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R. v. Teskey

Between
Her Majesty the Queen, respondent, and
Gertrude Teskey (in absentia), appellant

[2001] O.J. No. 3044

Ontario Court of Justice
Toronto, Ontario
Libman J.

Oral judgment: February 22, 2001.
(45 paras.)

Appeal — Summary conviction appeal — Grounds — Ground of appeal hurled allegation against integrity of justice of peace so unsubstantiated and baseless that it bordered on contempt of court.

Practice, process and procedure -- Legal representation -- Interim ban on appearance on appeal by agent whose understanding of duties called into question, pending agent's effort to purge apparent contempt after making baseless allegation against trial court's integrity -- Subsection 50(3) of Provincial Offences Act.

At trial before a justice of the peace on a charge of disobeying a stop sign, the defendant was represented by an agent who cross-examined the prosecution witness without interruption and then chose not to put in a defence. In his submissions, the agent pointed to some confusion over the location of the stop sign, whereupon the justice of the peace invited the prosecution witness to clarify this point of evidence. At no time did the agent object to the recall, even when asked by the justice of the peace whether he had anything to add. In the notice of appeal, the agent set out two grounds of appeal:

1. that the justice of the peace erred by re-calling a police officer to clarify a point of evidence; and
2. asking how many times is this justice of the peace was going to interfere with evidence.

Held:-- Appeal adjourned for over a month, pending which the agent was to make to take certain measures to purge what effectively amounted to a contempt of court.

A review of the transcript of the trial showed that the justice of the peace had recalled the witness solely to clarify a point of evidence and that the justice of the peace had not interfered with any evidence. In that context, the second ground of appeal was highly inappropriate as it suggested that the defendant had not received a fair trial because the justice of the peace was not interested in dealing with the case fairly. In fact, the second ground amounted to an unsubstantiated, baseless allegation against the integrity of a judicial officer that bordered on contempt of court. This agent did not understand the duties and responsibilities of an legal representative and the appeal court barred him from further appearances before the appeal court pending his re-attendance before the justice of the peace with a transcript of the appeal hearing and making appropriate comments to the justice of the peace re-appearance before the appeal court with a transcript of what transpired before the justice of the peace.

Statutes and Regulations Cited:

Provincial Offences Act, R.S.O. 1990, c. P-33, subsection 50(3).

Cases Cited:

Regina v. Morden (2000), 45 W.C.B. (2d) 571, [2000] O.J. No. 873 (Ont. C.J.).

Counsel:

Frederick DiBello, for the Provincial Crown.
Paul Periti, for the accused.

¶ 1 **LIBMAN J.** (orally):— Mr. DiBello, may we begin with the matter of Teskey, Gertrude Teskey?

¶ 2 MR. DiBELLO: Certainly. That's the Teskey matter. I'm sorry, I am trying to find that on the list. Oh, yes. Gertrude Teskey, number 15, yes.

¶ 3 **THE COURT**: Let me have the file?

¶ 4 MR. PERITI: Good morning, Your Honour. Paul Periti, appearing as agent for the appellant who is not before the court. I am ready to proceed. I have instructions to do so. My last name, for the record, Your Worship, is P-E-R-I-T-I, first initial "P". Your Honour, if I may just -

¶ 5 **THE COURT**: How dare you file this notice of appeal?

¶ 6 MR. PERITI: It is my intention, today, to apologize for the second grounds of relief, Your Honour. At the time -

¶ 7 **THE COURT**: Please, stand in front of me and be quiet.

¶ 8 Your client had a trial before a Justice of the Peace Burgess on the 29th of March, 2000. The charge was disobeying a stop sign. After the arraignment, police officer Orr testified. Following the testimony of the officer, you cross-examined this officer. None of your questions was interrupted and you were permitted to complete your cross-examination. Following that, you indicated that you were not going to call a defence.

¶ 9 The court asked the Crown to argue first and stated:

> Any submissions, Mr. Periti?

You made your argument at page 5 through 6 with regard to the location of the sign and the regulation.

¶ 10 Justice of the Peace Burgess, after hearing your argument, indicated:

> Could I just have the officer come back?

No objection was taken to that.

¶ 11 One reading of this transcript, at this point, was that he wanted to clarify the location of the sign. In that light, it would have been open to him to have the testimony read back. The first question that he asked was:

> When you said that the stop sign was on the west-north corner, what did you mean by that?

He did not, in any way, ask a leading question or suggest anything other than what may well appear to want to have an item of evidence clarified.

¶ 12 Following the three questions that he asked, he stated:

> Any questions out of that?

You then indicated you were not questioning here at this point.

¶ 13 You were then given an opportunity to say anything further. Justice of the Peace Burgess indicated to you:

> All right. Thank you. Anything you want to say, sir?

You replied:

> No thanks, Your Honour.

¶ 14 Justice of the Peace Burgess then stated:

> Okay. Thank you.

At no time did you take exception to what occurred.

¶ 15 Following was the notice of appeal. Do you have this in front of you?

¶ 16 MR. PERITI: I do have it. I do know what it says.

¶ 17 **THE COURT**: After indicating that your first ground was that the justice erred by re-calling the officer, you wrote:

> 2. How many times is this justice going to interfere with evidence?

You are accusing this man of bias and acting improperly. What have you to say?

¶ 18 MR. PERITI: Your Honour. It was my intention to apologize to the court for making that comment on the appeal.

¶ 19 **THE COURT**: How dare you make that type of comment? You didn't have the courtesy to bring to his attention that you had the concern. And then you put that in writing. What impression about the administration of justice do you think you've given your client?

¶ 20 What statement did you just make, Mr. Periti, too? I am asking you a simple question and you answer it now.

¶ 21 MR. PERITI: I did not leave a very good impression - Your Honour and -

¶ 22 **THE COURT**: This is absolutely despicable and disgraceful. The majority of people who have any contact with the criminal justice system in our province, as I have said time and time again, will have been informed by their dealings with the Ontario Court of Justice when they appear on these types of matters in a court. And you have now conveyed to someone, who has had their day in court, that they did not receive a fair trial because this justice of he peace is not interested in dealing with matters fairly. You should be absolutely ashamed.

¶ 23 MR. PERITI: I am, Your Honour.

¶ 24 **THE COURT**: Why shouldn't I hold you in contempt of court and send you to jail right now?

¶ 25 MR. PERITI: Just in my own defence, Your Honour, at the time of the trial, I had gotten a little emotional and I had taken it a little personal. I was my intention today to apologize for that particular comment. I will abandon the second ground, if given an opportunity.

¶ 26 **THE COURT**: Stop trying to give me self-serving, justifying rash like that. The trial was on March 29th. You filed this notice of appeal and filled it out two week later. Now, you step outside this courtroom. And I am going to recall this matter at 10:30. And you should take a very careful reflection on how you have contributed to the administration of justice in this province. Get out of here.

[Reporter's Note: At this point in the proceeding, the matter was held down and other matters on the court docket were called.]

¶ 27 **THE COURT**: Ms. Peterkin, if you wouldn't mind, would you just step outside and call all persons with business in this court, please?

¶ 28 MS. KASEY PETERKIN: Certainly.

[Reporter's Note: At this point in the proceeding, persons in absentia for matters on the court docket were dealt with.]

¶ 29 **THE COURT**: Mr. DiBello, at this stage, we will recall the matter in custody.

¶ 30 MR. DiBELLO: Certainly, Your Honour. Ms. Gertrude Teskey.

¶ 31 MR. PERITI: Good morning again, Your Honour. I have had this opportunity to reflect on the choice of words I had made in filing this appeal. I apologize for choosing those words and I completely see them as disrespectful to the court.

¶ 32 I have tried, in the past, to conduct myself as professionally as possible inside, and outside court when it comes to the interests of justice. I would like to say that, on this particular case, I felt it was a little personal, at the time. In the future, it is my intention to distance myself from cases such as this and not allow - or not allowed to appear, personally, or at all, Your Honour.

¶ 33 **THE COURT**: Nothing could be more important to a society than the opportunity to come to a courtroom and to have the hallmarks of our democratic institutions played out in full. When a defendant appears in these courts, whether or not he or she has representation, the hallmarks of our democratic legal institutions - such as "the presumption of innocence", "the burden of proof on the Crown" - are all engaged. To suggest that they are not applied in a fair way, simply out of a fit of peak with nothing more, is unacceptable.

¶ 34 You are a walking advertisement for why you, and your ilk, are in great need of regulation. Someone with a minimal education, lack of understanding of the courts, lack of respect of their very vital role, can walk into them and make unsubstantiated, baseless allegations. Judges of the appeal court have a duty and obligation to review the integrity of proceedings below. And when conduct as offensive as yours leaps out, I have a duty to deal with it in a very prompt way.

¶ 35 I am making the following orders as a judge of this appeal court. Listen to me carefully.

¶ 36 No later than March the 9th, I am ordering you to order, at your own expense, three copies of today's proceedings in front of me. You will then appear no later than the following week, in open court, before Justice of the Peace Burgess to provide him, during the session of the court, with a transcript of these proceedings and to make whatever remarks you feel are appropriate.

¶ 37 No later than the following week, you will order three copies - again at your own personal expense - of those proceedings. The following week is March the 26th. I am directing you to appear before me on that date with a copy of the remarks that you have made in open court before Justice of the Peace Burgess. I will consider on that date whether or not you ought to be held in contempt of court and, in the meantime, I am making an order under subsection 50(3) of the Provincial Offences Act, R.S.O. 1990, c. P-33, excluding you from appearing before this appeal court between today's date and March the 26th.

¶ 38 By your conduct and, in particular, by the manner in which you have contested this appeal, it is apparent to me that you, very particularly, do not understand and comply with the duties and responsibilities of an agent. The specific concern that I am bringing to your attention, in accordance with the reasons of this court in Regina v. Morden (2000), 45 W.C.B. (2d) 571, [2000] O.J. No. 873 (Ont. C.J.), arises from the manner in which you have sought to challenge a judgment of this court for nothing other than personal, improper reasons that reflects adversely on the entire administration of justice.

¶ 39 Do you have anything more to say?

¶ 40 MR. PERITI: I understand your comments, Your Honour, and I will get on it right away. I do want to apologize to the court, one last time, Your Honour.

¶ 41 **THE COURT**: This appeal will be adjourned to 10:00 o'clock on the morning of the 26th of March, when I will return to the orders that I have made and whatever future orders ought to be made in relation to you on that date.

¶ 42 MR. PERITI: Thank you, Your Honour.

¶ 43 MR. DiBELLO: Your Honour, would you like me to return on that date as well, since I was here today? Or is that necessary?

¶ 44 **THE COURT**: I don't know that that is required, Mr. DiBello. Whatever scheduling matters can be arranged in your office. I am sure that will be appreciated. But I know that your office has a number of commitments in the building and I don't want to interfere with them.

¶ 45 MR. DiBELLO: Very well, Your Honour. Thank you.

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