

Information No.

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

LISA HAMILTON

P R O C E E D I N G

BEFORE THE HONOURABLE MR. JUSTICE J.A. FONTANA
On January 14th, 2003, at OTTAWA, Ontario

Charges: speeding

APPEARANCES:

A. Coltermar, Ms.

J. Cole, Mr.

Counsel for the Crown

Agent for the accused

(i)
Table of Contents

ONTARIO COURT OF JUSTICE

T A B L E O F C O N T E N T S

<u>WITNESSES</u>	<u>Exam.</u> <u>in-Ch.</u>	<u>Cr-</u> <u>exam.</u>	<u>Re-</u> <u>Exam.</u>
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EXHIBIT NUMBER

ENTERED ON PAGE

Certification

Page 11

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Ordering Party Notified: December 10th, 2003

1.
R. v. Lisa Hamilton
Proceedings

TUESDAY, JANUARY 14TH, 2003

CLERK OF THE COURT: Number 31, Lisa Hamilton.

MR. COLE: Good morning again, I act as agent for Ms. Hamilton. She's not present.

CLERK OF THE COURT: Your name again?

MR. COLE: Sorry, Cole, John Cole, C-O-L-E.

MS. COLTERMAN: This is a matter, it's a charge of speeding Your Honour, 119 kilometres in a posted 100 km zone, the defence date the 7th of April, 2002 and there was a trial on the 13th of September, at nine a.m. in courtroom 102.

I was the prosecutor, I recall the case. The defendant was convicted of the offence of speeding and as a result of the evidence at court, I requested that the Justice of the Peace amend the certificate to the original speed of 147 in a 100, which he did do and the fine remained the same and I'll let my friend give his reasons for appeal.

THE COURT: Okay, just so that we're all -yes, I'm looking at an offence certificate in which it was originally charged 119 km in a posted 100 km zone.

MS. COLTERMAN: That's correct.

THE COURT: It appears to have been amended to 147.

MS. COLTERMAN: That's correct and that

2.

R. v. Lisa Hamilton
Proceedings

conformed with the evidence given by the officer at trial.

THE COURT: All right, let me hear from you on this...

MR. COLE: Thank you.

THE COURT: ...Mr. Cole.

MR. COLE: Thank you, at the time the officer stopped Ms. Hamilton, he used his discretion and on appealing, he charged her with doing 119 on a hundred. At that point in time, he could have charged her with a higher offence but he decided not to.

The defendant did not believe she was guilty, therefore she exercised her right to go to trial and now she's being punished by an increased amendment on the violation ticket.

Basically, what's happened is we went to court with a 119 in a 100, which was on the face of the ticket. I do have some case law, which I can provide to you.

THE COURT: Yes.

MR. COLE: It's from 1993 from Justice Allan, it's a similar case, R. v. Dwight Ali, and basically his decision was, I have reviewed the record and conclude that the learned justice did not exercise his discretion judicially when he permitted a certificate of offence to be amended at the end of the crown's case.

The defendant/appellant was thus

confronted with a different charge, having significantly greater consequences than the charge brought by the defendant. The appeal is allowed to the extent that the amendment is struck out and the conviction is substantiated for speeding the original speed.

I do have a copy if you'd like a copy of that.

THE COURT: If I could have a copy of that, I would like to see it. Was this a radar case, do you know?

MR. COLE: I believe it was and I apologize, this is all I was able to get from our head office yesterday.

THE COURT: I don't mean this decision.

MR. COLE: Oh.

THE COURT: I mean your client's case because...

MR. COLE: It was a radar or laser. I believe it was radar, I'll check while you are -yes, it was with a radar.

THE COURT: Continue.

MR. COLE: Sorry, so I'm basically saying that we went to court on the face of the ticket, 119 on a 100, the defendant exercised her right to go and appeal that particular charge and it appears almost as if now she's being punished because she went to trial.

Had she have paid that, it would have

4.

R. v. Lisa Hamilton
Proceedings

been 119 in a 100 but because she exercised her right to go to trial and she was found guilty, I don't believe the crown should have the right to amend the charge after that comes out and also I believe that the justice of the peace, basically he used, on page eight of the transcript, number 20, basically what happened is I objected at that point in time to it being amended and he said, well objected based on what basis.

'I mean the law of the *Provincial Offences Act* states that you can amend a certificate any time during the proceedings to comply with the evidence, so the evidence reveals that Ms. Hamilton was clocked at - and it was 147.

THE COURT: I don't have a copy of that transcript, do you have...

MS. COLTERMAN: Neither do I.

MR. COLE: I ordered it, our office paid for it.

THE COURT: Would you like a moment to look at it?

MS. COLTERMAN: No, I recall the...

THE COURT: You recall the case.

MS. COLTERMAN: I was prosecutor, I recall the trial yes.

THE COURT: Okay, again I'm going to reserve on this but would you have a copy maybe sent up to my...

MR. COLE: Yeah, you can have my copy. I

5.

R. v. Lisa Hamilton
Proceedings

have no problem with that.

THE COURT: All right, now I cut you off there. You were about to say something Mr. Cole.

MR. COLE: I'm sorry, I made some notations.

THE COURT: I won't be influenced by them, I assure you.

MR. COLE: Thank you. I'm just saying basically yes, the Provincial Offences Act does provide for certain amendments but it doesn't. I don't believe, that increasing the fine or increasing the speed half way through the trial, that there's anywhere in the Provincial Offences Act that states that that can be done. That's all I have to say, Your Honour.

THE COURT: Madam Crown?

MS. COLTERMAN: Your Honour, section 34 of the Provincial Offences Act, subsection 2, as I'm sure you're aware, reads the court may during the trial, amend the information or certificate as may be necessary if the matters to be alleged in the proposed amendment are disclosed by the evidence taken at the trial and in fact the officer did testify that the speed that the defendant was clocked on the radar was 147, pursuant to the amendment that I requested.

The question -peeding is an absolute liability offence so the question I think the court has to ask itself is how was the

defendant prejudiced in their ability to defend themselves against that charge of speeding by this amendment. My friend hasn't answered that question.

As far as his client being punished, in fact the set fine remained unchanged. There was no difference in the fine once that amendment was sought. I did not request a higher fine, so the same fine was imposed on the defendant as when they went into court.

Further, in terms of other consequences that the defendant may have incurred as a result of the conviction, it would be my respectful submission that those consequences I believe he's referring to are as a result of MTO recording the original speed, the correct speed, and those ultimate consequences by the insurance company and those are I don't believe matters related to the defence of speeding.

So I think that the defendant's ability to defend himself in the absolute liability offence of speeding was unchanged by the amendment and there was no prejudice to the client.

I also have some case law, this is out of a criminal court charge, but it's the Court of Appeal for Ontario and I would, I do have a copy for my friend and for Your Honour. I can pass that up and I would like to directly refer you to page ten of twelve,

the last paragraph, second sentence.

In deciding whether an amendment should be allowed, the appellant court must consider whether the accused had a full opportunity to meet all issues raised by the charge as amended and whether the defence would have been conducted any differently, had the amended charge been before the trial court.

In other words, would Mr. Cole have conducted his defence of the charge any differently if the original speed of 147 in a 100 were before the court on that day and in my respectful submission, he would not.

There's very little good defences to speeding once you verify the radar is working properly, the operator is trained and qualified and the signs are clear and posted, then there's very little other room for the defence to move.

The other section I'd like to refer you to, page eight of 12, on reading the section that contemplates any amendment which makes a charge conform to the evidence. The ultimate question is not what does the amendment do to the charge but what effect does the amendment have on the accused.

Again, in my respectful submission, in these proceedings, there was no further effect to the defendant. She was convicted of speeding, that was the charge before the

court and the final sentence in that paragraph, "if no prejudice will result from the change, why should it matter how the change to the charge is described", in other words 147 in a 100.

Those would be my submissions to that, thank you. Maybe just one point further, is my friend has not pointed to an error in law, I believe, that at trial the justice of the peace does have the authority and exercised his ability properly in this matter and although I did not request a higher fine, I believe I probably could have done that at that time, up to five hundred dollars.

THE COURT: Mr. Cole, do you wish to respond?

MR. COLE: No, I guess just maybe briefly, I'd just briefly reiterate we did go to court on a 119 in a 100. The police officer at the time stopping her, he did have the discretion and he decided to decrease it down to 119. We went to court...

THE COURT: That's pretty well acknowledged, is it, and that would have taken place at the scene.

MR. COLE: Yes.

THE COURT: I mean let's try to look beyond this a little bit.

MR. COLE: Okay.

THE COURT: He stops her and I note in the

transcript that she appears to have been cooperative, she pulled over and stopped, he didn't have to activate his lights.

MR. COLE: Exactly, yes.

THE COURT: Okay, so he says look I've got you at a 147, I'm going to give you a break at 119.

MR. COLE: That's right.

THE COURT: Well, implicit in that, is it not...

MR. COLE: Is it what, sorry?

THE COURT: Is it not implicit in that, that I mean she may have even said give me a break or something like that, I don't know. Its hard to say because there was no testimony on that point, but is it not implicit in that that the individual intends to plead guilty if they're given a reduced fine.

Now we're talking points here and not the money, I realise that.

MR. COLE: Yeah, you mean by the police officer giving a reduced fine and hope...

THE COURT: Yes, yes.

MR. COLE: Well, I think that's the whole idea of reducing it, to give somebody a -I know when I was a police officer you give somebody a reduced fine hoping to keep them out of court, saving the court time.

THE COURT: Yes.

MR. COLE: But again, in this case, she felt

she was not guilty and...

THE COURT: At all?

MR. COLE: At all, and she exercised her right to go to trial and all I'm saying is she shouldn't be punished because she exercised that right by going to court on the face of the ticket of 119 in a 100 and that's basically the point where I'm arguing is you know, we went to court on the charge of 119 in a 100 and then she was found you know at the end of the crown's case, they amended it.

THE COURT: Yes.

MR. COLE: So of course it's almost as if she's being punished but the police officer can't always assume by reducing a speed that everybody is -I'm sure he or she does, save a lot of cases, which I can understand.

In this case, why he reduced it, I don't know, I would assume that would have been the reason, because it was quite a dramatic decrease, so I'm not sure exactly...

THE COURT: Yes, very much so.

MR. COLE: ...why he decreased it quite that much. That's all I have to say on this matter.

THE COURT: Thank you Mr. Cole, I'm going to reserve and I will notify you.

MR. COLE: Thank you.

THE COURT: Probably some written reasons, thank you.

FORM 2

Certificate of Transcript

Evidence Act, subsection 5(2)

, Tricia Doran, certify that this document is a true and accurate transcript of the recording of R. v. Lisa Hamilton in the Ontario Court of Justice held at the City of Ottawa, taken from Recording No. 18, from court thirteen.

December 10, 2003



(Signature of Authorized Person)

PROVINCIAL OFFENCES ACT - APPEAL COURT RECORD

APPELLANT: Hamilton, Lisa Ann CASE NO: 66005896

DATE	CROWN	COUNSEL	MONITOR	CLERK	ADJOURNED TO
<u>Jan 14/03</u>	<u>CULTERMAN</u>	<u>(NONE)</u> <u>Call as Agent</u>	<u>TALLEN</u>	<u>Downey</u>	<u>Decision</u> <u>RESERVED</u>

☐ FAIL TO APPEAL
WARRANT ISSUED

☐ TRIAL IN ABSENTIA

FINDING OF THE COURT

APPEAL DISMISSED ☐

APPEAL ALLOWED ☒
AND IN PART

FINDING OF GUILT ENTERED AND:

FINED \$ 67.50

VFS \$ _____

APPEAL DISMISSED ☐
AS ABANDONED

AQUITTAL ENTERED ☐
OR

TIME TO PAY 90 DAYS

NEW TRIAL ORDERED ☐

CONVICTION FOR SPEEDING
119 KM/H IN A
100 KM ZONE -

[Signature]
JUSTICE OF THE ONTARIO COURT

PROVINCIAL OFFENCES ACT - RETRIAL COURT RECORD

DATE	CROWN	COUNSEL	MONITOR	CLERK	ADJOURNED TO

FAIL TO APPEAR ☐ FAIL TO APPEAR

☐ TRIAL IN ABSENTIA

COURT ACTION ☐ PLEADS GUILTY

☐ PLEADS NOT GUILTY

FINDING OF ☐ GUILTY

☐ CHARGE DISMISSED

COURT ☐ NOT GUILTY

☐ SUSPENDED SENTENCE

☐ CHARGE WITHDRAWN

☐ FINED \$ _____

COSTS \$ _____

TIME TO PAY \$ _____

FINE
ENFORCED

☐ DRIVER'S LICENCE SUSPENSION

BY:

☐ CIVIL ENFORCEMENT POA 69

☐ WARRANT OF COMMITTAL
POA 70(1)(3)

Justice of the Peace in and for the said Province of Ontario