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R. v. Bertolucci; R. v. Wu; R. v. Woo; R. v. Young

Between

Her Majesty the Queen, appellant, and
Bertolucci, Wu, Woo and Young, respondents

[1995] O.J. No. 4283

DRS 97-05365

Ontario Court of Justice (Provincial Division)

Toronto, Ontario

Reinhardt Prov. J.

June 23, 1995.

(5 pp.)

Motor vehicles — Offences — Prosecutions — Notices — Sufficiency of — Failure to provide name of informant, effect of.

This was a set of appeals by the Crown from quashing of certificates on the basis that the informant police officer had not placed his name on the offence notices issued under the Highway Traffic Act.

HELD: The appeals were dismissed. The failure of the officer to tell the accused drivers who was informing that they had breached the Act was a fatal flaw. It was not a flaw which could be cured by the provision of particulars at trial.

Statutes, Regulations and Rules Cited:

Highway Traffic Act, ss. 35, 36, 90.

Counsel:

R. Rosenberg for the Crown.

R. Ryck for the respondent Morgan Young.

Somers for the respondent Claudio Bertolucci.

¶ 1 **REINHARDT PROV. J.** (endorsement):— On these three matters, which are listed on the docket, as Morgan Young, represented by Mr. Ryck; Claudio Bertolucci, represented by Mr. Somers, and Jim Woo, who was properly served and is before me on appeal by the Crown from the decision of Justice of the Peace C. McCurdy, on the 19th of January 1995, in which he quashed the three certificates involved on the basis that the informant, namely, the police officer, Henry Gotham, had not seen fit to place his name on the offence notice.

¶ 2 And in each instance of the two represented people before me today I was shown the offence notices which do not disclose the name of the person; the informant, whose belief and certification is necessary for a valid offence notice.

¶ 3 Now, the actual certificate of offence in each instance is signed by Henry Gotham and properly filled out in all particulars. But it was the decision of Justice of the Peace McCurdy that it was a fatal flaw not to tell the accused driver who was informing or concluding that they had breached the Highway Traffic Act.

¶ 4 In my view that reasoning, although somewhat elliptical in the actual reasons as set out by the Justice of the Peace, is a very valid and correct conclusion. And although the Provincial Offences Act provides for a remedy short of quashing the certificate and suggests that in general such a remedy is not appropriate under the Provincial Offences Act. And I refer specifically to Sections 35, 90 and 36. Ninety, for example, suggested in dealing with offence-notices that irregularities in form or defects in substance of an offence notice do not affect the validity of a proceeding. And if you follow that them in the Provincial Offences Act of Section 36, it says, "An objection to an information or certificate for a defect apparent on its face shall be taken by motion to quash, and the court shall not quash unless and amendment or particulars under 33, 34 or 35 would fail to satisfy the ends of justice."

¶ 5 It is my view, and I agree with the submissions by the agents for the two represented individuals, that failing to put the informant on the offence notice is not something that can properly be cured by particulars at the time of trial. And although there is jurisdiction to amend, all those particulars in my view deal the details of the offence and they are describing circumstances where the offence has not been stated properly. They do not contemplate in my view the actual addition of the name of the informant. That is something which is so basic. I agree with the Justice of the Peace; is to make the notice a useless document for the purposes of the defendant. And the principles of justice would not be served by permitting an amendment to be made of that basic element. So I am not prepared to amend and I suggest that the appropriate decision was that of the Justice of the Peace.

¶ 6 So that the appeal by the agent for the Attorney General is dismissed.

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