Indexed as:

R. v. Wilson

Between
Her Majesty the Queen, (respondent), and
Charles Wilson, Matthew Balaban, Robert McIntosh and Adem Asimovski, (appellants)

[2001] O.J. No. 4907
Court File Nos. 65188670, 65156850, 65154707 and 58502985

Ontario Court of Justice
London, Ontario
Livingstone J.

Heard: October 25, 2001.
Judgment: November 30, 2001.
(49 paras.)

Counsel:

Janet Charron, for the respondent.
S. Keyes, for the appellants.

¶ 1 **LIVINGSTONE J.**:— On appeals against the convictions imposed

re Wilson - on August 22nd, 2001

re Balaban - on July 25th, 2001

re McIntosh - on July 17, 2001

re Asimovski - on June 5th, 2001.

Introduction

¶ 2 [1] All of these appeals arise out of the same issue; namely whether a certificate of offence issued under Part 1 of the Provincial Offences Act, R.S.O. 1990, c. P33 is "complete and regular in its face".

¶ 3 [2] Each of these appeals deals with an error, or an omission on the face of the certificate.

¶ 4 [3] The appeals are unrelated except for that significant similarity. Since the appeals were argued by the same agents, on the same day, for the sake of efficiency Reasons are being provided for all four appeals simultaneously.

Facts

¶ 5 [4] In the Wilson matter, the charge is speeding. The problem with the certificate of offence is that it shows no driver's license number for Mr. Wilson.

¶ 6 [5] In the Balaban matter, again, the charge is speeding. The certificate shows an incorrect "total payable". The "set fine" amount is correct, at $102.50. The correct Victim Fine Surcharge should have been $25.00 which would have made the correct "total payable" figure $127.50.

¶ 7 [6] The certificate however shows the amount to be $122.50. (emphasis added)

¶ 8 [7] McIntosh is, similarly, a charge of speeding, and also similarly, an incorrect calculation of the "total payable". The set fine figure of $110.00 is correct. The correct Victim Fine Surcharge is $25.00 and should have brought the total payable to $135.00.

¶ 9 [8] The certificate shows the amount of $130.00.

¶ 10 [9] Finally in Asimovski, another speeding charge, there is no "informant's" name written in at the top of the certificate.

Law

¶ 11 [10] What is meant by the phrase "complete and regular on its face" has been an issue in numerous provincial offences appeals.

¶ 12 [11] The following cases were reviewed in consideration of these appeals:

R. v. Deangelis November 10, 1994 O.C.J. Bogusky, J.
R. v. Bertolucci, Wu, Woo, and Young, [1995] O.J. No. 4283, June 23, 1995 O.C.J. Reinhardt, J.
R. v. Violetis, Dimovsky, and Hickey, [1997] O.J. No. 5491, March 3, 1977 O.C.J. Shamai, J.
R. v. Klauke August 18, 1998 O.C.J. Austin, J.
R. v. French October 18, 1999 O.C.J. McKerlie, J.
R. v. Singh January 14, 2000 O.C.J. Blacklock J.
R. v. Baldasare, [2000] O.J. No. 5515, November 9, 2000 O.C.J. Superior Court Daudlin J.
R. v. Crossan November 23, 2000 O.C.J. Schnall, J.
R. v. Khoshael,[200] O.J. No. 2110, May 25, 2001 O.C.J. Libman, J.
R. v. Vincenzo August 25, 2001 O.C.J. Graham, J.

Application of the law to the facts

¶ 13 [12] Section 9.1 of the Provincial Offences Act creates unique procedures in relation to certificates of offence issued under Part I, since the defendant may be convicted in his or her absence.

¶ 14 [13] Specifically, the defendant's failure to appear at trial is taken to represent that he or she "shall be deemed not to dispute the charge". (s. 9.1(1))

¶ 15 [14] The effect of this section, therefore, is to confer exceptional power on the justice of the peace who may convict without any hearing at all.

¶ 16 [15] However, s. 9.1 also creates a premium on the "form" of the document which the justice of the peace reviews.

¶ 17 [16] Once the justice of the peace has concluded that the defendant has been "deemed not to dispute the charge" (s. 9.1(1)) he or she must do three things:

Firstly, he or she must review the certificate of offence to determine if it is "complete and regular on its face".

If the conclusion is that the certificate has survived such scrutiny - a conviction must follow. (s. 9.1(2))

> If the justice of the peace concludes the certificate is not complete and regular on its face, he or she must quash the proceeding. (s. 9.1(3))

¶ 18 [17] On all of these appeals, since convictions occurred, this court accepts that each justice of the peace involved must have concluded, after the examination of the certificate, that it was "complete and regular".

¶ 19 [18] And since the exceptional power of the justice of the peace under s. 9.1(2) is to enter a conviction without a hearing after the certificate is scrutinized, as an appeal court justice I must accept that each justice of the peace must have concluded that each certificate of offence relevant to these appeals contained all of the essential information required for a conviction to be registered.

¶ 20 [19] The phrase "regular on its face" is defined in Black's Law Dictionary (Revised Fourth Edition 1968) as follows:

> Process is "regular on its face" when it proceeds from a court, officer, or body having authority of law to issue process of that nature, and is legal in form and contains nothing to notify or fairly apprise anyone that it is issued without authority.

¶ 21 [20] From that definition, I conclude that the certificate of offence, to be "regular on its face" must set out:

who is commencing the process - an informant;

who is charged under the process - name of the defendant;

what the process is - statute name and section number;

where and when the allegation arose; and

what the result will be from a conviction from the process - set fine amount.

¶ 22 [21] Applying these requirements to the form of the certificate of offence under Part I, in my view, the justice of the peace engaged in a section 9.1(2) scrutiny would satisfy himself or herself that all of these elements appear on the face of the certificate.

¶ 23 [22] An omission of any of these elements from the certificate would, in my view, prevent the justice of the peace from concluding the certificate was "regular on its face". The only procedure then available to the justice is to quash the certificate. (s. 9.1(3))

¶ 24 [23] In the Asimovski appeal, as stated above, the certificate of offence does not reveal a printed name of an "informant", although someone has placed a signature at the bottom of the document in the location set out for the "issuing provincial offences official".

¶ 25 [24] In my view, the name of the informant, namely who is commencing the process, is required to be on the document. It is not. Therefore, I conclude the certificate is not "regular on its face" and the justice of the peace erred in entering a conviction against Mr. Asimovski.

¶ 26 [25] There is a further consideration for the justice of the peace in the section 9.1(2) scrutiny.

¶ 27 [26] Section 9.1(2) uses the phrase "complete and regular on its face".

¶ 28 [27] The ordinary meaning of "complete", as taken from Webster's Dictionary (1987), is "with nothing missing"; the definition from Black's Law Dictionary is "full, entire, including every item or element of the thing spoken of without omissions or deficiencies".

¶ 29 [28] Does the inclusion of the word "complete" in section 9.1(2) then require the certificate of offence to have every box and space on it filled in with the relevant information?

¶ 30 [29] In my view, the simple answer is no.

¶ 31 [30] The power given to the justice of the peace in section 9 is to determine whether the certificate provides "complete and regular" information setting out the elements required to enter a conviction.

¶ 32 [31] If those elements are missing - he or she must quash the certificate.

¶ 33 [32] But, as Justice Daudlin stated at page 3 of R. v. Baldasare (supra) some of the information, for which there are boxes to be completed on the certificate of offence, is surplusage which

> "... in no way confuses or in any manner raises the issue of the notice being inappropriate, incomplete, or in any manner failing to meet the necessities of the legislation".

¶ 34 [33] In that case Justice Daudlin was dealing with the words "Ontario" or "of Ontario" being left off the description of the statute, namely the Highway Traffic Act.

¶ 35 [34] There is other information which might be seen by a justice of the peace involved in a section 9.1(2) scrutiny to be mere surplusage.

¶ 36 [35] For example, the certificate of offence contains a box which sets out "whether a motor vehicle was involved", as well as a box to describe "the plate number" as well as other aspects of the motor vehicle.

¶ 37 [36] If the offence is speeding, and the certificate contains the name of the driver and plate number of the vehicle, other information may not be required by the justice of the peace to satisfy him or herself that the certificate is "complete and regular" on its face. Specifically, the box to indicate whether a vehicle was involved would appear to me to be redundant, and surplusage.

¶ 38 [37] In the Wilson appeal before this court, the omission on the certificate argued to be significant is the "drivers license number".

¶ 39 [38] In my view that information, on that particular certificate of offence, is not required to make the certificate "complete and regular on its face" as there was sufficient information of the document to allow the justice of the peace to properly conclude, after her section 9.1(2) scrutiny that a conviction should follow. The "who", "what", "when", "where" and "result of conviction" were all on the document. The existence of a drivers license number on the certificate should not have, and obviously did not affect the justice's ability to conclude that all the essential information was present. The driver, Mr. Wilson, may not have had a driver's license, or may not have had his license with him, but none of those possibilities should have been relevant to a consideration of whether, based on the certificate itself, he could be convicted of speeding.

¶ 40 [39] Similarly, I do not accept the reasoning of Justice Graham in R. v. Vincenzo (supra) that the lack of information about "whether a motor vehicle was involved", and omission of the "driver's birthdate" on a certificate should result in overturning the conviction registered by the justice of the peace. Once again, what significance does that information have if the certificate in all the aspects necessary to convict the defendant appear on the face of the certificate?

¶ 41 [40] Finally there have been numerous appeals in relation to an incorrect "total payable" being endorsed on the certificate of offence, either because of a miscalculation of the Victim Fine Surcharge, or an omission of it, in the addition of the figure to the amount of the set fine.

¶ 42 [41] R. v. Crossan and R. v. Klauke (supra) are conflicting judgments on this point.

¶ 43 [42] Two of the appeals here, Balaban and McIntosh, involve this issue.

¶ 44 [43] In my view, as I stated above, the amount of the set fine should be correct on the face of the certificate. As Justice Libman set out in Khoshael (supra), at page 4:

> "Indeed, the recording of an erroneous set fine amount may give rise to adverse administrative results, as where the amount recorded constitutes an under-payment, thereby subjecting the defendant to the risk of being suspended from driving due to non-payment of the correct amount of the fine."

¶ 45 [44] But in relation to the amount of the Victim Fine Surcharge, I accept the reasoning of Justice Austin in R. v. Klauke (supra). She held that the amount of the surcharge is an administrative consequence flowing from the conviction, and that the recording of that amount is a "superfluous component of the certificate".

¶ 46 [45] In my view the justices of the peace involved in R. v. Crossan, and in the appeals here of Balaban and McIntosh did not err in convicting any of those defendants, simply because the "total amount payable" was calculated in error.

¶ 47 [46] As long as the set fine amount is correct I am satisfied that the justice of the peace would not have had jurisdiction to quash the certificate simply because of an error in the addition of or calculation of the Victim Fine Surcharge.

Dispositions

¶ 48 [47] For the reasons provided above the appeals of Charles Wilson, Matthew Balaban and Robert McIntosh are dismissed.

¶ 49 [48] The appeal of Adem Asimovski is allowed. The conviction entered against him is quashed.

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