

50/83

SUPREME COURT OF VICTORIA

PETERSEN v VARSZEGHY

Gray J

29 August 1983

MOTOR TRAFFIC – EXCESSIVE SPEED – CHECKED BY AMPHOMETER – CERTIFICATE TENDERED THAT AMPHOMETER TESTED DATED TWO MONTHS AFTER COMMISSION OF OFFENCE – WHETHER CERTIFICATE PRIMA FACIE EVIDENCE: ROAD TRAFFIC REGULATIONS 1973, R1001; MOTOR CAR REGULATIONS 1966, RR187, 188, 189.

V. was charged with exceeding the speed limit. At the hearing, the informant gave evidence that V's speed was checked by an amphotometer, and he produced a certificate which indicated that the amphotometer had been tested one week before the date of the alleged offence. However, the certificate was dated some 2 months after the commission of the offence. Upon a submission of no case, the magistrate dismissed the charge. Upon order nisi to review—

HELD: Order nisi absolute.

There is no requirement that the certificate of the testing of the amphotometer be brought into existence before the commission of the offence. Accordingly, the certificate represented *prima facie* evidence of the findings made at the test, and should have been acted upon in the absence of any evidence to the contrary.

GRAY J: *[After setting out the facts, His Honour continued]:* ... [3] The only point taken before the Magistrates' Court concerned the fact that the certificate of testing was dated subsequently to the time of the offence. No other criticism was made of the informant's proof. There was evidence from the informant that the amphotometer had been set up as required by Regulation 108(1)(a) of the Regulations.

There was evidence that the reading disclosed 89 kilometres per hour as the defendant's speed and that the seal on the amphotometer was intact. The certificate which was tendered in evidence, apart from certifying to the testing of the machine, also recited that, following the test, the amphotometer had been sealed. The certificate related to amphotometer No. SM 6, which was the instrument which was used on the relevant occasion.

There appears to be no requirement in the *Motor Car Act* or any of the regulations which require that the certificate under Regulation 187(1) should be brought into existence before the commission of the offence. It seems to me that the certificate is a [4] document which is intended to be used as part of the prosecution proofs when the matter comes before the Court. There is nothing in the context of the Act or regulations which requires it to be read in a way which makes the certificate ineffective if it is not brought into existence before the commission of the offence.

Regulation 187(1) sets out the matters which have to be checked in the course of a test. Section 187A requires that the technical officer shall seal the amphotometer if the test confirms the matters required to be satisfied in Regulation 187(1)(i). Regulation 188 provides for the manner in which the amphotometer shall be used by police, and there was evidence that those requirements were satisfied on this occasion. Regulation 180(1)(b) provides that the amphotometer may be used only if it has been tested in accordance with Regulation 187(1) within a period of six months prior to such occasion. This amphotometer had been tested approximately a week prior to the commission of the offence.

Regulation 189 requires that the certificate shall be to the effect of the form, contained in the 70th Schedule of the Act, and the 70th Schedule form is set out at the foot of the Regulations. The certificate in this case conforms to its requirements. The persons who signed the certificate, likewise, are persons who are authorised by s91B(b) of the Act. I feel satisfied that all the procedural requirements were satisfied to enable the certificate [5] to be admitted in evidence. Furthermore, as I have already said, I can find nothing in the Act or Regulations which makes it a requirement

that the certificate be given prior to the commission of the offence. As long as a certificate is given which certifies to the testing of the amphetamine at a time not more than six months prior to the offence, the requirements are satisfied.

It is not altogether clear from the affidavits what it was which led the Magistrates' Court to be other than satisfied with the certificate. It may be that the Court was influenced by the failure of the prosecuting officer to advance any argument in relation to this issue. Nevertheless, I feel quite satisfied that the Magistrates' Court was in error in dismissing the information on the basis of some lack of satisfaction with the certificate. The certificate was rightly admitted into evidence. It represented *prima facie* evidence of the findings made at the test and should have been acted upon in the absence of any evidence to the contrary.

APPEARANCE: For the informant/applicant Petersen: Mr PB Murdoch, counsel. State Crown Solicitor. No appearance on behalf of the defendant/respondent Varszeghy.
