

ONTARIO COURT OF JUSTICE

DATE: 2016-03-22

COURT FILE No.: Kitchener 4460 999 00 57171362

IN THE MATTER OF an appeal under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended;

B E T W E E N :

HER MAJESTY THE QUEEN
Respondent

— AND —

MARIA MINA
Appellant

Before Justice J.E. Allen
Heard on January 28, 2016
Reasons for Judgment released on March 22, 2016

Mr. D. Dwyer counsel for the prosecution
Mr. R. Tatangelo agent for the defendant Maria Mina

On appeal from a conviction by Justice of the Peace C. Anderson on August 18, 2015.

Allen J.:

[1] Ms. Mina was charged with driving with a hand held communication device contrary to s. 78.1(1) of the *Highway Traffic Act*. The evidence against her was that the officer saw, in a passing car some distance away in the dark her holding a pink phone with a square illuminated screen. He couldn't recall seeing a phone when he stopped her.

[2] He said at line 28 and following on page 39 of the transcript that it appeared to be a cell phone. That should have been the end of the matter.

[3] Ms. Mina testified that she was holding her iPod, which is not a communication device, and that it, and not her phone was pink. She brought both to court.

[4] Rather than recognizing that if the officer was equivocal he could not convict, the Justice of the Peace focussed on the perceived inadequacy of the accused's explanation at the roadside, reversing the onus in a case that did not call for an answer.

[5] The conviction is quashed. There will be an acquittal.

Released: March 22, 2016



Signed: "Justice J.E. Allen"