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Case Name:

R. v. Azzoli

**Between
Regina, and Azzoli**

[1983] O.J. No. 2466

24 M.V.R. 205

Ontario Provincial Court

Montgomery Prov. Ct. J.

December 19, 1983.

(13 paras.)

Cases cited:

R. v. MacDougall (1982), 18 M.V.R. 180, 31 C.R. (3d) 1, 1 C.C.C. (2d) 65, 142 D.L.R. (3d) 216 (S.C.C.).

R. v. Sault Ste Marie, [1978] 2 S.C.R. 1299, 3 C.R. (3d) 20, 7 C.E.L.R. 53, 40 C.C.C. (2d) 353, 85 D.L.R. (3d) 161.

Statutes cited:

Highway Traffic Act, R.S.O. 1980, c. 198 -

s. 29(2)

s. 29(4)

s. 35 [re-en. 1981, c. 48, s. 4] Motor Vehicle Act, R.S.N.S. 1967, c. 191.

APPEAL by the Crown from the dismissal of a charge of driving while suspended.

Counsel:

R. Clarke, Q.C., for the appellant.

M. Miller, for the Crown.

1 MONTGOMERY PROV. CT. J.:-- The Court will try to be brief with the matter. The Court is aware that this is an appeal from a Provincial Offences Court.

2 The Court must keep in mind that where the transcript discloses a lack of appreciation of relevant evidence or a complete disregard of such evidence it then falls to the reviewing Court to intercede; also, findings of fact can only be reversed in this Court where they are unreasonable or based upon a wrong decision on a question of law and a verdict is unreasonable only if it is so illogical and without foundation that no reasonable jury acting judicially could have reached it.

3 I make these comments keeping in mind, as both counsel have alluded to, that the Justice of the Peace presiding in the Provincial Offences Court believed the evidence of the respondent, Azzoli. He accepted his evidence.

4 I have already indicated that the Court will treat the offence under s. 35 [re-en. 1981, c. 48, s. 4] of the Highway Traffic Act, R.S.O. 1980, c. 198, as one of strict liability and I think that matter is now settled by R. v. MacDougall, (1982), 18 M.V.R. 180, 31 C.R. (3d) 1, 1 C.C.C. (2d) 65, 142 D.L.R. (3d) 216, which is a Supreme Court of Canada decision which dealt with a similar provision in the Nova Scotia Motor Vehicle Act, R.S.N.S. 1967, c. 191.

5 The R. v. Sault Ste Marie decision, [1978] 2 S.C.R. 1299, 3 C.R. (3d) 20, 7 C.E.L.R. 53, 40 C.C.C. (2d) 353, 85 D.L.R. (3d) 161, sets out the classification of offences, and as I understand the Sault Ste Marie decision it involves the consideration by the Court of what a reasonable man would have done in the total circumstances.

6 That case also indicates the defence of due diligence will be available if the respondent in this case reasonably believed in a mistaken set of facts which if true would render the act or omission innocent and I think that in a nutshell sums up the "due diligence" defence.

7 The respondent in this case, looking at p. 4 I guess, he signed for this notice, he admits getting what has been filed as Ex. 1 on the 4th day of May 1983. He got his notice and he was driving at a time when he was under suspension so the Crown has presented a prima facie case to the Court on those two matters. The respondent when he received this notice immediately, he says at p. 4 at the bottom of the page "I immediately" and I think the word "immediately" is very important because it shows that he was taking care of the matter right away, he says "I immediately went into my office, knowing that it would take ten days to reinstate my licence because I had to be out of town." So he knew he was going to New York City for a period of three weeks and, as Mr. Clarke has alluded to and I agree with him, when you look at the conduct of a reasonable man in the circumstances of Mr. Azzoli you must take into consideration that he has support staff, as we all do. I do and, of course, we all rely on our support staff to a great extent and I think that it is reasonable that we do so. They have a job to perform for us and we can only assume that they will perform same. This respondent, he told his secretary about the situation and told her to phone and find out about it and it would appear she did phone, at least that is what he said, that she phoned City Hall to find out about the fine, since he was out of town; on p. 5, he indicated that he thought this matter would be all straightened out and he would have his licence back when he got back from New York. He came back three weeks later, assumed it was done, and again the Court must look at the reasonable man concept again: was it reasonable for him to assume that with the knowledge that he had acquired before he left and the fact that he was on the phone with his secretary on numerous times while he was away, came back, he assumed that it was done because it seemed like a very easy thing to do; I agree with that, that it does seem like an easy thing to do and when he got stopped by the officer and was told he was under suspension he said he was shocked, and I again caution myself that the Justice of the Peace accepted his evidence, "and that is why I asked him what for"; they told him what for and then he realized the fine had never been paid.

8 When he found it had never been paid, on p. 6 he wanted to know from the officer "what do you suggest I do about this matter?" and the officer told him that he should get it paid immediately and, accordingly, the next day he went and paid it himself.

9 I haven't reviewed the total evidence, but that really is the evidence that goes to this issue. The notice bears some looking at as well because, as I have already alluded to, I think the notice is very ambiguous. It indicates initially under the title portion, it says "Your driver licence is suspended pursuant to a court order under the Highway Traffic Act, section 29(2)". Now to me accepting that at face value, it says your driving licence is suspended effective the 17th of

May 1983 and it is done pursuant to a court order and it refers to the Highway Traffic Act, s. 29(2).

10 Now I am aware of what s. 29(2) says and I am also aware of, I think it is subs. (4) of s. 29, which indicates that when payment is received that the Justice of the Court which ordered the suspension must sign an order reinstating the licence and this will be forwarded to the Registrar who will upon receipt reinstate the man's licence. It seems to be quite proper down to that point and then we get the offending clause, at least the clause that I find offending. It says "To reinstate your licence takes a minimum of 10 working days after your payment is processed by the Court", now really I suppose that much of that clause doesn't really cause too much concern because it says to reinstate your licence takes about ten working days after your payment is processed by the Court. Then they go on to say "Therefore it is important that your payment be made immediately", and I suppose if they had stopped there the Court may not take much objection to it, but they go on and say, "if you are to avoid suspension"; now to me it seems to indicate that if this man gets around, if Mr. Azzoli, the respondent, gets around and gets his payment made as quickly as possible and he has ten working days for them to process the matter, that he will avoid suspension and that is what the notice says 'avoid suspension' and to me that is an ambiguity as far as the initial clause in the notice is concerned, and where there is an ambiguity it must be resolved in favour of the respondent.

11 Having made those comments and keeping in mind that it is a due diligence matter or strict liability, I cannot criticize the respondent for the conduct that he participated in getting the matter taken care of. He went about it in a way that any reasonable man would have done, gave it to his secretary, asked her to look after it. "I received this notice and I want to have it taken care of. If I don't get it taken care of in a certain period of time I am going to be suspended" and he assumed it was done as I think a reasonable person could assume it was done.

12 Looking at the due diligence aspect again and the Sault Ste Marie decision, supra, I think really when you consider the reasonable man concept that this defence is available to this accused because he reasonably believed in a mistaken set of facts which if true would render the act or omission innocent and I think he falls directly within that definition.

13 Without any further comments from the Court the appeal will be dismissed.

qp/s/qlsjh/qldjv