

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

ROBERT DOLMAN

R E A S O N S F O R R U L I N G

BEFORE THE HONOURABLE JUSTICE K.G. LENZ
on April 26, 2010 at BRANTFORD, Ontario

APPEARANCES:

C. Szoke

L. Carter

Counsel for the Crown

Agent for Robert Dolman

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R E A S O N S F O R R U L I N G

5 LENZ, J. (Orally)

Mr. Dolman is here today as a respondent in an appeal brought by the Crown in respect of the dismissal that arose out of an application for adjournment which was denied. In most ways, it is an appeal against a denial of an adjournment by the justice of the peace, an adjournment requested by the Crown.

15 Mr. Dolman came to be charged that on or about the 2nd of June 2008, he was involved in the offence of stunt driving. In this case, it consists of operating a motor vehicle in excess of the permissible limit, that is, at a speed greater than 50 kilometres over the speed limit, 107 kilometres per hour on King George Road. Of course, as a result, he is also charged with one count of speeding.

25 There were numerous adjournments following the information. Regrettably, the endorsements give absolutely no hint as to why the matters were adjourned from time-to-time, so no blame can be laid. We do know, however, that on the 12th of May 2009, which was set for trial, was adjourned at the request of the defence. But, as everyone pointed out, it was on a timely motion by the defence who sought and obtained an adjournment without

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inconvenience, apparently to anyone. The matter was adjourned 23rd June 2009 trial date at 9:00 a.m. By the time, of course, we reached the 23rd of June 2009, it is now over a year from the offence date, which seems to be a lengthy period of time when what one is dealing with, in fact, is basically an allegation of speeding.

On the 23rd of June 2009, the defendant appeared with his agent, who I am trusting is not working pro bono. They were ready for trial. Regrettably, as is the practice of the Brantford Police Services, the trial was set on the basis of when a peace officer is on duty. The peace officer involved was, in fact, on duty. Setting trials in this fashion is obviously designed to save overtime, but obviously it also has, as a result, that peace officers have other responsibilities other than attendance in court on the days that trials are scheduled. As the justice of the peace pointed out if the unavailability of a peace officer was because he was sick or some emergency in his family, he would have had no problem in granting an adjournment. He went on to say, however, it is the officer's duty to be in court on a date when a matter is set.

Here, regrettably, the inevitable happened. The peace officer was dispatched to an accident which occurred, so far as we are aware, just before 9:00 a.m. on the date of the trial. Apparently it involved a vehicle and a bicycle. I have no idea

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of the severity of the accident, nor whether it was complex or otherwise, only that the peace officer was the investigating officer. Because the officer was unavailable, the matter was held down to 10:30 a.m., or at least to the 10:30 a.m. tier, but by 10:40, peace officer was not present. Clearly, then, there was over an hour during which Brantford Police Services could have reassigned another officer. Apparently that did not happen. The case was called. The Crown requested an adjournment. The defence, not surprisingly objected, and the justice of the peace refused the application for adjournment. The defendant was arraigned. The Crown had no evidence to offer, and the case was dismissed. Apparently the peace officer arrived 10 to 15 minutes after the dismissal and now the Crown has appealed the dismissal and, in fact, is really appealing the exercise of the justice of the peace's discretion in refusing an adjournment.

The justice of the peace clearly considered the issues when he refused to grant the adjournment. He said:

If the officer was sick or some emergency in the family or whatever, the court would have no problem granting the adjournment. But because the Brantford Police Services takes it upon themselves, for whatever reason, and I am not questioning how they should be doing their duties, but the officer's duty is to be in court and the court is scheduled today and

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5 people cannot be coming back for court when,
and the officers are not here. I think the
defendant is prejudiced if he cannot have his
trial date today and I don't believe that the
reason the officer just on a day of work
scheduled to do another duty other than the
court, when he is scheduled to be in court, and
for that reason the court is denying the
motion.

10 It says, "On the request of the defence" but that
was clearly a situation where the justice of the
peace misspoke himself.

15 Frankly, the reasoning is not lengthy nor perfectly
clear, but inherent, in my opinion, in the
reasoning of the justice of the peace is the
necessity of balancing the right of the State and
society to a trial on its merits, not on default,
20 and the right of an accused to proceed to trial as
scheduled, especially when the defence has no way
to recover from the State the cost of the requested
adjournment.

25 With rights, however, come responsibility. If the
State wishes a trial on the merits, the
representatives of the State, in this case the
police, best act in a way that ensures a trial on
the merits take place. Here, the police chose to
30 put cost over their right to a trial. Neither I
nor the justice of the peace can see any reason to
elevate the cost to the State, who seemingly have

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endless money, over the cost to the defendant, who I am sure has limited funds.

Frankly, the justice of the peace clearly understood the facts, recognized clearly the reason the Crown could not proceed, and the prejudice to the defendant. He exercised his discretion in favour of the defendant. I do not see any error in law and, without some major misconception as to fact or error in principle, it is not for me to substitute my opinion for that of the justice of the peace.

Frankly, bearing in mind the practice, I think the justice of the peace was correct in any event. If the State, that is the police, wish a trial, then they should stop worrying about the cost of overtime, begin scheduling officers when they are off duty and not on duty, and it would prevent this type of a problem. They do the same in this court. It often results in problems. That is a decision to be made by Brantford Police Services, I guess, as it relates to the assignment of their resources, but nonetheless, when it works to their disadvantage, I cannot see any reason that the court should then disadvantage the accused who is present and ready for trial.

The appeal is dismissed. The accused is free to go.

...WHEREUPON THESE PROCEEDINGS WERE CONCLUDED

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Certification

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Evidence Act, Subsection 5(2)

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July 5, 2010
(Date)

C. Lefebvre
(Signature of authorized person)