

IN THE PROVINCIAL COURT OF NOVA SCOTIA

**Citation:** R. v. Himmelman, 2007 NSPC 35

**Date:** 20070515

**Docket:** Docket Number 1721464

**Registry:** Bridgewater

**Between:**

HER MAJESTY THE QUEEN

v.

DAVID ERNEST HIMMELMAN

**Judge:** The Honourable Judge Anne E. Crawford

**Heard:** May 15, 2007, in Bridgewater, Nova Scotia

**Written Decision:** June 8, 2007

**Charge:** That he, at or near Pleasantville, County of Lunenburg, N. S., did unlawfully commit the offence of passing a school bus while red lights activated, contrary to section 103(3) of the **Motor Vehicle Act**.

**Counsel:** Craig Harding, for the Crown  
Michael K. Power, for the Defence

**By the Court (Orally):**

[1] David Himmelman is charged under section 103 (3) of the **Motor Vehicle Act** with passing a school bus while the red lights were activated.

[2] There is no major dispute on the facts.

[3] On the day in question, October 30, 2006 at around 7:55 in the morning the defendant was driving south on Highway 331 through Pleasantville, Lunenburg County, Nova Scotia when he saw a school bus stopped in the road ahead of him with its red lights flashing.

[4] There is some dispute as to whether or not he stopped behind the bus, but in any event, he almost immediately signalled a left turn; crossed the road onto the paved area in front of the local fire hall; proceeded through that area onto Church Street and then turned left to continue on his way on Highway 331 ahead of the school bus which was still stopped behind him, just finishing loading children.

[5] At least two parents who testified here today were sufficiently upset by what they saw as a danger to their children to take down his license plate and notify authorities as did the school bus driver. The defendant admits the manoeuver but says he did nothing wrong. His actions did not bring him within the section, in that he did not pass the bus on the highway but through adjacent private land open to the public.

[6] The Crown replies that the definition of "highway" under the Motor Vehicle Act includes and I quote, "private property that is designed to be and is accessible to the general public for the operation of a motor vehicle", and that therefore the defendant is as guilty of the offence as if he had passed on the highway itself.

[7] The issue then is simply did the defendant breach the section as alleged by the Crown? Looking closely at the section which reads, and again I quote, "Notwithstanding any other provision of this Act, the driver of a vehicle shall stop the vehicle before passing a school bus that is

exhibiting flashing red lights and is stopped on or near a highway and shall remain stopped until the school bus proceeds”.

[8] On a common sense reading of this section, the defendant at least failed to remain stopped until the bus proceeded. The gravamen of the offence on that reading is not on passing or where the passing was done, but on stopping and remaining stopped.

[9] Looking at the section from a purpose of point of view, what is the danger or evil the section is designed to prevent? Obviously the danger of injuring a child or children who, as children often are, may be intent on the bus to the exclusion of the danger of approaching traffic.

[10] In this case there were children on the right side of the bus boarding. And everyone agrees that no child in this incident was actually put at risk or injured but that whole area, so I'm informed through the testimony of the witnesses, including the Fire Department lot and the road in front of it, is used at least on occasion by children and parents waiting for the bus. I find that the defendant not only breached the section on a strict reading of the statute in that he did not remain stopped behind the bus, but also that he breached the purpose of it, to protect children.

[11] The defence argument that if there had been a street there he could have made a left turn, is not relevant. There was no street and if there had been it would have carried him safely away from the danger the statute seeks to avoid rather than keeping him in the immediate area where there was that immediate danger.

[12] I find that the defendant is guilty as charged. Mr. Power in regard to penalty, or maybe first the Crown in regard to penalty?

[13] The Crown: We'd be seeking what's shown on the ticket.

[14] The Court: Yes, right. Mr. Power?

[15] Mr. Power: Yes, that...

[16] The Court: Your client can pay if we give him time?

[17] Mr. Power: Yes, of course.

[18] The Court: Will a month be enough time?

[19] Mr. Power: I think so.

[20] The Court: That would be to the July payment date, July 11<sup>th</sup> for payment of the fine. Mr. Himmelman, would you stand please, sir. I found you guilty of the charge. The court clerk will give you a fine notice and you'll be free to go. We'll close court.

[21] **(Court closed)**