

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

against

ANNIE PERRY

P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE ROSEMARY
on the 14th day of July, 2000
at BRAMPTON, Ontario

A P P E A R A N C E S:

H. BEAURJOIS, MS.

Counsel for the Prosecutor

MR. G. BURD

Agent for the defendant

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FRIDAY, JULY 14, 2000

THE COURT: Yes, Ms. Beaurjois.

MS. BEAURJOIS: If I can return to the appeal list, I believe it's number 15.

THE COURT: Yes.

MS. BEAURJOIS: Annie Perry. I believe Mr. Burd has been waiting patiently.

THE COURT: Yes, Mr. Burd.

MR. BURD: Good afternoon, Your Honour.

THE COURT: Yes, good afternoon, sir.

MR. BURD: Annie Perry is a matter of -- a school bus matter, Your Honour. There was a trial. The defendant did not testify.

However, it would be my respectful submission that the Crown's case failed in several areas and the Learned Justice of the Peace did err in law. I'll start by taking Your Honour to page 12 of the transcript....

THE COURT: Yes.

MR. BURD: ...in His Learned Justice of the Peace Chang Alloy's reasons for judgment.

"This matter basically comes down to what the Crown first said in its first submissions. This argument had been made by way of submissions. We have to presume regularity and we have to presume by implication that the lights are working all the way around."

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What the Learned Justice of the Peace is referring to, Your Honour, is that the officer viewing the school bus -- the defendant is charged with approaching a school bus and failing to stop for the flashing red lights. The officer is viewing off to the side and the front of the school bus and never has a view of the rear of the school bus and what the defendant would be facing in approaching. So the officer cannot say with any surety or clarity, that the defendant was ever approaching a school bus with the rear lights at the back of the school bus flashing.

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The Learned Justice to get around this indicates, well, we have to presume regularity and I guess if the lights at the front of the school bus are working, then ergo the lights at the back of the school bus are working.

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I would submit that that is not a presumption of regularity. If an officer says that the lights at an intersection were in proper working order and that the northbound light was red, then presumably a court can consider that the southbound light was red. But in here, the officer never

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sees the lights at the back of the school
bus to say that they were in proper working
order and there was no school bus driver
called to give evidence that I did a trip
inspection that day and all the lights were
in proper working order.

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So it would be my respectful submission that
on that ground there is no presumption of
regularity that if the lights at the front
of the bus come on, ergo the lights at the
back of the bus come on.

THE COURT: Ms. Beurjois?

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MS. BEURJOIS: I would submit, Your Honour,
that the officer was in a position to
observe the front lights, as well as the
stop arm. I believe the officer indicates
that the stop arm was ought. Those stop
arms are both ways, they're one light that
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can be seen from behind the bus, as well as
in front.

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And also, with respect to that, the officer
indicates that the vehicle stopped behind
the bus, actually came to a stop and
observed the vehicle behind the school bus.
I would submit that it warrants a defence to
the charge to deny that those lights were
not working and the officer is in a position
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to see those lights from the front. Also

the stop arm indicates one light which can be viewed from front and back.

I would submit that there was no defence called and it does warrant a defence.

THE COURT: All right.

MR. BURD: Your Honour, if I can continue.

I -- perhaps I'm just going to read into the record the section number that the defendant is charged with.

"Every driver or street car operator on a highway, when approaching from the rear, a stopped school bus that has it's overhead red signal lights flashing, shall stop at least 20 metres before reaching the bus and shall not proceed until the bus moves or the overhead red signal lights have stopped flashing."

Now, further to His Learned Justice's comments of "we have to presume regularity and we have to presume by implication that the lights are working all the way around, I have no problem with that until shown differently." So not only is he presuming....

THE COURT: Well, I think you've made that point already. I think you've made that....

MR. BURD: But what I want to say is, not only is he presuming irregularity, but he is reversing the onus for the defendant to show that she's innocent and I would submit that that's....

THE COURT: Well, do I understand, Ms. Beaurjois, the Crown does not object to this matter, the appeal being granted and a new trial being ordered?

MS. BEAURJOIS: Well, I don't believe I was consenting.

THE COURT: Well, no, not that you were consenting. But I think that the point that Mr. Burd has made is that there's a presumption on the part of the Justice of the Peace....

MS. BEAURJOIS: I'm not sure whether it's going to change the next time, because the officer could not be in a position to see front and back....

THE COURT: Yes. So you....

MS. BEAURJOIS: ...at any time.

THE COURT: All right. So we might as well just resolve it then on that basis?

MS. BEAURJOIS: Sure.

THE COURT: All right. So, Mr. Burd, I take it you're asking that the appeal be allowed and the conviction be quashed?

MR. BURD: Set aside, yes, sir.

R U L I N G

ROSEMAY, J. (Orally):

All right. So I am in agreement that it would be improper to presume that the lights were working unless the officer was in a position to make the observation himself. So I am endorsing the record, appeal allowed, conviction quashed.

THE COURT: Thank you, Mr. Burd.

MR. BURD: Thank you, Your Honour.

THIS IS TO CERTIFY THAT the foregoing is a true and accurate transcription of the recording (my notes), to the best of my skill and ability.

Marie Jeanne Newbery, Court Monitor