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Durham (Regional Municipality) v. d'Avernas

Durham (Regional Municipality) v. d'Avernas

Ontario Court of Justice

D.J. Halikowski J.

Heard: September 12, 2007
Judgment: September 12, 2007
Docket: Oshawa 999-00-85046836

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Counsel: Ms. J. Moffatt — Prosecutor

Mr. B. d'Avernas, for himself

Subject: Criminal; Public

Criminal law — Pre-trial procedure — Disclosure of evidence — Disclosure — Duty to disclose.

Criminal law — Trial procedure — Preliminary matters — Powers of court — Stay of proceedings — Miscellaneous.

***D.J. Halikowski J.*, (Orally):**

1 I am going to grant the appeal. The disclosure requirements are clear. Each case turns on its own facts when it comes to whether or not there's apparent prejudice on the face of the documentation, but here the disclosure was obviously not legible and it was perfectly clear to everybody on the date of the trial that it was not.

2 Crown on that date did its best to get legible notes before Mr. d'Avernas but, having read them myself, I was confused on the second paragraph of those notes as to what exactly the officer's notes were saying. Although some people might not have been, I was, and there's a chance that the accused might have been as well.

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3 It's also dangerous to give disclosure on the date of the trial. You just don't know what the defence position is going to be, or what the strategy is going to be on the trial, and to second guess and say, "Well, it wasn't prejudicial to the accused", is really a dangerous thing for a court to do.

4 The obligations are clear. The disclosure should have been given and it was not. And because of that, I'm going to grant this appeal and I'm going to order a new trial and I take it this disclosure issue is now resolved. Somebody's typed this up properly, I hope, so that when the trial does take place, the defendant is going to be fully aware of what the notes are.

5 I would not have granted a stay of proceedings. As I - as the Crown indicated, this is not a case where the accused's liberty is at stake in any fashion at all. This is not an abuse of the process in any fashion. The officer, obviously, was less then legible in his notes, but that was not intentionally done for the purposes of misleading the defence. So, there will be no stay of proceedings in this case.

6

. . . . .

THE COURT: Um - the date for the trial would be set how?

MS. MOFFATT: Well, normally, under a Part I proceedings, sir, a notice of trial would go in the normal course. Although the - this particular appellant may wish to have input into that date, in which case - uh - I - I look to him on what his preference is. We could put it over just to set a date, a week or two from now, and then you could have input into the available date, or we could just ask the court administration to send a notice of trial as they would in the normal course. MR. D'AVERNAS: Uh - I think that would be sufficient in order to speed the process up - uh - obviously, 'cause - uh - to go to set a trial and then do it would lengthen it, but at this point - uh - I have sufficient disclosure. I - and I suspect if I need to require more clarification with the disclosure that after this point, I would suspect it will be forthcoming and I think setting a trial date at this point will certainly expedient - expedite the process.

THE COURT: All right. The matter will be - uh - the trial date will be sent - uh - to your last - your address, rather, which I take it is we - it's something that we're all aware of?

MS. MOFFATT: Still the same, sir?

MR. D'AVERNAS: And it's still the same as all the documentation here.

THE COURT: All right, sir. Thanks very much.

MR. D'AVERNAS: Thank you, Your Honour.

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MS. MOFFATT: Thank you, sir.

THE COURT: Yes, ma'am.

MS. MOFFATT: Thank you, Your - Your Honour.

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