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R. v. Eagles

Between
Her Majesty the Queen, respondent, and
Stuart Eagles, appellant

[1976] O.J. No. 1019

Ontario Supreme Court - High Court of Justice
Toronto Weekly Court
Robins J.

October 18, 1976.
(9 pp.)

Counsel:

Irwin Koziebrocki, for the Crown respondent.
M.J. Penman, for the appellant.

¶ 1 **ROBINS J.**:— This is a case of a speeding ticket. It comes to this court on appeal by way of stated case from a conviction by a Justice of the Peace on a charge that the accused "on the 11th day of October, 1975, at 3.10 p.m. in the City of Sarnia did commit the offence of speeding, contrary to Section 82(1)(b) of The Highway Traffic Act."

¶ 2 The Crown's evidence was that on October 11th, 1975, at approximately 3.10 p.m. the accused was travelling westbound on Lakeshore Road when his speed was recorded at 48 miles per hour on radar equipment set up on Lakeshore Road at a point just north of Hansard Street. The accused's evidence was that he had not been on Lakeshore Road before; he had driven in from Toronto on Highway 7 and had come down Modeland Road, where the maximum speed is marked at 50 miles per hour, then turned onto Lakeshore Road; he was not familiar with Sarnia and did not believe there were any signs advising motorists westbound on Lakeshore Road between Modeland Road and the point at which he was stopped that they were entering the City of Sarnia or that the speed limit was 30 miles per hour. On this record a conviction was registered against the deceased.

¶ 3 In his statement of the case the learned Justice of the Peace noted that there was no direct evidence before him of the speed limit which the accused allegedly exceeded or that he was driving a motor vehicle within the City of Sarnia or within a city, town, village, police village or built-up area. In convicting the accused he said, "I called upon my knowledge of the City of Sarnia and took judicial notice of the fact that the place where the offence was alleged to have been committed was within the City of Sarnia. I proceeded on the basis that since the accused was therefore driving within the City of Sarnia, the speed limit which the accused had allegedly exceeded was 30 miles per hour ... I found that there did not have to be a sign indicating that one is entering the City of Sarnia because Lakeshore Road at Murphy becomes the city limits of the City of Sarnia." The following questions were stated by him for the opinion of this court:

> "(1) Did I err in law in holding that the accused was guilty of the offence of speeding when there was no evidence before me of the speed limit which he had allegedly exceeded?
> (2) Did I err in law in taking judicial notice of the fact that the accused was driving a motor vehicle within a city, town, village, police village or built-up area when there

was no evidence before me that the place where the accused was alleged to have committed the offence of speeding was within such a city, town, village, police village or built-up area?

(3) Did I err in law in holding that the accused should be convicted of exceeding the speed limit within a city when there are no signs indicating to the accused that he had in fact entered the city and the accused was unaware that he had so entered the city?"

¶ 4 The main argument on this appeal revolved around question 2 which I shall consider first. After the Crown failed through inadvertence or otherwise to adduce evidence to prove as a fact that the accused was driving at the material time within the city limits of Sarnia, was the court entitled to take judicial notice of this fact?

¶ 5 The Crown's position is that judicial notice may be taken of geographic locations and the learned Justice of the Peace was right in finding on the basis of his own knowledge that the location in question was in the city. In support of this position reliance was placed on three cases: White v. Fudell, 116 C.C.C. 67; Regina v. Bednarz, 130 C.C.C. 398 (Ont. C.A.) and Regina v. Brown, 133 C.C.C. 89.

¶ 6 In Fudell the offence charged was careless driving, in Bednarz it was assault causing bodily harm and in Brown driving while impaired; in each of these cases the charge alleged that the offence was committed in a named township and county but no evidence was presented at trial that the place of the offence was in fact within the township or county; in all three cases it was held that the fact that the location of the offence was within the township or county named in the charge was a matter which could be judicially noticed.

¶ 7 In Fudell, Kelly J. said at p. 71:

"In the instant case the accused was charged at the scene of the accident, so that he was well aware of the offence with which he was charged and its location, and it cannot be said that he was misled or prejudiced in his defence by the failure of the Crown to prove in evidence the actual location where the offence took place. The right and justice of the matter is that the accused knew exactly what he was charged with and where it was alleged the offence was committed.

I am further of the opinion that in the circumstances of this case the Magistrate was right in taking judicial notice of the fact that Hickory Corners was within the confines of Middlesex County. According to the stated case it was proved in evidence that the offence took place 'on Number 22 Highway between Sarnia and London' and the accident took place 'between eighty-one and Hickory Corners', although no evidence was given as to the geographical location of Hickory Corners. Judicial notice may be taken of the territorial and administrative divisions of the country into counties and all matters which are so notorious that evidence of their existence is deemed unnecessary."

¶ 8 Morden, J.A. in Bednarz approved Fudell and at p. 400 observed:

"The short point is, - could the Magistrate sitting at Smooth Rock Falls take judicial notice of the fact that the micro-wave or T.V. tower at Unionville, which was 2 miles east of Smooth Rock Falls, was located in the Township of Kendry? In my opinion he could, and I assume he did, take notice of this fact, the truth of which if it had been disputed, and it was not, would have been capable of quick and accurate demonstration. Formal proof of that fact, which was obviously within the knowledge of the Magistrate, the Crown counsel and the accused, was unnecessary."

¶ 9 It is important, I think, to note that in each of these cases (as well as in a recent decision of the Court of Appeal on the same point, Regina v. Bridge et al., unreported, February 27th, 1976), location was significant only for the purpose of identifying the geographic area within which the offence was committed or to support the territorial jurisdiction of the magistrate. The offence was an offence regardless of where it occurred; its character was not affected by its location; location was not an element of the offence. The accused in these cases knew the

offence with which they were charged, knew the place where it was committed and could not be said to have been prejudiced in their defence when the Crown did not present evidence that the place where the offence was committed was actually within the named township or county and the court took judicial notice of this fact.

¶ 10 In the present case we have what in my opinion is a different and distinguishable situation. Here the offence charged is speeding in Sarnia contrary to s. 82(1)(b) of The Highway Traffic Act. Under s. 82(1), which reads in part,

> "No person shall drive a motor vehicle at a greater rate of speed than,
>
> (a) 50 miles per hour,
>
> (i) on a highway not within a city, town, village, police village or built-up area, or
> (ii) on a highway designated by the Lieutenant Governor in Council as a controlled-access highway under The Highway Improvement Act, whether or not such highway is within a city, town, village, police village or built-up area;
>
> (b) subject to clause a, 30 miles per hour on a highway within a city, town, village, police village or built-up area;"

the relevant speed limit is determined by reference to location - driving on a highway within a city, town, village, police village or built-up area, 30 miles per hour - driving on a highway not within those areas, 50 miles per hour. Location is an essential ingredient of a charge brought under this section; an accused cannot be convicted of driving contrary to s. 82(1)(b) if there was no evidence that he was within one of the designated areas. In the instant case, the prosecution not having tendered evidence to prove that the accused was driving within Sarnia, can the court itself provide the evidence by invoking judicial notice of the fact?

¶ 11 In my opinion it cannot. The onus is on the Crown to produce evidence to prove beyond reasonable doubt the essential elements of the offence charged and a court should not dispense with the production of evidence of material allegations. Judicial notice in my view ought not to be used to relieve the Crown of its failure to prove an essential averment of the charge. In the present circumstances where a person unfamiliar with the area is driving in a 50 mile per hour zone and is alleged to have crossed into a 30 mile per hour zone without signs so indicating, simple fairness it seems to me requires that there be evidence presented to establish that he was in truth within the 30 mile per hour zone. It cannot be concluded here, as it was in Bednarz, that judicial notice was taken of a fact "obviously within the knowledge of the Magistrate, the Crown counsel and the accused", nor can it be said that judicial notice was not prejudicial to the defence when it was applied after the evidence had been concluded in order to fill a gap in the prosecution's case and deny the accused an acquittal to which he was otherwise entitled.

¶ 12 Furthermore, without questioning the correctness of the learned Justice of the Peace's personal knowledge of the boundaries of Sarnia or its geography, there is nothing in the stated case to indicate either that the fact of Lakeshore Road at a point north of Hansard Street being within Sarnia or of Lakeshore Road at Murphy becoming the city limits is, in the words of the cases on judicial notice, a matter of "common knowledge" or so "notorious" or "indisputable" a fact that evidence of it should be deemed unnecessary. As a general proposition the actual boundaries of a municipality would not appear to me to be sufficiently notorious so as to be in the same category as principal geographic features or well known places, cities and towns within a county or other jurisdiction and entitled to judicial recognition without proof but, in any event, for the reasons stated it is my conclusion that judicial notice should not have been taken in the circumstances of this case and question 2 should be answered in the affirmative. See Rex et rel. Monaghan v. Vautour, 94 C.C.C. 312; Regina v. Uvery, 1 D.L.R. (3d) 29; Regina v. Porter, 130 C.C.C. 116 and Rex v. Zarelli & Newell, 55 C.C.C. 314.

¶ 13 Since my answer to question 2 decides the matter it is unnecessary to deal with questions 1 and 3. I might, however, comment on question 1 to the extent that, and this is implicit in what I have said, there is no necessity for the Crown in my opinion to produce evidence of the speed limit which allegedly existed. This is determined by the section under which the charge was brought, s. 82(1)(b) of The Highway Traffic Act. Judicial

notice of the statute is obligatory: The Interpretation Act, R.S.O. 1970, c. 225, s. 7(1); Regina v. Steam Tanker "Evgenia Chandris", 65 D.L.R. (3d) 553.

¶ 14 In the result since the answer to question 2 is "yes" the conviction will be quashed.

ROBINS J.

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