

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Ul-Rashid, 2014 ONCA 896

DATE: 20141215

DOCKET: C58020

Strathy C.J.O., Tulloch and Hourigan JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Haroon Ul-Rashid

Appellant

Under Section 139

Of the *Provincial Offences Act*

Mary Paterson and Michael Milne, *Amicus Curiae*, for the appellant

Matthew Asma, for the respondent, Attorney General of Ontario

Amanda Ross, for the respondent, City of Toronto

Heard and released orally: December 4, 2014

On appeal from the conviction entered on March 7, 2012 and the sentence imposed on March 7, 2012 by Justice Erick N. Libman of the Ontario Court of Justice.

ENDORSEMENT

[1] This is an appeal under s. 139 of the *Provincial Offences Act*, R.S.O. 1990, c. P. 33 (the “*POA*”) in relation to a prosecution conducted by the City of Toronto (the “*City*”) on a charge of failing to stop at a red traffic light.

[2] The appellant brought an unsuccessful appeal to the Ontario Court of Justice and then obtained leave to appeal to this court. An *amicus curiae* was appointed, who served a Notice of Constitutional Question.

[3] The Attorney General has elected to participate in the appeal on the constitutional issues and has brought an application to file fresh evidence. The Attorney General takes no position on the merits of the appeal.

[4] The appellant raises two grounds of appeal. First, he submits that his right to make full answer and defence, both under ss. 28 and 46(2) of the *POA* and ss. 11(d) and 7 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), was violated because the prosecutor did not advise him, as a self-represented litigant, of his right to disclosure. Second, he submits that the Justice of the Peace failed to adequately assist him in his trial. Therefore, he argues that he did not receive a fair trial and his rights under s. 11(d) of the *Charter* were violated.

[5] There is common ground among the parties that there is a duty of disclosure in trials conducted under Part I of the *POA* and that an unrepresented accused must be informed of his right to disclosure.

[6] The City concedes that as a self-represented litigant, the appellant was not adequately informed of his right to disclosure and that significant evidence, in the form of a video recording, has now been lost. On the basis of these concessions, the City agrees that the appeal should be allowed.

[7] We accept the City's position and its underlying concessions. Accordingly, the appeal is allowed, the order of the appeal judge is set aside, and an acquittal is entered.

[8] Given our order, it is unnecessary to consider issues, including constitutional issues, regarding the method and timing of providing notice of the right to disclosure to unrepresented litigants in trials under Part I of the *POA*. The proposed fresh evidence of the Attorney General on these issues is not required and will not be admitted. It is also unnecessary to consider the nature of the assistance required to be provided by Justices of the Peace to unrepresented litigants in trials under Part I of the *POA*.

[9] The *amicus curiae*, the City, and the Attorney General take the position that, notwithstanding the fact that there is no *lis* among the parties, we should consider the issue of disclosure and the issue of assistance for unrepresented

litigants in order to provide guidance to future courts on these issues. While we recognize that we have jurisdiction to hear these submissions, we decline to do so. Having regard to the factors enumerated in *Borowski v. Canada (A.G.)*, [1989] 1 S.C.R. 342, we do not believe that it is appropriate to deal with these moot issues. We are not satisfied that, having regard to our adjudicative role and the lack of a *lis*, we should offer any guidance on these issues or, that if we did, it would have any jurisprudential value.

[10] The appeal is allowed.

“G. R. Strathy C.J.O.”

“M. Tulloch J.A.”

“C. William Hourigan J.A.”