

Case Name:
R. v. Kalijundic

Between
Her Majesty the Queen, and
Tristan W. Kalijundic

[2008] O.J. No. 4749

Court File No. 3360-999-08-0320

Ontario Court of Justice
Peterborough, Ontario

P.J. Hiscox J.P.

Oral judgment: September 8, 2008.

(6 paras.)

Charges: S. 172.(1) Highway Traffic Act - Stunt Driving.

Counsel:

A. Fordham, Esq.: Prosecutor for the Crown.

M. **Greco**, Esq.: Agent for Mr. Kalijundic.

JUDGMENT

1 P.J. HISCOX J.P. (orally):-- We'll start with the wording of the offence, and it is grammatically correct. The punctuation is correct and there are three things contained in it, notwithstanding it's in one sentence, they are not all together. It's, "No person shall drive a motor vehicle on a highway in a race or contest." Then, "no person shall drive a motor vehicle on a highway while performing a stunt," and "no person shall drive a motor vehicle on a highway on a bet or wager." You can have a race at 30 miles per hour, you can have a race at ten miles per hour, depending on what tiny little vehicles they are, but those are, three distinct thoughts in that sentence, and it is grammatically correct. You would only use one comma there. You would not put a comma between stunt and or.

2 But really, what does this boil down to? We have the defendant driving his motor vehicle on Highway 115, admittedly a novice driver of novice licence, admittedly inexperienced. I suppose if there was any due diligence anywhere, you should have taken a few courses first. That would show due diligence. However, he's been out practicing as he's entitled to do, and there's no restriction on where he can drive. He's driving along and a police car comes up behind him, five metres behind, just over a car length, at 70 kilometres per hour. The defendant's evidence is that he's nervous by this and he makes a mistake when he gears down and forgets to let off the gas, disengages the clutch and the front tire comes up, we've heard six inches from the defendant and 12 inches from the officer. He stopped immediately, no problems, polite with the officer, cooperative. I don't believe he had any intention whatsoever, which

is certainly that part of the definition of stunt that indicates an intention to lift some or all of its tires. I don't believe it was intentional at all.

3 I think it's reasonable to accept the evidence of the defendant. I have no question that it happened. The officer's observations were correct, it did happen, but the inclusion of the word "intention" in 3(1), the definition of stunt, it's clearly this court's belief that there was no intention there. If this was a case of one of these cowboys that I personally have seen on Highway 115 who go into their wheel stand at approximately 100 kilometres an hour or more and go for a distance of two, three kilometres, well, I'd have a hard time saying that there was no intent there, but I think in this particular case there wasn't, and I find him not guilty.

4 MR. **GRECO**: Thank you, Your Worship.

5 MR. FORDHAM: Thank you.

6 MR. **GRECO**: Thank you, Mr. Fordham. That completes my matters, sir.

qp/s/qlcct/qlcnt