

ONTARIO COURT OF JUSTICE

COURT FILE No.: Toronto

DATE: July 23, 2014

Citation: *Toronto (City) v. Mangov*, 2014 ONCJ 351

B E T W E E N :

LOUIS MANGOV

(Appellant)

— AND —

CITY OF TORONTO

(Respondent)

Before Justice S. Nakatsuru

Heard on July 16, 18, 2014

Reasons for Judgment released on July 23, 2014

Bauman, S. for the Respondent

Tatangelo, R. for the Appellant

NAKATSURU J.:

[1] Mr. Mangov appeals his conviction for speeding under the *Highway Traffic Act*, R.S.O. 1990, c. H.8 as amended. The trial was held on October 15, 2013, before a Justice of the Peace. The appellant raises two grounds of appeal: 1) The conduct of the Justice of the Peace gives rise to a reasonable apprehension of bias and; 2) The Justice of the Peace erred in curtailing cross-examination of the police officer on the manual for the laser device that he used to measure the speed of the motor vehicle and erred in refusing to make it an exhibit at trial.

[2] For the following reasons, the appeal is allowed and an acquittal is ordered.

A. SUMMARY OF THE FACTS

[3] On February 26, 2013, P.C. Hayward was conducting his duties in a uniform capacity on Kingston Road in the City of Toronto. He was enforcing the posted 60 kilometers

per hour speed limit on the road. The officer was using a Lidar Atlanta laser mounted on a tripod. P.C. Hayward testified that he confirmed that the manufacturer's specifications were met by his testing of the device at the police station both before and after his enforcement duties. At 7:31 in the morning, using his Lidar Atlanta, he measured the speed of a black GMC SUV driven by the appellant at 80 kilometers per hour. The police officer waived the vehicle over and gave the appellant a ticket for speeding.

[4] The appellant testified in his own defence that he was driving on his way to work that morning. He has always taken Kingston Road to work and was aware the police frequently set up speed traps along the route. As a result, he testified that he was doing the speed limit of 60 kilometers per hour. He acknowledged that P.C. Hayward waived him over and gave him a ticket. However, he testified that there was another black motor vehicle in front of him at the time he was waived over.

B. ANALYSIS

1. Reasonable Apprehension of Bias

[5] The test to be applied is whether a reasonable person, with knowledge of the relevant circumstances, would have a reasonable apprehension of bias that is real and substantial on the part of the decision maker. As stated in *Committee for Liberty and Justice v. National Energy Board*, [1981] 1 S.C.R. 369 at p. 394:

[T]he apprehension of bias must be a reasonable one, held by reasonable and right minded persons, applying themselves to the question and obtaining thereon the required information.

[6] Watt J. (as he then was) in *R. v. Bertram*, [1989] O.J. No. 2123 (Ont. S.C.) at p. 21 expanded upon what "bias" means in this context:

In common usage, bias describes a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case. In cases involving judicial disqualification, bias generally refers to the mental attitude or disposition of the judge towards a party litigant, rather than any views that he or she may entertain regarding the actual subject-matter of the dispute.

[7] After closely scrutinizing the whole of the trial proceeding involving the appellant, with the greatest of respect to the learned Justice of the Peace, I find that there is a reasonable apprehension of bias.

[8] To commence, let me acknowledge the difficult task that was faced by Her Worship. It is one that is all too commonly faced by Justices of the Peace who hear provincial offences charges. Put simply, these trial courts are faced with lengthy dockets with the pressure of trying to complete them in a sitting, often litigated by unrepresented defendants with little experience or knowledge of the substantive and procedural law, some quite upset

about the perceived injustice in their case, in a crowded courtroom with perhaps less than ideal staffing or facilities. It is all too easy in such circumstances for a Justice of the Peace or a Judge for that matter to become frustrated or impatient. Nevertheless, it is precisely in such a trying environment that there must be a conscientious and concerted effort to adhere to the well-known principle “that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”

[9] Unfortunately, in this case, this was not done. I hasten to add that nothing that I say should be construed as a finding that the Justice of the Peace was in fact biased. In many ways, she was fair and patient. There is no challenge on this appeal to her reasons for conviction or sentence. Nor do I make any criticism of the conduct of the appellant’s paralegal that represented him at his trial (the same paralegal that represents the appellant on this appeal). He was simply trying to represent his client to the best of his ability.

[10] The trial started out badly. After the prosecutor asked that the defendant be arraigned on the speeding offence, the Justice of the Peace made this comment:

THE COURT: Okay. Your client doesn’t want to resolve? He doesn’t understand that it’s in best interest to resolve. How many trials do I have to do for speeding before people understand? Could I see that?

MR. TATANGELO: Well, Your Worship...

THE COURT: Okay. You were allegedly going at 80 in a 60, sir. Okay? Was there a resolution presented to your client?

MR. TATANGELO: I believe there was one offered on the first occasion. I can certainly talk to my friend here.

THE COURT: Talk to your friend.

[11] In my opinion, there are a number of things wrong with what occurred here. First of all, it was the Justice of the Peace who initiated the inquiry about potential resolution. Before that, the Justice of the Peace was advised that this was going to be a trial and the prosecutor had immediately thereafter asked that the defendant be arraigned. At this moment in time, the Justice of the Peace was being called upon to be the trial court to hear the charge against the defendant. A trial where the defendant was entitled to be presumed innocent of the charge. When the Justice of the Peace asked the agent why his client did not want to resolve, in the context, this could have only have meant a resolution by way of a guilty plea. If there were any such resolution discussions conducted earlier, the Justice of the Peace should have refrained from making inquiries into it when it was clear the matter was going to trial. The defendant was entitled to have an impartial and unbiased adjudicator who would decide the case based upon the evidence heard. Not one who seemed to assume he was guilty from the beginning. This was exacerbated by the Justice of the Peace taking the further step in encouraging the defence to speak to the prosecutor about resolution.

[12] Obviously, the most significant problem was the comment made that it was in the defendant’s best interest to resolve and the intemperate remark about how many speeding trials the Justice of the Peace had to do before people understood it was in their best inter-

est to resolve. Of course, that was said before any evidence was heard. A reasonable and right minded person having heard these comments would only conclude that the court was predisposed to conviction on speeding trials. This apprehension of bias was substantial. The comment regarding how many speeding trials the Justice of the Peace had to do before people simply decided to plead guilty rather than having a trial, could only signify to the defendant that it was futile to have a trial since in this jurist's mind, a conviction was inescapable.

[13] I appreciate that after the paralegal returned and advised the Justice of the Peace that a resolution could not be obtained, the Justice of the Peace said that it was absolutely the appellant's right to have a trial. While this somewhat ameliorates the effect of the impugned statements, it does not remedy them. This comment could reasonably be interpreted as meaning that while it was the appellant's right to insist on a trial, this may still be a trial pre-ordained to a conclusion in favour of the prosecution.

[14] If the balance of the trial was without blemish, I may have regarded this exchange as simply an unwise and hasty comment made during perhaps a demanding day in the Provincial Offences Court.

[15] This did not prove to be the case. P.C. Hayward was cross-examined by the appellant about the tests he performed to ensure that the laser was operating properly on the day in question. These tests he performed at the police station using the device. In one such test, he measured the distance in performing the tests using a measuring wheel. When the appellant attempted to use a printout of an engineering supply company that supplied such measuring wheels, apparently off the internet, the prosecutor objected. Without ruling specifically on the objection, the following exchange took place:

THE COURT: Do you have any other questions relevant for the officer, Mr. Tatangelo?

MR. TATANGELO: I do.

THE COURT: And how long will you be, Mr. Tatangelo?

MR. TATANGELO: I've got 20, 25 questions. I've got quite a bit.

THE COURT: Well I think this is too much, Mr. Tatangelo. You have...

MR. TATANGELO: I'm sorry?

THE COURT: ...to focus on...

MR. TATANGELO: I'm sorry?

THE COURT: ..what has been said. Okay?

MR. TATANGELO: Your Worship, are you...

THE COURT: You have certainly the right to cross-examine the officer.

MR. TATANGELO: Thank you. Thank you.

THE COURT: But you have to be precise and concise and the officer testified very clearly on all the tests he's done. Anything else about the tests or about anything else?

MR. TATANGELO: It seems as if you've already made a decision, Your Worship, in your mind. I haven't even finished my cross-examination and you're telling me I have to get precise. I don't...

MR. RACZKOWSKI: Certainly doesn't seem that way to me, Your Worship.

THE COURT: I think you're going all over the place. The officer has been very precise in explaining the test. Okay?

[16] To be clear, there is nothing wrong in asking counsel how long they will be. It is done all the time and for good reason. Further, at times, to advise counsel that more focussed questioning or a certain focus to the questioning can be helpful both to the trier of fact and the questioner.

[17] But in reviewing the cross-examination, there was nothing unfocused or prolix to the questioning. The purpose was to question the officer about the tests he performed to ensure the laser was operating properly. This was fundamental to the defence since the appellant denied speeding. If he could undermine the reliability of the Lidar Atlanta's results, this could raise a reasonable doubt. The cross-examination was brief and to the point. At the point the comment was made, the entire cross-examination spanned eight pages of transcript. The portion dealing with the tests, four pages of transcript.

[18] Further, the comment made by the Justice of the Peace that the officer had been clear and precise was premature given that cross-examination on this point had only really begun. Whatever the tone of the exchange, it led the paralegal to question on the record if the Justice of the Peace had already made up her mind on the officer's evidence.

[19] Standing alone, there is not much substance to the apprehension of bias this exchange could cause in a reasonable observer. But when placed in context with the remarks made at the beginning of the trial, it becomes weightier. Again, a reasonable person could interpret the court's comments as indicating a predisposed attitude towards conviction when it came to a speeding trial. In other words, that the cross-examination of the officer with respect to his operation of the laser was predetermined in the mind of the jurist as being of no value and a waste of time.

[20] The cross-examination of P.C. Hayward continued. The appellant attempted to introduce the manufacturer's manual for the Lidar Atlanta as an exhibit. The prosecution raised an objection to the manual being marked as an exhibit. The Justice of the Peace ruled that it could not be made an exhibit. This will be assessed as a separate ground of appeal below.

[21] After the ruling was made, the following exchange took place:

THE COURT: Do you have any other questions of the officer? Otherwise, we will...

MR. TATANGELO: Your Worship, I mean...

THE COURT: I don't see what other questions you could have, other than making that on purpose very long. Okay?

MR. TATANGELO: At this point, Your Worship, now my friend has been – I believe my client's been prejudiced by the comments that you're making on the record. You're trying to state that I am purposely making the trial longer.

THE COURT: Absolutely. The officer answered...

MR. TATANGELO: Thank you.

THE COURT: ...very clearly all the questions that you had.

MR. TATANGELO: Again, I'm going to say for the record....

THE COURT: And this is – if this was going to be a two-hour trial, you should have asked for a special.

MR. TATANGELO: Well first...

THE COURT: It doesn't come in a place where we have 62 cases. It was up to you to ask for a time frame properly.

[22] There was no basis for the allegation that the paralegal was deliberately delaying the trial or making it longer. As already indicated, there was nothing wrong with the questioning. The Justice of the Peace also appears to have concluded any further cross-examination was pointless while the defence was still in the midst of developing its theory. Again, in the context of the previous remarks already made in this trial, a reasonable person would come to the conclusion that the Justice of the Peace was biased against the defence. It would seem that what was driving these comments by Her Worship was a concern that this case was taking too long given its place in the busy docket of her courtroom. While her concerns may have merit in terms of the systemic operation of the courts, the individual defendant would legitimately feel that his defence was being sacrificed on the altar of expediency.

[23] After this exchange, the Justice of the Peace and the agent for the appellant continued their discussion about whether it was appropriate to try this case in the busy courtroom and whose responsibility that was. The Justice of the Peace indicated she felt it was the defence who should have advised that the trial was going to be a two hour trial. The agent objected and stated that the trial had not yet taken a half hour and that the defence could not know that this trial, a second trial date for the appellant, would be placed on a docket along with over 60 other matters. Then Her Worship stated the following:

THE COURT: We're still – no, we have started 30 minutes ago and you're still not finished your cross-examination. I still want to hear from your client, saying that he was not speeding.

MR. TATANGELO: My client will take the stand. I was not finished my cross-

examination. If it's your ruling now that, that you're cutting my cross-examination short because the state decides to put 60 matters on a docket, and I think it's pretty ambitious of them to expect all 60 people to plead guilty, but if that's what they want to do, they control the docket, we don't, Your Worship.

MR. RACZKOWSKI: Okay. Your Worship, I think...

THE COURT: We're going to take five minutes. We'll take five minutes recess, okay, now and we'll come back. I'll leave you a few minutes to finish your cross-examination, but I'm not going to accept...

[24] After the recess, the agent returned and advised that he had no further questions for the police officer at that point. Undoubtedly, the Justice of the Peace took the five minute recess in order provide an opportunity for all involved to have a moment to regain the equanimity appropriate to a judicial setting. It was a sensible thing to do. However, the remarks made by the Justice of the Peace before she left the bench in the context of all of that which transpired before, would leave a reasonable observer to believe that not much scope was going to be left for any further cross-examination. Further, whatever the scope remaining, a reasonable observer would believe would likely be largely ineffectual from the perspective of the defence.

[25] The appellant testified largely without interruption or incident. Submissions were heard and the Justice of the Peace gave oral reasons convicting the appellant. These reasons are not attacked by the appellant. Despite that, in my view, the harm had already been done. The comment made at the start of the trial and the related exchanges during the cross-examination of the police officer raised a reasonable apprehension of bias in favour of the prosecution. In short, a reasonable person would apprehend that the march to conviction was unstoppable and the defence was being chastised for wasting the court's time in insisting on his right to a trial.

[26] Therefore, I would give effect to this first ground of appeal.

2. The Manual for the Operation of the Laser

[27] The appellant submits that the Justice of the Peace erred in refusing to make the manufacturer's manual for the Lidar Atlanta an exhibit at trial and curtailing his cross-examination on it. I reject this ground of appeal.

[28] Some history on how the Justice of the Peace came to her decision must be set out to understand this ground of appeal. From the record, it would appear that a copy of this manual was disclosed to the defence as a matter of disclosure by the prosecution. The agent stated that the manual was available in the prosecutor's office upon request by any individual.

[29] As noted above, the appellant was cross-examining the police officer on the tests he performed prior to setting up his duties on Kingston Road. The purpose of that cross-examination was to attempt to show that the correct procedures were not followed and thereby the results obtained by the Lidar Atlanta could not be relied upon.

[30] In the midst of the cross-examination, the paralegal for the appellant attempted to

simply enter the full manual as an exhibit at trial. This was objected to by the prosecution on the basis that the proper procedure had not been gone through. The prosecutor stated that he did not know who made this copy and whether it was compared to the original. At this point, the agent took the view that the objection was a matter of disclosure and stated that the copy came from the prosecutor's office. The prosecutor stated he would be objecting to any manual since the foundation was not laid for its introduction and the procedure had not been followed. The agent continued to take the view that if the objection was to the copy, then a proper one could be obtained from the prosecutor's office. The Justice of the Peace interrupted and asked what the agent wanted to do with the manual. The agent advised he wanted to cross-examine the officer on the manual. The Justice of the Peace stated that the agent had "cross-examined the officer on everything from A to Z on the manual." When the agent replied that he had not, he wanted to cross-examine the officer on some of the assertions, and asked to present the manual to the officer, the Justice of the Peace advised him to do so.

[31] When P.C. Hayward was presented with the copy of the manual and asked if that was similar to what he was trained on, the officer replied that it actually seemed more comprehensive than the one he had. However, he agreed it looked familiar and that all the pages appeared to be there.

[32] At this point, the prosecutor objected that the original of the manual was not present and that the officer could not compare the copy to the original and could only go by his memory. He objected that if the specifics of the manual were going to be cross-examined upon, then the manual the officer actually used should be present. He submitted that the proper foundation had not yet been laid.

[33] The agent replied that if there was an issue, then it was incumbent on the prosecution to provide the proper manual the officer was trained on. He further submitted that the officer stated the copy appeared to be it and was even more comprehensive.

[34] The Justice of the Peace then ruled:

THE COURT: Thank you. So, no, the manual will not be introduced. It's not proper. It's not certified. We don't have the original. The officer... You could certainly have a certified copy of [it]...

[35] In my view, I agree that the Justice of the Peace erred in her reasons for not making the manual an exhibit. If properly identified and the foundation laid for its introduction, then the manual could be entered as an exhibit and the fact it is not certified to be a copy is not an impediment to its admissibility. There is no rule of evidence that requires that such a copy of the manual be certified as a true copy.

[36] Although her reasons disallowing the manual as an exhibit were in error, I disagree with the appellant that the manual could have been made an exhibit at that time. A sufficient foundation had not been laid. It must be remembered that this manual was not created by the officer. Any assertions or statements found within the manual as to the proper operation of the Lidar Atlanta, if used for the truth of its content without a foundation being laid in the evidence, remains inadmissible hearsay at the trial. In other words, it was wrong for the agent to simply stand up in the midst of the cross-examination of the officer and announce to the court that he wanted to make the manual an exhibit and present it to

the Justice of the Peace. It cannot be forgotten that once made an exhibit, it becomes independent evidence for the trier to consider. If it is to be used for the truth of its content, that is an inadmissible purpose subject to any proper hearsay exception. To that extent, the original objection made by the prosecution had some merit.

[37] However, as I see the record, what the agent really wanted to do was to cross-examine the officer on whether he followed the procedures found in the manual for the Lidar Atlantis. This became apparent as the issue was more fully argued. To this extent, the Justice of the Peace was correct in permitting the agent to present the officer with the copy of the manual. Once that was done, the officer acknowledged that although more comprehensive, this was the manual that he used. At this point, the prosecution made an objection that the original was not in court for the officer to compare the copy to. This objection had no merit to it. The officer was still in the witness box and could be asked further questions to lay the proper foundation for the introduction of the manual. More importantly, the cross-examination could have continued whether the manual that the officer used was before the court as an exhibit or not.

[38] In my opinion, it was not necessary to make the manual an exhibit for the appellant to have continued in his cross-examination of the officer once the proper foundation had been laid. First of all, as the officer did, P.C. Hayward had to acknowledge that this was the manual that was used for the testing and operation of the Lidar Atlanta. The fact that it was more comprehensive or that he could not possibly have memorized each page is no obstacle to further cross-examination. The appellant could then have had the officer agree that he followed the recommended procedures in the manual for testing and operating the device. The appellant could then, as he intended to, turn the officer's attention to the specific provision, guideline, or recommendation in the manual that was relevant to his cross-examination. If the officer could not recall them or wished to review the relevant portions, then he could do so. Once he acknowledged that he did agree with such provision, guideline or recommendation, the appellant could cross-examine the officer with respect to any failure to follow them in the appellant's case. If the officer disagreed with the provision, guideline or recommendation, then he could be cross-examined on his explanation why. If the officer was unaware or could not recall that provision, guideline or recommendation, that could open up other avenues of questioning. All of this cross-examination could have been achieved without ever making the manual an independent exhibit at trial.

[39] There is nothing wrong in making portions of the manual an exhibit at trial further to this type of cross-examination. It is often done on consent of the parties and it may be of assistance to the Justice of the Peace to have a written copy of the provision, guideline or recommendation to assist him or her in following the testimony of the witness. However, for the appellant's purposes, it is the testimony of the police officer that is the evidence. It is the cross-examination that matters. Not the exhibit itself.

[40] Very little is gained in making the whole manual an exhibit at trial, even with the consent of the parties. It contains much that is totally irrelevant to the issues in the particular case. Yet if it is made an independent exhibit, it is incumbent on the Justice of the Peace to review the whole manual. Her Worship in this case was alert to the absurdity of this when she commented that she could not possibly read it all at the moment.

[41] In this case, when the objections were made and the Justice of the Peace ruled

that manual could not be made an exhibit, the appellant chose to close his cross-examination. The ruling itself, erroneous though it may have been, did not foreclose the cross-examination that the appellant wished to conduct of the police officer. In other words, not having the manual made an exhibit should not have affected the cross-examination of the officer on the manual. However, appellant chose not to do so. If he had done so and the Justice of the Peace prevented cross-examination on the manual, then the appellant would have a justifiable complaint. However, he did not. In his factum, the appellant submitted that the ruling intimidated him into closing his cross-examination. With respect, however the paralegal may have felt at the time, it is my view that the ruling made by the Justice of the Peace, did not affect his opportunity to cross-examine the officer on the manual. The fact that he chose to end his cross-examination, for whatever reason, does not give rise to an arguable ground of appeal. I dismiss this ground of appeal.

C. THE APPROPRIATE RELIEF

[42] The remedial powers of an appeal court hearing a provincial offences appeal under the informal ticketing process set out in Part I of the *Provincial Offences Act* R.S.O. 1990 c. P.33 (henceforth the “Act”) is broad. That subsection merely states:

s. 138(1) Upon an appeal, the court may affirm, reverse or vary the decision appealed from or where, in the opinion of the court, it is necessary to do so to satisfy the ends of justice, direct a new trial. R.S.O. 1990, c. P.33, s. 138 (1).

[43] This should be compared to the more expansive and detailed provisions dealing with appeals in cases where the proceedings were commenced by way of an information under Part III: see ss. 116 to 130.

[44] The appellant submits that in this case, the appropriate relief on a successful appeal should be an acquittal. He relies on cases where similar relief was provided: see *R. v. Khan*, [2008] O.J. No. 1561 (C.J.) at para. 11; *R. v. Kahsay*, [2011] O.J. No. 3519 at para. 10. The appellant focuses his submissions on the minor nature of the charge, the fact that this was the appellant’s second trial date, and the expense he has already gone to in hiring an agent to represent him both at the trial and the appeal. The prosecution submits that a new trial should be ordered. She argues that although the charge is minor, the legislation against speeding has important societal objectives. Further, she submits that the trial should ultimately be determined on the merits and the particular costs to the appellant should have no relevance in considering what the appropriate relief should be.

[45] Let me start with the scheme of the Act. The appellant’s charge was commenced under Part I using the most efficient and informal method under the Act. The intent of the overall legislation was to ensure that minor offences be treated efficiently but fairly. As stated in *R. v. Jamieson* (1981), 64 C.C.C. (2d) 550 (Ont. C.A.) at 552, the Act was intended to establish a speedy, efficient, inexpensive and convenient method of dealing with provincial offences which are, for most part, minor offences.

[46] In assessing the wording of s. 138(1), it seems clear that the majority of Part I appeals were meant to be disposed of on the appeal itself. It is only when it is “necessary to do so to satisfy the ends of justice” that a retrial should be ordered. In other words, a retrial should be the exception and not the rule. This makes sense since, given the minor nature

of most of the offences, the overall proceedings should not be prolonged unnecessarily by a retrial.

[47] In exercising my discretion, I agree that both the seriousness of the charge and the nature of the legislation involved are important considerations in determining whether a retrial is necessary to satisfy the ends of justice. The more serious the offence, by definition or on the facts of the specific case, the more likely the ends of justice can only be satisfied by a retrial in order to determine the merits of the case. Further, if the objectives of the legislation would be impaired or undermined without a new trial, this would be a sufficient reason to order a retrial.

[48] In this case, without diminishing the importance of the speeding laws in this province, the offence relates to one of many laws that regulate the operation of motor vehicles. Posted or unposted speed limits cover nearly every road and highway travelled by the public. Speeding regulations are enforced frequently by the police. A speeding infraction is a common offence. When ticketed, many people pay without asking for a trial. In addition, it is not uncommon that some drivers go faster than the speed limit despite the enforcement or the penalty. In these circumstances, I find that allowing an appeal without an order for a retrial in this case would not undermine the objectives of the legislation. I doubt that one acquittal in the circumstances that this case presents would impair the objectives of the law.

[49] Secondly, the facts of this case are not egregious or even noteworthy. The appellant was allegedly going 20 kilometers per hour over the speed limit, doing 80 in a 60 zone. He was caught by a speed trap. There was no accident or other aberrant driving. There was nothing unusual about the driving, the stop, or the ticketing process.

[50] The nature of the appeal may also be a consideration under s. 138(1). Here the appellant has been successful on the basis that he did not have a trial that was reasonably apprehended to be fair or unbiased. He was entitled to one originally. Through no fault of his, he did not receive such a trial. Indeed, one of the reasons I find that he did not was due to perceived time pressures existing at the time. To send him back for another retrial in these circumstances would be contrary to the ends of justice.

[51] In this case, the appellant testified and denied he was speeding. Although he was convicted, it was done by a flawed process. The conviction cannot stand but no useful purpose will be served by having the offence decided on its merits. This would be the appellant's third trial date in a process that was designed to be fair and expeditious. While most individuals appear unrepresented at these trials, the fact that the appellant has retained an agent on two trial dates and one appeal cannot simply be ignored. The added expense of a third trial date, one where he would have to come to court and testify yet again, is a factor that speaks against the ordering of a retrial.

[52] The final consideration is the cost to the public. Significant court resources have already been consumed on a minor speeding ticket. The ends of justice would not be served by expending even more valuable court time or resources. Further, this retrial would only contribute to the already heavy court dockets that exist in the provincial offences trial courts. Given the particular facts of this appeal, the irony of doing so has not escaped me.

[53] For these reasons, the appeal will be allowed and an acquittal entered.

Released: July 23, 2014.

Signed: "Justice S. Nakatsuru"