Case Name:

R. v. He

Between
Her Majesty the Queen, (respondent), and
Li He, (moving party)

[2003] O.J. No. 2257
Docket No. M29727

Ontario Court of Appeal
Toronto, Ontario
Armstrong J.A.
(In Chambers)

May 26, 2003.
(7 paras.)

Counsel:

No counsel mentioned.

¶ 1 **ARMSTRONG J.A.** (endorsement):— This is an application in writing for leave to appeal.

¶ 2 The applicant was convicted of speeding before Justice of the Peace B. Brown on June 20, 2002 (114 kilometres per hour in an 80 kilometre per hour zone contrary to s. 128 of the Highway Traffic Act.

¶ 3 Ontario Provincial Police Officer John Ritchie testified that he clocked the applicant with a radar gun travelling at 122 kilometres per hour.

¶ 4 The applicant appealed to Justice Bellefontaine of the Ontario Court of Justice who dismissed his appeal.

¶ 5 The main issue in the courts below was whether Officer Ritchie was qualified to operate the particular radar gun, a Genesis II. The justice of the peace was satisfied that Officer Ritchie was qualified and Justice Bellefontaine held that there was a factual basis to make that finding.

¶ 6 The applicant seeks leave to appeal from the decision of Justice Bellefontaine. In dismissing the applicant's appeal, Justice Bellefontaine said.

> In my view there was factual foundation upon which it was open to her worship to find as she did specifically factually find that the officer was trained and qualified officer.
> And considering all of her reasons in this matter and the arguments that have been made I'm satisfied that there was a factual basis for her to find that he was in fact a trained and qualified operator.

¶ 7 I am unable to find that the summary conviction appeal court judge committed an error of law in coming to the above conclusion. The applicant has therefore failed to the test set out in s. 139 of the Provincial Offences Act for leave to appeal. The application is therefore dismissed.

ARMSTRONG J.A.

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