** Unedited **

Indexed as:

R. v. Newton

Between
Her Majesty the Queen, respondent, and
Peter John Newton, appellant

[1997] O.J. No. 708

Ontario Court of Justice (Provincial Division)
Libman Prov. J.

February 18, 1997.
(12 pp.)

Motor vehicles — Regulation of vehicles and traffic — Rate of speed, offences — Validity of charge — Rate of speed, jurisdiction — Offences — Appeals.

Appeal under the Provincial Offences Act of a conviction for speeding under the Highway Traffic Act. The territorial jurisdiction section of the Provincial Offences Act was at issue. The certificate of offence stated that the offence occurred in York, but the matter was made returnable in Simcoe County. The charging officer had testified that the offence began in Simcoe, but ended in York. The defendant argued that the Act favoured the interests of the defendant and that as he resided in Toronto, he should be entitled to have his trial in Bradford, not Barrie, as Bradford was closer to Toronto. Section 29(2) of the Provincial Offences Act provided that the proceeding should be heard in a place reasonably proximate to the place where the offence occurred.

HELD: Appeal dismissed. The requirement of reasonable proximity had been satisfied in these circumstances. The territorial jurisdiction of both counties was properly engaged with reference to the speeding infraction. As the court in Barrie provided full-time sittings and the court in Bradford was open on a part-time basis, it was in the defendant's and society's interest to have the matter heard by a court providing more timely and varied opportunities to make full answer and defence.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, ss. 11(b), 24(1).
Highway Traffic Act, s. 128.
Provincial Offences Act, ss. 9.1, 28, 29(1), 29(2)(a), 29(2) (b), 29(3), 46(2), 135.

Counsel:

G. Parker for the appellant.
P. Burke for the respondent.

¶ 1 **LIBMAN PROV. J.**:— This is an appeal under s. 135 of the Provincial Offences Act following the appellant's conviction for speeding pursuant to s. 128 of the Highway Traffic Act. At issue is the territorial jurisdiction section of the Provincial Offences Act, particularly the meaning of the phrase, "in a place reasonably proximate", in s. 29(2)(a).

History of the Proceedings

¶ 2 On 9 August, 1995 the appellant Was issued a certificate of offence by S. Sutton, provincial offences officer, for speeding 130 kilometres per hour in a 100 kilometre per hour zone. The offence location was described as "S/B HWY 400 N/O KING RD, YORK". The certificate went on to state that the set fine was $116.25; the total payable was indicated as $136.25. According to the summons set out at the bottom of the certificate, the summons was issued for, and filed at, the Ontario Court (Provincial Division) at 30 Poyntz Street, Barrie, Ontario.

¶ 3 The matter proceeded to trial at Barrie on 7 December, 1995 at which time the appellant was deemed not to dispute the charge and a finding of guilt was entered. Accordingly, the set fine of $116.25 was imposed. Subsequently, the appellant brought an appeal under the Provincial Offences Act, challenging his conviction. He was represented by Mr. Parker, as agent, during the appeal proceedings. On 4 September 1996, Payne J, allowed the appeal and ordered a new trial, the question of territorial jurisdiction being raised, but not adjudicated upon, by the court.

¶ 4 The appellant appeared for his re-trial at Barrie before Justice of the Peace D. White on 18 November, 1996. The issue of territorial jurisdiction was again raised at this time by Mr. Parker, agent for the appellant, in the form of a pre-trial motion. The learned justice concluded that the court had jurisdiction to deal with the matter in that the requirement of reasonable proximity under s. 29(2) of the Provincial Offences Act was met. Thereafter the court registered a conviction under s. 9.1, the appellant being deemed not to dispute the charge as Mr. Parker indicated that he was not representing the appellant following the conclusion of the pre-trial motion. In the result, the set fine of $116.25 was imposed.

¶ 5 By way of notice of appeal dated 22 November 1996, the appellant seeks to set aside the conviction and substitute an acquittal. The ground of appeal, as framed in the notice of appeal, reads thusly:

> The court was outside the territorial jurisdiction as per s. 29 P.O.A. as such no conviction could be registered under s. 9.1 P.O.A.

¶ 6 The appeal was argued on 14 February, 1997. Following oral argument judgement was reserved.

Summary of the Facts

¶ 7 A brief recitation of facts may be gleaned from the certificate of offence and the previous appeal proceedings. The appellant was charged with speeding 130 kilometres per hour in a 100 kilometre per hour zone, the offence location being specified as southbound Highway 400, north of King Road, in the Municipality (Region) of York. The offence was alleged to take place on 9 August, 1995 at 9:20 a.m. According to the certificate, the summons was issued for the Ontario Court (Provincial Division) at Barrie, Ontario. The Appellant's address is recorded on the certificate as being Toronto.

¶ 8 It is common ground that the certificate alleged an offence location in York whereas the matter was made returnable to a court holding sittings in an adjoining county, namely, Simcoe. The nearest court in Simcoe County, proximate to the offence location in York, is situate in Bradford whereas Barrie is approximately 25 kilometres north of Bradford. However, the court in Bradford, unlike that in Barrie, does not hold full time sittings during the week as the court is shared with municipal offices; nor does the former have a dedicated office for the clerk of the court or other court personnel.

¶ 9 It is not clear between which locations the provincial offences officer, an Innisfil police officer, observed the appellant speeding on Highway 400. The certificate itself did not specify such locations, referring only to the point at which the appellant was stopped. However, it was stated by Mr. Parker at the previous appeal proceedings that "of course it is conceded that it started somewhere in Simcoe and got into York". Mr. Parker went on to explain that "it couldn't be determined yet exactly where the commencement of this took place."

Legislative Provisions

¶ 10 Territorial jurisdiction under the Provincial Offences Act is governed by s. 29. For the purposes of this appeal, the relevant subsections are s. 29(1) and (2). These provisions read as follows:

> 29(1) Subject to subsection (2), a proceeding in respect of an offence shall be heard and determined by the Ontario Court (Provincial Division) sitting in the county or district in which the offence occurred.
>
> (2) A proceeding in respect of an offence may be heard and determined in a county or district that adjoins that in which the offence occurred if,
>
> (a) the court holds sittings in a place reasonably proximate to the place where the offence occurred: and
>
> (b) the place of sitting referred to in clause (a) is named in the summons or offence notice. [emphasis added]

¶ 11 These subsections have remained unchanged, but for re-numbering, since the enactment of the Act: S.O. 1979, c. 4, s. 30(1) and (2).

¶ 12 Section 29 appears under Part IV of the Act respecting trial and sentencing. The provisions in Part IV apply to proceedings commenced under Part I, II or III of the Provincial Offences Act; s. 28.

Position of the Parties

¶ 13 It was the position of the appellant that s. 29 of the Provincial Offences Act favours the interests of the defendant and should therefore be interpreted in this light. Accordingly, if it is more convenient for the defendant and his or her witnesses to travel and bear the costs of court proceedings at a court location or sittings in an adjoining county or district which is not as convenient or well-suited for the prosecution or police authorities, it is the defendant's interests which ought to govern. Thus, Mr. Parker submits, the appellant, who resides in Toronto, should be entitled to have his trial in Bradford, not Barrie, Bradford being the more convenient location for him.

¶ 14 In support of this contention, Mr. Parker relies on the following passage in Drinkwalter and Ewart, Ontario Provincial Offences Procedure (Carswell, 1980), p. 129:

> As indicated, the basic presumption in favour of limited territorial jurisdiction is maintained by s. 30(1). [now s. 29(1)] This presumption has its roots in the ancient history of criminal law, but can be justified on a number of still valid bases. It makes fundamental sense to conduct trials where offences occur, as a matter of convenience to the witnesses, the victim and, generally, the defendant. Apart from convenience, local jurisdiction permits the courts to impose the penalties which are appropriate in the area for individual offences. Taking fish out of season may be a minor offence in Toronto, but a very serious offence in Red Lake. By ensuring that, as a general rule, offences occurring near Red Lake are tried in that area, the Act helps ensure that a justice who is aware of the needs of that community will preside over the trial. [emphasis added]

¶ 15 Mr. Parker went on to observe, in his very able submissions, that any ambiguity in the wording or interpretation of s. 29(2)(a) ought to be resolved in favour of the defendant.

¶ 16 Conversely, it was submitted by counsel for the Crown respondent, Ms. Burke, that the phrase "reasonably proximate" in s. 29(2)(a) must be interpreted as to strike a balance between the interests of the defendant but also those of the public, including the administration of justice. Crown counsel submits, in this regard, that the provision of a full time sittings of the provincial offences court in Barrie, in Simcoe County, as opposed to Bradford, a relatively short distance away in the same county, ensures that the public expense in maintaining such a court will be more standardized and reasonable.

¶ 17 A court which sits five days a week, equipped with a full time office of the clerk of the court available for service and filing of documents (Barrie), in contradistinction to a court which does not sit on a regular basis and where documents cannot therefore be filed routinely (Bradford), in fact accommodates the defendant's interests, reasons the Crown, by providing better access to the court. Such a court must, of necessity, furnish speedier and a more varied array of trial dates, as well as broader access to the administration of justice generally. Further, it is submitted, law enforcement and court resources may be more reasonably allocated to travelling to one such dedicated location, not to funding travel and court costs to diverse locations throughout the county.

¶ 18 It is finally observed by Ms. Burke that the use of the word "reasonably" modifying "proximate" in s. 29(2)(a) reflects a recognition on the part of the legislation that the interests of the defendant are not to be emphasized over those of the public. Were it to be otherwise, submits Ms. Burke, the wording of the section would be couched in language clearly stating that the place where the court holds sittings under s. 29(2)(a) is that which is closest or nearest to the place where the offence occurred, whereas the section describes the place as one which is reasonably proximate to the offence location.

Analysis

¶ 19 It can hardly be gainsaid that the basic rule in respect of territorial jurisdiction, as stated by subsection 29(1), is that a proceeding under the Provincial Offences Act shall be conducted by the Ontario Court (Provincial Division) sitting in the county or district in which the offence occurred. See further in this regard Regina v. Giagnocavo (1995), 99 C.C.C. (3d) 383 (Ont.C.A.). [See Note 1 below]

Note 1: This decision also notes that the provincial offences court is a "court of competent jurisdiction" under subsection 24(1) of the Charter of Rights and Freedoms.

¶ 20 However, the proceeding may be conducted in an adjoining county or district if the court sits in a location reasonably proximate to the place where the offence occurred and the said place is named in the summons or offence notice: subsection 29(2). There is also provision for the transfer of proceedings, other than those under subsections (1) and (2), to the proper county or district, and an award of costs to the defendant where he or she so appears: subsection 29(3).

¶ 21 In order for the exception justifying the expansion of territorial jurisdiction pursuant to subsection 29(2) of the Provincial Offences Act to obtain, the place of the sittings of the court must meet the test of reasonable proximity [s. 29(2)(a)] and be specified in the summons or offence notice [s. 29(2)(b)]. Nothing more is required; nothing less will suffice.

¶ 22 There can be no dispute respecting the secondary requirement in subsection 29(2)(b) being satisfied as the certificate of offence refers to the Ontario Court (Provincial Division) at Barrie, Ontario. Hence, the place of sitting (Barrie), said to be in reasonable proximity to the locus of the offence (southbound Highway 400 north of King Road, York) a named in the summons or offence noticed, as mandated by subsection 29(2)(b).

¶ 23 With respect to the primary issue of reasonable proximity, as required by s. 29(2)(a), it is my respectful opinion that the learned justice of the peace did not err in holding that the City of Barrie "is in fact a reasonable proximity, is proximate to the place where the offence took place". This finding is in accord, in my view, with the clear intent of this provision of the Provincial Offences Act which seeks to strike a balance between the interests of the defendant and that of the public, including the administration of justice. Such a holding is more consonant with the very wording employed in s. 29(2)(a) of the Act, that is reasonableness being mandated in a consideration of the proximity of the sittings of the court in the adjoining county or district to the offence location.

¶ 24 I am therefore unable to give effect to the contention advocated by the appellant that s. 29 should be interpreted in manner which emphasizes the interests of the defendant only. To put it shortly, the wording of

subsection 29(2)(a) requires the court to consider reasonable proximity, not the closest or nearest or more convenient proximity, these latter phrases being more in keeping with the construction sought to be given by the appellant. It follows, in my view, that the interpretation of the provision, as favoured by the appellant, is not borne out by the very wording of s. 29(2)(a). This finding is fatal to the appellant's argument in the instant appeal.

¶ 25 Neither do I accept the argument that it is only the closest court location (in an adjoining county or district) to the site of the offence which must necessarily be more convenient to the defendant. While the distance between such locations may well be shortest - and thus more convenient or less expensive between which to travel - it is surely both in the defendant's and society's interest to provide greater access to the courts, by virtue of the additional and more varied sittings of a court which provides full time sittings with a dedicated office of the clerk of the court (Barrie) as opposed to one which is open only on a part-time basis without a court office or facilities for other court personnel (Bradford). It follows, in my view, that the former thus conveniences both the defendant and the public at large by providing more timely and varied opportunities for the defendant to make full answer and defence: see Provincial Offences Act, s. 46(2). [See Note 2 below] The provision of a rationalized allocation of precious court resources by means of a full time sittings of the court in reasonable proximity to the alleged location of the offence may also be said to be in the best interests, if not best convenience, of the public at large, including, of course, the appellant.

Note 2: In Regina v C.I.P. Inc. (1992), 71 C.C.C. (3d) 129 (S.C.C.), a s. 11(b) case, it was held that the Charter does not distinguish between types of offences. Accordingly, there was no basis for the argument that because the appellate was charged with a regulatory offence, the allowable time frame for bringing it to trial should be greater than it would be in other circumstances.

¶ 26 In terms of the fishing out of season analogy in Red Lake and Toronto, set out in Drinkwalter and Ewart and relied upon by the appellant, I do not think it can seriously be contended that the proximity of the counties in question is such that speeders on Highway 400 through Simcoe or York need be concerned that the justice presiding over the trial in the one will be cognizant of the needs of one county to the exclusion of the other. To the contrary, it is hard to discern any appreciable difference between them vis-a-vis the Highway Traffic Act offence of speeding in the circumstances of this case.

¶ 27 This is not a case, in any event, where the defendant is apprehended at one end of the county and brought to the sittings of the court in the adjoining county, which sittings occur at the other end of same. It may well be that the requirement of reasonable proximity under subsection 29(2)(a) of the Provincial Offences Act would not be satisfied in such circumstances. However, this is not the situation presented in the case at bar.

¶ 28 Indeed, in this case, the appellant was observed by the provincial offences officer, an Innisfil police officer, to be speeding "somewhere in Simcoe and got into York". Hence, the territorial jurisdiction of both the counties of Simcoe and York may be said to be properly engaged with reference to this speeding infraction. In such circumstances, it may fairly be contended that no one of these counties has greater claim to territorial jurisdiction than the other, the most appropriate determining factor between the two being reasonable proximity pursuant to s. 29(2) of the Provincial Offences Act, not the general rule in subsection (1) of local territorial preference.

Conclusion

¶ 29 In my respectful opinion, the learned justice of the peace did not err in finding that the requirements of s. 29(2) of the Provincial Offences Act were satisfied in the instant case. More particularly, the learned justice correctly determined that the primary requirement in subsection 29(2)(a) of reasonable proximity was met. Consequently, Justice of the Peace White did not err in finding, upon dismissing the pretrial motion, that the appellant should be deemed not to dispute the charge pursuant to s. 9.1, and that the set fine should be imposed.

¶ 30 The appeal must therefore be dismissed.

LIBMAN PROV. J.

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