

2008 CarswellOnt 6779
Ontario Court of Justice

R. v. Jarecsni

2008 CarswellOnt 6779, [2008] O.J. No. 4565

Her Majesty The Queen v. Lauren Jarecsni and Ashley Tuffin

Pockele J.

Heard: July 4, 2008

Judgment: July 4, 2008

Docket: 07-P2262-01, 07-P2262-02

Counsel: D. Cribbs — Municipal Prosecutor

Subject: Criminal; Public

Pockele, J. (Orally):

1 This is an appeal by the City of London relating to a decision made by Justice of the Peace Forster on April 18th, 2008. On that day an ex-parte trial was held with respect to a charge laid under section 1.1 of *City of London*, bylaw PW-4, specifically that the defendants permitted noise likely to disturb as defined in that section and on the ticket. The two defendants were actually Tuffin and Lauren Jarecsni. Tuffin, T-U-F-F-I-N, Lauren L-A-U-R-E-N Jarecsni, J-A-R-E-C-S-N-I. They chose not to attend and as I indicated earlier it was an ex-parte trial.

2 Where the evidence of the only prosecution witness was completed, the Justice of the Peace made the decision that she could not make a finding that the identity of the individuals had been established and that the charges would be dismissed.

3 All of the issues raised at this appeal by the appellant are concerned with errors of law. Sitting as an appeal court judge I cannot interfere with findings of fact unless such findings are absolutely not supported by the evidence. These are called errors of fact. And I cannot grant an appeal unless there is an error of law. I am granting this appeal as there were several errors of law.

4 The first and most primary error of law is one based upon principles of fundamental justice. And that is the opportunity for the litigants in a proceeding to argue their positions before the judge or justice of the peace. For no reason apparent on the transcript, the justice of the peace raised the issue regarding voluntariness of statements, dismissed the charge on this basis without giving the prosecution an opportunity to make any submissions. The justice of the peace, a judge or any trier of fact is not assumed or presumed to be the fount of all legal knowledge. Nor do we expect judges and justices of the peace to do so. We rely upon the litigants, particularly where they are skilled as agents or counsel to provide us with case law and argument to fully explore any issue that may come before the court. Prosecution simply was not given an opportunity to address the concern raised by the justice of the peace, was totally taken by surprise, and was denied this simple right, and for that reason alone this matter should be remitted for trial.

5 The second error of law applies to the justice of the peace's understanding of the law concerning voluntariness and statements. I am aware that any appealed decision made by me becomes instructive for other justice's of the peace so I feel compelled to briefly address this issue. Generally, a statement made by an accused to a person in authority is only admissible if freely and voluntarily made. Decisions that are involuntary are unreliable and inadmissible. More so it is well established in criminal law that a person charged with a criminal offence upon being arrested has the right to

remain silent. So, to be admissible a statement made against interest by an accused to a person in authority must be made without fear, prejudice or hope of advantage. And a process is usually undertaken called a voir dire; a hearing within the trial to determine if that has been done. While that is the general principle the realities of modern life and day-to-day law enforcement has resulted in the courts making decisions that not every comment coming out of the mouth of an individual who is ultimately charged with an offence is deemed to be a confession or admission against interest which requires the court to test whether it was voluntary.

6 There is a vast body of law that requires people to identify themselves to police officers. There is a vast body of law that indicates that when a police officer arrives at the scene of the crime or an investigation they are entitled to ask, "Who are you? Who lives here? Who was driving? Where were you going? Did anybody see this crime? Can anybody tell me anything about this?" Questions of that sort. None of these answers require that a voir dire be entered into to determine voluntariness.

7 On the evidence I have before me and the transcript of the evidence of J. Bonnett, B-O-N-N-E-T-T, it is clear to me that when she attended at the particular residence where there were concerns about noise problems that she had not decided that she was going to lay a criminal charge, or a charge under the *Provincial Offences Act*. That she was not trying to ensnare someone into admitting their identity for the purposes of charging them. In her words: "I attended the address and spoke with two of the residents that were home who actually advised or represented that they resided there." This is not the sort of pre-charge or pre-detention questioning which is — violates any principles of voluntariness. Identifying oneself is not the same as providing a written statement to the police concerning involvement in a crime. It is merely identification. The justice of the peace clearly misunderstood this principle of evidentiary law, and that error by itself would warrant this matter being remitted for hearing.

8 The last error of law relates to the issue of the mis-spelling of the name the accused, the defendant — one of the two defendants from the evidence of the officer there was an inconsistency of one letter between the name on the information and the name related to the record. Again, this is a point that should have been presented to the prosecution with an opportunity for submissions to be made. For failing to do so, principles of natural justice were denied.

9 Having said all of that, I am mindful that this was an ex-parte trial neither defendant felt that they wanted to come before the court and offer an explanation or a defence based upon whether the charge had been substantially made out. The comments of Justice of the Peace Forster, page 17, I quote. "It is clear that under the circumstances described there would be a contravention of the bylaw."

10 In view of that, the remedy in this matter is not to interfere with her findings, but having determined that there was an error of law, I will substitute a finding of guilt against both defendants as named in the informations.