33/92

SUPREME COURT OF VICTORIA

DPP v PARSONS

Beach J

16, 24 June 1992 — [1993] VicRp 1; [1993] 1 VR 1; (1992) 15 MVR 474

MOTOR TRAFFIC – POSSESSION OF RADAR DETECTOR – ADMISSION MADE BY DRIVER AS TO FAMILIARITY WITH RADAR DETECTORS – WHETHER SUCH ADMISSIONS MAY BE RELIED UPON – WHETHER PROSECUTION REQUIRED TO CALL EXPERT TECHNICAL EVIDENCE AS TO NATURE OF DEVICE: *ROAD SAFETY ACT* 1986, S74.

Section 74 of the *Road Safety Act* 1986 ('Act') provides:

> "A person must not...possess a device the sole or principal purpose of which is to...detect when a prescribed speed measuring device has been used."

(1) There is no requirement upon the prosecution to call expert technical evidence to prove that a radar detector is a device within s74 of the Act.

(2) Provided that any admissions made by a defendant have probative value, such admissions may be sufficient to justify a conviction for an offence under s74 of the Act.
***Anglim & Cooke v Thomas* [1974] VicRp 45; (1974) VR 363, applied.**

(3) Where a motor car driver was found in possession of a device which he described as a radar detector he had modified so as to make it inoperative and that he had used the device previously to detect police radars, those admissions had strong probative value so as to justify a conviction under s74 of the Act.

BEACH J: [1] This is an appeal pursuant to the provisions of s92 of the *Magistrates' Court Act* 1989 against the order of the Magistrates' Court at Sale on 11 February 1992 whereby the Magistrate dismissed an information laid against the respondent Dennis Parsons pursuant to the provisions of s74(1) of the *Road Safety Act* 1986. The questions of law for determination by this Court are set out in para.l of the order of the Master made 10 March 1992 which reads:-

> "(1) The questions of law for which the appellant shows an arguable case for appeal are:
> (i) Whether the prosecution must in respect of a charge under s74(1) of the *Road Safety Act* 1986 call expert technical evidence to prove that a radar detector is "a device the sole or principal purpose of which is to prevent the effective use of a prescribed speed measuring device, or to detect when a speed measuring device is being used"?
>
> (ii) Whether on the hearing of the charge the prosecution may prove the facts referred to in (1)(i) by way of evidence of the respondent's admission of those facts.
>
> (iii) Whether the Court ought to have been satisfied on the evidence that the respondent was guilty."

Section 74 of the *Road Safety Act* 1986 (the Act) deals with offences relating to the sale, use, or possession of anti-speed measuring devices. Sub-section (1) reads:-

> "A person must not own, sell, use or possess a device the sole or principal purpose of which is to prevent the effective use of a prescribed speed measuring device or to detect when a prescribed speed measuring device has been used. Penalty: 20 penalty units."

The information was laid against the respondent following his apprehension by police officers in Loch Sport on 13 October 1991. The respondent's account of his apprehension that day is set out in para.8 of his affidavit sworn 4 May 1992, which reads:- **[2]**

> "On the 13th of October 1991 I was driving along Sanctuary Road, Loch Sport. It was about ten-past two in the afternoon and I was alone in the car. There was a police car coming from a side street. He stopped and gave way to me. 1 passed the police car and drove 30 to 40 yards on. I stopped the

> car. The police car pulled up and I had a conversation with the informant about the whereabouts of another police officer. After the informant made a call on his car radio and told me the other officer was at Box Hill, he asked me if I had a radar detector on board. I told him "Yes". He asked me if it was on and I said No, it's not connected, I do not have the whole detector". The informant then said "Can I have it?" I then went to the front of the car and pulled the device out and gave it to him. The device was not connected to the battery. It was also not connected to a speaker in the driver's compartment. Without a speaker I could not hear the alarm, even if the device was connected to the battery. I said that the wire that connected the device was at home, and that I had pulled it out when radar detectors became illegal and that I had used the wire for fishing. I invited the informant to sit in the car to sec if the device worked, which he declined. I offered to take my car to the police station for a test to be done to see if the device worked, this offer was also declined and the informant said to me "You can say that to a court"".

The matter came before the Magistrates' Court on 11 February last. The informant, Senior Constable Bruce James Draper, gave evidence substantially in accordance with the respondent's account of his apprehension, to which I have referred, and tendered to the Court in evidence the radar detector device which he described as a Bel Express Radar Detector, bearing serial number H145657. The informant was then asked by the prosecutor how it was that he came to suspect that the respondent was in possession of a radar detector, and replied that the radar detector detector fitted to the police vehicle had activated. The prosecutor then sought to demonstrate to the court the informant's familiarity with radar detector detectors.

Counsel for the respondent successfully objected to such evidence being led on the basis that the informant had not been qualified as an expert **[3]** in relation to electronic instruments, and that whilst he may have been authorised to use certain electronic instruments to detect motorists who exceeded the speed limit, there was no evidence that the radar detector detector he claimed to be using was authorised by legislation or regulation. The prosecutor then sought to demonstrate to the court the informant's familiarity with radar detection devices. The question was objected to on the ground that it was not relevant, that what was relevant was the informant's knowledge or experience with the Bel Express Radar Detector. The informant swore that there were hundreds of different types of radar detectors on the market, but that the particular model was previously unfamiliar to him.

The respondent gave evidence in accordance with the content of para 8 of his affidavit. In cross-examination he admitted that the radar detector had been connected to a previous vehicle and had been used by him to detect police radars and that at some stage it had been connected to the vehicle he was driving at the time he was intercepted. However, he had "pulled the wires off" some two years previously and did not know how the device was connected in order to make it work. Finally he swore that he did not have any knowledge of the workings of electronic instruments, nor did he possess any technical know how in respect of radar devices.

Counsel for the respondent, and the prosecutor, then made various submissions to the Magistrate in relation to the charge. It is unnecessary to recite those submissions in these reasons for judgment. **[4]** The Magistrate's finding in relation to the matter is set out in para.11 of the respondent's affidavit, the relevant portion of which reads:-

> "I agree with the prosecution on the question as to whether the device "works", but the charge is one of possession and not of operating the device. In my view it does not matter whether the device was wired; it does not matter whether it was capable of operation. I am not told whether the device was operating. The prosecution must satisfy me that this is a device as proscribed in s74 *Road Safety Act* 1986. The defendant was asked did he have a radar detector and his purpose for having the device. There was no evidence by the prosecution and, in particular, no technical evidence, as to devices' capacity in relation to the speed measuring device. The prosecution cannot rely on the belief the defendant had as to the purpose of the device. I do not believe it is sufficient evidence that a Bel Radar Detector device was used. There was no evidence as to its effective operation in terms of the section. I am not satisfied beyond reasonable doubt that the device in the possession of the defendant was one of the types set out in s74(1). I only have the defendant's evidence that it was a radar detector. The charge will be dismissed and the informant is ordered to pay $600 costs to the defendant."

In my opinion the answer to the first question I am required to determine is no. There is no requirement upon the prosecution to call expert technical evidence to prove that a radar detector is a device the sole or principal purpose of which is to prevent the effective use of a prescribed

speed measuring device or to detect when a speed measuring device is being used, in every case in which a person is charged with an offence under s74(1) of the Act before being entitled to secure the conviction of that person.

These are not cases in which the prosecution is seeking to establish a person's guilt based upon the recording or readings of an instrument or the results produced by an instrument such as a breath analysing instrument or a speed measuring device. In such cases, unless the instrument falls within the class of **[5]** instruments of a scientific or technical character which by general experience is known to be trustworthy so that there is a presumption that the recording or reading or result produced by the instrument is accurate, e.g. watches, clocks, thermometers, et cetera, the common law requires that expert technical evidence be called to establish the general function of the instrument and that the instrument is of a kind that is likely to produce accurate results if properly used. See *Porter v Kolodzeij* [1962] VicRp 11; (1962) VR 75.

In the present case one is not concerned with the recording or reading or result produced by the instrument confiscated from the respondent; one is concerned to determine whether he was in possession of a device the sole or principal purpose of which was to detect when a prescribed speed measuring device was being used. A non-expert who is generally familiar with radar detectors can give evidence to the effect that a particular device is a radar detector even though he had not previously seen that particular model of radar detector in just the same way that a non-expert who is generally familiar with transistor radios may give evidence that a particular device is a transistor radio even though he has not previously seen or handled that particular model of transistor radio.

Of course questions may arise as to the weight to be attached to the evidence or indeed whether any weight is to be attached to it. If a police officer who professes to have appropriate knowledge of and experience of radar detectors, swears that a particular device is a radar detector, in the absence of evidence to the contrary that will establish, *prima facie*, that the **[6]** device is a radar detector. If cross-examination elicits the facts that in reality the witness has only seen a so-called radar detector on two or three previous occasions, has simply relied on what he had been told in relation to those particular devices and had never previously seen a device of the type in question, then little if any weight will be attached to his evidence.

Needless to say that if expert evidence is called by the defence to the effect that the device is not a radar detector but is used for some other purpose, no weight should be attached to the witness' evidence to the effect that it is a radar detector. The answer to the second question posed is that provided the admissions made have probative value, yes.

There has been a number of reported decisions relating to the weight to be attached to admissions made by a person charged with a criminal offence. If it is shown that the admissions relate to matters of which the persons making them had no personal knowledge then no weight can be attached to the admissions. See *Surujpaul v R* (1958) 1 WLR 1050; (1958) All ER 300 and *Comptroller of Customs v Western Lectric Co Ltd* (1966) AC 367; (1965) 3 All ER 599. But if the evidence shows a degree of familiarity by the defendant with the article, substance or event in respect of which he has made the admission then the court is entitled to rely upon that evidence as sufficient to justify a conviction. See *Anglim & Cooke v Thomas* [1974] VicRp 45; (1974) VR 363; *Parks v Bullock* [1982] VicRp 22; (1982) VR 258 and *Reardon v Baker* [1987] VicRp 72; [1987] VR 887; (1987) 25 A Crim R 203.

If the evidence was that some person had given the respondent the device telling him that it was a radar **[7]** detector and that he had placed it in the glove box of his car and never operated it no weight could be attached to his admission because it would have no probative value. But that is not the situation in the present case. In both his statement to the informant at the time he was apprehended and in his evidence to the court the respondent described the device as a radar detector and stated that it had been connected to a previous vehicle and used by him to detect police radars, that at some stage it had been connected to the vehicle he was driving when apprehended by the police, but that he had pulled the wires off some two years previously and thereafter the device could not be used.

In my opinion those admissions have the strongest probative value and in the absence of

evidence to the contrary, and there was none, were more than sufficient to justify the respondent's conviction. It follows from those findings that the answer to the third question posed is yes.

The appeal will be allowed and the orders of the Magistrates' Court at Sale on 11 February 1992 including the order for costs are set aside. The following are the answers to the questions posed in para.l of the Order of the Master made 10 March 1992:- (i) No, not in every case. (ii) Yes. (iii) Yes.

I order that the appellant's costs of the appeal including reserved costs be taxed and paid by the respondent. I grant to the respondent the appropriate certificate in respect of the costs of the appeal pursuant to the provisions of the *Appeal Costs Fund Act*. **[8]** I have been asked by counsel for the respondent not to remit the matter to the Magistrates' Court at Sale for further hearing and determination but to deal with the matter myself. In that way all parties will be saved further expense and inconvenience. In my opinion that is a very practical and if I may so sensible approach.

Section 92(7) of the *Magistrates' Court Act* provides that after hearing and determining the appeal the Supreme Court may make such order as it thinks appropriate, including an order remitting the case for re-hearing to the Court, i.e., the Magistrates' Court, with or without any direction in law. It is clear therefore that I have ample power in relation to the matter including the power to record a conviction. I shall now hear what counsel for the respondent wishes to place before me in relation to the matter.

[9] Having regard to the respondent's age and his previous good character, and the expense and inconvenience he has been put to, as a result of the commission of this offence, I do not consider it appropriate to record a conviction against him. On the other hand, I do not consider it is appropriate to dismiss the offence as being so trivial as to justify its dismissal. I do not regard the offence as trivial. In the circumstances, I propose to release the respondent on a bond in the sum of $500 to be of good behaviour for a period of 26 weeks, and to come up for sentence if and when called upon.

Solicitor for the appellant: Victorian Government Solicitor.
Solicitors for the respondent: MacPherson and Kelley.
