

Case Name:

R. v. Zilaie

IN THE MATTER OF an appeal under the Provincial Offences
Act, R.S.O. 1990, c. P.33, as amended

Between

Maziar Zilaie, respondent, and
Her Majesty the Queen, appellant

[2002] O.J. No. 2144
Court File No. 3811 999 99 0959 00

Ontario Court of Justice
Krelove J.

Heard: November 7, 2000.

Judgment: May 17, 2002.

(9 paras.)

The appellant appeals the acquittal of the respondent by Justice of the Peace D. White on March 21, 2000 and requests that the respondent be found guilty of the charge.

Cases considered:

R. v. Colavita Construction Ltd., [1993] O.J. No. 4484 (O.C.J., Atwood, J.).
R. v. 29934752 Canada Inc. (c.o.b. as Highland Transport), [1997] O.J. No. 6308 (O.C.J.).
R. v. Laidlaw Environmental Services Ltd., unreported decision of Justice D.M. Stone of the Ontario Court of Justice dated February 26, 1998.
R. v. 2934752 Canada Inc., unreported decision of Justice G. Regis of the Ontario Court of Justice dated February 7, 2000.
R. v. Germanis, [2001] O.J. No. 3225 (O.C.J., Lampkin, J.).

Counsel:

No counsel appearing for the respondent.
B. Bhangu, for the Crown.

KRELOVE J.:—

FACTUAL BACKGROUND:

¶ 1 On May 23, 1999, Constable Maureen Light of the Ontario Provincial Police was dispatched to the scene of a single vehicle accident. Upon her arrival she viewed a motor vehicle that had caught fire after colliding with a telephone pole. She had discussions with the driver of the vehicle and also with a person that she identified as the owner of the vehicle. The "owner" provided her with a document of ownership which identified Maziar Zilaie of 126 St. Paul Avenue, Apartment 201, Brantford, Ontario as the owner. This person also identified himself to the officer by showing her a valid Ontario driver's licence in the name of Maziar Zilaie. The officer requested proof of insurance which he was not able to provide. The defendant was charged "with being the owner of a motor vehicle, did permit the motor vehicle to be operated on highway while the said vehicle was not insured under a contract of automobile insurance contrary to Section 2(1)(b) of the Compulsory Automobile Insurance Act." The defendant did not attend at his trial.

THE ISSUE:

¶ 2 The main issue argued in this appeal is whether the appellant had established that the defendant was the owner of the vehicle by virtue of Constable Light's evidence that the defendant provided a vehicle ownership document which she reviewed and determined was in the name of the defendant.

ANALYSIS:

¶ 3 The prosecution must establish beyond a reasonable doubt that the defendant was the owner of the vehicle at the time of the offence.

¶ 4 Constable Light's testimony that she was given an ownership document by the owner which she reviewed and determined to be in the name of the owner is hearsay evidence (see *R. v. Germanis*, [2001] O.J. No. 3225 (O.C.J., Lampkin, J.)). In order for such evidence to be admissible for the truth of its contents, it must fall within one of the exceptions to the hearsay exclusion rule. No such exception has been established in this case. Alternatively such hearsay evidence may be admitted for the truth of its contents based upon the principled approach to admissibility established by the Supreme Court of Canada in *R. v. Khan* (1990), 59 C.C.C. (3d) 92 and other cases. Both reliability and necessity must be established as part of the principled approach. However, necessity can not be established in this case as the prosecution could have proved ownership by obtaining and filing a certificate of the Registrar of Motor Vehicles pursuant to Section 210 of the Highway Traffic Act.

¶ 5 Accordingly, the Learned Justice of the Peace was not in error when he determined that the prosecution had failed to establish beyond a reasonable doubt that the defendant was the owner of the vehicle in question.

¶ 6 I hasten to add that the result in this case may have been different if there was admissible admission by the respondent that he was the owner of the vehicle.

¶ 7 I also note that my review of the transcript indicates that there does not appear to be evidence that the vehicle in question was being operated on a highway or that the respondent permitted the vehicle to be operated. These are elements of the offence that must be established. However, these issues were not the subject matter of submissions before me.

CONCLUSION:

¶ 8 Therefore the appeal is dismissed.

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Appendix

Cases Considered

¶ 9

1. R. v. Colavita Construction Ltd., [1993] O.J. No. 4484 (O.C.J., Atwood, J.).
2. R. v. 29934752 Canada Inc. (c.o.b. as Highland Transport), [1997] O.J. No. 6308 (O.C.J.).
3. R. v. Laidlaw Environmental Services Ltd., [1998] O.J. No. 6426, decision of Justice D.M. Stone of the Ontario Court of Justice dated February 26, 1998.
4. R. v. 2934752 Canada Inc., unreported decision of Justice G. Regis of the Ontario Court of Justice dated February 7, 2000.
5. R. v. Germanis, [2001] O.J. No. 3225 (O.C.J., Lampkin, J.).

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