ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

against

MEVITON RODRIGUEZ

O A A A L

BEFORE THE HONOURABL MADAM JUSTICE K L. HAWKE

on riday September 7th 999 at BRAMPTON Ontario

****

CHARGE Speeding

****

APPEARANCES:

Mr. P. Bonas — Counsel for the Cro

Mr. Kaloty — Agent for the accused

CROWN: Mr. Rodriguez, Mevition Rodriguez. Mr. Kaloty.

MR. KALOTY: Good afternoon, Your Honour. For the record my name is Kaloty -K-A-L-O-T-Y, initial J., agent for the appellant, not present before the Court.

THE COURT: Is there a transcript?

MR. KALOTY: No, Your Honour. Actually, it was deemed not disputed situation. There was no trial held in this matter and the basic argument is with respect to some technicality or defect on the face of the certificate.

Your Honour, I will start with indicating that this matter originated from a minor traffic violation under Provincial Offences Act p.1; which deals that basically by the police officer issuing an offence notice to the defendant and filing a certificate of offence; which is basically dictated by s.3 of the Provincial Offences Act, with respect to issuing of the certificate of offence and also with respect to the service of the offence notice. And once this certificate is issued and an offence notice is served on the defendant or the accused, then the police officer basically has 30 days to serve the offence notice under this particular part of the Provincial Offences Act; 30 days -- I mean to say that 30 days from the date of offence. The police officer does have 30 days to serve the accused with an offense notice within 30 days from the date of offence.

Now, once that has been done, then the police officer files his certificate offence with the court office and there are certain various procedures. There is a chain of things which takes into

AG 2067 12 94

complete and regular on it's face than the Justice of the Peace will basically enter a conviction...

THE COURT: Okay.

MR. KALOTY: ...or otherwise. Now, in this particular certificate of offence before Your Honour, I would like to draw your attention -- two-thirds away down, down just to the right side of the officer's signatures....

THE COURT: Right.

MR. KALOTY: ...there are two problems. Two small boxes which are basically to indicate -- I'll read it. It says, and "I further certify that I served an offence notice personally upon the person charged" and then there are two boxes indicating "on the offence date" and the second box says "other." So the requirement is that the police officer tick marks one box. So..

THE COURT: Sorry, I can't find it.

MR. KALOTY: I'm -- just on top of the officer's badge number, Your Honour.

THE COURT: Under all these stamps. Okay got it.

MR. KALOTY: Got it.

THE COURT: Yes. And you say nothing is filled in there.

MR. KALOTY: That is correct. The officer did not indicate. Now, leaving that - there is no indication that when the offence notice was served. Now, if you go to the bottom of this certificate in front of Your Honour, it says date of service if other than offence date. So basically the function is these two boxes, if the officer served this offence notice on the date of offence, he will simply tick mark the top box indicating....

THE COURT: Sure, okay.

MR. KALOTY: ....on the offence date. If he ticks mark the other, then he will go down to the bottom and indicate the date of service other than the offence date.

Now, in this particular matter there's no service date being indicated when this offence notice was, in fact, serviced, making this certificate of offence improper, irregular, incomplete on it's face. Now, what are the complication with respect to the service of today? Your Honour, the act itself -- I mean, going to s.3, I have indicated that deals with the certificate of offence. SS. 5 of these two, Your Honour, it says "where service is make by the Provincial Offence officer who issued the certificate of offence, the officer shall certify on the certificate of offence that he or she personally served the offence notice or summons on the person charged" and the date of service.

THE COURT: Okay.

MR. KALOTY: I am saying it again, "shall certify on the certificate of offence." There is no certification in this particular matter. Beyond that a fact of service date -- in POA p.1, the way I understand, Your Honour, there is a chain of process. Now, there are 30 days to serve this offence notice from the offence date. Now, how do - one can conclude? How can do court have jurisdiction that if this offence notice was served within 30 days if there is no indication of service of date. Also, Your Honour, I would like to draw your attention towards violation 200 of the Provincial Offences Act s.11 (1). It says the Clerk of the Court shall not accept for filing a certificate of offence more than seven days after the day on

which the offence notice or summons was served unless the time extended by the Court.

THE COURT Okay.

MR. KALOTY Now even if there date of service, how uld the Clerk of the Court will ever know that this has been serviced within last seven days. So again, the process under part one of the POA it requires basically, given the option of out of court settlement, that the certificate of offence must be complete and regular on it' face. Now, if there any flaw basically the, the whole process falls and my respectful submission is if there date of service that definitely puts this certificate into question that it not served proper and complete on it' face. And again, Y Honour, if Y Honour wil require, can read .9. which, fact, happened in this particular matter. It was deemed not to dispute the trial date. can read it, it says, failure to appear at trial if defendant who has given notice of intention to appear first here at the time and place granted for the hearing the defendant shall be deemed not to dispute the charge.

Subsection two examinati by the Justice, if the subsection one applies, which did apply in this case, 54 does not apply and Justice shall examine the certificate of offence and shall without hearing, enter conviction in the defendant absences and impose set fine for the offence if the certificate is complete and regular face. And subsection three again says quashing proceeding, the Justice shall quash the proceeding if he or she is not available to enter conviction.

And my respectful submission that this certificate of offence is not complete and regular on face and it was in situation where dealt with according to 9. of the POA and it should have been quashed. Thank you, Your Honour

THE COURT: Okay Crown response.

MR. BONAS: Yes, very briefly if could. There is bit of an analogy which can be drawn, drawn between this scenario, Your Honour, and situation where this Court Your Honour made decision where police officer situation with the pol ce officer has put the wrong total fine payable on the Provincial Offence ticket and this Court held that for similar type of argument that at tri that does not become live issue; the total fine payable. Those

THE COURT: It strikes that it' not analogous. It service of document that kicks the process.

MR. BONAS Yes

THE COURT: into motion.

MR. BONAS Yes.

THE COURT is nherently different than any other particular

MR. BONAS Okay. All right. My submissions with respect to this Your Honour are somewhat threefold. His Honour Judge Smith and it' practice now that' been happening with our courts and His Honour Judge Smith sometime ago made mentioned that the practice and he used the word sleazy. What has been happening is that and Mr. Kaloty would would vouch for th But these are fairly new Provincial Offence tickets that has been issued. That certification was never there the first place up and unti about four, five, six months ago and since this has been issued

to officers within the the Greater Toronto area agents or representatives of defendants have been coming before the Courts inspecting the certificates, and this is at trial when they have been given a Notice of Trial, speaking to the prosecutors before the commencement of court and if, in fact, that box isn't ticked off then the agents vanish into thin air, with the hope that these matters would be deemed not to be dispute and then an argument could be made that the tickets were not regular on it's face. My submission to the Court, Your Honour, is that the Provincial Offences Act was enacted as a simple procedural act to deal - and expedite matters a simple nature. And His Honour Judge Montgomery sometime ago said, in the matter R. v. Golden, the Golden matter, that we should get to the meat of the matter and not not hedge on these simple technicalities. The...

THE COURT: Almost all of your arguments are premised on the fact that this gentleman was served and you can't proved that he was.

MR. BONAS: Well, Your Honour -- I, I, I -- the prosecution can always prove that. However what I would like to indicate to the Court; what has been happening is that...

THE COURT: But you don't know that it happened in this case and even if it did you can't show that's wrong. The defence - it's a defence and when the Crown has a procedural shortcut, you comply or you don't get your shortcut.

MR. BONAS: Even when a trial -- the police officer is there. He can go up into the witness box. They take the oath and swear that on the date in question he issued and he served them that Provincial Offence ticket and that was what the

position of the Crown has been taking in the current past when these things come up. However

THE COURT: You still don' know what the officer testified this case that he served. And even if you did testify that he served, it doesn't comply with the statue. The way the statue reads, thi thing should never been filed with the Court.

MR. BONAS: My submission is, Your Honour, is that 90 of the Provincial Offences Act key holes that particular situation.

THE COURT: really disagree with you. see how when it' something that when it' the process. It' not even about the offence. It' about the process.

MR. BONAS 'm.

THE COURT mean.

MR. BONAS Your Honour, even though this fairly new Provincial Offence ticket

THE COURT: If you want drag someone in front of the Court, you go through the process to do that. ust think that just think it' the bottom. If you're under the Criminal Code, you hav to ha grounds for an arrest and then there procedures you go through. Here if you have to have whatever about the offence and you must get people appropriately before the Court the Court has no jurisdiction over them. can't see how the Court had any jurisdiction over this individual, when all the things that are set to give the Court jurisdiction didn't happen. He had to be served. It had to be shown that he'd been served before the Clerk was even supposed to accept it. And the Clerk wasn supposed to accept except for within certain time imit of that service. That can't be fixed in time...

MR. BONAS: Well....

THE COURT: ....if it happened.

MR. BONAS: Okay. Your Honour, would the Court allow me some time to apply for transcripts to see, in fact, it was put on the record that anyone was there in - to represent the defendant and if, in fact, the officer was there and was prepared to....

THE COURT: Yes, but let's say the transcript shows that someone was there, somehow they have to do something to atone to the jurisdiction.

MR. BONAS: But basically that's my point. If someone was there, than there would have been some attempts to atone to the jurisdiction of the Court and then that..

THE COURT: Okay I will allow to -- there is no....

MR. KALOTY: Your Honour, if I may say something please?

THE COURT: Yes, you may.

MR. KALOTY: Your Honour, before Your Honour grants any adjournment to order the transcripts, when there's a situation deem not in dispute, nothing happens. Basically, on the back of the certificate of offence there is a box which is tick marked "deemed not in dispute." That indicates nobody appeared. The information should be before Your Honour on the certificate of offence. It should or shall indicate that...

THE COURT: That's fair enough. But I don't think it's unfair given that there is nothing really in these materials to alert the Crown to what the issue is today. If you - if he wants a chance to do whatever he can to check what the court record is on this matter, I think, I should allow to do that. When do the two of you want to come back, and you can do it in any

court 'm sitting because if you wait for Friday that I'
here you might wait long time'

MR. BONAS: I'm open, I' open, Your Honour

THE COURT When do you want to do

MR. KALOTY Your Honour, if you suggest some dates,
can probably look into it.

THE CLERK OF THE COURT: Y have to get the
transcript on this?

MR BONAS: Yes

MR. KALOTY The Crown wants it.

MR. BONAS: It' not going to be anything lengthy so
three weeks.

THE COURT: Okay Let do after Thanksgiving and
the two of you just nick date

THE CLERK OF THE COURT: Anything but riday
Any day but Friday would be easier for you

MR. KALOTY Well, have to look if.

THE COURT A couple good days for me would be the
9th and the 2 st because 'm courtroom would fit
naturally into what do in

MR. BONAS Okay

MR. KALOTY October Y Honour.

THE COURT: Yes, October 9th October

MR. KALOTY The 9th is good

THE COURT And then ten clock two 'clock is
fine as well.

MR. KALOTY 9th, two clock

THE COURT: Okay 9th at two o'clock.

MR. BONAS That fine.

MR KALOTY wil be in this court

THE COURT: It will be in court 11.

MR. KALOTY: 11.

THE CLERK OF THE COURT: 141 Clarence Street.

MR. KALOTY: Thank you, Your Honour.

THIS IS TO CERTIFY that the foregoing pages numbered 1 to 11 are a true and accurate transcription from recordings made herein, to the best of my skill and ability.

S. Rodney
Court Reporter

Transcript Ordered: November 8, 1999
Transcript Completed: November 23, 1999
Ordering Party Notified: November 25, 1999

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

against

MELITON RODRIGUEZ

++++++++++++

R U L I N G

++++++++++++

BEFORE MADAM JUSTICE K.L. HAWKE,
on November 14, 1999 at BRAMPTON, Ontario

++++++++++++

APPEARANCES:

Mr. P. Bonas	Counsel for the Prosecutor
Mr. Kaloty	Agent for Defendant

++++++++++++

TABLE OF CONTENTS

RULING.....Page One

****

THURSDAY, NOVEMBER 4, 1999

R U L I N G

K.L. HAWKE, J. (Orally):

With respect to the Rodriguez matter the facts are reasonably simple. There was a Certificate of Offence before the Justice of the Peace. That Certificate of Offence had been signed. With respect to the date for service no date is mentioned with respect to service of the Offence Notice on the Certificate of Offence.

The issue on the appeal is whether the Justice of the Peace should have acted upon the certificate and convicted the defendant in his absence. In the most general terms, the appellant has argued the Certificate of Offence was deficient on its face and the Justice of the Peace should not have acted on it, in fact should have quashed it. The respondent, once again in the most general sense, argued that this is a minor defect, that it could have been amended, although it was not amended. As a whole the Act operates in such a way that formalities and technicalities give way to deciding matters on their merits.

I will start with a few comments about the Certificate of Offence. It is a preprinted form, the officer, by filling in the blanks, certifies a number of things, including, a number of particulars about the alleged offence; a number of particulars about the defendant; and that the

ff h ed he Of No h da

W spe i em w

emp sep cat

h N i i

ply y ha h i

p po he ed h Ce i of

Off y

da of da

amed da

As my bec

h f doe ill i

p h f rm d

f h y i

h all h o

d h C

h ed mi

pa ni ice Th

tha h did

f h impl pa i

i

ded

ome he ween h

ff i i e but

ny ha h served

O i

De l spec f i he

Off i h

f h Of

No h ny rt p ded i

Provincial Offences Act By way compa ison

p. A f. d f Se i

T i p

doe de opy f ocum

be ng ed and ob i sly i llow

h h by pe on h

d i py

d

i g momen he Of ence N

lf p by y def da t my ew

b l ly N y doe i i

lleged ff b al i f

p def da h p oced al and

wh ill ppe f h

d p O f N i

derpi g h abb ted p oceeding

bl shed de Provincial Offences Act

p y P On

h i l h i

h. documen be ear y stab i hed Thi i

my f rma y ty

d g y

ry p po i aim he Provincial

Offences Act T Ac p de

i f h rgi g prosec ing

h. gh h if fo

On ldn be omp ed h

p ll h op i f eedin

hi ppeal he p osec h qued

f Off l h

amended. I see no point in exploring this issue as there is no evidence that such a request was made. I suspect that was because no one noticed the problem on the certificate, but another possibility is that without further information from the police officer the person asking for the certificate to be amended would simply have been guessing, which hardly would seem appropriate for a document to purport to certify certain things.

That brings me to section 9.1(1) of the Provincial Offences Act, which indicates: "Where the defendant fails to appear he's deemed not to dispute, then the Justice of the Peace is to examine the 'ertificate of Offence, and if it is complete and regular on its face, he is to convict, and quash if he is not able to enter a convict

It must be apparent by now that in my view the certificate did not have what I view as essential information in that it did not provide clear and detailed information concerning service of the Offence Notice, and as such, in my view, is not complete and regular on its face

In the circumstances, the Justice of the Peace should have quashed the Information, and if the Crown was still interested in proceeding with the matter they could do so under Part Three. There is just one other thing that I should mention, the Crown has submitted that the defendant filed an Intention to Appear, I have no

d. d J di

y d.

h d be

d h

d p. d

p g

wh d.

pp p. b A y

b q ed h dy

qu d

4R KAT,O' y An

b

d d y

:OUI

dm peop

MI KAL Y

TRANSCRIPT ORDERED: November 4, 1999
TRANSCRIPT COMPLETED: December 1, 1999
COUNSEL NOTIFIED: December 1, 1999

THIS IS TO CERTIFY that the foregoing is a true and accurate transcription of my recordings, to the best of my skill and ability.

Julie C. Volkmann
Certified Court Reporter