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ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

MARVIN YOUNG

PROCEEDINGS AT TRIAL

BEFORE HIS HONOUR JUDGE J.J. BELOBRADIC
on the 27th day of November, 1992
at BRAMPTON, Ontario

Charges: Disobey Stop Sign

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

P. JOHN, MS.

G. BURD, ESQ.

Counsel for the accused

Counsel for the Crown

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FRIDAY, NOVEMBER 27, 1992

5 MS. JOHN: Back to the last two matters, Your Honour, the first one is number 28, Marvin Young. Just to make this clear, I just received this transcript and factum this morning.

THE COURT: Which one?

MS. JOHN: On Marvin Young.

10 THE COURT: Oh.

MR. BURD: This is a very brief and simple argument, Your Honour. It's a matter of a stop sign, fail to stop. That's what the allegation is on the information. The evidence as seems the Learned Justice of the Peace would accept, that is in fact, the defendant did stop, but stopped in the wrong place. So, if we go to Her Worship's Reasons for Judgment, she accepts the evidence that he did stop. However, he didn't stop in the right place. His evidence is he stopped just behind the stop sign and that is some ten metres back from the mouth of the intersection itself.

20 THE COURT: The description in the charging section....

25 MR. BURD: Is stop sign, fail to stop.

THE COURT: But....

MR. BURD: And our argument is that Section 116(1)(a) constitutes two separate charges under Regulation 817. One is stop sign, fail

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to stop, the other is stop sign, stop wrong place. And it is our submission that the wrong charge was laid and the court accepted the evidence that he did stop; however, the court was not satisfied that he stopped in the right place.

That being the case, the court had, I think, two options; one to dismiss the charge as laid, or secondly, the Crown could have made a request to have the information amended and then taken it from there. I do have a copy of the regulation, that does have the sections with the official wordings, and it's quite clear that there's two separate charges that can be made out under Section 116(1)(a).

THE COURT: Well, it's 116(1)(a) that is the charging section.

MR. BURD: Yes, sir.

THE COURT: And that requires a driver approaching a stop sign, to stop his vehicle at a marked stop line or if there isn't a marked stop line, before entering the nearest crosswalk, or if there isn't one, immediately before entering the intersection.

MR. BURD: That's right. And there is a particular offence and a particular wording, and that is, disobey stop sign, stop wrong place. And I'm sure had the defendant been charged with that offence, he may very well have accepted the out of court settlement and

pled guilty.

THE COURT: Well, without going into that, is there a marked stop line here?

MR. BURD: The evidence is that there isn't.

THE COURT: So, there's no marked stop line.

Is there a crosswalk?

MR. BURD: No.

THE COURT: And the offence is made out, if there is no stopping immediately before

entering the intersection.

MR. BURD: If he was charged with -- it's our respectful submission, if he was charged with stop sign, fail to stop....

THE COURT: Well, that's what 116(1)(a) is.

MS. JOHN: That's what he's charged with.

MR. BURD: Yes. But there's also under

regulation 817, a second charge including the same section -- that includes the wording of

the same section, and that is stop sign, stop wrong place. So, the regulations make up two

separate offences under that section. That is not uncommon. There are several sections in

the Highway Traffic Act that make up several different offences. And we are submitting

that the court accepted the defendant's

evidence that in fact, he did stop; however, he stopped at the wrong place, because he

stopped at the stop sign.

THE COURT: Well, did he stop immediately before entering the intersection?

MR. BURD: No. No, sir. His evidence is

quite clear that he stopped at the stop sign.
And it's our respectful submission....

THE COURT: I'm sorry, the evidence is clear
what?

MR. BURD: That he stopped at the stop sign,
or just previous to coming upon the stop sign,
but not at the intersection. So, it is our
submission that if he was charged with stop
sign, stop wrong place, there would not have
even been an argument made. However, the
section was stop sign, fail to stop. And the
court accepted evidence that he did stop;
however, he stopped in the wrong place. It's
a technical argument.

THE COURT: What's the regulation.

MR. BURD: The regulation is 817.

THE COURT: But it's pursuant to what, the
Highway Traffic Act?

MR. BURD: Pursuant to the Provincial Offences
Act and it's the section that governs the
official wordings of the offences under the
Highway Traffic. I think it's schedule five,
Regulation 817. I do have a copy of that.

THE COURT: Let me look at that. I don't
remember ever seeing such a thing.

MR. BURD: Under here it's rules of the road.
I do have a copy of the new Provincial
Offences Act.

THE COURT: What are you showing me, words or
expression?

MR. BURD: Yes. That is the Provincial

Offence Act....

THE COURT: Well, that's just....

MR. BURD: ...Regulation 817.

THE COURT: That allows -- does it do any more than allow the officer to use these words on a certificate of offence?

MR. BURD: That is correct.

THE COURT: That's all it does.

MR. BURD: It is the official wordings for the different sections in the Highway Traffic.

THE COURT: But what....

MR. BURD: My argument is that the Provincial Offences Act constitutes and legislates that there are two separate offences under Section 116(1)(a), that is, stop sign, fail to stop, and also stop sign, stop wrong place.

THE COURT: How could you get that. The charging section is Section 116.

MR. BURD: 1(a), yes. But the regulation....

THE COURT: Words or expression don't....

MS. JOHN: Don't regulate.

THE COURT: Words or expressions in the Provincial Offences Act, do no more than allow the officer, when charging under, for example, Section 116, to use the expressions without fear of being met with a motion that the information doesn't charge clearly or charges ineffectively. In other words, if you use the expressions in the Provincial Offences Act, or at least under this regulation passed under the Provincial Offences Act, you will not be

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approximately ten....

MS. JOHN: Ten.

MR. BURD: ...metres from the mouth of the intersection. Now, I guess one can argue immediately before entering the intersection, can ten metres be accepted as immediately before the intersection.

THE COURT: I suppose I have trouble in concluding that if you stop at the stop sign, that you're committing an offence.

MR. BURD: That is the wording of the Justice of the Peace, that you are committing an offence if you stop at the stop sign.

THE COURT: I don't understand that.

MS. JOHN: This is where we have -- this is where the technicalities come in, too, Your Honour, because as Your Honour outlined the three criterias for stopping at an intersection. And if you look at the Justice of the Peace judgment, she indicated -- and again, if you look at page 19 of the transcript....

THE COURT: Yes. I'm looking at 19.

MS. JOHN: The third paragraph, "the stop" sign, according to the officer, the last paragraph....

THE COURT: Yes.

MS. JOHN: ..."is eight or ten metres behind Britannia Road. The whole purpose of having to stop at a stop sign at an intersection, is not to have a stop sign where it is

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read -- that deal where a stop sign must be placed?

MR. BURD: Well....

MS. JOHN: That's the regulation, Your Honour.

MR. BURD: ...if I might, Your Honour, the line of thinking that you're using, Her Worship does say, "The whole purpose of having a stop sign at an intersection, is to not have a stop sign where it is meaningless for a vehicle to stop." Now, the Crown's case would support that where the stop sign is, it is meaningless.

MS. JOHN: But there's....

MR. BURD: So, then the question is raised, was the stop sign properly posted? If the court is finding that it's a meaningless place to be or the Crown's argument is that 30 feet back is a meaningless place for a stop sign to be, then she is making out our argument.

MS. JOHN: No. But there is no requirement for the defendant to stop at the stop sign. As 116(1) says, there's no requirement for him to stop at a stop sign. There's a requirement for him to stop at the line, the crosswalk or before entering the intersection. It does not say, shall stop at the stop sign.

THE COURT: But the gravamen of the offence is failing to stop.

MS. JOHN: Exactly.

THE COURT: It's not where to stop.

MS. JOHN: But failing to stop where and



that's the three criterias that were outlined, the stop line, crosswalk or before entering.

THE COURT: Well....

MS. JOHN: You see, they shall you shall stop and these are the three places you shall stop, at the stop line, at the crosswalk or before entering. He didn't do any one of those three.

THE COURT: But these things have to be reasonably interpreted. Surely, if a car stopped 18 inches from the stop line, he's not committing an offence, or is he?

MS. JOHN: From the....

THE COURT: Supposing there's a stop line there....

MS. JOHN: Okay.

THE COURT: ...and he doesn't stop on the line, he stops 18 inches behind it.

MS. JOHN: Well, no, he's not committing an offence.

THE COURT: Why not?

MS. JOHN: Because he's in close proximity to the stop line, 18 inches.

THE COURT: Where does that say?

MS. JOHN: Well, it's at the stop....

THE COURT: It doesn't say in close....

MS. JOHN: Well, when you....

THE COURT: No, no.

MS. JOHN: ...interpret it at the stop line....

THE COURT: Okay, two feet from the stop line,

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MR. BURD: Well, that's the officer's evidence....

THE COURT: Why....

MR. BURD: ...but is that from the back of his vehicle or is that from the front vehicle? From the front tires or the rear tires?

MS. JOHN: Well....

MR. BURD: I think that's the spirit that Your Honour is trying to get at, is....

MS. JOHN: No.

MR. BURD: ...who's to....

THE COURT: Why did he do that, by the way? I didn't read the transcript, but why did he stop ten metres behind?

MR. BURD: At the stop -- he felt that that's....

THE COURT: He stopped at the sign?

MR. BURD: He stopped at the stop sign, yes.

THE COURT: And the sign is ten metres....

MR. BURD: And he waited for the traffic and he proceeded. And the officer's interpretation was that, I guess where he stopped, he didn't abide by Section 116(1)(a).

THE COURT: That's not a reasonable interpretation that you're putting on it. I would have thought that when a stop sign is placed at an intersection, is what that requires is a stopping at that intersection.

MS. JOHN: Exactly.

THE COURT: And that these sections particularize where you can -- surely --

sometimes if you drive along the Kingsway,
stop signs....

MS. JOHN: You see, that's why you go to the
charging section, because these are the places
that require where you should stop and the
purpose of the stopping is to ensure the
traffic -- you can clear traffic. You cannot
stop ten metres back and say....

THE COURT: Why is that stop sign ten metres -
- maybe that stop sign is not in the right
spot.

MS. JOHN: Well....

THE COURT: Maybe there is no stop sign.

MS. JOHN: Then the onus would be then for the
defence to show it was not there.

THE COURT: I remember in practice, in
negligence actions, that there was a great
deal of litigation as to whether the stop sign
was the right size. What section....

MS. JOHN: The right height.

THE COURT: The right position, the right
height, behind trees and the like.

MS. JOHN: Regulation 486.

THE COURT: What does it say? Where does the
stop sign have to be?

MS. JOHN: I don't have my Act with me, but if
you look at Regulation 486....

THE COURT: Did you check that out? I mean,
what's the stop sign doing there anyway?

MR. BURD: If it is improperly posted....

THE COURT: What's the....

MR. BURD: ...then one would assume that it has no....

THE COURT: If it's improperly posted, then there is no stop sign within the meaning of....

MR. BURD: There is no offence made.

THE COURT: That's why I'm asking. Maybe that's the defence here.

MS. JOHN: I don't think you'll get a distance from the street. You'll only get the height and the size.

MR. BURD: I don't think so. I think it's just height, the size, the colour.

MS. JOHN: Exactly.

THE COURT: I can't remember.

MR. BURD: But I may....

THE COURT: I think that -- I recall that there was very much detail about where the sign had to be placed. It had to be on the right hand side of the road; it had to be a certain dimension....

MS. JOHN: Dimension.

THE COURT: ...certain colour; certain height.

MS. JOHN: Oh, here is the stop sign, Your Honour.

THE COURT: What does it say?

MS. JOHN: Shall be octagonal in shape....

THE COURT: Yes.

MS. JOHN: ...and shall not be less than 60 centimetres in height....

THE COURT: Right.

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MS. JOHN: ...not less than 60 centimetres in width; bear the word stop in white retro-reflective letters of not less than 20 centimetres in height, on a background of red retro-reflective material.

THE COURT: All right. Should it say about where it should be?

MR. BURD: Section 7, sir, it says....

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THE COURT: What section are you looking at? Maybe I can....

MR. BURD: Regulation 486, number seven under stop signs.

THE COURT: Is it in here?

MR. BURD: It says it should be 15 metres....

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THE COURT: Regulation 486?

MR. BURD: Yes.

MS. JOHN: I'll send up a copy to him. It's right there.

THE COURT: 486. Just a minute. Oh, maybe it's there.

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MR. BURD: Section seven has the distance from the curb and from the intersection.

THE COURT: "The stop sign shall be erected on the right side of the highway, facing approaching traffic at a point not less than 1.5 metres and not more than 15 metres from the intersecting roadway." Does that mean -- 15 metres from the intersecting roadway. What does that mean, from the centre or from the limits?

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MR. BURD: Or from the far curb. Who knows.

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THE COURT: Intersection roadway. I suppose it requires more thinking, but my feeling is that it's unreasonable to convict someone of failing to stop if they stop at the stop sign. Now, the question is, how can one articulate that, in the light of the way in which 116 reads?

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MR. BURD: Well, I think there's an interpretation that has to be made, not immediately before entering the intersection and there would have to be some interpretation as to what immediately before entering the intersection is, in metres or feet.

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MS. JOHN: Well, that's a new book, Your Honour. It will be Section 136 if you're looking at a new book.

THE COURT: Section 136 is Section 116 now?

MS. JOHN: Yes.

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MR. BURD: Yes. But again, I think, as it's always argued, it's the spirit of the act here, and the spirit of the act is that the man did come to a stop and he could see oncoming traffic and it was safe to proceed after he stopped. And in the spirit of the act, he really committed no offence.

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THE COURT: These offences are routinely violated, aren't they?

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MS. JOHN: Exactly, yes. So, with that, Your Honour, I guess it will come down to the interpretation of the section, and when one stops, how would one interpret immediately

before entering the intersection.

THE COURT: Well, it just violates my sense of -- I would not convict. I would not convict and I would have to think about why not.

MS. JOHN: But you see, because you have in the Regulations, it shall be within 15 metres....

THE COURT: I know. I know.

MS. JOHN: ...the stop sign is within ten metres. Yes, it is a regular routine traffic offence, Your Honour. That's the difficulty.

THE COURT: It's always violated.

MR. BURD: I mean, if an officer were to be....

THE COURT: I think the rule is that it's violated, right?

MS. JOHN: Yes.

THE COURT: How long was this officer on the force?

MR. BURD: I don't think there's any evidence to that effect?

MS. JOHN: There's no evidence on that.

THE COURT: Maybe, there's....

MS. JOHN: Say about a year and a half or two. I'm just assuming.

THE COURT: Was there an accident?

MR. BURD: No, sir.

THE COURT: No fatality or anything like that?

MS. JOHN: No.

MR. BURD: The officer was not -- usually when these offences come up at trial, the officer

is there for the specific purpose of observing the stop sign in a complaint area. That is not the case here. The officer just happened to be coming along the intersecting roadway.

THE COURT: Maybe he just graduated out of Aylmer or something.

MS. JOHN: I know he has been around for a bit, Your Honour.

THE COURT: I don't know. Well, I wouldn't convict, but the question is, would I allow the appeal.

MR. BURD: Yes, that certainly is the question.

THE COURT: And how can I allow the appeal? I would never convict. I can't imagine my -- unless there was an accident or a fatality, or a negligence action or something. It seems strange. What provokes him to lay a charge like this?

MS. JOHN: Well, sometimes it's a complaint area....

THE COURT: It's hard to understand.

MS. JOHN: It's a complaint area, especially residential and the police force get these complaints and they set up a certain area to monitor the stop signs. That's why they're charged regularly.

MR. BURD: In this case, however, if you read the transcript, the officer was just on his way and was travelling at some rate of speed, approximately 50 kilometres per hour down

Britannia Road, and they were going in
 opposite directions, as a matter of fact. So,
 it is not one of those situations where the
 officer is there because there's a lot of
 traffic, children, residential area. This is
 an industrial area.
 THE COURT: I'm going to allow the appeal on
 this basis, that 136(1) only applies where
 there's no stopping and then it should be
 further litigated.
 MS. JOHN: Okay.
 THE COURT: I'm going to say that it only
 applies where there's no stopping.
 MS. JOHN: I think if Your Honour puts that
 in, then you'll have people stopping four car
 length and then they'll say, look, I stopped.
 It will be relative to the stop sign. I think
 it should be clarified, if there's stopping at
 the stop sign, then maybe technically they
 have complied.
 THE COURT: Well, I'm approaching on the basis
 that he stopped at the stop sign.
 MS. JOHN: At the stop sign. But, you know,
 you'll have people using....
 THE COURT: And that, in my mind, satisfies
 the....
 MS. JOHN: The stopping.
 THE COURT: ...the principle that motivates
 Section 136, that Section 136 is essential
 legislation in those cases where there is no
 stopping.

MS. JOHN: At the stop sign.

THE COURT: And when a person says he stopped half way down the block, well, then, different considerations would clearly apply. But....

MS. JOHN: But if Your Honour gives an open judgment if there is no stopping, then it will be subject to a wide interpretation. That's why I was asking if there is a stopping at the stop sign, then....

THE COURT: No, because I think the gravamen of the offence is a failure to stop.

MS. JOHN: At the stop sign.

THE COURT: At the stop sign. At the stop sign. And that there is a stopping here and therefore, that 136 is not violated.

MS. JOHN: Okay.

THE COURT: Common sense drives me to that conclusion.

THIS IS TO CERTIFY THAT the foregoing is a true and accurate transcription of the recording (my notes), to the best of my skill and ability.

Misty Soprano, Court Stenographer