

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

vs.

ALEXANDER SMITH

P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE R.J. LeDRESSAY

The 20th day of December, 2001
At MILTON, Ontario

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

Mr. R. Teague

For the Provincial Prosecutor

Mr. S. Pelaccia

Agent for Mr. A. Smith

ONTARIO COURT OF JUSTICE

TABLE OF CONTENTSWITNESSESExam
In-Ch.Cr-
Ex.Re-
Ex.

...no one called at this time

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5 MR. TEAGUE: Number 15, Your Honour, Alexander Smith.

MR. PELACCIA: Yes, good morning Your Honour, or good afternoon.

THE COURT: Yes, good afternoon.

10 MR. PELACCIA: Last name for the record is Pelaccia, spelled P-E-L-A-C-C-I-A, initial S, appearing as agent for the appellant who is now before the Court.

THE COURT: Sorry, it's P-E-L-A...

MR. PELACCIA: ...C-C-I-A, initial S.

15 THE COURT: Yes, thank you Mr. Pelaccia.

MR. PELACCIA: Thank you. Your Honour, first I'd like to apologize to the Court. I understand that the grounds for the appeal refer to a case which was not supplied to this Court prior to this appeal and certainly hasn't given Your Honour an opportunity to familiarize yourself with the case. I will try to explain the case and present it today, if Your Honour would allow me to.

20 THE COURT: Do you have a copy of the case?

MR. PELACCIA: I do.

25 THE COURT: Have you provided a copy to Mr. Teague?

MR. PELACCIA: I certainly will.

THE COURT: Yes?

30 MR. PELACCIA: The case I'll be relying on Your Honour, is *Regina vs. Ali Khoshael*, it's a

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decision, Appeal Court decision that came from the Toronto region. I will be referring to it but I first would like to indicate Your Honour, the grounds for the appeal in this matter are that the Justice of the Peace...

THE COURT: Just so I understand Mr. Pelaccia, because I've read the transcript of the matter, it wasn't - this wasn't a ground that was argued in front of the Justice of the Peace?

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MR. PELACCIA: There's actually an error. That is not the transcript of this matter. This was a fail to respond matter. Those transcripts are in relation to another matter that's not related to this Your Honour. Somehow the transcripts got attached to this appeal.

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THE COURT: So there is no transcript of the proceedings?

MR. PELACCIA: Certainly not. It was a fail to respond matter, Your Honour.

THE COURT: And this matter was...

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MR. TEAGUE: That's right Your Honour, and I was caught with the same thing because I probably have the same copy as you have.

THE COURT: Yes?

MR. TEAGUE: And I couldn't understand why there was a difference.

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THE COURT: So this was argued before the Justice of the Peace?

MR. PELACCIA: No, it was a fail to respond matter Your Honour. It was a matter...

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THE COURT: Oh, I see what you mean, all right. Yes?

MR. PELACCIA: Your Honour, the grounds for the appeal are that the Justice of the Peace erred in not quashing the certificate as there was a defect on the certificate, specifically in regards to the total payable Your Honour, and it would be my respectful submission that the total payable that appears in the certificate is in error in that the excess of what the proper total payable should be for the matter and I will be relying on firstly a document that I gave to my friend because I believe it would be something my friend would concede in regards to the fine itself.

Your Honour, the set fine for the offence appears as \$132.50. That is the correct set fine, however, the total payable that was assessed was incorrect. It's actually I believe four dollars in excess of what should appear. The victim fine surcharge that should apply to this matter should be \$25, which would make the total payable \$157.50. However, what appears on the actual certificate is a fine of \$160.50, which is in excess of what the total payable should be for this matter, Your Honour.

I will be relying on a document that I actually just received from the front office in regard to total payables. Unfortunately I was only able to obtain one copy but my friend has had an opportunity to take a look at it. If it could be passed up to you Your Honour. You'll notice if you look at the chart fines that are in the range of \$101 and \$150 a total surcharge

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Now I will be referring to the *Khoshael* matter at this point Your Honour. The *Khoshael* matter is a decision out of the Toronto region where His Honour Justice Libman ruled on a number of matters in relation to defects in section nine of the Provincial Offences Act and essentially, if I can have the Court's brief indulgence. Essentially, the decision sets out that section nine is quite clear and section 9.1 are quite clear in regards to matters that are deemed not to dispute in that if the certificate is not complete and regular on its face and a person has not atoned to the jurisdiction of the court, meaning appeared in court, and spoken to the matter, that the section nine does come into effect and that if there is a defect on the certificate that the certificate shall be quashed.

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There are a number of different defects that are referred to in the decision ranging from set fines, total fine payables, service indications, and the like, Your Honour. Ultimately, His Honour Judge Libman confirmed that section nine does set out that if there are defects on the certificate and the matter does go - is under section nine, meaning that it hasn't been responded to and there is a positive onus on the Justice of the Peace to review the certificate and prior to entering conviction shall review it and if there are any defects then the certificate shall be quashed. Again, specific defects referring to set fines,

total payables, service indications, and also I believe section numbers, Your Honour.

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Having said that in this particular case Your Honour, it's quite clear that the certificate was in error, that there was a defect, specifically in regards to the total payable Your Honour, and that the Justice of the Peace was obliged to quash the certificate in regards to section nine which sets out quite clearly that if it is not complete and regular on its face the Justice shall quash the proceeding and that was not done. Those would be my submissions in regard to this matter, Your Honour.

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THE COURT: Just give me a moment then to review the case. Yes, Mr. Teague?

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MR. TEAGUE: Yes, Your Honour, I've just been perusing this matter just at the same time you have and basically reading in to Judge Libman's decision certainly would indicate that the set fine, which would include the total, would have to be correct. I should say at the outset Your Honour, that the officers use a form in a book which is similar to what I have here, and in actual fact whenever I look at that it says \$132.50 fine, total payable \$160.50. Now this book is something which is put out by the policing organization for the information of the officers. Obviously Your Honour has to follow what is laid down in relation to what the set fine is and what the victim surcharge is, which in this particular case would be \$25

going in accordance with what has been issued to the office here. If that's the case Your Honour, then obviously the total fine payable was not correct.

THE COURT: I suppose what concerns me then, Mr. Teague is the proper - I agree with the case law, the proposition that you've just stated. I suppose what concerns me is what in fact the proper surcharge was. I know counsel's provided me with this general form. It seems like...

MR. TEAGUE: Absolutely Your Honour, and I can only take that on face value, just the same as I can only take this on its face value also. I don't have anything that says specifically that this regulation says that this will be the surcharge for that fine.

THE COURT: I think I'd like to have some information on that because certainly Mr. Pelaccia if in fact the surcharge is \$25 so the amount's incorrect I would like follow Justice Libman's decision, as all of his decisions are very well reasoned and I understand the point of it. Certainly I'd tend to follow it. What concerns me is what Mr. Teague has brought up. I'd like to see the specific regulation itself as opposed to - I guess some better evidence in terms of what the specific surcharge would be. I just wonder if that's the manual set out by the police, I'd like to know what it is.

MR. PELACCIA: Court's indulgence, my friend just passed me something here and it may assist

Your Honour.

MR. TEAGUE: Just one moment, Your Honour.
I've got a new Highway Traffic Act here Your
Honour. I'll just see if...

THE COURT: Yes, I'm going to have a look
myself.

MR. TEAGUE: It refers to Ontario Regulation
785-94, which is revoked, and the new
regulation came in 2000. I'm just wondering
Your Honour if there's something indicated in
the book for 785. I don't see anything there
Your Honour in the book, not even 785.

MR. PELACCIA: My friend has brought to my
attention Your Honour that Your Honour does
have a 2001 Provincial Offences Act?

THE COURT: Yes, Highway Traffic Act?

MR. PELACCIA: No Provincial Offences Act.

MR. TEAGUE: I'm sorry, I'm looking in the
wrong book.

MR. PELACCIA: My edition here that I've been
given is the 2000, however the 2000 you'll find
that the victim fine surcharge is set out, it's
the old. Now if Your Honour does have the 2001
it will indicate the more recent surcharge that
came into effect April 1st of 2000.

MR. TEAGUE: Just a moment's indulgence Your
Honour. It says here ``Ontario Regulation
161...''

MR. PELACCIA: Slash 100.

MR. TEAGUE: ``...victim fine surcharge is made
under the Provincial Offences Act.''

MR. PELACCIA: Page 495 Your Honour.

MR. TEAGUE: I'm sorry, Your Honour 495, page 495.

THE COURT: I'm not sure if I have the same edition. I'll take a look and see.

MR. TEAGUE: Would Your Honour like to see mine?

THE COURT: Oh, yes.

MR. TEAGUE: I have it.

THE COURT: I have the same.

MR. PELACCIA: I believe that should confirm the victim fine surcharge for the fines ranging between 101 and 150 Your Honour and I believe it indicates 25 if I'm not mistaken.

MR. TEAGUE: That's correct Your Honour.

MR. PELACCIA: And I thank my friend.

THE COURT: Mr. Teague are you satisfied then that...

MR. TEAGUE: Yes, I am Your Honour.

THE COURT: ...the information...

MR. TEAGUE: I am. And I will certainly take steps to ensure that this matter to do with the police and the issuance of them is brought to the attention of the proper authorities.

THE COURT: Yes, thank you. All right, I've endorsed then the appeal is allowed on consent. The certificate of offence is quashed.

MR. PELACCIA: Thank you Your Honour.

MR. TEAGUE: Thank you Your Honour.

THE COURT: Thank you.

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THE FOREGOING IS A TRUE
AND ACCURATE TRANSCRIPT
OF MY STENOMASK RECORDINGS
TO THE BEST OF MY SKILL
AND ABILITY

M. Reilly

MAURA CATHERINE REILLY
COURT REPORTER

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