

P.O.N. # 22964599

ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

RODERICK TANG

* * * * *

PROCEEDINGS AT TRIAL

HEARD BEFORE HIS WORSHIP M. HOULE, on February 5th,
1996, at ALEXANDRIA, Ontario.

* * * * *

OFFENCE : Section 128 (H.T.A.)

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APPEARANCES :

Mr. Al Peeters

Counsel for the Crown

Mr. M. Warsaw

Agent for the Accused

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ONTARIO COURT OF JUSTICE (PROVINCIAL DIVISION)

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Transcript Ordered : February 16th, 1996

March 8th, 1996.

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R. v Roderick Tang
February 5th, 1996

THE CROWN : The matter of Tang. Number 41.

MR. WARSAW : Good morning, Your Worship.

THE COURT : Yes, Sir. I have it right here.

MR. WARSAW : Good morning.

THE COURT : Good morning.

MR. WARSAW : For the record, the name is Warsaw. Initial M. Appearing as, representative for Mr. Tang.

THE COURT : As agent, right?

MR. WARSAW : As agent, yes.

THE COURT : Okay. And it reads as follow. As on or about the 8th day of December '95, on Highway 401, Charlottentburg Township charge is speeding. 130 kilometers per hour in a posted 100 kilometers per hour zone contrary to Section 128 of the Highway Traffic Act of Ontario. And the plea is?

MR. WARSAW : Not guilty, Your Worship.

THE COURT : Fine.

THE CROWN : Officer Desforges.

THE COURT : Please be seated, Sir.

MR. WARSAW : Thank you.

OFFICER MIREILLE DESFORGES : SWORN

THE COURT : Go ahead. You intend to use notes?

OFFICER DESFORGES : Yes, I do.

THE COURT : When were they made?

OFFICER DESFORGES : The time of the

2

NOT
Qualified TO
operate

NO
Symptoms
of offence

....

THE COURT : Any corrections or alterations made to those notes have been made?

OFFICER DESFORGES : No.

THE COURT : By yourself?

OFFICER DESFORGES : No. By myself, yes, sorry. I thought you said no corrections.

THE COURT : You need them to refresh your memory?

OFFICER DESFORGES : Yes, I do.

THE COURT : Thank you. Go ahead.

OFFICER DESFORGES : On the 8th of December, I was working the 7:00 a.m. to 7:00 p.m. shift. I was operating the radar on Highway 401, Stocker ATR, number 01187. Test, it was tested at 11:15 with a tuning fork key band, 65 kilometers per hour number 11216. It was self tested and it also tested accurate. I was operating the radar in the Eastbound lane. Vehicle was facing west. At 11:25, I observed - I -Sorry, at 14:22, I observed a black BMW 525 motor vehicle travelling Eastbound on 401 in the passing lane at a high rated speed. Clocked the vehicle when he was alone in the radar beam. At 137 kilometers an hour in a posted 100 kilometer zone. He, the driver identified himself as Roderick Tang. It was a valid

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M. Desforges - in-Ch.
M. Desforges - Cr-Exam.

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Ontario driver's licence. The address
of 72 Dunblaine Avenue, Toronto,
Ontario, Postal code M5M 2S1. Driver's
licence number T04186610640519. Date of
10 birth, May 19, '64. Licence number of
the vehicle was 367 JPH, Ontario marker.
In the vehicle there was one male and
one female. And the PDN number issued
was 22964599.

EXAMINATION IN-CHIEF BY MR. PEETERS

15
Q. Officer, were you able to see the
vehicle in sight at the time that you clocked it and have it
stopped?

A. For me, sorry?

Q. Were you looking at the vehicle in
sight from the time that you clocked it and have it stopped?

A. Yes, I did.

Q. And, you mentioned having tested the
radar. Making sure it worked properly?

20
A. Yes, at the start and then at the
end of the shift.

Q. And what time would that be?

A. 11:25 and - I don't have what time I
tested at the end, actually.

25
* * * * *

THE CROWN : Thank you.

THE COURT : Defence.

CROSS-EXAMINATION BY MR. WARSAW

30
Q. Where would that information be?
You say you don't have it here, Officer? Where would that
information be?

A. It was disclosed. I wrote it on the

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M. Desforges - Cr.Exam.

5
back, the officer's note. Back of a ticket, PON. You should have a copy. It's the same thing that I write on my notes. I write on the back of the ticket.

Q. Are you aware of the disclosure procedure? When a defence asks for the information?

A. Yes. We do three copies. One of them goes to you.

10
Q. And are you aware that the defendant in this case requested disclosure?

A. I wasn't aware of that, no.

Q. Do you know where all three copies of your notes are? You said there's three copies.

15
A. No, I have one right here which is my notes. I don't know where the other two copies are, no.

Q. Okay. I'm looking at an offence notice, with digits 22964599. The number in question of the certificate of infraction.

A. Huh, hmm.

20
Q. It's the offence notice and on the top right hand corner, perhaps Your Worship, could follow on as well. Indicates the time. And there's no time indicated?

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THE CROWN : Yes, that's true, Your Worship. My friend is well aware that, of section 90 of the Provincial Offences Act, which says that "The validity of any proceeding is not affected by any regularity or defect in the substance or form of the summons".

30
THE COURT : No time on yours? There's time on this one.

OFFICER DESFORGES : No, I had it writ-

5
M. Desforges - Cr.Exam

ten. The time wasn't written on the
copy issued to the defendant.

THE COURT : Okay.

Q. I may continue? Why wasn't the,
with all respect officer, there are a lot of details to
indicate. Why wasn't the time indicated on the offence
notice?

A. I completely forgot, I guess. I
don't remember. I don't recall why it wasn't done.

Q. Would you consider that an element
to the offence? Certainly?

A. Yes.

Q. You would?

THE COURT : Consider what?

MR. WARSAW : An element of the offence.
An important piece of information leak-
ing the accused to the infraction.

Q. If I may, Officer, on the certifi-
cate of offence, it does indicate 2:22 p.m. as you read from
your notes when you were refreshing your memory.

A. Huh, hmm.

Q. How did that get there?

A. From the notebook.

Q. That's from your ?

A. My notebook.

Q. And when was that done?

A. Right after the ticket was issued.

Q. Okay, so you ...?

A. About 30 seconds after I go back to
my vehicle.

Q. ... so, you served the ticket, you
still give the infraction to the defendant. Thinking that

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M. Desforges - Cr.Exam.

all the information was proper on its face?

A. Yes.

5 Q. And then you went back to your vehicle and you marked in the time?

A. Obviously, I went back to my ticket and when I reviewed my notes and I noticed the time wasn't there. That's when I amended the ticket.

10 Q. Did you at any time indicate to the Court or ask their permission? Get their consent or approval to amend?

A. I called, I contacted the Crown this morning, telling him that the time wasn't written on the ticket, the P.O.N.

15 Q. Did you contact him on that day, before the notice of trial was send out to the defence?

A. No, I didn't.

THE CROWN : Your Worship. I really don't know. It's nonsense It's very clear in the Act.

20 THE COURT : Ah, what's the issue, Sir. She didn't mark it, she didn't write it, I have no problem. It's up to the Court to decide, yes or no. Not up to her. She didn't mark it. It's written on the top portion. I don't know when she wrote it but I have no problem with that. I can live with that. I think Section 90 of the Provincial Offence Act elaborates or Crown knows all the procedures, so that ought to do it. Go ahead.

30 MR. WARSAW : Very well. I thank you.

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I have no more questions for the officer. Let me make - present some exhibits to the Court, perhaps. And then, make a submission.

THE COURT : Sure.

MR. WARSAW : Thank you.

THE COURT : Thank you, Officer.

MR. WARSAW : Thank you, Officer. This is for Mr. Prosecutor. This is for Your Worship.

THE COURT : Thank you.

MR. WARSAW : Here is two cases of course, I don't think you're bound by them Your Worship. They're perhaps, they're persuasive. They're are from the Brampton Provincial Court.

THE COURT : Yeah.

MR. WARSAW : I think perhaps could be helpful.

THE COURT : Yeah, sure.

MR. WARSAW : Ah, which case are you looking at first, Your Worship.

THE COURT : Which one you want?

MR. WARSAW : The one you're holding is fine. Anyone is fine. One is April 28th, '95, one is February 10th, 1995. We can perhaps begin with the February 10th. On the second last page, the top of the page it reads : "The regulation now

THE COURT : You're ruling on motion, is that it. It that where you're at?

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MR. WARSAW : Yes. Yes, thank you. The top of the page. The regulation now is 200, section 15.

THE COURT : Yeah.

MR. WARSAW : Where the Justice finally made his judgment that the document changed after the delivery to the defendant. Where after were served, new information was added to the certificate. Rendering it improper.

THE COURT : Okay.

MR. WARSAW : If I may, before you render your judgment, Your Worship. In the other document I presented to the Court, the Lapitra case.

THE COURT : Yes.

MR. WARSAW : August, sorry, April 28th.

THE COURT : No problem.

MR. WARSAW : On the third page, just about where it says the Court, it says consequently if I may read for the Court.

THE COURT : The Court. Yeah. So, you're asking for what ideal with it. Is that it?

MR. WARSAW : Yes.

THE COURT : Okay, go ahead.

MR. WARSAW : Well, just above there, it says : " Consequently, after quotes, after quotes, consequently has it's clear from differences between the offence notice and the certificate of

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offence, that there as been something added to the certificate after the service of the offence notice and as such I would ask you to find that that causes the certificate in fact, to be a nullity and should be quashed." And the Justice once again rends his judgment. Since there has been a material change at the actual certificate isn't proper. Now, further, when Mr. Tang requested disclosure of the Court, the officer's notes, the officer indicated there were three copies out. I imagined the officer can keep one herself.

THE COURT : Wow, wow, it's up to the - Mr. Tang, if he wants disclosure that'll will hear say. You are getting into the trap there. You cannot answer on behalf of this individual, with all due respect.

MR. WARSAW : Very well.

THE COURT : And it's his duty to ask the Crown, the Prosecutor.

MR. WARSAW : I understand.

THE COURT : She has to go by what the Prosecutor agrees or not. It's up to the Prosecutor. And the case of Stinchcombe surely tells you how and what Go ahead.

MR. WARSAW : Yes. I do have a problem on behalf of ...

THE COURT : Go ahead.

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MR. WARSAW : ... with the procedure in this case.

THE COURT : Procedure? Why?

MR. WARSAW : Your Worship. The officer only contacted the Crown with this matter this morning or much after the offence date. Perhaps this should have been done a lot earlier. Certainly, closer to when the certificate was served on defence.

THE COURT : Where does it say in the Provincial Offences Act, that, about amending, amendment. Where does it say that - what it should be done. Do you have any, do you have a copy of the Ontario Provincial Offences.

MR. WARSAW : I actually have it in front of me, Your Worship. However, what these cases read.

THE COURT : Donnes-y. You want a few minutes to look at? If you want a few minutes? Sure.

MR. WARSAW : Thank you.

THE COURT : Go ahead.

MR. WARSAW : I'm looking at Section 34, Your Worship.

THE COURT : Yeah. Does it say? If there's a limit for amendment but you can amend within, before or after the trial, right?

MR. WARSAW : Yes.

THE COURT : Bon. Okay.

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MR. WARSAW : If I may just look at something. More of your indulgence once again.

THE COURT : No problem.

MR. WARSAW : Thank you.

THE COURT : I'm well paid to listen, to wait.

MR. WARSAW : Thank you, Your Worship. That'll be fine. I, at this point, I'm not sure if you're some sort of persuaded by the case law. At the same level court, where the Justice's quashed these matters for information that was later added. Rendering of the certificate improper on the faces.

THE COURT : Thank you. Mr. Crown?

THE CROWN : Your Worship, obviously the decision are wrong and they're - thank goodness they're not bound, you're not bound by them as they fly completely in the face of Section 90 of the Provincial Offences Act. Even, Section 90 (2) points out the - where it appears to the court, the defendant has been misled by any irregularity, defect or variance. The Court may adjourned the hearing and may make such order as the court considers appropriate. And obviously, the Accused is not misled in any fashion. He was served a ticket at the time and that's why these provisions are there with regards to service. There's also a

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case of Regina v Goldwitch, indicates
that once a trial date is set any de-
fects and form are cleared up.

THE COURT : Yeah. Thank you. I have to
agree with the Prosecutor and the Crown,
Sir, and I find your client guilty as
charged. But I'll announced suspend
sentence but I find him guilty and
suffer the consequences at this point.
Okay. Thank you very much.

MR. WARSAW : Thank you, Your Worship.

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CERTIFICATION

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foregoing is a true and accurate
transcription from the record
made by sound recording apparatus,
to the best of my skill and ability.

Manon Bray
Manon Bray
Court Monitor

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SIGNATURE OF THE COURT REPORTER.

ONTARIO COURT OF JUSTICE
(PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

RODERICK TANG

* * * * *

A P P E A L

HEARD BEFORE THE HONOURABLE JUDGE M. de SOUSA,
on June 6th, 1996, at ALEXANDRIA, Ontario.

* * * * *

APPEARANCES :

Mr. Tom Raganold

Counsel for the Crown

Mr. Malcolm Higgins

Counsel for the Accused

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R. v Roderick Tang
Reasons for Judgment
M. de Souza (O.J.F.D.)

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THE COURT : All right. I am convinced
that the Justice of the Peace did hear.
I do believe he was bound by those
decisions on the facts. There was a
postservice amendment and in my view
section 90, does not in any way remedy
that situation. So, the conviction is
quashed.

10
MR. HIGGINS : I do thank you, Your
Honour.

THE COURT : Appeal is granted.

MR. HIGGINS : Yeah, there was no fine
to be paid. So, nothing has to be
remitted. It's a suspended sentence.
Thank you, again.

* * * * *

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