

BASIC ELEMENTS.

IN PROVINCIAL COURT (CRIMINAL DIVISION)

IN THE MATTER OF An Appeal of Conviction
Under the Provincial Offences Act,
R.S.O. 1980

BETWEEN:

FREDERICK HALL

Appellant

against

HER MAJESTY THE QUEEN

Respondent

REASONS FOR JUDGMENT

GIVEN BY HIS HONOUR JUDGE NORMAN BENNETT,
on Wednesday, August 5, 1987 at HAMILTON.

APPEARANCES:

L. Urban, Esq.

Counsel on behalf of respondent

M. Keith, Esq.

Agent on behalf of appellant

REASONS FOR JUDGMENT

N. BENNETT, P.C.J. (Orally):

I recently had a similar argument presented to me, sitting as an Appeal Court Judge for Provincial Offences. The point was that there has to be a minimum criteria presented in court to allow the court to accept electronic equipment evidence; i.e. radar.

Simply put, the officer should testify as follows:

- (a) the time that, in fact, he tested the equipment;
- (b) when he went on duty;
- (c) how he tested the equipment; did he use a tuning fork (that was done in this case I might add);
- (d) that after he finished his shift, or prior to leaving his radar outpost, he re-tested the equipment to make sure it was still functioning properly;
- (e) his qualifications.

The argument is that there should be, at the very least, a minimum requirement presented in court to allow a judicial officer to accept evidence of electronic equipment. I accepted that argument.

It is a simple procedure for an officer to say, for example: At 9 a.m. I tested the Unigrip Radar device by the following method and I tested it according to the manufacturer's specific instructions, and to indicate how he tested it. Further, to indicate that he was a qualified radar

5 technician and set out what his qualifications are, and not merely come to court and say: I qualify. Although I would take judicial notice of the qualifications unless there was evidence to the contrary.

10 I would find that at Provincial Offences Court there is not enough information being presented to the Justice of the Peace to accept the electronic equipment into evidence. I think it is just a simple matter of the prosecutor asking the officer the appropriate questions.

15 I do not know what your feeling is in connection with this, Mr. Urban. Mr. Whitten was the Crown on the last occasion and I pointed out my concerns with the evidence, and I granted the appeal.

20 In the interests of justice I would be hard pressed now, because Mr. Keith an agent is arguing it, not to take cognizance of what I had said on a previous occasion.

... FURTHER SUBMISSIONS BY MR. KEITH

HIS HONOUR: Mr. Keith, I am not prepared to say that the officer has to come to court and prove every part and parcel of the functioning of that machine. However, I am prepared to say that the minimum requirement as I have set out has to be presented in court.

Reasons for Judgment
Bennett, P.C.J.

5 In this particular case the officer had
stated that the radar had been checked
prior, according to the manufacturer's
standards, and proved to be operating
accurately. The officer did not say that
10 he tested it or when it was tested.

I am not prepared to go as far as the Bork
decision; that one has to test the accuracy
of the tuning fork and prove the machine
was capable of accurately registering.
However, I am prepared to go this far:
15 that there is a minimum requirement
necessary to accept evidence of the
electronic device. I do not feel that the
minimum requirement was established in
the Hall matter (this appeal).

20 Consequently, I am going to quash the
conviction and register an acquittal.
The appeal is allowed.

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CERTIFIED



Dolores Shaw
Dolores Shaw, C.S.R.