

5
10
15
20
25
30

ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

JEFFREY LEPITRE

BEFORE THE HONOURABLE JUDGE K. HAWKE
ON APRIL 23, 1995 AT BRAMPTON, ONTARIO

P.O.A. PART I APPEALS

* * * * *

APPEARANCES:

P. John, Ms.

S. Parker, Esq.

Provincial Prosecutor
Agent for the Appellant

APRIL 23, 1995:

5 MS. JOHN: If we can call number 10, Jeffrey
Lepitre, on the appeal docket.

MR. PARKER: Good morning, Your Honour. For the
record the name is Parker, initial "S". I appear as
agent on behalf of the appellant.

10 The situation is, Your Honour, where an Offence
Notice was issued to the individual and you'll
notice that there is what we deem to be a required
element of the Offence Notice is missing; namely, at
the top of the Certificate of Offence, beneath the
wording there is a space for the officer to write in
his name at the very top. I believe that may appear
15 on the Certificate of Offence but it does not appear
on the Offence Notice, which I have, which Your
Honour may wish to peruse.

THE COURT: Thank you.

20 MR. PARKER: And we attempted to have the matter
dealt with by having a note attached to that Offence
Notice and provided to the court office to be
attached to the Certificate, in order that the
Justice of the Peace may view the two copies at the
"Fail to Respond" docket, rather than waste
25 everybody's time in setting a trial date and taking
up unnecessary space on a trial docket for this type
of argument.

30 That, for whatever reason, was ignored and a
conviction was entered, ostensibly for "Fail to
Respond". And yet, there was some sort of a
response because the Offence Notice was attached to
the Certificate. I have retrieved that.

po

ifi

ed

id

Th

ed

dd

id

b

h

h

he

hm

d

H

od

5 therefore, that's all they have to deal with. But when they, in my submission, have another copy of the document that shows a difference, which causes, or should cause, the Certificate to be quashed, then they should take notice of it. But for whatever reason, they didn't.

10 THE COURT: I do not know if it affects the merits, but I notice with the copy you have handed me, nothing is filled out on the back. You said there was something attached to this, though?

15 MR. PARKER: I believe there was a "post-it" type note that I do have on another matter that is to be dealt with. I don't know where it went. But it was just a little "post-it" that was attached, bringing it to somebody's attention. It must have come adrift somewhere, but I do have one that is of a similar nature of another matter.

THE COURT: Okay, and you are saying you have since retrieved this from the Court file?

20 MR. PARKER: Yes.

THE COURT: Ms. John?

25 MS. JOHN: I think the facts in the case that Mr. Parker provide is somewhat different in the case of Koza. If you look at page two, line 5, when the argument was raised and reference was made to Regulation 200, s. 15. If you look at line five:

"...but in any case, the Justice of the Peace had marked it to be quashed when it came on the 'Fail to Respond' docket. At that time it was not quashed and that is why the matter was appealed."

30 In this instance, Your Honour, nothing was done.

5
There was no undertaking taken by any Justice of the Peace to have the matter quashed. Mr. Parker just indicated that he had left a note on the Offence Notice and hopefully that someone will catch it and that matter will be quashed.

10
It would be my position, Your Honour, again I know we are dealing with the Provincial Offence Act. The Offence Notice will be similar to one of a Summons, and you have to look at the intent of a Summons or the Offence Notice; and that is to notify the defendant of the charge and the options they have to take, which is listed at the back.

15
Whether the officer's name is at the top of the Information or not, doesn't in any way affect the validity of the proceedings or the charge itself or wouldn't prejudice him in any way in preparing for a defence to the charge, which is one of amber light, fail to stop.

20
It will be my submission there will be no prejudice at all at this stage. I'll leave that to Your Honour's hands. Those are my submissions.

* * * * *

THE COURT: Reply?

25
MR. PARKER: If I could just respond. Again, it would be our respectful submission that it is a fatal error. The Koza case is very clear on that. Although the Koza case deals with the change of date from the Certificate, as against the Offence Notice, but nonetheless, in any event, there is an amendment after service of the Offence Notice.

30
If Your Honour does not see fit to grant the quashing of the Certificate on that basis, the

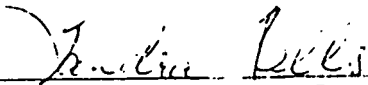
Notice of Appeal is also requesting that a trial be ordered in any event, which is our belief that there is a defence to the charge in any event, but we were hoping to avoid the necessity of taking up unnecessary time on a court docket by having this matter dealt with outside the court environment, because of what we deem to be a fatal error.

RULING

HAWKE, Prov. Crt. J. (Orally):

With respect to this matter, the conviction will be quashed. I do not agree with the submission that this Offence Notice effectively amounts to a summons, because it does not summons the person charged to anything. It sets out the details with respect to the offence and it is completely the same as a Certificate of Offence, except that clearly a Certificate has had added material to it, after the Offence Notice was issued. Therefore, I will quash the conviction.

THIS IS TO CERTIFY that the foregoing is a true and accurate transcription of the record made by sound recording device, to the best of my skill and ability


SANDRA WELLS, C.V.R.
Official Court Reporter