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R. v. Brum

Between
Her Majesty the Queen, and
Kevin Brum

[2000] O.J. No. 5207

Ontario Court of Justice
Toronto, Ontario
Libman J.

December 14, 2000.
(37 paras.)

Counsel:

H. Clement, for the Crown.
J. Alessandro, for the accused.

LIBMAN J.: —

¶ 1 MR. CLEMENT: If we can return to the appeals proper list. We can deal with line number 18, the matter of Kevin Brum.

¶ 2 MR. ALESSANDRO: Good afternoon, Your Honour. Alessandro, initial J., appearing as agent on behalf of the appellant. A-L-E-S-S-A-N-D-R-O.

¶ 3 **THE COURT:** Go ahead.

¶ 4 MR. ALESSANDRO: Your Honour, I've had conversations with my friend in reference to resolution subject to your approval. It is a speeding charge of speeding 122 kilometres in a 70 kilometre zone. I'm wondering if Your Honour would accept resolution of a three kilometre drop in the speed to bring the defendant down to four points versus a six point demerit point which

¶ 5 **THE COURT:** On what basis? He had a trial on the merits. I can appreciate that consideration is very often properly given to individuals who have not had a day in court. Here there was a trial on the merits and you represented the defendant. Why should I interfere?

¶ 6 MR. ALESSANDRO: Your Honour, the three grounds of the appeal was that on p. 2 the defendant asked for an adjournment for the reason that when he was in the motor vehicle, he had a passenger with him and he asked for an adjournment on line 11 on p. 2 for the reason that he wanted that passenger to come to

court and testify in reference to the actual speed and he wasn't given that opportunity.

¶ 7 On p. 10, Your Honour, line 14, when I was given an opportunity to make submissions in reference to the officer's testimony in examination in-chief, he indicated that operated that he operated a laser unit. And he indicated that he tested the laser unit prior to him obtaining the reading of the motor vehicle and at no time in the examination in-chief did he indicate that he also tested it after he obtained the reading to satisfy him that the laser unit was operating correctly.

¶ 8 And he also didn't indicate in examination in-chief that he did not indicate that when he conducted that laser unit that he was operating, that he Conducted an approved test for that laser unit as per the manufacturer's specifications to satisfy him that it was working in a proper fashion.

¶ 9 **THE COURT:** Well, you were not interested in any of this evidence. You declined to ask the officer one question on the merits so obviously you did not think there was any reason to contest the matter. Trial by ambush does not cut it. What is your next argument?

¶ 10 **MR. ALESSANDRO:** Your Honour, I actually asked him twice in reference to the testing procedure. I asked him, "When you tested the laser unit at 4 p.m., that was ..." I asked him specifically on two occasions. "When did you test it?" on p. 9, line 18, I asked him, "When did you test it?" He answered, "I tested it at 4 p.m. at the commencement of my shift. I tested it according to manufacturer's specifications as outlined in the guidelines"

¶ 11 **THE COURT:** Are you not referring to the questioning by the provincial prosecutor? At 1. 25, Mr. Alessandro; "No questions for the officer."

¶ 12 **MR. ALESSANDRO:** Is that on p. 9, Your Honour?

¶ 13 **THE COURT:** Page 9. You did not ask a single question and you did not call a defence.

¶ 14 **Mr. ALESSANDRO:** The reason why, Your Honour, I didn't ...

¶ 15 **THE COURT:** Why are you telling me that you asked a question? You are referring to questions of the prosecutor.

¶ 16 **MR. ALESSANDRO:** The reason why I didn't ask the question, Your Honour

¶ 17 **THE COURT:** Did you not just refer me to an excerpt and tell me that you asked that question?

¶ 18 **MR. ALESSANDRO:** Yes.

¶ 19 **THE COURT:** What am I missing here? Were these questions not asked by the provincial prosecutor?

¶ 20 **MR. ALESSANDRO:** Okay. Well, what I'm indicating, Your Honour

¶ 21 **THE COURT:** No, no, no. I am asking you a direct question and you answer it directly. Did you just point out a question to me and tell me that you asked it when in fact you did not?

¶ 22 **MR. ALESSANDRO:** I did ask that question, Your Honour. I asked him, you tested the radar unit at

a specific time and he said be tested it at 4 p.m. but he never indicated that he tested it after. I asked it on two separate occasions in my submissions and I indicated that to the Justice of the Peace.

¶ 23 **THE COURT:** Do we have the same transcript?

¶ 24 **MR. ALESSANDRO:** Yes, Your Honour.

¶ 25 **THE COURT:** What does it say at the top of p. 9? "Myers, in-Ch."?

¶ 26 **MR. ALESSANDRO:** Yes, sir.

¶ 27 **THE COURT:** Show me on that page where you ask a question. Attempting to mislead the Court is disreputable.

¶ 28 **MR. ALESSANDRO:** Your Honour, I'm not misleading the Court.

¶ 29 **THE COURT:** Show me on this page where you ask a single question.

"MR. GUNNESS: All right. That's my questions."

THE COURT: Mr. Alessandro.

MR. ALESSANDRO: No questions for the officer."

¶ 30 **MR. ALESSANDRO:** May I have the Court's indulgence, please.

¶ 31 **THE COURT:** Immediately after, you indicated no defence. You are now trying to mislead the Court on appeal.

¶ 32 **MR. ALESSANDRO:** Your Honour, I'm not trying to mislead the Court.

¶ 33 **THE COURT:** Agents perform a very vital role in the administration of justice. A small group of them who act in a disreputable way by misleading Courts, telling their clients not to appear for trial or do not appear on their behalf on appeal fall within the category that the Court of Appeal recently commented upon as belonging to an ilk of people who, with the same degree of training or lack of training, could equally sell t-shirts or hot dogs on the street corner.

¶ 34 When you come to an Appeal Court and argue an appeal, you are performing an important role in the administration of justice. Misleading an Appeal court is disgusting. Do you have anything further to say?

¶ 35 **MR. ALESSANDRO:** No Your Honour.

¶ 36 **THE COURT:** The appeal is dismissed.

¶ 37 **MS. CLEMENT:** Thank you.

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