

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

FABIAN NAVARRO

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

BEFORE THE HONOURABLE MR. JUSTICE R. KHAWLY

On January 24th, 2002, at TORONTO, Ontario

APPEARANCES

Counsel for the Crown

L. Smith, Ms.

Agent for the Defendant

B. Bauer, Mr.

January 24th, 2002

MS. SMITH: And the matter for Navarro.

MR. BAUER: Good morning, Your Honour.

THE COURT: Yes.

MR. BAUER: For the record, my name is Bauer, B-A-U-E-R, initial B. With your leave, appearing as agent on behalf of the appellant who is not present before you. I have instructions.

THE COURT: All right. To shorten the matter, I read Justice Lapkin's judgment. Thorough, as per usual; names a number of other cases of a similar nature and comes to the conclusion that the officer is simply relying on his notes and his memory to say that the person had a G2 license is insufficient, and it amounts to hearsay.

MS. SMITH: That's what the decision does. But the only thing I would like to add, Your Honour, is that at the time when this decision was made back in July of 1999, the Justice of the Peace hearing the Navarro matter accepted that evidence, as it was proper at that time.

THE COURT: Yes.

MS. SMITH: This was back in July of '99.

THE COURT: Right.

MS. SMITH: The *Germanis* decision just came down last year in 2001.

THE COURT: Yes.

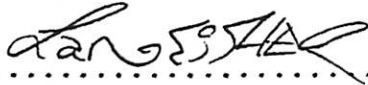
MS. SMITH: That's all I had to add.

5 THE COURT: I am not following a Justice of
the Peace, I am just saying that -- as I said
yesterday, any decision of this court, of
course, I am going to want it bound by unless
it is appealed and it is overturned. I mean, I
10 appreciate some other jurists take a different
position, but in my view, to make
inconsistency in the system, I have no choice
but to accept that. Beyond that, I happen to
agree with the judgment. Moreover, he cites a
number of cases. *Colavita* from 1993, so that
was already in existence. And also the case by
Justice Masse, which also considered *Colavita*.
15 And *Hilem*(ph). And that decision was from
1997, I believe. In any event, having made
those comments, appeal allowed, acquittal
entered.

MS. SMITCH: Thank you.

MR. BAUER: Thank you, Your Honour. I thank my
20 friend for calling this matter.

THIS IS TO CERTIFY THAT
the foregoing is a true and
25 accurate transcription from
recordings made herein, to
the best of my skill and ability.

30 
L. Fisher
COURT MONITOR