

Case Name:
R. v. Hajivasilis

Between
Ioannis Hajivasilis, and
Her Majesty the Queen

[2012] O.J. No. 859

Ontario Court of Justice
Toronto, Ontario

C. Mocha J.

Heard: January 23, 2012.
Oral judgment: January 23, 2012.

(25 paras.)

Counsel:

A. Smith, Esq., Counsel for the Crown.

V. Manoukian, Esq., Counsel for the Appellant.

RULING

1 C. MOCHA J. (orally):-- This is a summary conviction appeal, the decision of His Worship Angelo Cremisio in the case of Her Majesty and Ioannis, Hajivasilis.

2 Mr. Hajivasilis was charged that on October the first, 2007, he did fail to report an accident contrary to s. 199.1 of the Highway Traffic Act.

3 Trial commenced before His Worship Cremisio on January the 7th of 2009, and was remanded for continuation on January the 9th of 2009.

4 It was an admitted fact at the trial that the alleged offence occurred in a parking lot of a super-market. As I was not provided transcripts of the trial proceedings I asked the Appellant for further clarification about the parking lot and the Appellant concedes that the alleged offence occurred in a location that is only used as a parking lot, not a combined use area of parking lot and thoroughfare.

5 The trial was adjourned to continue on a third date. On that date, at the outset of the proceedings, that is on April the 9th of 2009, His Worship advised counsel of the Ontario Court of Appeal decision in *Shah v. Becamon*, that is [2009] O.J. No. 478, a Judgement delivered on February 6th, 2009. So that judgement had been released in the intervening time period.

6 He advised counsel that his interpretation of the case led him to conclude that the charge could not stand as it had not occurred on a "highway" as defined in the Highway Traffic Act.

7 His Worship then agreed to adjourn the case to April the 29th of 2009 to allow counsel the opportunity to review the case and make argument.

8 On April the 29th, the Appellant made submissions to the effect that *Shah* and *Becamon* did not apply to the case at bar. The respondent made no submissions and no Motion. His Worship adjourned the matter to June the 17th 2009, at which time His Worship dismissed the charge on the basis of the rationale in *Shah* and *Becamon*.

9 I would first like to address the procedural irregularities and how this case was handled. His Worship was quite correct to bring the case of *Shah* and *Becamon* to the attention of counsel. At that point, however, if the Prosecution wished to continue, it would have been up to counsel for the Respondent to make an application for nonsuit upon the close of the Prosecutor's case. If none were made then the trial ought to have continued and this issue should have been argued as part of final submissions.

10 Having said this, a simple charge of fail to report was in its third day of trial proceedings. This is not the same situation as set out in *R. v. Evans*. That is a 2010 decision at [2010] O.J. No. 468, judgement handed down on January the 27th of 2010 where the Justice of the Peace quashed the charge before any trial had commenced. That is not what we have here. The trial had commenced and there was an agreement as by both parties that the circumstances as to the location of the accident had already been presented to the Court by agreement. So there was a consensus by all that it was used solely as a private parking lot.

11 The Prosecutor concedes that no regulations have been passed in relation to parking lots that would be applicable in this case. Although proper procedure was not followed by His Worship, continuing the trial would not have added anything to change the outcome, it only would have added to the delay in bringing the matter before an appellate court.

12 So I turn then to His Worship's reasoning in dismissing the charge against Mr. Hajivasilis. His Worship quite rightly points out the importance of stare decisis and our judicial system. Laws are useless if they are not understood and if there is no consistency in their interpretation. The appellant hierarchy attempts to ensure that laws will be applied the same way to all, and not be dependent upon who they have as a Judge or Justice.

13 His Worship held that he was bound by the decision of the Court of Appeal for Ontario in *Shah* and *Becamon*. In *Shah*, which is a civil case, the Court considered the definition of "highway" in s. 1.1 of the Highway Traffic Act.

14 The case concerned an accident that occurred in the parking lot of a strip mall. The issue was whether the accident occurred on a "highway" as defined in the Highway Traffic Act. The Highway Traffic Act defines "highway" in s. 1.1 as follows,

"'Highway' includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof."

15 As in the case before me the primary use of the parking lot in the Shah case was clearly as a private parking lot, and as such, it did not fall within the definition of "highway" under s. 1.1.

16 The Court concluded at page 305, of the Shah judgement,

"Indeed, not surprisingly, the entire Highway Traffic Act applies to what its title foreshadows, highways."

17 The Appellant argues the Court of Appeal in Shah reached the right conclusion for the wrong reasons.

18 Firstly, it is not open to this Court to dismiss the reasoning of the Ontario Court of Appeal. The only argument that could be made is that the Shah decision does not apply to the facts in charge in this case. The Appellant argues that as s. 191.1 does not use the word "highway" it should be interpreted to be applicable anywhere, not just on highways. The Appellant cites public policy reasons to support its contention that Shah should not apply.

19 The problem is that even statutory interpretation does not support the Applicant's position. The Applicant argued that section 1.1 of the Highway Traffic Act favours its argument regarding the lack of the use of the word "highway" in the charging provision. However, as I read section 1.1 of the Highway Traffic Act, the Applicant's interpretation would render section 1.1 of the Highway Traffic Act useless. Section 1.1 reads as follows,

"The Lieutenant Governor and Counsel may make regulations providing that this Act or any provision of this Act or of a regulation applies to a specified place or class of place that is not a highway."

20 In other words, if the Lieutenant Governor wants to make the Highway Traffic Act or any of its provisions apply to a place other than a highway, a regulation must be made. In addition to statutory interpretation, the Court of Appeal in Shah made it clear that the words used in the charging sections of the Highway Traffic Act are irrelevant as the entire Act applies only to "highways". The summary conviction appeal cases that the Appellant referred to in support of its position all pre-dated Shah.

21 As for the Appellant's public policy arguments, this Court understands the significant impact that may flow from this decision. It is clear that those responsible for enforcing the Highway Traffic Act have interpreted it in such a way as to include places other than highways, regardless of the lack of regulations expanding it to those areas. For example, the accident report forms used by police refer to accident locations that can include private property, trails, frozen lakes and parking lots. But it is the interpretation by the Court of Appeal that rules.

22 If the decision in Shah needs further clarification it must occur at the Court of Appeal, not here. This Court is bound to follow the clear ruling of the Court of Appeal in Shah. Consequently, the appeal here is dismissed.

23 MR. SMITH: Thank you Your Honour.

24 THE COURT: Okay. Thank you.

25 MR. MANOUKIAN: Thank you, Your Honour and I thank my friend.

qp/s/qllyr/qljxr

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