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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

MAURICE O'CONNOR

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

B E F O R E T H E H O N O U R A B L E J U S T I C E S . R A Y

On February 22, 2010, at TORONTO, Ontario

Courtroom G

APPEARANCES:

J. McPherson

Prosecutor for the Province

S. O'Connor

Agent for the Appellant

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

MAURICE O'CONNOR

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

BEFORE THE HONOURABLE JUSTICE S. RAY

On February 22, 2010, at TORONTO, Ontario

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THE COURT: All right, so now we are dealing with the O'Connor matter.

MR. O'CONNOR: Yes, and for the record, it's O'Connor, initial, S, appearing as agent....

THE COURT: Yes, but not the same O'Connor.

MR. O'CONNOR: With no relation.

THE COURT: Yes, and he is not here today, I take it?

MR. O'CONNOR: He is not here today.

THE COURT: You are here on his behalf.

MR. O'CONNOR: I am.

THE COURT: And Ms. McPherson is here for the Province. Okay, so....

MADAME REPORTER: Sorry, Your Honour, may I just have his first name?

THE COURT: His first name is Maurice.

MR. O'CONNOR: That's correct.

THE COURT: Maurice O'Connor. All right and Madame Clerk, you have got the forms for the peace bonds?

CLERK OF THE COURT: Yes.

THE COURT: I had asked you to make sure they were in here?

CLERK OF THE COURT: Yes, I do.

RAY, J. (Orally):

Okay, excellent. Okay, so this is an appeal against conviction by the defendant Maurice O'Connor on two charges of engaging in prohibited activity on a premise, contrary to Section 2(a), 2(a)(ii) of the *Trespass to*

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Property Act, and two charges of entering premises when entry was prohibited, contrary to 2.1(a)(1) of the same Act.

5 The only issue argued with respect to the conviction appeal is with respect to the two charges of entry while prohibited. The submission simply stated is that there was no evidence before the learned JP that the officer who prepared the notices of trespass at the time they were served compared the two copies and ensured that they were the same, before he served the one and kept the other for his records. The officer testified that it was his normal practice to prepare two original notices and this is why he did in this case.

10 Based on R. v. Pederson, (1973) 15 C.C.C. (2d) 323, the appellant asked me to find that the Provincial Prosecutor had not proved its case beyond a reasonable doubt. Pederson is the well known decision of Burger J., of the British Columbia Supreme Court that decided an officer must compare whether a copy of the certificate of analysis served on an accused is accurate in a criminal case of driving while a quantity of alcohol in his blood is over the legal limit, before handing it to him.

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30 It has been followed in a wealth of Ontario

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5 Court of Justice cases that have decided that when two original documents have been prepared, they must be compared before one is served, even in cases of where the officer only fills out a form, and the vast majority of these cases are drinking and driving cases.

10 These cases have found that photocopies and carbon copies do not necessarily have to be compared because there are other guarantees that they are accurate. But when two original copies are prepared such as in this case, they do have to be compared. And the citation for the Pederson case is 15 C.C.C. (2d) 323. I am persuaded that the Pederson doctrine applies to the trespass notice in this case.

20 I have also reviewed the transcript and I agree that there was no evidence before the learned JP that the officer who prepared the two original notices of trespass at the time they were served compared the two copies and ensured that they were the same, before he served one of them on the appellant.

25 For all of these reasons, the two enter the premises when entry was prohibited conviction appeals are allowed and I am substituting acquittals for those charges.

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As for the engaging in prohibited activity on a premise counts, no issues were argued and the appeals against convictions are dismissed.

The Provincial Prosecutor has conceded that the sentence imposed on these counts is illegal. I acknowledge that all the learned JP wanted to do was order Mr. O'Connor to stay away from the premises. He did not want to fine him and this was a fine motive for the sentence imposed. I have decided to allow the sentence appeals on the two remaining charges and I am substituting a nominal fine of \$1.00, since there is no statutory minimum for this fine.

I am also exercising my Common Law discretion to order Mr. O'Connor to sign a common-law peace bond in the amount of \$500.00, with no deposit and no surety for the period of one year with the following conditions: He will keep the peace and be of good behaviour and he will not enter or be found on the Air Canada premises, or be found within a radius of 50 metres of 40 Bay Street in the city of Toronto. So, I have basically done the same thing that the JP did, except I have converted it into a legal sentence.

Okay? Basically it. So, he is not here to sign the peace bond, and you are here as his

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agent. So, what I am going to ask is the court clerk is going to prepare the bond, you are going to sign it on his behalf and give him a copy.

MR. O'CONNOR: I will do that.

THE COURT: Okay.

MS. MCPHERSON: Thank you, Your Honour.

MR. O'CONNOR: Thank you, Your Honour, thank you, my friend.

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

Vana Xiggoros
Official Court Monitor