

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

SEAN RUIZ-BARNES

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

BEFORE THE HONOURABLE JUSTICE R. BIGELOW

on May 26, 2015, at TORONTO, Ontario

APPEARANCES:

G. Noel

R. Tatangel

City Prosecutor

Counsel for Sean Ruiz-Barnes

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Transcript ordered: June 17, 2015

Transcript completed: December 19, 2015

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TUESDAY, MAY 26, 2015

...

MR. TATANGEL: Your Honour, again for the record,
it's Tatangel, R., representing Mr. Ruiz-Barnes on
this matter. Your Honour, if I may inquire, it
seems that the fellow agent here has a couple of
matters. Did you want to deal with that matter
first...

THE COURT: It's entirely up to Ms. Noel; she's
calling the list.

MR. TATANGEL: Your Honour, the case of Ruiz-
Barnes. This is a case where it was alleged the
appellant proceeded contrary to a sign at an
intersection under section 144(9) of the *Highway
Traffic Act*. I think it's - the one ground of
appeal is basically that the evidence was
misapprehended by the learned justice of the peace.
I'm going to start out by saying I think we both
agree that this was an absolute liability offence,
so only the *actus reus* need to be proven in this
particular case. And what's specific about this
sign is that the prohibited act is specifically no
right turns between a Monday and a Friday, between
7:00 a.m. and 7:00 p.m. So I would submit that the
justice of the peace misapprehended in the
following way. If we go through the transcripts,
Your Honour, nowhere does the officer in his
evidence state specifically the day of the week.

THE COURT: I'll hear from you, Ms. Noel. I'll
hear from you. I'll hear from you.

MS. NOEL: Thank you.

MR. TATANGEL: And I would submit that given the nature of the sign and the prohibition, that would be a - I'll use the justice of the peace's words, "an essential ingredient in the offence". Again, nowhere in the judgment does the justice of the peace refer to the day of the week but he instead refers to the offence as laid out on the certificate. Now, I know my friend is probably going to make the submission that it's such a notorious fact, the day of the week, it could simply be discovered by looking at a calendar, etcetera, etcetera, but I would submit that the absence of the evidence in-chief and the absence of the articulation that that was either a Monday to a Friday in the judgment, leaves the court in somewhat of a vacuum. It's almost as if there was an evidentiary link missing; whether or not the prohibited act occurred within a Monday to Friday. I think that's fundamental to the conviction and that the evidence in the appellant's view doesn't support the conclusion. I would also add, I think it's never incumbent on a defendant to complete the Crown's case nor do I think it's proper for the court to take judicial notice of the day of the week when it's an essential ingredient of the *actus reus*. If it was not an essential ingredient then I would, I would say, no, judicial notice would be proper. It could be taken - it's a strict - judicial notice as you know, Your Honour, is a strict rule. There's two cases that I've included which are *Rue* (ph) and *Newton* (ph). They are - were both cases with red light offences. And that

would be at Tab 7 and 8...

THE COURT: Tab 7 and 8, both Justice Flaherty, I believe, are they?

MR. TATANGEL: I believe so.

THE COURT: Six and seven.

MR. TATANGEL: Sorry, six and seven. In a nutshell, both the appeal decisions ruled that something as simple as the functioning of a red light or a traffic signal light can't be inferred and that judicial notice can't be taken that when, say for instance, the eastbound lights are green, the northbound lights are red. And that's something that should come out in the evidence and I'm going to suggest that these cases perhaps extend to this type of charge, again where it's clear - it's only *actus reus* that needs to be proven. And so I use those cases to support the argument here on this particular matter. The one additional issue I may raise is the - there was never any reference by the officer to the Regulations under the *Highway Traffic Act*. There is a case that I've included, it's *R. v. Clark*, it's an Ontario Court of Appeal decision, it's 1978; however, to the best of my knowledge it's never been overturned or overruled. And in that case they were discussing a bylaw and proof of a bylaw versus an offence under the *Highway Traffic Act*. And my understanding of the case is that in *Clark* it was distinguished because the officer, in his evidence, actually came out and said the offence took place - that the signs were posted in accordance with the Regulations under the *Highway*

5 *Traffic Act*. That evidence was actually tendered
in some shape or form, we don't have the trial
transcripts, but - into court, and that was the
distinguishing difference. In this case the
officer never articulates what kind of signs; they
could have been cardboard signs for all we know
that someone put up and hung on the street corner.
There is no reference to the Regulations under the
10 *Highway Traffic Act* at all. And I'm sure Your
Honour knows there's also signs that can be purely
set up in the City of Toronto through bylaws; that
was never distinguished. And if it's a bylaw sign,
there's a - I would say an additional burden for
the bylaws to be entered into evidence, into court
as well, and that's an Ontario Court of Appeal
15 decision, *R. v. Clark*, where if it is a bylaw, the
bylaw itself, proof of the bylaw has to be tendered
into court. So here we're left with an evidentiary
gap, I would submit, Your Honour. One; day of the
week was never articulated, it was just taken as
20 gospel that it was between a Monday and a Friday.
And there's no reference to the Regulations at all
or where these signs derived from; whether they
were *Highway Traffic Act* signs or whether they were
bylaws. Subject to any questions, Your Honour,
25 given the nature of the charge and of course that
the appellant can never recover the costs of the
appeal proper or the trial, I'd ask that the charge
- acquittal be entered and appeal be allowed in the
reverse order, obviously. Appeal allowed first,
30 and then the acquittal entered, given the nature of
the charge. Thank you.

THE COURT: Ms. Noel?

MS. NOEL: Thank you. Your Honour, I would like to point out this was the agent on a trial and it's strange that he wants to bring this up at trial that the day - date of the week was not brought up and that wasn't done at trial. I was wondering why that wasn't done at trial? Why wait to bring new evidence at the appeal level? It is a...

THE COURT: Well, it's not bringing new...

MS. NOEL: ...I mean he could have done a motion - sorry.

THE COURT: ...it's not bringing new evidence. What Mr. Tantangel is saying is that one element of the offence of making an illegal turn, Monday to Friday, is that it's Monday to Friday.

MS. NOEL: I read that as well. But he didn't raise any motions before the trial, a factor regarding that...

THE COURT: Well, but what kind of - I don't understand, what kind of motion do you mean? Should he have...

MS. NOEL: Well, he could have - a motion for nonsuit that all the elements had not been...

THE COURT: Well, I think - if I recall correctly, he...

MS. NOEL: He just called no evidence.

THE COURT: Which is basically the same thing as a nonsuit application and there's no requirement that you make an application for a nonsuit; you can choose to do it if you wish, but there's nothing that requires you to do it. I guess the real issue is, you know, can a court take judicial notice of

the day of the week. I can tell you, for the sake of argument I checked, it was a Wednesday. But that's not, that's not - and I'm not in any way using that, just curious. So I mean the question, Ms. Noel, is, is - can the court - if, you know, someone says it happened on May 7th, can a court take judicial notice? I mean, as Mr. Tanta.. - Mr. Tanganible - sorry, I have a real hard time with the two t's coming I guess - that that is something, although it may be fairly simple, it's also something very simple for the prosecution to have. All it took was, yes, officer, and what day of the week it was, and for whatever reason, no doubt it just got forgotten, but it wasn't there.

MS. NOEL: I read that in the transcript as well, Your Honour. Yes, I did see that. I concede.

MR. TATANGEL: You concede; okay, thank you.

THE COURT: Frankly, I'm - given how simple it was. I mean if it had been something more complex for the prosecution to establish, maybe I'd take a different view, but in my view, I think in a situation like this where that is one of the essential elements of the offence and it could have been very easily dealt with and wasn't, it's appropriate to grant the appeal and I'll direct an acquittal.

MS. NOEL: Thank you, Your Honour. That leaves us with line number seven...

MATTER CONCLUDED

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Evidence Act

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15 **December 19, 2015** _____

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