

ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

V.

GEORGE BARGIS

R U L I N G

BEFORE THE HONOURABLE MR. JUSTICE S. ARMSTRONG
on March 25, 2004, at Newmarket, Ontario

Charge: s. 106(2) H.T.A. - Fail to Wear Seatbelt

APPEARANCES:

E. Allen

S. Pelaccia

Prosecutor for the Region

Agent for the Appellant

1.
RULING
- Armstrong, J

R U L I

ARMSTRONG, J. (Orally):

5 I apologize for taking a few extra minutes. I
wanted to give you a decision this afternoon, and
complete this matter, so that we would complete our
list. I am prepared to give a decision now.

10 In the matter of Regina v. George Bargis, S.
Pelaccia for the appellant, defendant, and E. Allen
for the respondent Prosecutor.

15 This is an appeal of a fail to respond conviction
under s. 9 of the Provincial Offences Act. The
issue is whether an error on the face of a
certificate of offence should result in the
quashing of the certificate

20 Specifically, the offence is described on the
certificate as the offence of "driver fail to wear
complete seatbelt assembly" contrary to "Highway
Traffic Act" "s. 106(2)". The subsection is
incorrect. It should be s. 106(3).

25 There is a very significant difference in the case
where a defendant appears at trial and default
conviction proceedings, such as this case, where
the defendant did not appear. In this case where
30 the defendant did not appear, he must therefore be
deemed not to dispute the charge as mandated by s.
9.1(1). The justice of the peace was therefore

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Armstrong, J.

required to act in the defendant's absence under s 9.1(2), and examine the certificate of offence to determine whether it was complete and regular on its face

Justice Blacklock in Regina v. Singh, his decision of January the 14th, 2000, described the unique ambit of s. 9.1 succinctly when he said:

That section is an exceptional section, in that it permits the justice of the peace without any evidence at all to convict an accused person who does not appear, and it seems to me that to invoke that exceptional power and section requires compliance with its terms.

The section thus creates a premium on the form of the document the justice of the peace reviews. The question is then, was the certificate complete and regular on its face?

Black's Law Dictionary, the revised 4th edition of 1968, defines "regular on its face" as follows:

Process is "regular on its face" when it proceeds from a court, officer or body having authority of law to issue process of that nature, and is legal in form and contains nothing to notify or fairly apprise anyone that it is issued without authority.

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- Armstrong, J.

The term "complete" is defined in Black's Law Dictionary as "full, entire, including every item or element of the things spoken of without omissions or deficiencies."

But there is a further question, namely, does the inclusion of the word complete in s. 9.1(2) require the certificate to have every box and space on it filled in with relevant information. In my view, the answer is "no"

As Justice Daudlin noted in Regina v. Baldasare, November 9, 2000, Doc. Windsor 00-CR-05944 Ont. S.C., some of the information for which there are boxes to be completed on the certificate of offence is surplusage, which "in no way confuses or in any manner raises the issue of the notice being inappropriate, incomplete or in any manner failing to meet the necessities of the legislation." Therefore, the omission of the words "Ontario" or "of Ontario" from the description of the Highway Traffic Act would also appear to me to be surplusage that would not require a quashing of the information.

However, in this case the section number contained an error. It specifically stated s. 106(2) instead of 106(3). I find that this error was something that was in conflict with the description, and cannot be said to be - and here I am quoting Justice Daudlin's phrase, "surplusage" [which] "in

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Armstrong, J

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no way confuses." I find that the conflict was something which could not be said to in no way confuse. And given the scheme of the Provincial Offences Act and the premium that is put on the form in the context of default conviction proceedings, this conviction cannot stand.

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I am therefore allowing the appeal and quashing the conviction. The justice of the peace should have quashed the certificate.

MR. PELACCIA: I thank Your Honour. If I may Your Honour, I believe you quoted the section as 160, and I believe it should be 106. It's just for the record.

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THE COURT: Sorry, did I say - you are quite right. I reversed the digits. Throughout those reasons, the correct section number is 106(3). The incorrect subsection number on the certificate is 106(2). So, if I have said anything differently, those are the correct numbers. Yes. Thank you for pointing that out to me.

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CLERK OF THE COURT: So the appeal is allowed, and the quashing is granted - appeal is allowed?

MR. ALLEN: The conviction is quashed.

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THE COURT: All right.

CLERK OF THE COURT: Appeal allowed, conviction quashed.

THE COURT: Yes.

MR. ALLEN: Yes

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CLERK OF THE COURT: Thank you.

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Armstrong, J.

MR. PELACCIA: I thank Your Honour. I thank my friend. I thank Madam Clerks.

THE COURT: Sorry, first technically I have to grant the extension of the filing of the notice time.

MR. ALLEN: That's correct, yes.

THE COURT: And, I am going to allow the appeal and quash the conviction.

CLERK OF THE COURT: Thank you, Your Honour.

MR. PELACCIA: I thank Your Honour for your time and consideration

6.
Certification

I, Helen Eliakis, certify that Recording No. 57 is the recording of the evidence and proceedings in the Ontario Court of Justice held at at 50 Eagle Street West, Newmarket on March 25, 2004 and that I was in charge of the sound recording device during those proceedings.

5 June 5, 2004
Date


Signature of authorized person

Transcript Completed. June 3, 2004
10 Ordering Party Notified..... June 7, 2004

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