

THE ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

JOHN MORE

C O U R T P R O C E E D I N G S

BEFORE THE HONOURABLE, MR. JUSTICE R. KHAWLY
on March 31, 2000 at TORONTO, Ontario.

CHARGE: Proceed contrary to sign

APPEARANCES:

Mr. M. Nicol

Mr. S. Pelaccia

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Counsel for the Crown

FRIDAY, MARCH 31, 2000:

MR. NICOL: Line 14, John More.

MR. PELACCIA: My last name for the record is Pelaccia, initial S., appearing as agent for the appellant in his absence, Your Honour.

Mr. More is appealing a conviction for the offence of proceed contrary to sign at intersection. The matter proceeded by way of a minor traffic trial. I have a transcript of the proceedings, and a \$70.00 monetary fine was imposed.

Mr. More's grounds for appeal indicate that:

(1) Prosecutor cross-examined his own witness in re-direct, which should not have been allowed.

(2) The justice of the peace interfered with evidence that the defense was satisfied with.

I am prepared to deal with this matter.

THE COURT: You may be. There is a transcript?

MR. PELACCIA: There is, Your Honour. If I could clarify?

THE COURT: Well, you can point out where you believe the error in law is.

MR. PELACCIA: Your Honour, the main argument is that ---

THE COURT: What is your name, sir?

MR. PELACCIA: The last name is Pelaccia.

THE COURT: You are an agent, sir?

MR. PELACCIA: That's correct, Your Honour.

THE COURT: All right, go ahead.

MR. PELACCIA: Your Honour, the charge in question is an offence of proceed contrary to sign at intersection. It prohibits drivers from making a left turn during certain hours. The sign in

question is one that essentially regulations indicate that it must be a black arrow pointing to the left with a red circle around the black arrow, and a red slash through the arrow.

THE COURT: Right.

MR. PELACCIA: In cross-examination ---

THE COURT: What page are you on?

MR. PELACCIA: That would be on page 3, line 22.

THE COURT: Yes?

MR. PELACCIA: The question is:

"Now, you have described a sign with a red circle, but never described the colour of the arrow or the slash. Are they all the same?"

The officer responds:

"Yes, it is red, a red arrow indicating to the left."

Again Mr. Purdy(ph) confirms:

"A red arrow indicating to the left?"

"Yes."

Your Honour, the officer made an error at that point.

In re-direct, Your Honour, the prosecutor asked a very leading question:

"Officer, is the arrow on the signs, is it red or black?"

Your Honour, that's obviously a very leading question. The learned Justice of the Peace Mr. Burgess ---

THE COURT: It is more than leading. I am not sure that is a proper re-examination question. Anyway, go ahead.

MR. PELACCIA: I would agree, Your Honour.

Nonetheless, the learned Justice of the Peace Mr. Burgess does interject and state that that was not a proper question, and that if there is a question as to the colour it should be asked properly.

The next question is:

"What is the colour of the arrow?"

And the response is:

"Probably it would be black."

Your Honour, at that point the prosecutor is satisfied with that answer, and ends his re-direct. Your Honour, at that point the learned Justice of the Peace Mr. Burgess asked a question of the officer.

It is at this point, Your Honour, that I am stating that the justice of the peace may have overstepped his boundaries in basically asking the question, essentially:

"Do you know what colour the arrow is at the intersection?".

I suggest that the justice of the peace had the right to clarify a point. However, the question is posed in cross-examination:

"What is the colour of the arrow?"

He stated:

"It is red."

In the re-direct by the prosecutor, the leading question which plants the seed in the officer's mind as to "Oh, now I have two options. Maybe it's red or maybe it's black", that question was asked which planted the seed that maybe the arrow was not red.

The response to the prosecutor's question is:

"Probably it would be black."

At that point, Your Honour, obviously it was an ambiguous question. I suggest at that point, since it is ambiguous it should be more in favour of the defendant by way of reasonable doubt.

However, the justice of the peace at that point does ask the question, essentially:

"What is the colour of the arrow."

How many times should the same question be posed to a witness? Is it until you get the right answer? I suggest not, Your Honour, and at that point I think the learned Justice of the Peace Mr. Burgess did err in asking that question.

Those are my submissions, Your Honour.

THE COURT: What do you say to Mr. Purdy saying this is a mechanical device?

MR. PELACCIA: Your Honour, it is a mechanical device in that it opens during certain hours of the day, so the actual sign is displayed. In the evidence you will notice that it indicates between 7:00 and 9:00, and also between I believe 4:00 and 6:00 p.m.. The sign actually opens. It is a mechanical device.

THE COURT: That's what he means by that?

MR. PELACCIA: Yes.

THE COURT: All right.

MR. NICOL: Your Honour, what my friend is really alluding to is the fact that there is some sort of judicial interference found on page 4, line 25 where the justice of the peace says:

"Do you know what the colour of the arrow is at that intersection?"

There is simply no judicial interference at all, or anything that even amounts to it. The questions asked were simply to clarify the ---

5 THE COURT: Oh come on, Mr. Nicol. Come on, you can do better than that.

MR. NICOL: Sometimes some questions require follow-up questions to get more succinct answers.

10 THE COURT: I am not so sure I agree with you. I can't agree with you here. He gives an answer in cross-examination, the Court allows the Crown to ask a question in re-examination which he should not have been entitled to ask, because if anything this is the crux of the case, whether or not there was an arrow at that time and what the colour was. In my view the Crown would have known ahead of time that this is the crux of its case, and to suggest that that question caught the Crown by surprise, to allow him to ask the question in re-examination is of no moment. That's number one.

15 Number two: Even after he is allowed to ask those questions the answer is:

20 "Probably it would be black."

When the justice then chooses at that point to ask a question, what is he in essence doing? Isn't he in essence trying to assist or bolster the evidence of the witness to become clearer, which it then does become?

25 MR. NICOL: He could be firming up the Crown's case.

THE COURT: I think he is.

MR. NICOL: He did a good job.

30 THE COURT: Go ahead, I'm listening.

MR. NICOL: When can my friend return for trial?
THE COURT: I am not going to send this back for
trial. In my view that is a clear error, and I
should not put the defendant to have to return to
court on this matter. Appeal allowed.

MR. PELACCIA: Thank you, Your Honour. I thank my
friend.

THE COURT: Conviction quashed.

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



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