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R. v. Baren

Between
Her Majesty the Queen, and
Lianne Baren

[1996] O.J. No. 5353

Ontario Courtof Justice(Provincial Division)
Brampton, Ontario
Rosemay Prov. J.

Oral judgment: February 9, 1996.
(4 paras.)

Charge: Speeding - Highway Traffic Act

Counsel:

A. Berk, for the Crown.
L. Baren, for her own behalf.

¶ 1 **ROSEMAY PROV. J.** (orally):— In the matter of Lianne Baren, this is an appeal before me. Ms Baren has been convicted of speeding at 75 kilometres an hour in a 40 kilometre zone. Ms Baren did not appear in court on the day the matter was set for trial but she was represented by an anent. Ms Baren appears in person before me today. Ms Baren has explained to the court that on the day in question she was speeding because she had felt the onset of a migraine headache. She realized that unless she had received medication within about five minutes the result would be she would have blurred vision and be unable to drive. Her boyfriend lived within proximity to where she was driving and she was speeding because she wanted to get to her boyfriend's residence.

¶ 2 The Crown prosecutor takes the opposing view. He has referred to case-law as well as the Highway Traffic Act which spells out that the offence of speeding is one of absolute liability. And the case-law which seems to support that would indicate that in circumstances such as explained by Ms Baren the excuse or defence of necessity does not apply. This court, in reviewing the information and in considering the submissions made by Ms Baren as well as the Crown prosecutor is satisfied that in addition to the evidence of the onset of a migraine there is a letter from Doctor Galasio Parlan [ph] dated July the 11th, 1995, two days after the incident which states clearly, "This letter is to certify that the above named patient is under my care due to migraine headaches. She takes Imitrex tablets as needed."

¶ 3 This court having heard the explanation given by Ms Baren that she felt the onset of a migraine headache and she felt there would be dire consequences if she continued to drive without obtaining medication is satisfied the defence of necessity does prevail in this case. Accordingly, this court finds there is

merit in the appeal by Ms Baren and the appeal is granted.

¶ 4 The charge is hereby quashed as well as the conviction.

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