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ONTARIO COURT OF JUSTICE

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AGAINST

MANRAJ GREWAL

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

BEFORE HER WORSHIP JUSTICE OF THE PEACE
D. MCALPHER, on June 28th, 2001, at KEELE STREET
COURTROOM 704, 3:00 P.M.

CHARGES: Section 128, H.T.A.
Speeding

APPEARANCES

Prosecutor for the Crown

Mr. Woods

Agent for the Defendant

Mr. P. Peretti

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ONTARIO COURT OF JUSTICE

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MR. WOODS: If I could call the matter for Grewal. This is line 19.

Manraj Grewal.

MR. PERETI: Good afternoon, Your Worship. Paul Pereti appearing as agent for the defendant who is before the Court. We also have the assistance of the Punjabi interpreter.

THE INTERPRETER: Good afternoon, Your Worship. Punjabi interpreter.

THE COURT: Are you ready to proceed?

MR. PERETI: Yes we are, Your Worship.

THE COURT: Is the prosecution ready to proceed?

MR. WOODS: Yes, the prosecution is ready to proceed.

THE COURT: Is this a trial that you expect?

MR. WOODS: Yes, Your Worship. Well there's a motion attached.

THE COURT: All right, then swear the interpreter please.

MANWAN ARORA: (PH) SWORN: ENGLISH/PUNJABI

CLERK OF THE COURT: Manraj Grewal, you are charged on or about the 25th day of June, in the year 2000, at 12:31 P.M., at eastbound Lakeshore Boulevard West, in the City of Toronto, did commit the offence of speeding, 94 kilometers an hour in a 60 kilometer an hour zone. Contrary to the Highway Traffic Act, Section 128.

How do you plead to the offence, guilty or not guilty?

MR. PERETI: Your Worship, prior to entering a plea, I believe there is a motion attached before the Courts.

If you are satisfied with service, it is my understanding that there is an Affidavit of Service attached.

THE COURT: Yes.

MR. PERETI: Okay, good Your Worship, because I have a copy.

THE COURT: Is the crown satisfied with the Courts jurisdiction?

MR. WOODS: Yes Your Worship.

THE COURT: All right, go ahead.

MR. PERETI: Thank you, Your Worship.

With respect to this matter here, the defendant received a traffic ticket...the dates are put in different places on this. My apologies, Your Worship.

THE COURT: The offence date is June 25, if that helps you.

MR. PERETI: Thank you, Your Worship. I was looking --

THE COURT: The Notice Of Intention was completed July 9th.

MR. PERETI: With respect to this, Your Worship, the only (inaudible) the defendant has made is from June the 25th until July the 9th. Timeframe 14 days, it still...well the Notice o...the (inaudible) of Offence allows for 15 days for the defendant to

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apply for it and that was within those
15, prescribed 15 days. However, it obviously
took the defendant sometime to get his
Notice Of Intention to Appear in Court
and that would be the only way that I would
ask the Court to take into consideration
at fault for the defendant.

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With respect to the timeframe, I would
then ask the Court to consider from July
the 9th, until todays date of the 28th
of June, 2001, basically putting it at
eleven months and 20 days, Your Worship.
THE COURT: Yes.

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MR. PERETI: With respect to the length
of the delay, Your Worship, I would argue
that it's unreasonable and I base that
on a lot of the case law that I've read
in the past and we hear about, you know
six to 10 months, et cetera. As a result,
I am asking the Court to take into consideration
that eleven and twenty...eleven months
and 20 days is unreasonable.

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With respect to the reason for the delay,
Your Worship, it can only be interpreted
as systemic. I don't believe the defendant
should be found at fault for this delay.
He has no input in choosing the date of
todays date, the Court chooses that. I
don't want to fault my friend for it or
the police officer, as they have no input
as well. Obviously there is a bit of a
backlog in these buildings and as a result

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Grewal - in-ch. (on motion)
Grewal - cr.ex. (on motion)

5 we are seeing cases get from date of offence
to trial date, timeframe becoming lengthier
and lengthier.

The Courts must take into consideration
prejudice, Your Worship and for that I
would be requiring the assistance of the
defendant himself. So if I can have him
sworn, Your Worship.

10 THE COURT: Fine.

MANRAJ GREWAL: SWORN

EXAMINATION IN CHIEF BY MR. PERETI

15 Q. Sir, I would like you to explain to
the Court, how is your memory in relation to the details
of this traffic ticket?

A. It has been a long time. I don't remember
all the details.

20 Q. Has this traffic ticket affected you
in any other way?

A. It could affect my driver insurance,
my driver abstract.

25 MR. PERETI: I have no more questions for
you. My friend may have some for you.
One second.

CROSS EXAMINATION IN BY MR. WOODS

Q. Sir, you say you don't remember some
of the details. What details do you remember?

A. I remember that I got a ticket.

30 Q. Do you remember where it was?

A. I am not sure.

Q. So you...how long have you been involved with your agent, Mr. Pereti sitting there?

A. I don't remember the exact date, but once I got the ticket, I contacted him.

MR. WOODS: Those would be my questions, Your Worship.

THE COURT: Re-direct?

MR. PERETI: No Your Worship. No thank you.

THE COURT: Other witnesses?

MR. PERETI: No, I have no other witnesses, Your Worship.

THE COURT: Closing argument.

MR. PERETI: Thank you, Your Worship.

With respect to this, Your Worship, the prejudice that I believe the defendant has demonstrated today, is that this ticket has happened some time ago and he has advised us that as a result, he doesn't believe that he remembers every single detail. Now the difficulty is, if one of these details is gone and perhaps this detail may be a defence to the charge or may assist him in his defence, his ability to make full answer in defence to the charge may have been compromised, and it's difficult to say what we remember and what we have forgotten. I would assume that a forgotten memory can't be identified as truth anymore as a result it does hinder the ability for the defendant to make full answer in defence to the charge.

5 The second point that the defendant has
made was that being the point about his
insurance. He had a traffic ticket.
He doesn't know how it is going to affect
him, but that he worries (inaudible).
Nothing (inaudible) prejudice, Your Worship,
however, I would ask the Court to consider
it to be some type of minor anxiety.
10 Given what the defendant has said on the
stand, I think that prejudice here is
sufficient enough, given the content that
we are dealing with, the charges should
be Stayed, Your Worship.

THE COURT: Mr. Woods?

15 MR. WOODS: Your Worship, the crown concedes
that the proper calculation of time is
11 months, 20 days. The time that Mr.
Periti, I am sorry, July 9th to June 28th,
I believe the dates, from 2000 to 2001
and concedes that at this time the cause
20 of this time is systemic delay and therefore
it runs against the crown. All this time
properly runs against the crown.
Your Worship, the defence mentioned this
time is unreasonable. I would submit,
Your Worship, that unreasonable is not
25 at issue in a 11(b) motion. It is solely
prejudice to the defendant. And in this
case I submit, that only memory, that is
the lack thereof, the loss of memory should
be considered. Prejudice usually falls
30 under the heading of sigma, as it was

classified in ASKOV and MORAN, really does not apply to a speeding ticket. The worry about ones insurance rates going up is substantially less than in the case of ASKOV, a major drug trafficking case, having a serious drug charge against one. In this cse, it can be only memory, the loss of memory that may prejudice the defendant. In this case, it was said that some details may have been forgotten and there in those details perhaps there is a defence. Well that's true. Of course it's trite to say that the fact that we are not able to give a trial the day after one receives a ticket. Due to that fact, memories will be lost, details will be lost. It is not the case that ones memory of some details were lost. It is, has the defendant been unreasonably prejudiced by the crowns delay, such that they cannot receive a fair trial. In this case it's not clear, Your Worship, that any...I am sorry, let me rephrase that. There's not even a beginning of defence, to which of the details which have been forgotten. What has been put forth, I take it is, well I have forgotten some things about it, I don't remember when it was and maybe I have a defence but I don't remember what it is now. In that case, Your Worship, I submit that that does not found unreasonable prejudice to the defendant. The Courts accept, yes

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JUDGMENT ON MOTION
J.P. D. MCALEER

5 a defendant will forget details of an event,
but that in itself, should not lead to
a Stay, under an 11(b) of the Charter.

Thank you, Your Worship.

THE COURT: Do you want to respond Mr.
Pereti?

MR. PERETI: No thank you. I think I have
made my point clear.

10 THE COURT: Okay thank you.

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JUDGMENT ON MOTION

MCALEER, J.P. (Orally):

15 I have an application with jurisdiction, proper
notice to the Federal and Provincial Attorney
Generals, as well as the Provincial Prosecutor,
an application for Stay Of Proceedings under
Section 24(1) of the Charter, for an alleged
20 breach of Section 11(b) of the Charter Of Rights
And Freedoms, which concisely put is the entitlement
of a person charged for the trial within a reasonable
period of time. And the allegation here is that
prejudice has occurred, due to the diminishment
of time, that the defendant is unable to make
25 full answer in defence and that the Court therefore
should intervene and grant, what I consider to
be, the greatest relief any trial Court, no matter
what level we are dealing with can offer in respect
of any trial, and that is to Stay the proceedings,
to deprive the Attorney General of this right
30 to prosecute. It cannot be entered into lightly.

We've heard evidence from the defendant. His evidence can be capitalized in two ways. The first is a question; how is your memory regarding this traffic ticket? Answer: It was a long time ago, I don't remember all the details. Very broad, inspecific, it doesn't assist me at all. Just, yeah, it's been a long time, I don't remember the details.

The second comment the defendant has made at the request of his agent, is there anything that has been affected in any other way. Well it could have an affect on my insurance. It's not even a statement in the sense that it's a definitive. It is a speculative assertion that would be made equally admitted after the ticket is issued vis-a-vis, 11 months and 20 days, which is the passage of time in this matter.

I find that under the circumstances, it's just not a case where the agent can stand before the Court and say: well I've read a lot of case law. If you want to refer to a case, I think you've got to hand it to me, but when you start talking six to nine months, I don't think you are talking about the City of Toronto, the biggest and busiest jurisdiction, not only in the province but likely in the country. The standard in these courts varies and each case is specific. But when the assertion is made and I quote these things from the agent, that the defendant can't remember every single detail, I question if that is a standard. Is it the standard that the Court must offer a trial within the first hour or week

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JUDGMENT ON MOTION
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5 of a transgression or an alleged offence, so
the defendant can preserve his memory of every
single detail. Those were the words that were
used by the agent and I think that is a misstatement
That is not the standard at all, and in fact,
the crown was quite successful in cross examination
to observe that the defendant does not at all
receive many tickets, so this one certainly
10 should stand out in his mind, despite the fact
he said; well yeah, but I don't know if I have
a defence here. Well I don't know if you have
a defence here either sir. But certainly it
is not the standard that you have to remember
every single detail.

15 You were even vague about the incidents that
you should remember as well that occurred after
that date or more recently, vis-a-vis this trial
date. When did you retain your agent? When
did you speak to the lawyer? Did you make any
prior steps in regard to ascertaining whether
20 there would be an affect to your insurance or
not. Who knows. There doesn't seem to be much
done at all sir, except you tell me that you
don't remember every single detail and therefore
I should enter a Stay in these matters and that's
just not the standard here.

25 I don't find it it's a case where the Court would
intercede and Stay these proceedings, given the
absence, in my opinion, the substantive prejudice
beyond a blanket statement of I don't remember
all the details.

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THE COURT: I direct the defence on this unsuccessful motion to enter a plea.
MR. PERETTI: Not guilty, Your Worship.
THE COURT: Thank you.
MR. WOODS: I'll call the officer.

POLICE CONSTABLE DAVID RHODE: (5170) SWORN

MR. PERETTI: Your Worship, I have no objection to the officer using his notes.

THE COURT: Thank you.
I take it that's going to be your application?
MR. WOODS: Yes.
THE COURT: Fine.

EXAMINATION IN CHIEF BY MR. WOODS

Q. Go ahead officer.

A. Thank you, Your Worship.

On June 25th, of the year 2000, I was working as a police officer in the City of Toronto. I was on Lakeshore Boulevard near Dowling Avenue for the sole purpose of monitoring eastbound traffic. The speed limit of Lakeshore is a posted 60 kilometer an hour zone. Lakeshore at this area is six lanes, three lanes eastbound and three lanes westbound.

On this occasion I was using a Laser Marksman 2020 speed measuring device, which is capable of measuring a motor vehicles speed. I compared this unit using radar, Muni-Quip KGP, number 4112 on a similar motor vehicle earlier and it was found to come up with the same reading and the radar was tested as well and found to be working to manufacturers specifications

5 The laser, number 8019, on this day was on a tripod and it was...the laser is set-up as such as it magnifies a veh...or magnifies somewhat with a red dot which goes out as a target and I am able to single out one vehicle on the roadway and I can lock a target in with the red dot, pressing a trigger.

10 At approximately 12:31 P.M., I observed a 1994 Lincoln, four-door black motor vehicle, a taxi, Airflight Services motor vehicle, travelling at a high rate of speed towards my direction eastbound. It was in the fast lane or lane one of three, eastbound. After observing the high rate of speed I targeted this vehicle using the laser. I found the vehicle or measured the vehicle and received a speed of 94 kilometers in the posted 15 60 kilometer hour zone.

20 I pulled this vehicle over, not losing sight of the vehicle. The driver had two male fares in the rear of the vehicle and the driver identified himself with a valid Ontario drivers licence as Manraj Grewal, the last name spelled G-R-E-W-A-L, with an address in Brampton, Ontario. His date of birth on the licence was December 31st, 1974. I was satisfied with this identification and issued the defendant with a Provincial Offences Ticket for the offence of speeding, 94 kilometers in a 60 kilometer hour zone, under the Highway Traffic Act, Section 128.

25 And the weather on this day was approximately 25 degrees Celcius. It was hot, humid and the road conditions were dry and this occurred in the City of Toronto.

MR. WOODS: Q. Officer, can you describe the traffic conditions at the time you took this reading?

A. He was the lone vehicle in my view.

30 Q. And at any time between the taking

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5 a radar device. Now he did mention that
the radar device was tested. He mentioned
it in such a way to insinuate that the
laser device was tested as well, however,
there has to be some evidence as to when
these devices were tested, specifically
the laser device as this is what is being
used to determine the speed of the defendant's
10 motor vehicle. There should be some evidence
that this device, this laser device, that
is being operated is in good working order
and that device is tested before and after,
sometime within a reasonable time from
the times of offence, Your Worship. Without
15 that evidence, I don't think my friend
has satisfied the Court that this device
could be working properly on that particular
date and as a result, I am asking the charge
to be dismissed.

20 THE COURT: Mr. Woods?

MR. WOODS: Your Worship, simply that the
crown need only establish that, just on
a common sense level that the way...the
method of measuring speed did work on that
day. There is no, as far as I know, no
25 statutory or case law requirement that
to say it was tested before and after or
before, then after, there is no formula,
simply any method it's open. As long as
the crown does satisfy the Trier Of Fact
30 that the device was operating properly
on that day, the crown's case is made out.
Thank you.

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REASONS FOR JUDGMENT
J.P. D. MCALEER

THE COURT: Anything else Mr. Pereti?

MR. PERETI: I forgot to mention a point in my closing argument, Your Worship with respect to who tested the device and I don't believe the officer mentioned that he is qualified to operate this device and I think that is an essential element as well.

I made a mental note of it, however, I forgot to mention it earlier, Your Worship. I apologize.

THE COURT: Well I gave the crown the opportunity for the last word, Mr. Pereti, because you should have mentioned that earlier.

MR. PERETI: Of course. Thank you, Your Worship, I --

MR. WOODS: I have no submissions.

THE COURT: Thank you.

Stand up Mr. Grewal.

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REASONS FOR JUDGMENT

MCALEER, J.P. (Orally):

All right, Mr. Grewal, what the officer has established is you are operating motor vehicle ✓ You are eastbound on Lakeshore Boulevard West, that's in the City of Toronto. You have two fares in your vehicle and then the officer tells me you

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REASONS FOR JUDGMENT
J.P. D. MCALEER

5 look like you are speeding, you appear to be speeding, travelling at a high rate of speed, He describes your lane. He tells me that he uses a device capable of accurately measuring the speed of a moving motor vehicle, that he calls laser. He tells me how he did some tests earlier, he said, in regard to a comparison with the radar, which is no longer necessary pursuant to the law, but he did it in any event. He continues 10 to utilize the device sir, and the only reasonable inference I can draw sir, is that the officer was satisfied the device was working properly. If there was "any", any evidence to the contrary, I would be prepared to consider this argument, 15 but there isn't. Your agent has chosen not to call you.

So what can I do sir, except find the crown has established that you were speeding. I do accept the reading sir. I find that the officer was in a position sir, to visually observe your vehicle and then utilize the device and I am 20 satisfied sir, the device on this date, subject to any evidence to the contrary, was working properly.

There will be a conviction.

25 Dealing with the penalty sir, any comment?

MR. PERETI: No, Your Worship, I have no comment.

THE COURT: All right, the set-fine.

Time to pay sir?

MR. PERETI: Thirty days, please, Your Worship.

THE COURT: Yes sir.

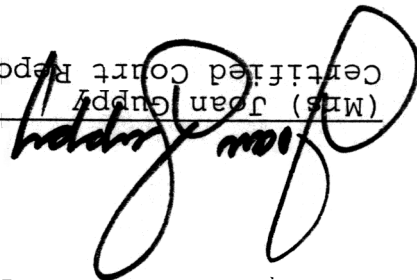
30 Thank you.

MR. PERRETT: Thank you, Your Worship.
MR. WOODS: Thank you.

* * * * *

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

(Mrs) Joan Guppy
Certified Court Reporter (retired)



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