

Case Name:
R. v. Bishop

Between
Brock Bishop, and
Her Majesty the Queen

[2008] O.J. No. 5501

2008 ONCJ 712

Information No. 78067870

Ontario Court of Justice
Cayuga, Ontario

D.A. Harris J.

Heard: November 19, 2008.
Oral judgment: November 19, 2008.

(11 paras.)

Charges: Section 136(1)(a) Highway Traffic Act - Disobey stop sign

Counsel:

B. Bishop, Appellant.

J.P. Maloney: Counsel for the Respondent.

REASONS FOR JUDGMENT

1 D.A. HARRIS J. (orally):-- The appellant, Brock Bishop, was found guilty of disobeying a stop sign on January 8, 2008, contrary to section 136(1)(a) of the Highway Traffic Act. The appeal is against that finding of guilt.

2 Ontario Provincial Police Constable Barb Nakagawa testified for the prosecution at the trial. Mr. Bishop gave evidence in his own defence. They both agreed that Mr. Bishop was operating a motor vehicle on January 8, 2008, travelling eastbound on Main Street west in Selkirk in Haldimand County, as alleged in the charge. The learned Justice of the Peace misstated the date of the offence as August 29 in her reasons for judgment, but my decision does not rest on that mistake.

3 Both witnesses agree that Mr. Bishop drove up to the stop sign at the intersection of Main Street and Erie Street. Mr. Bishop said that he stopped there before proceeding through the intersection. Provincial Constable Nakagawa said that he did not come to a complete stop. The Justice of the Peace should then have instructed herself in accordance with the ruling of the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 as follows:

4 If she believed the testimony of Mr. Bishop that he did not fail to stop, she should have found him not guilty. Even if she did not believe the testimony of Mr. Bishop, if it left her with a reasonable doubt about his guilt, she must find him not guilty. Finally, even if the testimony of Mr. Bishop did not raise a reasonable doubt about his guilt, if after considering all the evidence that she did not accept she was not satisfied beyond a reasonable doubt of his guilt, she must acquit.

5 I do not know whether the Justice of the Peace went through this process or not. In her reasons for judgment, she reviewed the evidence given by both Provincial Constable Nakagawa and Mr. Bishop. She then concluded at page 19 of the transcript that "The court accepts the evidence of the officer because the officer's specific purpose that day was for stop sign enforcement. She is focused on that intersection, she sees your vehicle approach, and her evidence is that you did not stop at the sign or the line, proceed throughout and that there was a continuous motion. And, the reason the court has accepted her evidence over yours is solely because the officer has nothing to gain. She is there for that specific purpose and she has nothing to gain from laying that charge."

6 The Justice of the Peace does not say that she rejected the evidence of Mr. Bishop. She did not say that his evidence did not leave her with a reasonable doubt as to his guilt. She does not even say that she knew that the onus was on the prosecution to prove its case beyond a reasonable doubt. I hope that the Justice of the Peace knew that the onus was proof beyond a reasonable doubt. I expect that she probably did. I do not, however, know that for certain because she did not say so in her reasons.

7 In *R. v. Hull*, [2006] O.J. No. 3177, the Ontario Court of Appeal said at paragraph 5 that "W.(D.) and other authorities prohibit triers of fact from treating the standard of proof as a credibility contest. Put another way, they prohibit a trier of fact from concluding that the standard of proof has been met simply because the trier of fact prefers the evidence of Crown witnesses to that of defence witnesses."

8 In her reasons for judgment, the Justice of the Peace says why she accepts the officer's evidence over that of Mr. Bishop, but that is not enough. She does not indicate that she rejected Mr. Bishop's evidence, or that the evidence she did accept proved guilt beyond a reasonable doubt.

9 The Supreme Court of Canada has indicated in *R. v. Sheppard*, [2002] 1 S.C.R. 869, and *R. v. Braich*, [2002] 1 S.C.R. 903 that judicial officers must not only consider the relevant factors and the law, but must also articulate clearly the fact that they have done so.

10 I am fully aware that appellate deference should be shown to the judicial officer conducting a trial, and that it is presumed that justices know the law with which they work day in and day out. However, as the Supreme Court of Canada has commented in *Sheppard*, "even learned judges can err in particular cases and it is the correctness of the decision in a particular case that the parties are entitled to have reviewed by the appellate court".

11 Here, there was no mention by the Justice of the Peace of the process of analysis set out in *W.(D.)*. There is nothing in her reasons to suggest that she went through that form of analysis. This makes meaningful appellate review impossible, and the finding of guilt is set aside. This is not, however, a case where an acquittal is appropriate. It was clearly open to the Justice of the Peace to reach the conclusions that she did after going through a *W.(D.)* analysis. In the result, a new trial will be ordered.

qp/s/qlbxm/qlcnt