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R. v. Jamieson

Between

**Her Majesty the Queen, respondent, and
Constance M. Jamieson, applicant**

[1981] O.J. No. 1937

64 C.C.C. (2d) 550

7 W.C.B. 32

Ontario Supreme Court - Court of Appeal
Toronto, Ontario

(In chambers)

MacKinnon A.C.J.O.

Heard: November 20, 1981.

Judgment: November 23, 1981.

(5 pp.)

Counsel:

Rod Cormack, Q.C., for the Attorney General.

Constance M. Jamieson, applicant, in person.

1 MacKINNON A.C.J.O.:-- The applicant applies for leave to appeal under s. 122 of The Provincial Offences Act, R.S.O. (1980), c. 400. Her appeal is based on the simple but important ground that her defence has never been heard or as she put it "the offence was not tried".

2 So far as I can gather from the meagre record the applicant was charged with and convicted of speeding - 82 km. in a 50 km. zone. She, apparently, mailed her request for a hearing on March 7th, 1981, but it had not been received by the court office by March 19th when she was convicted in absentia. She applied for a rehearing which was granted for 1:30 p.m. June 25th. According to her

statement to me and to the Appeal Court, she arrived at 2:10 on that day, her car having had a flat tire on route. When she arrived the courtroom was closed and her conviction registered.

3 She promptly appealed to the Provincial Court (Criminal Division) expecting her case to be heard when she appeared on the merits. On her appeal before the Provincial Court Judge the following took place:

THE COURT: Yes. What do you wish to say, Miss Jamieson?

CONSTANCE JAMIESON: I was forty minutes late for my trial and the Courtroom was empty and the only alternative the lady in the office said was to appeal to get my say in Court. As for the first -- in the first place, I mailed my request, ticket, March 7th, I believe it was and then they said as of March 19th they still had not received anything from me.

THE COURT: All right, so that was remedied, that was remedied.

CONSTANCE JAMIESON: That was remedied.

THE COURT: You got your Court date.

CONSTANCE JAMIESON: I had a flat tire on the way here.

THE COURT: You failed to show for the Court date.

CONSTANCE JAMIESON: Because I was forty minutes late.

THE COURT: What evidence do you have that you had a flat tire?

CONSTANCE JAMIESON: If you want I guess I could go to the garage and get ...

THE COURT: What's that?

CONSTANCE JAMIESON: If you want, I guess I could ...

THE COURT: It's not what I want, ma' am, it's your appeal, you have to convince me, you have to show me that some mistake was made in the Court below. I'm re-trying the issue.

CONSTANCE JAMIESON: You want evidence that I had a flat tire, is that it, sir?

THE COURT: I didn't ask you, I didn't tell you I wanted anything, I asked you if you had any?

CONSTANCE JAMIESON: Well not with me, I don't have it, but I did have a flat tire and then I arrived forty minutes late, I did drive here.

THE COURT: Where were you coming from?

CONSTANCE JAMIESON: I was coming from Thornhill, Yonge and Steeles area.

THE COURT: I see. I don't see any error or miscarriage of justice in this case, the appeal is dismissed.

4 The applicant advised that if she had known it was necessary to have a letter or affidavit from the garage man as to his attending to replace and repair the tire, she would have done so. She, however, was under the understandable impression that her appeal would be heard on the merits and she would be allowed to give her evidence at that stage.

5 The Provincial Offences Act was intended to establish a speedy, efficient and convenient method of dealing with offences under Acts of the Legislature and under regulations or by-laws made under the authority of an Act of the Legislature. The courts which hear these matters are given a wide discretion as to how they may proceed. However, s. 47(1) makes it clear, as one would expect, that "the defendant is entitled to make his full answer and defence".

6 The Justice of the Peace before whom the matter originally came for hearing, properly registered a conviction when the applicant failed to appear at the time fixed for hearing. The applicant then acted on advice given to her by a person in the court office and appealed to the Provincial Court Judge. It is understandable that the applicant, not being represented by counsel, would not anticipate that she would be required to establish by independent evidence that she had failed to attend the hearing before the Justice of the Peace because of a flat tire on her car. She might reasona-

bly expect that she would at worst have to take her oath as to that fact, and, if it were felt necessary, that the hearing would be adjourned to permit her to call a witness or to secure any statement or affidavit required "in the interests of justice" to explain her default (s.100(1); s. 119(1) and (3)).

7 It seems to me that the applicant has a justified sense of grievance that her defence has never been heard. Counsel for the Crown does not suggest that her statement as to the reason for her failure to appear at the time fixed is untrue or should be questioned. Indeed, when the applicant appeared before the Provincial Court Judge there was no opportunity given for the Crown and the applicant to consider whether they could agree on this explanation as a fact if they had so desired.

8 In my view, the proceedings before the Provincial Court Judge may have been unsatisfactory. The Provincial Offences Act is not intended as a trap for the unskilled or unwary but rather, as already stated, as an inexpensive and efficient way of dealing with, for the most part, minor offences. The way in which the proceedings were conducted by the Provincial Court Judge may have resulted in a denial of natural justice.

9 I am of the view, accordingly, that there are special grounds and a question of law alone on which leave to appeal should be granted. I am also of the view that in the particular circumstances of this case it is essential for the due administration of justice that leave to appeal be granted. Leave to appeal is accordingly granted to the applicant.

MacKINNON A.C.J.O.

qp/s/wlh/ajg

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Time Of Request: Wednesday, February 01, 2012 16:58:25