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ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

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against

John McConigal

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REASONS FOR JUDGMENT

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BEFORE HIS HONOUR JUDGE T. WOLDER
on October 1, 1990, Brampton, Ontario

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APPEARANCES

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Ms. C. Sym

Counsel for the Crown

Mr. A. McKay

Counsel for the accused

ONTARIO COURT (PROVINCIAL DIVISION)

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Transcript Ordered:

November 20, 1990

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Monday,
October 1, 1990

...COURT OPENS (10:00)

...OTHER MATTERS DEALT WITH AT THIS TIME

MS. SYM: Number thirteen, John McGonigal.

MR. McKAY: Good morning, Your Honour. My name is McKay, M-c-K-A-Y, initial A. I appear as agent for the appellant who is now before you today, sir.

THE COURT: Yes.

MR. McKAY: Your Honour, the appellant was stopped on the 10th of November 1988 and issued an offence notice charging him with the offence of red light fail to stop contrary to the Highway Traffic Act, Section 109. Subsequent to the offence notice being issued to the appellant he attended and obtained a trial date of the 26th of July 1989, 1 p.m. in court room five in this building. I was agent of record at that particular time and date. Prior to arraignment I made a motion to quash to the Court. That motion in essence was that there had been a change--an amendment--a deletion to the original offence notice and the Section number being changed from 109 to 124 (16) which is in fact the correct Section and subsection number for the offence alleged. I realize full well that the body of the charge still remains the same. My argument to the learned justice of the peace at that time, Your Honour, was that there was an amendment and a deletion non initialled on an official

document. The officer was present in court, and no evidence was called by the Crown to indicate who in fact had made the deletion and the amendment. And Section 35 of the Provincial Offences Act, Your Honour, is quite clear that the Court may make an amendment at any time during the proceedings, but there was no evidence induced by the Crown to give information to the Court as to whom had made the amendment--or deletion and amendment to an official court document. That is the appellant's position at this particular point in time, Your Honour.

THE COURT: Thank you. May I hear from the Crown, please.

MS. SYM: It is the Crown's submission, sir, that the certificate was regular on its face at the dated trial. That it conformed to the Provincial Offences Act. That the justice of the peace acted properly in refusing to quash the certificate on that date. I submit that the justice of the peace acted properly. There is no grounds for appeal.

THE COURT: Perhaps I could ask the Crown to address this issue. I don't believe the issue, and I am of the view that the justice, while correct in stating that the offence may have been sufficient information of the offence. The issue really, for this Court, is Section 3 (2) of the Provincial Offences Act which reads:

"An Offences officer who believes that one or

more persons have committed an offence may issue by completing and signing a certificate of offence certifying that an offence has been committed, and an offence notice indicating to get fine for the offence in a prescribed form under Section 13. The offence notice or summons shall be served personally on the persons charged within 30 days after the alleged offence occurred."

What has happened here is that the offence notice, as I see it, there was an error on its face by referring to the wrong Section. Instead of issuing an information which the officer had the option to do under Section 22 (2) with the consent of the Attorney General or agent. The officer unilaterally chose to then amend the certificate of offence. But there is no evidence that that amended certificate which then became a new certificate was served upon the accused within 30 days and that's the difficulty this Court is having.

MS. SYM: It is Crown's submission that it doesn't become a new certificate. The certificate was sufficient by setting out the offence using the wording that is allowed for by regulation, red light fail to stop, simply correcting the Section number. The Crown's submission doesn't make it a new certificate. The defendant was informed of the case he had to meet. He was informed of the burden that would be on him at trial. And the Crown's

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5 submission there is compliance with the Act, and the matter was properly determined on its merit.

THE COURT: Do you have the new wording under 124 (18).

10 MS. SYM: I have a copy of the front page of the regulation and then the page dealing with the wording.

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15 P.C.J. WOLDER, T. (Orally):

THE COURT: This Court is of the view that there is a provision under part one which allows certain offences to be commenced by way of certificate of offence. This is really a summary procedure to avoid necessity of having to swear a formal information and issue a summons as is contemplated under part three of the Provincial Offences Act.

20 However, it's a statutory requirement that requires strict compliance. There is no provision under the Provincial Offences Act to amend an original document after execution or acceptance of service by the accused.

25 This is a matter that should have been done by motion. It is the view of this Court that the officer having chosen to amend the original documents without authority, in fact, has nullified these proceedings. The
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officer had an option. The option was to then issue a summons under part three with the consent of the Attorney General. The officer failed to do that. He took a short cut. There is no provision in the Act for such a short cut, and I am, therefore, going to quash the information.

MR. MCKAY: I thank, Your Honour. I thank my friend.

This is to certify that the foregoing is a true and accurate transcript of my recordings to the best of my ability and skill.

J. Kaercher
J. Kaercher
Court Reporter