

Citation: *R. v. Kociuk*, 2010 YKTC 115

Date: 20100907
Docket: 10-04699
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

BETTY JOAN KOCIUK

Appearances:
Mark Pindera
Betty Kociuk

Counsel for the Crown
Appearing on her own behalf

REASONS FOR JUDGMENT

[1] CAMERON J.P.T.C. (Oral): Ms. Kociuk has pled not guilty to one count under s. 139.

[2] The testimony that we heard was the sworn testimony of Constable Sauv , an RCMP officer for seven years. He was stationed in Whitehorse since mid-May. At the end of May, he was on traffic duties in Whitehorse and was southbound on Mountain View Drive. He observed a vehicle that he estimated to be travelling above the speed limit approaching northbound. His testimony was that it was on Copper Road, Copper Road being an extension, a lower extension of Mountain View Drive, so it is essentially the same road. However, Copper Road is a posted 50 zone; it changes then to a 70 zone after Tlingit Road.

[3] He had radar in his unit which he had tested and he confirmed the speed to be 83 kilometres per hour on that vehicle, activated his lights, pulled a U-turn and pulled the vehicle over. It was driven by Ms. Kociuk; no passengers in the vehicle. He identified her by her driver's licence. He identified that the pullover occurred, certainly, well within the 70 kilometre zone.

[4] Ms. Kociuk indicated that for some personal reasons, she was, in fact, attempting to get home rather quickly. However, she had been slowed down on the Copper Road zone by a vehicle that was in front of her, a white van. It was travelling at 40 kilometres per hour and she was not in an area where she could pass it, so she was following rather impatiently. However, it did indicate and finally turned right off of Copper Road onto Tlingit. At that point, she then started to accelerate into the 70 zone. Her testimony was that she observed the police officer, the police car, coming around the corner as she entered the zone. She was in the zone when the police officer activated his lights and passed her shortly thereafter, did a U-turn and pulled her over. It is agreed that the police officer indicated the appropriate spot for the pullover.

[5] She claims that her vehicle is not a high-powered vehicle and therefore could not have been doing the speed within the short space that she had within that 50 kilometre zone where she was not impeded by the other vehicle. However, she did also admit that she does not dispute that she may have been doing 83, but she was within the 70 zone when she was doing that.

[6] For the general offence of exceeding the posted speed limit, 83 in a 70 zone is sufficient to, in fact, make out the offence. I am finding you guilty of the offence, but I

am indicating that the Court is content that the facts that are beyond a reasonable doubt would support that that speed occurred within the 70 zone. I believe a doubt has been raised in regards to whether that occurred in the 50 zone or not. So as such, my finding would be a finding of guilt for doing 83 in a 70 zone. Essentially, that would change, I believe, the fine amount and would bring it in, normally, at a \$25 fine.

[7] Do you have any submissions on that, Mr. Pindera?

[8] MR. PINDERA: No, the fine for that specific amount would be \$25, Your Worship.

[9] THE COURT: So a \$25 fine, a \$3 surcharge; a total of \$28. How long would you need to pay that, Ms. Kociuk?

[10] BETTY KOCIUK: Two weeks, sir.

[11] THE COURT: Two weeks?

[12] BETTY KOCIUK: Yes.

[13] THE COURT: Fourteen days time to pay. Thank you.

CAMERON J.P.T.C.