

THE ONTARIO COURT (PROVINCIAL DIVISION)

B E T W E E N :

FARUK OKTEM

Appellant

and

HER MAJESTY THE QUEEN

Respondent

R E A S O N S F O R J U D G M E N T

BEFORE HIS HONOUR, R.B. DNIEPER
on January 30, 1992, AT OLD CITY HALL.

APPEARANCES:

F. Oktem

Representing himself

G. Kelly, Esq.

Counsel for the Respondent

Reasons for Judgment
Dnieper, P.C.J.

REASONS FOR JUDGMENT

DNIEPER, P.C.J. (Orally):

Actually, there is no evidence. The evidence is that the accused was operating a motor vehicle, on the date and time in question, within the municipality named, on the Don Valley Parkway. He was travelling below the speed limit; no evidence of anything else, and the car struck a post off the road.

The officer investigated; asked the accused for an explanation and the officer said, "I was not satisfied with the explanation so I laid a charge of careless driving". Whether the elements to support the charge were present or not, apparently, didn't enter the officer's mind to check.

In any case, the Justice convicted, but he could not have convicted unless he convicted on the basis, solely, of circumstantial evidence, so that he presumed that because the car hit the post, this man was guilty of careless driving.

But the very learned Baron Alderson sitting at Liverpool Assizes, in 1838, in Hodge v. the Queen, reported in 1838, Second Volume of Lewin's Cases, at page 227 and in Volume 168 of the English Reports at page 1136 said that circumstantial evidence may form the basis of a conviction where a rational inference can be drawn of guilt, and where there is no other rational explanation for the facts. He didn't say if the accused gives a rational explanation or doesn't give it,

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Reasons for Judgment
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"where there is no rational explanation".

This point was considered by the learned Chief Justice McCruer, as he then was, of the high court. He heard an appeal in a case called McIvor v. the Queen, where the circumstances here were exactly as those in McIvor. The learned Justice affirmed the conviction stating, "It is not to Crown to rebut fanciful defences".

But he sites, with approval, the concept in Hodge. But here the defendant says, "I hit a patch of water", that's the only explanation. This is an explanation. If the explanation is given, whether it is rational or not, it must be accepted. If it's not given and there is a rational one, it still cannot be the basis for a conviction.

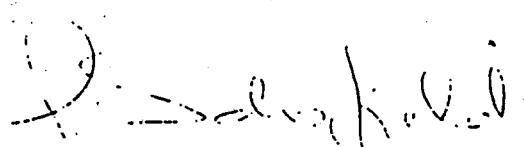
In this instance he -- the accused said, "I hit a patch of water". Whether the Justice believed the man or whether he disbelieved him completely, he had no foundation to convict because if he believed him, the rule relating to circumstantial evidence cannot be used to support the conviction. If he didn't believe him, the Court acted without jurisdiction.

As early as 1930 the Ontario Court of Appeal in Gunning v. the King pointed out that, "uncontradicted evidence of any witness is entitled to some weight". If this testimony is given some weight, it certainly rebuts any presumptions and certainly makes inoperable the rule in Hodges case.

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Futhermore, in a more resent case of May 1991,
the Supreme Court of Canada in the case of the
Queen v. L(WK) said, "It was beyond the
jurisdiction of the trier of the case to com-
pletely disregard uncontested evidence"; and
they held that the Judge was without jurisdic-
10 tion in that case. Here the Justice had to
give some weight to uncontested evidence and
the Justice was without jurisdiction to convict.
This actually is a classic case and the one
that is most often run across.
15 The appeal is allowed and an acquittal entered.

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

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Patricia Schofield

Official Court Reporter