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# REGINA v. GRUSKO

127 D.L.R. (3d) 751

**Manitoba Court of Appeal**
**Hall, O'Sullivan** and **Huband JJ.A.**

September 9, 1981

*Constitutional law -- Validity of legislation -- Provincial legislation -- Highway Traffic Act prohibiting possession in motor vehicle of radar-detecting device -- Legislation having as true object and purpose regulation and control of traffic on highways and therefore intra vires Province -- Legislation not constituting invasion of federal field of broadcasting -- Highway Traffic Act, R.S.M. 1970, c. H60, s. 185 (3)(a) -- Radio Act, R.S.C. 1970, c. R-1.*

*Criminal law -- Motor vehicles -- Provincial regulation -- Validity -- Provincial traffic legislation prohibiting possession in motor vehicle of radar-detecting device -- Legislation having as true object and purpose regulation and control of traffic on highways and therefore intra vires Province -- Legislation not constituting invasion of federal field of broadcasting -- Highway Traffic Act, R.S.M. 1970, c. H60, s. 185(3)(a) -- Radio Act, R.S.C. 1970, c. R-1.*

[R. v. Boivin (1978), 44 C.C.C. (2d) 348, 93 D.L.R. (3d) 557, 1 M.V.R. 44; R. v. Olin (1978), 41 C.C.C. (2d) 241, 87 D.L.R. (3d) 152, 6 Alta L.R. (2d) 229, 12 A.R. 98; R. v. Crosstown Motors Ltd. (1974), 22 C.C.C. (2d) 404, [1975] W.W.D. 52, folld]

APPEAL by the accused from a judgment of P.D. Ferg Co. Ct. J. dismissing the accused's appeal from his conviction by Dubienski Prov. J. for driving a motor vehicle equipped with a radar-detecting device contrary to s. 185 (3)(a) of the Highway Traffic Act, R.S.M. 1970, c. H60.

R. Henderson, for accused, appellant.

S. Whitley, for the Crown, respondent.

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The judgment of the Court was delivered by:

**HALL J.A.** -- David Grusko was convicted by Dubienski Prov. J. on a charge of driving a motor vehicle with a device for detecting radar speed testing equipment contrary to s. 185(3)(a) [enacted 1970, c. 70, s. 63; am. 1977, c. 49, s. 7] of the Highway Traffic Act, R.S.M. 1970, c. H60. An appeal on the record was dismissed by P. D. Ferg Co. Ct. J. and this is a further appeal from that dismissal.

At issue is whether s. 185(3)(a) is ultra vires the Legislature of Manitoba as being legislation repugnant to the Radio Act, R.S.C. 1970, c. R-1. **[page752]**

The impugned section reads in part:

> 185(3) No person shall
>
> > (a) drive a motor vehicle that is equipped or equip a motor vehicle, with a device for detecting radar speed determination equipment;

This section has as its true object and purpose the regulation and control of traffic on highways. It makes no attempt to interfere with the federal power to regulate the ownership, possession or use of radar equipment by licence except incidentally. The essence of the offence charged is the driving of a motor vehicle equipped with a radar-detecting device.

In other words, you may have a licence from the federal authority to have and use a radar receiver but do not drive a motor vehicle equipped with such a device on the highways of Manitoba. There is no repugnancy or conflict that renders the impugned section beyond the legislative power of the Legislature of Manitoba. The cases of R. v. Boivin (1978), 44 C.C.C. (2d) 348, 93 D.L.R. (3d) 557, 1 M.V.R. 44; R. v. Olin (1978), 41 C.C.C. (2d) 241, 87 D.L.R. (3d) 152, 6 Alta. L.R. (2d) 229; and R. v. Crosstown Motors Ltd. (1974), 22 C.C.C. (2d) 404, [1975] W.W.D. 52, support this view.

In sum, the impugned section is a restriction on the use of equipment licensed by the federal authority as a means of controlling or regulating the highways of Manitoba. It is valid provincial legislation and not repugnant to the federal power of regulating and controlling radar receivers in Canada. Both the federal and provincial power can live and operate concurrently.

The appeal should be dismissed.

Appeal dismissed.