

IN THE COURT OF APPEALRESIDENT MAGISTRATE'S CRIMINAL APPEAL NO. 102/86

BEFORE: THE HON. MR. JUSTICE ROWE, PRESIDENT
THE HON. MR. JUSTICE WHITE, J.A.
THE HON. MR. JUSTICE BINGHAM, J.A. (AG.)

REGINA

VS

CHARLENE BARKER
NOT STOPPING AT STOP SIGN

Mr. Earle DeLisser for the Appellant

Mr. Courtney Daye for the Crown

June 29, 1987ROWE P.:

A lady, Ms. Charlene Barker was stopped by the police on the 18th of April, 1986, just after 2 o'clock in the afternoon at the top of Duke Street and it was alleged that she had driven through the intersection of Duke Street and Heroes Circle, without stopping.

The police were operating a walkie-talkie system whereby, one constable would do the observation and the next would do the stopping. The constable who stopped a car RR 2149 two chains from the intersection of Duke Street and Heroes Circle said that the appellant was the driver of the car.

The point taken on appeal is that firstly, there was no proof that this appellant drove the car at the very moment it was crossing the intersection which is regulated by the Stop Sign. We have pointed out to Mr. Delisser the presumption of continuity. This is the kind of case in which that presumption is applicable because nobody has suggested that

after the car passed through that intersection and before it was stopped by the constable two chains up the road, it had stopped so that there could have been any change of driver. The presumption of continuity is applicable and we think that there is absolutely no substance in the point that there was no proof as to the person who drove the car across the intersection.

The second point, of somewhat more substance, is that the Traffic Sign was not properly erected and did not comply with the Road Traffic Regulations. There was no challenge to the fact that poles were erected and that they carried octagonal shaped Signs. The defence contention was that whatever was written on the Sign Posts was so obscured with posters as not to be visible to any motorists.

Three photographs were introduced into evidence by the defence which show that the Signs to which they relate were defaced in an extensive manner by the pasting on to them of sundry advertisement material.

The Officer whose duty it is to replace Stop Signs, did replace the Sign at that intersection on the 14th of May, 1986, a month or so after this offence was alleged to have been committed, and this Officer said that he had known this Sign and that it was in an obscure condition for about a year prior to May 1986. However, the constable who gave evidence for the prosecution said that on April 18, 1986 at that intersection the Stop Sign was of the prescribed design and that it was not obscured on the particular day. That was a question of fact.

We think that in the absence of express findings of fact of the learned resident magistrate the inference to be drawn is that the magistrate accepted the evidence of the police officer that the Stop Sign was in such a condition that it could have been read by the appellant and that it ought to have been obeyed.

We say this in favour of the appellant that she did not go into the witness box and deny the police allegation that she did not stop at the intersection. The technical point taken on behalf of the appellant

can be disposed of on two bases. Firstly, the resident magistrate was well able to determine on the factual basis that the Stop Sign was in a condition to have been seen and to have been observed. Secondly, the onus was on the defence, having regard to the provisions of Section 97 of the Road Traffic Act, to show that the Sign was not lawfully erected, in the sense that it did not conform to the Regulations and we do not think that they discharged that burden.

The appeal is dismissed.