

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R v. Brody*, 2013 NSPC 59

**Date:** 20130703

**Docket:** S-15000319

**Registry:** Pictou

**Between:**

Her Majesty the Queen

v.

Evelyn Brody

**Judge:** The Honourable Judge Del Atwood

**Heard:** July 3, 2013 in Pictou, Nova Scotia

**Charge:** On or about the 7<sup>th</sup> day of November, 2012, did unlawfully commit the offence of failing to stop at stop sign contrary to Section 133(1) of the *Motor Vehicle Act*

**Counsel:** J. Patrick Young, for the Nova Scotia Public Prosecution Service  
Evelyn Brody, self-represented

**By the Court:**

[1] The court has for decision the case of Evelyn Brody. Ms. Brody is charged in Summary Offence Ticket 15000319 with an offence under Section 133(1) of the *Motor Vehicle Act*.

[2] There are a number of things that the Crown has to prove beyond a reasonable doubt. I am satisfied, based on the evidence of Cst. MacDonald, and based on the video recording evidence--which I am satisfied pursuant to *R. v. Nikolovski* provides the court with an accurate, independent, impartial and impassive depiction of the relevant facts and the relevant scene on November 7<sup>th</sup>, 2012--that on the 7<sup>th</sup> of November, 2012, Ms. Brody was operating a motor vehicle that approached the intersection of Denoon Street and Coleraine Street, in the Town of Pictou, heading westbound. The vehicle that was operated by Ms. Brody indeed slowed as it approached that intersection. I'm satisfied that there was a stop sign that was visible to Ms. Brody. Ms. Brody testified here today truthfully that she is well familiar with that intersection. In fact, noting Ms. Brody's place of residence, I'm satisfied that she would in fact be well familiar with that intersection.

[3] Ms. Brody believed that she stopped. I believe that when she testifies here today, she still believes that. However, having observed the video recording—which I find accurately depicts the motion of Ms. Brody’s vehicle as it approached the intersection of Denoon Street and Coleraine Street, in the Town of Pictou—I find that, although Ms. Brody’s vehicle did in fact decelerate, it did not come to a stop. There was no complete cessation of forward motion. To conclude otherwise would be to require the courts to suspend its believe in what I saw plainly in the video recording. I found the video recording to be very clear. It clearly depicted the traffic. It clearly depicted the intersection. It clearly depicted the vehicles that preceded Ms. Brody’s vehicle. The first one appeared to be a van with Aliant Telcom livery that obviously rolled through the intersection. The next vehicle was an Aliant-liveried truck that appeared to come almost to a stop but, again, did not come to a complete stop. And then there was Ms. Brody’s vehicle that did decelerate but rolled through that stop sign. There was no complete cessation of forward motion. I find that all of the essential elements of the offence have been proven beyond a reasonable doubt.

[4] That does not end the court's inquiry. The court is obligated pursuant to *R. v. Sault Ste. Marie* to consider the defence of due diligence. In this particular case, there is no due diligence defence that has been raised by Ms. Brody. Ms. Brody simply believes that she stopped, and I'm satisfied that when she testifies in court here today, she truly believes that she did stop. The fact is she didn't. There was no mechanical difficulty that prevented Ms. Brody's vehicle from coming to a complete stop, nothing that interfered with the braking system. There were no obvious emergent traffic situations that necessitated Ms. Brody rolling through that intersection; therefore, I find that the defence of due diligence has not been made out.

[5] All of the elements of the offence haven't been proven beyond a reasonable doubt and no defence having been established under *R. v. Sault Ste. Marie* . . . Ms. Brody, as I say, I accept when you say that you feel that you stopped, but I find that you didn't, and the video recording, in my view, is quite clear on that point. This isn't a case of it being a close call. There was nothing near a complete stop.

[6] The court will record a finding of guilt and the Crown is seeking the voluntary payment amount on the ticket?

[7] **Mr. Young**: Yes, Your Honour.

[8] **The Court**: Thank you. Ms. Brody, the ordinary fine is \$169.91. But the court can consider a lesser amount if there's a good reason for that. Are you working now, Ma'am?

[9] **Ms. Brody**: I'm retired, sir.

[10] **The Court**: You're retired. And what was your line of work before you retired?

[11] **Ms. Brody**: I worked as a community health nurse.

[12] **The Court**: I see. And do you have any family responsibilities other than yourself?

[13] **Ms. Brody**: No. No, I do not.

[14] **The Court**: Thank you. Would paying a ... how long have you been retired, ma'am?

[15] **Ms. Brody**: Since 1994.

[16] **The Court**: Thank you very much. What the court is going to do, Ms. Brody, the court has to impose the costs amount of \$112.41. I am going to remit all but \$40.00 of the fine so that the total amount that you'll be required to pay will be \$152.41. Would six months be enough time to pay that fine amount?

[17] **Ms. Brody**: I'll pay it less than that, sir.

[18] **The Court**: Well, we'll give you six months just to ensure that that provides you with ample time. So, \$152.41 with six months to pay. The sheriff will give you a reminder slip of that fine amount and that slip of paper will also explain to you how to make the fine payment.

[19] And, Mr. Young, I apologize to you. I was short-tempered and that was inappropriate. I can certainly understand why in appropriate circumstances the

Crown would wish to present to evidence of the sort that the Crown did seek to admit and my apologies.

[20] **Mr. Young**: Thank you, Your Honour, I accept that.

[21] **The Court**: Thank you.

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Del Atwood  
Judge of the Provincial Court  
of Nova Scotia