

CANADA / JUDGMENT

R. v. Pearce

2000 BCSC 376

COURT

Supreme Court of British Columbia

DECIDED

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2000 BCSC 0376

Citation:

R. v. Pearce
2000 BCSC 0376
Date: 20000301
Docket No.:
CC990890
Registry: Vancouver
IN THE SUPREME COURT OF BRITISH COLUMBIA
MYRNA RUTH PEARCE
APPELLANT
REGINA
RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MADAM JUSTICE LYNN SMITH

Counsel for the Respondent:

T. Tozer

Appearing on behalf of the Appellant:

R.L. Pearce

Date and Place of Trial:

Vancouver, BC

November 10, 1999

INTRODUCTION:

- [1] This is an appeal by the accused from her conviction for the offence of speeding in a municipality under section 146(1) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318. The grounds of appeal are that the learned Justice of the Peace erred:
- (a) in admitting the document entitled "Vehicle Ownership" in evidence in the proceedings; and
 - (b) in finding that the Crown had met its burden of leading some evidence of each of the elements of the offence charged, in that it had not provided evidence that at the time of the offence, the vehicle was being driven or operated by a person. STATUTORY PROVISIONS:
- [2] The evidence in the case was gathered pursuant to sections 82, 82.1 and 83.2 of the Motor Vehicle Act, the "photo radar" provisions. The relevant provisions read as follows:

82(5) A reproduction in paper format of a record kept in electronic format by the Insurance Corporation of British Columbia or the superintendent is evidence of the record and of the facts stated in the record, and is conclusive proof that the corporation or the superintendent, as the case may be, is the keeper of the record, in fulfillment of the corporation's or the superintendent's responsibility under this section, if (a) the reproduction is certified to be a true copy by an officer of the corporation or by the superintendent, as the case may be, or (b) the reproduction contains a statement to the effect that the reproduction is an authentic reproduction of information stored in a database in electronic format by the corporation or by the superintendent, as the case may be. 82.1(1) A record or an extract of a record, that (a) is kept in electronic format by the Insurance Corporation of British Columbia, (b) is necessary for law enforcement or prosecution purposes respecting an offence (i) by an owner of a motor vehicle under section 83.1(2), or (ii) by another person under a provision referred to in section 83.1(2) if evidence of the offence was gathered through the use of a speed monitoring device prescribed for the purpose of that section, (c) is reproduced in electronic format or paper format, or on a record that enables the information to be subsequently displayed or immediately accessible in visible form, and (d) contains a statement to the effect that the record or extract is an authentic reproduction of information stored in a database in electronic format by the Insurance Corporation of British Columbia, is evidence of the record and of the facts stated in the record and is conclusive proof that the Insurance Corporation of British Columbia is the keeper of the record, in fulfillment of the corporation's responsibility under section 82(10). (2) A Certificate of the Insurance Corporation of British Columbia, containing a statement based on the records kept by the corporation, that (a) is kept in electronic format by the corporation, (b) is necessary for law enforcement or prosecution purposes respecting an offence

- (i) by an owner of a motor vehicle under section 83.1(2), or (ii) by another person under a provision referred to in section 83.1(2) if evidence of the offence was gathered through the use of a speed monitoring device prescribed for the purpose of that section, (c) is reproduced in electronic format or paper format, or on a record that enables the information to be subsequently displayed or immediately accessible in visible form, and (d) contains a statement that it is an authentic reproduction of all the information on a

certificate stored in a database in electronic format by the corporation, is, without proof of the signature, if any, or official position of the person giving the certificate, evidence of the facts stated in the certificate. (3) A record, providing a statement of information based on the records kept by the Insurance Corporation of British Columbia, that (a) is necessary for law enforcement or prosecution purposes respecting an offence (i) by an owner of a motor vehicle under section 83.1(2), or (ii) by another person under a provision referred to in section 83.1(2) if evidence of the offence was gathered through the use of a speed monitoring device prescribed for the purpose of that section, and (b) contains a statement that it is an authentic reproduction of all the information on a certificate stored in a database in electronic format by the corporation, is evidence of the facts stated in the record. 83.2(1) In this section, "enforcement officer" means an enforcement officer as defined in the Offence Act. (2) An enforcement officer may provide, by signing a completed certificate in the prescribed form, evidence of an offence (a) by an owner of a motor vehicle under section 83.1(2), or (b) by another person under a provision referred to in section 83.1(2) if evidence of the offence was gathered through the use of a speed monitoring device prescribed for the purpose of that section. (3) A certificate under this section is, without proof of the signature or the official position of the person signing the certificate, evidence of the facts stated in the certificate. (4) A person against whom a certificate under this section is produced may, with leave of the court, require the attendance of the enforcement officer who signed the certificate, for the purpose of cross-examination. (5) An enforcement officer who signs a certificate under this section must promptly send the certificate to the Insurance Corporation of British Columbia. (6) The Insurance Corporation of British Columbia must keep a record of every certificate sent to the superintendent under subsection (5). (7) The Lieutenant Governor in Council may prescribe the form and content of a certificate for the purposes of this section. (7.1) For the purpose of a certificate under this section, (a) the certificate may be created and completed in electronic format by electronic or any other means that allows the certificate to be reproduced in intelligible form including, without limitation, electronically, (b) in place of signing the certificate under subsection (2), the enforcement officer may identify himself or herself as the person making and authenticating that certificate by means of an electronic reproduction of his or her signature that is capable of being assigned to that certificate only by that enforcement officer, (c) the signature referred to in paragraph (b) may be made by electronic or any other means that allows the signature to be reproduced in intelligible form including, without limitation, by electronically storing the signature by means of an electronic scanner or an electronic signature pad, (d) if the certificate including the enforcement officer's signature is in electronic format, it may be converted from electronic format to paper format for all purposes including, without limitation, for the purposes of subsection (5), (e) if the certificate including the enforcement officer's signature is in electronic format, it may be received, transmitted, stored or sent electronically, (f) if the certificate is sent to the Insurance Corporation of British Columbia in paper format for storage, the corporation may convert it to and store it in electronic format, and (g) if the Insurance Corporation of British Columbia has stored the certificate in electronic format under paragraph (e) or (f), (i) the

corporation may provide the certificate by reproducing it in electronic format or paper format, or on a record that enables the information to be subsequently displayed or immediately accessible in visible form, and (ii) the reproduction referred to in subparagraph (i) has the same effect for all purposes as if it were an original document, if the reproduction

(A) is certified by an officer of the corporation under section 82, or (B) contains a statement that it is an authentic reproduction of all the information on a certificate stored in a database in electronic format by the corporation.

- (8) The recorded image referred to in section 83.1 (11) may be included as part of a certificate under subsection (2) of this section.

EVIDENCE:

- [3] The evidence before the learned Justice of the Peace consisted of three documents: (1) a "Certificate of Enforcement Officer Vehicle Image Evidence", (2) a certified copy of a "Certificate of the Enforcement Officer Qualified Operator" and (3) a computer print-out pertaining to the ownership of the vehicle, headed "Vehicle Ownership". The admission in evidence of the first two documents was not disputed.
- [4] The first document, the "Certificate of Enforcement Officer Vehicle Image Evidence", states that the person signing is an enforcement officer, and certifies that: (a) the images attached were gathered by a prescribed speed monitoring device; (b) the bottom image is an enlargement of the top image showing the licence plate area of the alleged offending motor vehicle; (c) the motor vehicle in the images bears licence plate number DGJ381 issued in the jurisdiction of B.C.; and (d) the data line on the image was electronically and simultaneously recorded and shows among other things, the date and time the image was captured (January 22, 1998 at 09:32:20) and the vehicle's speed in kilometres per hour (64 kph.).
- [5] The second document, the "Certificate of Enforcement Officer Qualified Operator", states that the person signing it is an enforcement officer and a qualified operator of the prescribed speed monitoring device, and certifies that: (a) on January 22, 1998 between 07:41 hours and 10:35 hours she operated a particular prescribed speed monitoring device which photographed motor vehicles while accurately and simultaneously measuring and recording their speed; (b) she found the device to be working properly throughout this period of time; (c) the device monitored, photographed and recorded motor vehicles moving away from the device as the vehicles were driven on a highway, namely East Keith Rd. westbound at Grand Blvd. at North Vancouver in the Province of British Columbia; (d) the device captures the image of each alleged offending motor vehicle on a separate frame of the film and simultaneously records a data line; (e) the data line shows the direction of travel of the alleged offending motor vehicle; (f) the location where the motor vehicles were being photographed was in the municipality of North Vancouver; and (g) the maximum speed permitted at that location was 50 kilometres per hour.

- [6] The third document, the "Vehicle Ownership" computer print-out, is not issued or signed by any person, but is a single sheet of paper with the provincial coat of arms at the top left corner, a reference to "Violation Ticket Number SC02455906" (the number of the ticket here) at the top right corner, and the heading "Vehicle Ownership" at the centre of the page. It sets out the particulars of the registered ownership of the vehicle bearing licence plate number DGJ381, showing it to be owned by the accused Myrna Ruth Pearce. At the foot of the page is set out the following:

STATEMENT OF INFORMATION PURSUANT TO SECTION 82.1(3) OF THE MOTOR VEHICLE ACT
The records kept by the Insurance Corporation of British Columbia indicate that the person named above, as owner, was the registered owner of the motor vehicle described on 1998 01 22. This document providing a statement of information based on the records kept by the Insurance Corporation of British Columbia is an authentic reproduction of information stored in a database in electronic format by the Insurance Corporation of British Columbia. ANALYSIS:

- (a) The admissibility of the "Vehicle Ownership" print-out

- [7] The appellant's position was that the "Vehicle Ownership" computer print-out did not amount to a "statement" within the meaning of s. 82.1(3) of the Motor Vehicle Act. That section provides that a "record, providing a statement of information based on the records kept by the Insurance Corporation of British Columbia" is evidence of the facts stated in the record if it (a) is necessary for law enforcement or prosecution purposes and (b) contains a statement that it is an authentic reproduction of information stored in a data base in an electronic format by the corporation.
- [8] Mr. Pearce, counsel for the appellant, argued that the term "statement" must in this context refer to an utterance by a human being. For there to be a "statement" there must be a person stating something, a "stator". He argued that exceptions to the hearsay rule such as that created by s. 82.1(3) of the Motor Vehicle Act should be strictly construed and, if ambiguous, interpreted in favour of the accused, citing *R. v. Smith* (1998), 34 M.V.R. (3d) 64 (B.C.S.C.). He further argued that there is an important rationale for adopting this narrower construction: that the absence of a "stator" means that there is no-one whom the accused can cross-examine in order to test the case against him or her, yet the right to cross-examine one's accuser is a fundamental precept of the justice system and a construction which supports the right must be preferred over one that does not.
- [9] Finally, counsel for the appellant argued that it would be possible for anyone to produce a piece of paper looking like the "Vehicle Ownership" document produced by the Crown in this case, and asked rhetorically whether it can be the law that such a piece of paper is evidence of the truth of its contents simply because it "contains a statement that it is an authentic reproduction of information stored in a data base", thus pulling itself up by its own bootstraps. Counsel for the appellant noted that in the *Smith* case (which related to s. 83.2(4) not s. 82.1(3)) the court commented at 66:

Mr. Smith submits that ... anyone, including the accused, could present a document in the prescribed form with an arbitrary signature which document would become evidence of the facts in it (subject to cross-examination). I note that s. 83.2(4) permits a person to seek the attendance of the person who signed the certificate for the purpose of cross-examination, thus safeguarding against the mischief Mr. Smith contemplates. [10] Counsel for the respondent, Mr. Tozer, argued that the word "statement" is not ambiguous and that there is nothing in the legislation requiring the statement to be from an individual or precluding the statement from being in electronic format. The respondent referred to a previous decision of this court in which the constitutionality of the photo radar scheme was upheld on the basis that the production of certificate evidence does not require a conviction; rather, it merely allows the Crown to establish a *prima facie* case (*R. v. Tri-M Systems Inc.*, (1998) 38 M.V.R. (3d) 265 (B.C.S.C.), leave to appeal granted [2000] B.C.J. No. 302, 2000 BCCA 27). In *Tri-M Systems* Brenner J. stated at 276:

It is open to the accused to raise a reasonable doubt based on the contents of or omissions from the certificate itself and/or to apply for an order that the author of the certificate attend for cross-examination. Either or both of these steps are available to an accused and allow him to attempt to raise a reasonable doubt without having to testify. [11] The respondent agrees that the law is as stated by Allan J. in *R. v. Smith*, *supra*, at 66:

... at common law, the certificates would be inadmissible as unsworn testimony and as hearsay in the hands of counsel tendering them. Further, a penal section such as s. 83.2, which is clearly a provision designed to circumvent the common law evidentiary rules and to assist the Crown in proving its case, should be strictly construed and, if ambiguous, interpreted in favour of the accused: *R. v. Noble* (1977), 37 C.C.C. (2d) 193 and 198 (S.C.C.); *Paul v. The Queen* (1982), 67 C.C.C. (2d) 97 at 106 (S.C.C.) [12] However, Mr. Tozer argued, ambiguities relied on must be "reasonable ambiguities" (a term which he did not define but which I take to mean "ambiguities that would be seen as such by reasonable persons".) He further referred me to *R. v. McCormack*, [1999] B.C.J. No. 814 (Q.L.), (26 March 1999) Vancouver Registry, SC02322080 (B.C. Prov. Ct. (Traf. Div.)) where the court commented that the authorities show that "the only conditions imposed on the admissibility of a prescribed certificate are those set out in the legislation itself", and that "we should avoid reading into the section technical requirements which do not flow from the language used by the Legislature." The Crown submitted that *R. v. Guinn*, [1997] B.C.J. No. 3046 (Q.L.), (25 June 1997), Vancouver Registry, CC970321 (B.C.S.C.), *R. v. Teague* (1972), 11 C.C.C. (2d) 191 (B.C.C.A.) and *R. v. Crosthwait*, [1980] 1 S.C.R. 1039 also stand for the proposition that the legislation provides conditions for admissibility and further conditions ought not to be implied.

[13] The respondent submitted that here the legislature intended that the conditions for admissibility be different for the Vehicle Ownership document than for the Certificates of Enforcement Officer. The only relevant fact contained in the Vehicle Ownership document is the name of the registered owner of the subject vehicle on the date of the alleged offence. It relates solely to what the electronic records show, as opposed to what individuals observed. In s. 83.2(4) the legislature provided that the makers of the Certificates of Enforcement officer can be made available for cross-examination. There is no provision for this with

respect to the Vehicle Ownership record and, the Crown argued, there could be no conceivable purpose in so providing since there is nothing a human being could add to the electronic record. The legislature may be taken to have intended to avoid expense and waste of court time by allowing the Crown to prove a prima facie case in this way, which can be rebutted evidence to the contrary.

- [14] The learned Justice of the Peace admitted the Vehicle Ownership document. She held that since s. 82.1(3) establishes an exception to the hearsay rule it must be strictly interpreted, referring to *R. v. Smith*, supra. However, Her Worship found the provisions of s. 82.1(3) not to be ambiguous, referring to various dictionary definitions of "statement", such as the following from the Oxford Dictionary:

Statement, n. stating or being stated, expression in words, thing stated (that statement is unfounded); formal account of facts, e.g. of liabilities and assets (the Bank issues monthly statements to each customer) or of amount due to the tradesman. The Justice of the Peace concluded on this point:

A simple reading of these definitions reveals that the term "statement" incorporates not only the statements of the individuals, but also any representation of fact, including computer instruction. Section 82.1(3) of the Motor Vehicle Act uses the term "statement" without any further specific determinations. There is nothing ambiguous about this section. Its strict interpretation requires the court to conclude that the legislative intent was to incorporate not only the statements of individuals, identifiable or not, but also the statements resulting from computer operations, where, due to the nature of the operations, the author as an individual is non-existent. [15] I have concluded that the "Vehicle Ownership" certificate is admissible, although on somewhat different reasoning than that of the learned Justice of the Peace.

- [16] The Interpretation Act, R.S.B.C. 1996, c. 238, s. 24 provides:

24. If an enactment provides that a document is evidence or proof of a fact, unless the context indicates that the document is conclusive evidence, the document is admissible in evidence in any proceeding, and the fact is deemed to be established in the absence of any evidence to the contrary. [17] Section 82.1(3) of the Motor Vehicle Act provides a means of providing prima facie evidence of vehicle ownership, rebuttable by evidence to the contrary. The Supreme Court of Canada stated in *R. v. Noble*, [1978] 1 S.C.R. 632 at 638, regarding the admissibility of breathalyzer certificate evidence:

The effect of s. 237 both before and after the amendment is to establish the conditions under which the certificate of a qualified technician is admissible, without further evidence, as proof of the proportion of alcohol in the blood of the accused. These provisions are obviously designed to assist the Crown in proving its case, and as they serve to restrict the normal rights of the accused to cross examination and saddle him with the burden of proving that the certificate does not accurately reflect his blood-alcohol at the time of the alleged offence, they are to be strictly construed and, where ambiguous, interpreted in favour of the accused. The British Columbia Court of Appeal in *R. v. Alexis*, [1999] B.C.J. No. 2666 (Q.L.), (19 November 1999), Vancouver

Registry, CA025185/025203 discussed the term "ambiguity" and accepted the following definition from G. Dworkin, *Odger's Construction of Deeds and Statutes*, 5th ed. (London: Sweet & Maxwell, 1967) at 76: "an expression capable of more than one meaning". In that case the issue was the wording of a certificate, not the construction of a statute, and the Court held that the question was whether the accused may have been misled or prejudiced by the wording.

- [18] This case concerns the construction of a statute, specifically, the meaning of the term "statement" in s. 82.1(3) of the Motor Vehicle Act. The appellant's argument is that "statement" is capable of more than one meaning, presumably (1) an assertion by a person; or (2) a record provided by a system. It is useful here to look at the context in which the word "statement" is used in s. 82.1(3): "A record, providing a statement of information based on the records kept by the Insurance Corporation of British Columbia ... is evidence of the facts stated in the record." This is different wording from that of s. 82.1(2): "A certificate of the Insurance Corporation of British Columbia, containing a statement based on the records kept by the corporation, ... is, without proof of the signature, if any, or official position of the person giving the certificate, evidence of the facts stated in the certificate." (It is also different wording from that of s. 83.2, which allows enforcement officers to provide certificates of evidence and which was at issue in *Smith*.) In the context of the statute, "certificate" clearly contemplates a person certifying; "statement" does not necessarily contemplate a person stating. Instead, "statement of information" in s. 82.1 refers to the product of a system. That product can constitute a "record" and be tendered on its own under s. 82.1(3) or can be contained in a certificate which is tendered under s. 82.1(2). In short, although without context "statement" can bear either of the two meanings suggested by the appellant, in the context of s. 82.1(3) and the statute as a whole it unambiguously refers to a record provided by a system.
- [19] The appellant was unable to suggest what utility there would be in requiring a human being to be available for cross-examination as to an individual record of vehicle ownership kept in the I.C.B.C. system. This is not to say that computer records are assumed to be above all suspicion. However, it does reinforce the premise that the statute unambiguously permits the record to be admitted without a person certifying that it is a true record. Once admitted, the record can be rebutted by evidence to the contrary, and any such evidence that "tends to put in doubt the probative value" the legislature has conferred on the record will remove the presumption that the vehicle is owned by the person shown in the record: *R. v. Oliver*, [1981] 2 S.C.R. 240.
- [20] The appellant did not give notice under the Constitutional Question Act, R.S.B.C. 1996, c. 68, and did not explicitly raise a Charter argument. However, one of the underpinnings of Mr. Pearce's argument was that, where there is an ambiguity, legislation should be construed in a way that is constitutional rather than in a way that is unconstitutional, and that consideration pointed toward the construction of "statement" as requiring a "stator" because otherwise there is a constraint on the accused's right to cross-examination. I have concluded there is no ambiguity here, and the legislation does permit the electronic record on its own

to provide prima facie evidence of ownership. In the absence of argument on the point, I reach no conclusion as to whether the legislation is thereby in contravention of the Charter.

(b) The evidence that the vehicle was being driven by a person

[21] The appellant's position was that there was no evidence regarding an essential element of the offence with which she was charged, namely, that the vehicle was driven by a person. The relevant sections of the Motor Vehicle Act read:

146 (1) Subject to this section, a person must not drive or operate a motor vehicle on a highway in a municipality at a greater rate of speed than 50 km/h, and a person must not drive or operate a motor vehicle on a highway outside a municipality at a greater rate of speed than 80 km/h. 83.1(2) The owner of a motor vehicle is liable for the contravention of section 140, 146(1), (3), (5) or (7), 147 or 148(1) if evidence of the contravention was gathered through the use of a prescribed speed monitoring device. Appellant's counsel made an unsuccessful "no evidence" motion at the conclusion of the Crown's case on the basis that there was no evidence that the vehicle was being driven or operated, and no evidence that it was being driven or operated by a person as required under the charging sections.

[22] Counsel for the appellant argued that upon careful analysis there was neither evidence of driving nor evidence of driving by a person. He urged that the Certificate of Enforcement Officer Qualified Operator does not state that only vehicles being driven or operated by persons were photographed, and that there is no reason to assume that the photo radar system is not triggered by objects being towed. Thus, in his submission it is impossible to infer from the Certificate that this particular motor vehicle was being driven or operated by a person at the time the photograph was taken.

[23] Second, counsel for the appellant argued that the wording of s. 83.1(2) (which makes the owner liable whether or not the owner was the driver) refers to "evidence gathered through the use of a prescribed speed monitoring device" but nothing in the Certificate sets out evidence actually gathered by the device -- rather, it is evidence as to the set-up and operation of the device.

[24] Counsel for the respondent argued that the uncontroverted evidence of the Enforcement Officer is that the photograph was taken as vehicles were driven on a highway. Mr. Tozer urged that the logical inference is that this vehicle was being driven. He further pointed out that the appellant's assertion that radar-based systems are triggered by vehicles being towed was a bare assertion, not supported by evidence.

[25] Mr. Tozer argued that inferences must be logical conclusions based on evidence admitted at trial and must not be based on conjecture. He cited *R. v. Bouvier*, [1985] 2 S.C.R. 485 as support for the principle that reasonable doubt applies to the total body of the Crown's evidence and individual pieces of evidence should not be subjected to that standard of scrutiny. He argued that the only rational conclusion from the evidence is that the vehicle was being driven by a person.

- [26] The Justice of the Peace was prepared to take judicial notice of the fact that persons drive automobiles but noted that it was for the Crown to prove that the movement of the defendant's vehicle was caused by driving. Her Worship found that the Certificate of Enforcement Officer Qualified Operator, stated as fact that vehicles were photographed as they were driven on a highway. This certificate was not challenged by the defendant through cross-examination of the officer who provided the certificate or through presentation of other evidence to the contrary. Consequently, the Justice of the Peace found that the Crown had proven the essential element of driving the vehicle pursuant to s. 24 of the Interpretation Act.
- [27] However, because the photograph produced in evidence was taken of the rear of the vehicle, the Justice of the Peace held that there was no direct evidence the vehicle was being driven by a person. Her Worship then considered whether there was circumstantial evidence of that fact and referred to the test enunciated in *R. v. Comba*, [1938] S.C.R. 396: "before finding a prisoner guilty upon such evidence, [the jury] must be satisfied not only that the circumstances are consistent with a conclusion that the criminal act was committed by the accused, but also that the acts are such as to be inconsistent with any other rational conclusion than that the accused is the guilty person." She concluded by stating:

In the case before the Court the evidence presented indicates that on January 22, 1998 the Defendant, Myrna Ruth Pearce, was the registered owner of a motor vehicle bearing B.C. licence number DGJ 381 and that on that date at 09:32:20 hours said vehicle was driven west bound on East Keith Road at Grant Blvd. at the speed of 64 km/h in a 50 km/h zone. The only rational inference from the established facts would be that the vehicle was driven by a person. The suggestion of the defence that it could be a trained chimpanzee that was driving the vehicle is frivolous and has no ground in evidence. Consequently the Crown has proved circumstantial evidence of the Defendant's vehicle being driven by a person. [28] The evidence provided to the court through the three documents was that the motor vehicle owned by the appellant was photographed on January 22, 1998 going at a speed of 64 kilometres per hour in a zone where the maximum permitted speed was 50 kilometres per hour, by a device which photographed vehicles as they were driven on a highway.

- [29] I agree with the learned Justice of the Peace that there was prima facie evidence that the vehicle was being driven, and that judicial notice can be taken of the fact that people drive vehicles. The possibility of there being some driver other than a human person is so remote as not to constitute a rational conclusion.
- [30] I conclude that the learned Justice of the Peace was correct in finding that there was evidence that the vehicle was driven or operated by a person.
- [31] Accordingly, the appeal is dismissed.

"LYNN SMITH, J."

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