

Case Name:
R. v. Hough

Between
Her Majesty the Queen, and
Rodney Hough

[1996] O.J. No. 5456

Ontario Court of Justice (Provincial Division)
Guelph, Ontario

Gonet Prov. J.

Oral judgment: January 5, 1996.

(6 paras.)

Charge: S. 128 Highway Traffic Act - Speeding

Counsel:

Ms. J. Speyer, counsel for the Crown.

G. Parker, Esquire, agent for the accused.

RULING ON APPLICATION

1 GONET PROV. J. (orally):-- The application before me by way of appeal is twofold, the first matter being that there was a breach of the Charter in that the Crown failed to give full disclosure in this matter. I am satisfied that full disclosure was given and so in respect to that alleged breach, and grounds for appeal, that will be dismissed.

2 The one that gives me greater concern is the fact of whether or not the Crown has proven beyond a reasonable doubt the offence itself, and together, whether or not the prima facie case had

been proven by the Crown in respect to the experience of the police officer using the radar machine and whether or not he would be considered a qualified operator or technician in that regard.

3 The evidence before the court was that he received, at least on two occasions, training from another O.P.P. officer. In asking how long these training sessions had been the answer was, it depended upon who was the instructing officer. At one time it was a couple of hours and then another time it was approximately half a day.

4 The officer in question had absolutely no knowledge of instructions as to the proper use of the instrument given by the manufacturer, nor had he read any material as to not only the use of the instrument but how the instrument could be checked and how it was set up by the use of the tuning forks. He had no specific manufacturer's instructions and therefore he could not advise the court, or satisfy the court, on the evidence as to whether or not the setup of the instrument was proper and had been completed as directed by the manufacturer.

5 I am following the reasoning of my brother Judge Lampkin in R. v. Christopher Brewer, [1988] O.J. No. 2531, which was heard in the Provincial Court (Criminal Division) at Newmarket on May 19, 1988. The facts are similar, in fact nearly the same save and except that one was a hand-held radar and in our instance it is a mounted radar unit. The reasoning of Judge Lampkin is accepted by this court and, saying that, I am not satisfied that the Crown has proven a prima facie case in the incident in question and therefore the appeal will be allowed. The conviction is set aside. All fines to be returned. Thank you.

6 MR. PARKER: Thank you very much Your Honour.

qp/s/np/qw/qlhcc/qlkjg