

COURT OF APPEAL FOR ONTARIO

RE: HER MAJESTY THE QUEEN (Respondent) – and – JOHN CAMERON (Appellant)

BEFORE: WEILER, ARMSTRONG and JURIANSZ JJ.A.

COUNSEL: Joanne K. Stuart
for the appellant

John A. Neander
for the respondent

HEARD: March 1, 2006

On appeal from the decision of Justice Joseph B. Wilson on December 30, 2005 dismissing the appeal from the conviction entered on April 27, 2004 by His Worship Justice of the Peace M. Biss.

ENDORSEMENT

[1] The appellant seeks an order quashing his convictions, pursuant to s. 139 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33, on a charge of careless driving a snowmobile and a charge of failure to report his ensuing accident contrary to ss. 15 and 13(1)(c) respectively of the *Motorized Snow Vehicles Act*, R.S.O. 1990, c. M.44.

[2] In relation to the charge of failing to report forthwith, the appellant raises two interrelated questions of law: (1) the Provincial Offences Appeal (“POA”) judge erred by failing to take the appellant’s circumstances into account in relation to the requirement to report “forthwith” as found in the *Motorized Snow Vehicles Act*; and (2) the POA judge erred by failing to hold the justice of the peace to the standard for sufficiency of reasons as set out by the Supreme Court of Canada in *R. v. Sheppard* (2002), 162 C.C.C. (3d) 298. The appellant further submits that the POA judge also erred because he did not recognize that the reasons of the justice of the peace fail to advert to the appellant’s defence. This submission applies to both the conviction for careless driving and failing to report the accident. The appellant asks that a verdict of acquittal be entered on both counts, or, alternatively, that a new trial be ordered.

Facts

[3] In the afternoon of March 8, 2003, the appellant was out with his friend Mark Gilbert for a snowmobile ride. In the course of negotiating a turn, the appellant's snowmobile left the trail and hit a tree. With the help of Mr. Gilbert, the snowmobile was put back on the trail and, because the appellant felt winded, the two men decided to return home rather than continue their journey. The appellant and Mr. Gilbert noted some immediately apparent minor damage to the snowmobile and to the appellant's helmet, but the snowmobile was driveable. The two men drove their machines slowly back the same way they had come. On the way back, the appellant asked Mr. Gilbert to get assistance from his wife. Mr. Gilbert rode back to the Cameron residence and asked Mrs. Cameron to come and get the appellant. The appellant's son came with Mrs. Cameron in order to drive the appellant's snowmobile back to their home. According to Mr. Gilbert, he thought that the appellant should go to the hospital but the appellant insisted that he did not think he was injured and that he just had the wind knocked out of him. The next morning, it was clear that the appellant had serious injuries; accordingly, he was airlifted to the hospital.

[4] The insurance company determined that the frame of the snowmobile was bent and that the machine was a "write-off." It was the need of the emergency assistance that first brought the attention of the police to the incident in question. After an investigation, the appellant was charged with careless driving and failure to report the circumstances of the accident under the Motorized Snow Vehicles Act.

[5] On December 30, 2004, Wilson J. of the Ontario Court of Justice dismissed an appeal by the appellant from the judgment of Biss J.P., given on April 27, 2004, convicting the appellant of these offences and ordering him to pay a total fine of \$1,500. By order of Lang J.A. dated August 24, 2005, the appellant was granted special leave to appeal.

Analysis

[6] Subsection 13(1)(c) of the *Motorized Snow Vehicles Act* provides that "[e]very person in charge of a motorized snow vehicle who is directly or indirectly involved in an accident shall, if the accident results in personal injuries or in damage to property apparently exceeding \$400, report the accident forthwith to the nearest police officer and furnish the police officer with information in respect of ... (c) the circumstances under which the accident occurred." There are no reported decisions that interpret the meaning of "forthwith" in the context of this section of the *Motorized Snow Vehicles Act*. However, this section is virtually identical to the failure to report provision in s. 199(1) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8. Subsection 199(1) of the *Highway Traffic Act* has been interpreted to mean that someone involved in an accident must report it

within a reasonable time having regard to all of the circumstances of the case. Both counsel appear to be in agreement that the interpretation to be given to the word “forthwith” should be the same in both statutes. The disagreement relates to how the forthwith requirement was applied.

[7] Both judges below held that the damage to the snowmobile and the appellant’s injuries were so extensive that he had to have known he had an obligation to report the accident.

[8] Both decisions below considered the appellant’s opportunity to contact authorities but neither judgment adverted to his due diligence defence, which was, in essence, a mistake of fact. The evidence is clear that the appellant believed he was fine. The testimony of his family members and friend supported his perception. Until seven o’clock the following morning when an air ambulance was called, the appellant and his family did not realize that he was suffering from serious internal injuries. In addition, the appellant testified that he assessed the damage to his snowmobile at \$250. He drove the snowmobile for over an hour and his son drove it as well. Although the snowmobile was a write-off because the frame was bent, on the evidence of the appellant and the other witnesses for the defence, the extensive damage was not readily apparent. In addition, there was medical evidence that raised the question whether his injuries themselves clouded his ability to assess the situation accurately.

[9] In other words, the court below made no finding whether the appellant, given his condition, appreciated he had the duty to report because of his injuries and the apparent extent of the damage to the snowmobile. The POA judge failed to recognize that the due diligence defence was not dealt with.

[10] In relation to the careless driving charge the appellant testified that the snowmobile hit a rock and that that was the cause of the accident. The appellant’s friend and a police officer went back to examine the trail but only after a foot of snow had fallen. The reasons of the justice of the peace held that the accident was so bad the appellant had to have been careless. He did not deal with the appellant’s evidence concerning the condition of the trail itself. Thus, the justice of the peace did not advert to the evidence of the only two persons present at the time of the accident, the appellant and his friend and again ignored the defence of due diligence put forward. The justice of the peace simply made a conclusory statement that he was satisfied that the elements of the charge had been fulfilled and that he was satisfied the appellant drove with lack of attention, without due care and committed the offence of careless driving. That statement does not meet the standard articulated in *Shepherd* for appellate review. The POA judge failed to recognize these errors.

[11] Accordingly we hereby order that the appeal be allowed set aside the convictions and order a new trial.

“K. M. Weiler J.A.”

“Robert P. Armstrong J.A.”

“R. G. Juriansz J.A.”