for the bus.

THE COURT: All right. But, there'd be some attempt would there not? Was that your client's defence that he never saw the lights?

MR. BROWN: No, that wasn't his defence at all.

THE COURT: All right. Well, then I don't think we need that example. Let's go on to what your argument is.

MR. BROWN: Okay. Most certainly. The evidence as it disclosed the events as they unfolded was that when the lights came on, he was approximately six metres from the rear of the bus. Even if, Your Honour, and I put this example to his worship, if the defendant were to have jammed on the brakes right there, the

officer could very easily come up and knock on his window and say, sir, you didn't stop within at least, I'm sorry, 20 metres from the bus. So, you're sort of betwixt in between. Common sense would dictate you should stop anytime. I always stop for school buses. But, when you're six metres from the bus, the lights don't come on until you're six metres from the bus, it is impossible to stop a minimum of 20 metres, that threshold you've passed. It's long behind you. It's 14 metres behind you. You know, it puts the motorist in a very precarious position whereby he's facing the peril of a conviction, you know, if in the circumstances such as these he's not given the 20 metre opportunity to even bring his vehicle to a stop. An argument can be said and may be it should be addressed in the legislation. May be it would be preferable if the section said, you know, stop if you can within 20 metres, but at least no less than 20 metres. But, it doesn't say that. The law is clear. Stop at least 20 metres -- at least 20 feet, direct evidence from the police officer. And I don't think that the learned justice of the peace favoured my position on that. I note from his ruling on the non-suit, and I'll just tell you the page. It's page 29, at line 21. After I put essentially the same argument to him as I have to Your Honour, he

concludes that it's a situation, at line 21, page 29, it's a situation that we don't know where this car came from. And I think if the court were to accept my argument that it's incumbent upon the Crown to lead evidence that the car came from beyond this 20 metre threshold, then the justice of the peace ought to have acquitted the accused.

THE COURT: Yes, anything further?

MR. BROWN: Subject to any of your questions, Your Honour.

THE COURT: This is exactly what you argued in front of the justice of the peace.

MR. BROWN: Precisely.

THE COURT: All right. Could I hear from the prosecutor, please?

MS. CRAIG: Yes, Your Honour. If I can take you to page six, line 12 approximately, line 12. The bus driver, Ms. Piatkowski, goes through the motions of what she was doing that day. She indicates, what happens is approximately five bus lengths, the bus being 40 feet long, will activate the school lights. That's the upper warning lights and she explains the lighting. And the prosecutor indicates, could you tell us if that's what you did that day. "Yes". She did. She goes on to say that this is what she did that day. Approximately 40 feet, the bus is still moving giving warning to drivers travelling behind

that the bus is going to be stopping. Then I take Your Honour to page seven, approximately line 25, the bus driver indicates,

"When it got to the...."

If I can just go to page seven, line five. The bus driver indicates,

"there was a car, came up very slowly from behind and didn't bother to stop. It still continued past. It pulled out and came into the passing lane."

The bus driver is was honking the horn. And we go down to line -- approximately line 25, the bus driver is scanning the area.

"So you're looking from side to side, watch that the right children get off. Watch that the right adult is picking -- and then scan back. And this is when I was the car passing the bus."

If then we look at the officer's evidence -- if I can just -- page -- court's indulgence, approximately line 18, the officer.

MR. BROWN: I'm sorry, what page.

MS. CRAIG: Page 19, line 18.

THE COURT: Does he change his evidence that the bus -- the car was 20 feet away from the bus when the lights were activated.

MS. CRAIG: No, he does not.

THE COURT: Yes.

MS. CRAIG: But this officer was not monitoring that school bus. The officer actually came around a bend and that's what I'm trying to submit that the driver was in a better position

-- the school bus driver was in a better position to observe this vehicle go around the school bus and also travelled 40 feet, approximately the length of a school bus before she actually stopped and then observed the driver come around once she was stopped. I would submit that her evidence gives the driver behind her an opportunity to stop. But the officer was not in as good a position as the driver of the school bus, as she indicated earlier, she was scanning and didn't -- didn't see that vehicle until it -- she was actually coming to a stop. And she also indicates that she was travelling when the lights were activated to give drivers warning. She didn't just stop the vehicle and turn on the lights. She travelled 40 feet. The length of a school bus. We also have the estimated speed of the motor vehicle. Approximately ten kilometres. At ten kilometres, that driver of a motor vehicle should have been able to stop, even if it was 20 feet. But I would submit that the driver of that motor -- the school bus driver observed that -- didn't see the vehicle at first and observed it travelling past and had already travelled 40 feet. I would submit that that driver had an opportunity to stop.

THE COURT: Well, what does the legislation mean? It says both, bring your vehicle to a stop, but at least 20 metres behind the

vehicle when the lights are flashing. Isn't that what the legislation says?

MS. CRAIG: That's what it says, yes.

THE COURT: Yes.

MS. CRAIG: But, I believe the intent of the legislation is for the safety of children at least 20 metres -- 20 feet behind -- 20 metres, pardon me.

THE COURT: So, you're saying even if he was closer when she activated those lights he still has to bring the vehicle to a stop.

MS. CRAIG: I would -- that's not what I'm saying. No, Your Honour. What I'm saying is that I don't believe he was that close. That the driver of the school observed that vehicle coming around, going from the curb lane into the passing lane and had already travelled -- the school bus had already travelled 40 feet from the time it activated the -- the lights. She's indicating at approximately five bus lengths, 40 feet a bus being -- 40 feet long, she activated the lights.

Based on that, I would submit that the driver had an opportunity. There's no way the lights were activated, she's travelled over 40 feet, 200 feet before she came to a stop. For any driver not to observe that over 200 feet, miss the activation of the lights, that's my interpretation of her evidence on page six

at line -- approximately line 11.

THE COURT: Yes. All right. Carry on then.

MS. CRAIG: Those are my submissions, Your Honour.

MR. BROWN: If Your Honour would entertain a response.

THE COURT: Yes.

MR. BROWN: I respectfully disagree with my friend on her take of the school bus driver's evidence. On page six, I listened carefully, at about line 11, a question was put to the officer -- I'm sorry, the school bus driver, and she starts to indicate what she's supposed to do or what she generally does. And that's where we get this 40 feet stuff and how long you're to drive with the lights on. But, Mr. Brents[ph] is the prosecutor at line 15, wants to know what she did on that day. And he says,

"Could you tell us what you did on that day, though, you're giving your evidence in a general manner?"

And she[sic] says,

"Okay, what did you actually do?" And once we get that answer at line 21, she doesn't indicate that she'd been driving for X number of bus lengths or any of this stuff.

THE COURT: Yes, at line number five she goes from there to say on page seven that when asked to advise what she did that day,

"There was a car came up very slow from behind and didn't bother to stop."

MR. BROWN: Right. Right. There was also evidence lead as to a number of intersections that would have been behind the bus, so when the school bus driver indicates what she is supposed to do in-chief, you know, she explains the situation where you give driver's advance warning and the bus is 40 feet long and you're supposed to drive for a number of bus lengths with the lights on et cetera, et cetera, that's what she's supposed to do. When she's asked to specify what she did, she says I'm driving along the road and it's time to activate the lights. So, you switch the lights on, you activate them, you check for traffic. And to see that it's slowing and you pull slightly to the side, as you come to a complete stop. So, I don't think there's anything reliable that puts this bus, as my friend would have the court believe, that's driving for a number of bus lengths with the lights on, et cetera, et cetera. And I don't think we ought to discount Officer Wright's direct evidence. And if I could respond to the point that my friend raised on that issue, she cited in her arguments as I did, the portion of the officer's evidence in-chief where it's ambiguous as to whether the defending vehicle was 20 feet from the bus at the time that the lights were activated or whilst they were

activated. And that again, as I submitted earlier, I clarified under cross-examination. So, I think it would be more favourable to look to the officers clear explanation of what he observed that was illicit under cross. And that was, as I read earlier, that no, the lights were activated, initially activated at the time that the Singh motor vehicle was 20 feet from the rear of the bus.

So, I think if we take all of the evidence in totality, I think that it can all co-exist quite comfortably. The officer's evidence, along with Ms. Piatkowski's evidence in that she's unaware of this vehicle. She didn't at any time see this vehicle. She didn't tell the court, yeah, I did see the vehicle and it was 21 metres behind the bus. She says I didn't see it at all. The last minute it came out from behind the bus. Something to that effect. I think what we would have to hear from the Crown's perspective for a case to be successful is that no, I saw this vehicle and it was more than 20 metres from the rear of the bus. And that should be something that is proven beyond a reasonable doubt. And I don't think that would even be possible to do in light of Officer Wright's very clear and very direct evidence. And we should also bear in mind the vantage point that Officer Wright had,

which was behind the defendant's vehicle. So, when the officer gives his very explicit evidence that, no, the lights came on when the defendant's vehicle was 20 feet from the bus, it ought not be simply dismissed out of hand and have the circumstantial connections drawn from Ms. Piatkowski's evidence and have those conclusions favoured over Officer Wright's.

And I think at the end of the day, Your Honour, that had Justice of the Peace Biss, agreed with my view of the appropriate take on the section and what it actually mandates, I think that he would have come to a different result. And from reading this transcript, the judgment on the non-suit and the judgment after submissions -- His Worship doesn't address the 20 metre issue that I'm repeatedly putting to him. He seems to be satisfied that a conviction ought to be entered based on the fact that's it crystal clear that this defendant passed a stopped school bus when it had it's lights on. And I think that, one, in particular, the Crown has to go further and say, no, Joe passed the school bus, the lights were on when you were more than 20 metres from the rear of the bus. And I think that the case is made out at that point. It's incumbent on the Crown in every case, such as this, to lead

evidence as to the location of the defendant's vehicle. And that's essentially it, subject to any of your questions, Your Honour.

THE COURT: Prosecutor, do you agree with that submission that it is part of the Crown's case to establish where it was, how far back the defendant vehicle was when the equipment was activated?

MS. CRAIG: Yes, and -- yes. But, I'm not sure whether that's the intent of the legislation that, you know, I still take the view that the bus driver was in a better position although she didn't observe exactly where she was. But, I still take the position that she was travelling when she activated the lights which would give an opportunity of more than 20 feet. I still take that position in interpreting what Ms. Piatkowski....

THE COURT: But, we really don't know how -- even if she was travelling, we are only guessing, are we not, we don't have any real direct reconstructed evidence as to how much...

MS. CRAIG: No.

THE COURT: ... metres or....

MS. CRAIG: But, I don't think you would get, you know, you would get more than 20 metres, but you wouldn't get an exact, you would get an approximation. You also have an officer coming around a bend, with a bus stopped

5 already. In my view of reading the transcript, the motor vehicle behind that school bus already had the opportunity to stop with the bus travelling that distance. Because the bus doesn't stop, put the lights on right away, they travel.

THE COURT: All right. Well, I'm going to look at the transcript in light of the submissions and we'll come back at two o'clock.

MS. CRAIG: Sure. That's fine, Your Honour.

MR. BROWN: Thank you, Your Honour.

R E C E S S

15 ...U P O N R E S U M I N G

COURTROOM CLERK: Court will resume. Be seated please.

THE COURT: Yes. All right.

20 R E A S O N S F O R J U D G M E N T

READY J. (Orally):

25 I have had an opportunity now to review the transcript in respect to the matter of Malkeet Singh. I considered the transcript, the evidence that is set out therein, in light of the submissions that were made by agent for Mr. Singh as well as from the prosecutor.

30

I am satisfied that the only evidence that we have about the location of this vehicle, in respect to the school bus, comes from both the school bus driver, S. Piatkowski as well as from the constable who noted this vehicle, Constable P. Wright. I am satisfied that when one reviews all of the evidence of those two individuals, it is clear that from her evidence, when she started this manoeuvre of stopping the bus and activating the necessary equipment for the school bus, she never noted anybody, as she said, on her bumper at that time.

It is also clear from her evidence that in fact all that she really can tell about the location of this motor vehicle is that some half a minute or 30 seconds after she had stopped, activated the necessary equipment and was in the process of allowing one child to disembark from the vehicle, she said she noticed this car crawling by her at a fairly slow speed of ten to 15 kilometres. As to where this vehicle was in respect to her vehicle when she had first stopped the vehicle and activated the lights is really not clear from her evidence. The prosecutor has asked that it would be reasonable for a presiding justice to infer from the evidence that 30

seconds has passed before she notices this vehicle up beside her. I am asked and the prosecutor is suggesting that the justice should have and could have inferred that the vehicle was a fair distance back. In fact, would have been further back than the 20 metres and would have had lots of time to comply with the section and stop.

They are asking this court to, in fact, suggest that I should, as well as, indicate that a presiding justice could prefer her evidence about the location of the vehicle based upon the fact that she said the car passed her about 30 seconds after she had stopped and activated her lights. They are asking this court to suggest that it was proper that the presiding justice could infer that this vehicle was well behind the vehicle and in fact could have avoided violating the 20 metre rule in the section. And they ask me to accept that evidence as well as the justice of the peace to prefer that piece of evidence.

But, it is very difficult to do so unless there was some expert testimony called in respect to the speed of the vehicle, in respect to the amount of time, 30 seconds and what location that would have put the vehicle in vis-a-vis the bus when it first activated its lights

and was stopped.

I really can not do that based upon the evidence that I have heard from the bus driver. I do not think it would be proper for the presiding justice to do that or to read that into the evidence.

What we really have at the end of the day is the evidence of the presiding officer, Constable P. Wright. The evidence of the constable is basically that, and it is his understanding of the evidence that the vehicle was 20 feet behind the school bus when the lights were activated, and he indicated that he had just come around a slight bend and he noticed the school vehicle with the lights and he noted the driver and the driver drive by.

So, I am satisfied that he was in a position that would allow him to adequately access the vehicle and what was happening ahead and his evidence is quite clear. There is evidence that a presiding justice must consider that the vehicle was 20 feet away when in fact the lights were activated on the bus.

Accordingly, 20 feet does not equate to the requirement under the *Highway Traffic Act*. It

would appear that it was much closer than 20 metres and accordingly should not be caught by the legislation as violating sections under the *Highway Traffic Act* that deal with overtaking a school bus with activated signal lights flashing.

Accordingly, based upon the conflicting evidence or lack of evidence, I am really only left in considering this appeal what the justice of the peace would be left with. This was the evidence of the officer that the vehicle was much closer than the 20 metres when the lights were activated.

Accordingly, the conclusion that the justice of the peace came too based upon what evidence is before the court seems in this courts estimation to be an unreasonable conclusion that is drawn from the evidence. I am certainly not stepping into the justice of the peace shoes and saying what I might have done on this occasion. I have to be concerned whether or not his -- based upon what evidence is there, could he reasonably come to that conclusion. I find that it is not reasonable to suggest that he could based upon the particular piece of evidence here.

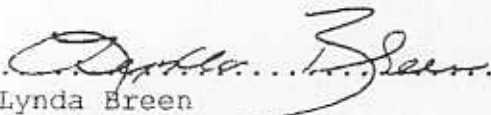
Accordingly, an acquittal is entered in respect

to this matter.

MR. BROWN: Thank you, Your Honour.

MS. CRAIG: Thank you, Your Honour.

THIS IS TO CERTIFY the
foregoing is a true and accurate
transcription of my recordings
to the best of my skill and ability.


Lynda Breen
Court Monitor

Date Transcript Ordered: January 23, 2002
Date Completed: February 1, 2002
Date Ordering Party Notified: February 9, 2002