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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

AGAINST

KIRSTEN JAMES

P R O C E E D I N G S A T T R I A L

BEFORE HIS WORSHIP JUSTICE OF THE PEACE
N.R. BURGESS, on October 5th, 2001, at KEELE STREET
Courtroom 704, 3:00 P.M.

CHARGE: Section 144(18) H.T.A.
Red light fail to stop

APPEARANCES

Prosecutor for the Crown — Mr. Smith
Agent for the Defendant — Mr. P. Periti

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ONTARIO COURT OF JUSTICE

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MR. SMITH: Your Worship, line number nine, for Kirsten James.
MR. PERITI: Paul Periti appearing as agent for the defendant who is not before the Court. Ready to proceed in his absence. I have instructions to do so.
MR. SMITH: Ready to proceed.
CLERK OF THE COURT: Kirsten James is charged on or about the 24th day of December, in the year 2000, at 1:45 A.M., at eastbound Dixoin Road to southbound Martingrove Road in the City of Toronto, did commit the offence of red light, fail to stop. Contrary to Highway Traffic Act, Section 144(18).
How do you plead on behalf of the defendant guilty or not guilty?
MR. PERITI: Prior to a plea, Your Worship, if I may just breifly look over the Certificate.
Thank you, Your Worship.
Not guilty on behalf of the defendant.
MR. SMITH: Officer 5416 please.

POLICE CONSTABLE FAGU: (5416) SWORN

MR. PERITI: I won't have any objection to the officer using his notes, Your Worship.
THE COURT: Go ahead officer.
A. Thank you.
On Sunday, December 24th, I was employed in uniform capacity as a police officer in the City of

Toronto. I was on general patrol this day, using Scout Car 2308, which is a marked scout car. I was southbound Martingrove Road in the passing lane behind the one vehicle. There was one vehicle also in the curb lane. The time was approximately 1:45 in the A.M. I observed the lights on Martingrove Road change to green. At that time I observed a vehicle. It was a Chevy Malibu, four door black in colour, turn southbound on the Martingrove Road without making any attempt to stop for the red light. The vehicle in the curb lane, heading southbound Martingrove was approximately halfway through the intersection when the vehicle made it's turn. The scout car was approximately at the white stop line when I made my observations. The vehicle was going approximately five kilometers an hour as it turned.

The vehicle was stopped and the driver I.D. with a valid Ontario drivers licence as Kirsten James, of 48 Queen Mary Drive, in Toronto, with a date of birth of 1981/06/06, a female, with a Class "G2" drivers licence. She produced a rental agreement for the vehicle under her mom's name.

I issued an Offence Ticket and returned and checked the traffic signals which were okay and working properly. The marker of the vehicle was AFFE 059.

EXAMINATION IN CHIEF BY MR. SMITH

Q. In which municipality sir?

A. Pardon me?

Q. In which municipality sir?

A. City of Toronto.

Q. Okay and did you have occasion to go back and check these lights?

A. Yes I did. I mentioned that, after issuing the P.O.T., I returned and checked the traffic signals. They were okay, working properly.

Q. You say you were at the white stop line?

A. No. I was initially behind one vehicle when I made my observation. The lights had already turned green when the vehicle made its right turn and I had proceeded up, so I was at the white stop line as the vehicle was turning.

Q. So you were there at the intersection?

A. Yes and I never lost sight of the vehicle. An unobstructed view.

MR. SMITH: Thank you.

Those would be my questions.

CROSS EXAMINATION BY MR. PERITI

Q. Officer, let me understand this. You were traveling southbound on Martingrove?

A. Yes.

Q. And the light that was facing your direction was what colour?

A. It was red. We were waiting for the light to change.

Q. So you are facing a red light?

A. Yes.

Q. Now the defendant was traveling in which direction?

A. Eastbound Dixon Road.

Q. So the defendant was traveling eastbound and you were southbound facing a red?

A. Yes.

Q. And the defendant made a right hand

turn?

A. Yes.

Q. And you mentioned that this defendant never stopped at the intersection?

A. Yes, because their light was green when they had reached the stop line. Our lights were four-way red. It was in the process of changing to Martingrove being green and Dixon Road being red.

Q. So Dixon Road was about to change to red?

A. No, it was already red.

Q. It was already red.

A. There is a delay. There is a four second amber and a three second delay.

Q. And whose light was about to change to green at this point?

A. It was my light, which was southbound Martingrove.

Q. Your light was about to change green.

A. Yes.

Q. And so as this vehicle is approaching the intersection, what colour was the light and from how far back?

A. I don't have it noted from how far back, but I observed these southbound Martingrove lights turn green, as vehicle eastbound Dixon Road turns right, which is southbound Martingrove. So as our light turned green. the vehicle approaches and turns. The vehicle in the curb lane was approximately halfway across the intersection as this vehicle was making its turn.

Q. Suppose the first time you noticed the vehicle, where was it?

A. I didn't make note of that.

Q. Pardon?

A. I didn't make note of that. I would say a couple meters back, probably a couple of meters back of the white stop line.

Q. Probably?

A. Yeah. I have a habit of checking the intersections while waiting for stop lights when on general patrol, just to make sure.

MR. PERITI: I have no further questions.

MR. SMITH: The case for the crown.

THE COURT: Thank you.

MR. PERITI: I am not calling a defence, Your Worship.

THE COURT: Mr. Smith?

MR. SMITH: The officers evidence is complete, Your Worship.

THE COURT: Mr. Periti?

MR. PERITI: Yes, Your Worship.
The officer never mentioned what year this took place in.
He advises that on the 24th of December he was on patrol. We have no idea as to what year he was on patrol Your Worship.
It could have been the year 1999, and because 2001 hasn't arrived yet, 1998, it could have been 2000, we have no idea.
As a result I think the defendant should be given that benefit of the doubt and the charge should be dismised for that reason.
Secondly, with respect to the officer suggesting that the defendant is probably a couple of meters back from the

intersection, that's not definite, Your Worship.

As a result, I think the defendant should get the benefit of that doubt as well, that he could have been possibly across the line as he was turning. He is not very clear to say where he was when the light he was facing was red.

In any event, Your Worship, I am asking for a dismissal.

Thank you.

THE COURT: Thank you.

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REASONS FOR JUDGMENT

BURGESS, J.P. (Orally):

Well first of all I am not even sure what the officer...whether he said 2000 or the circumstances, but certainly at the time, the charge is certainly 2000. I don't know what year it would expected to be in. Certainly it wouldn't be 2001, because we haven't reached that date yet, and certainly it wouldn't be 1999, because then it would be way out of date being filed. The only reasonable conclusion would be that of 2000. I don't know if a lot turns on that particular issue.

With respect to the matter of a vehicle approaching, clearly the officer has indicated he doesn't really know exactly the distance.

At the bottom line the vehicle was approaching, there is just no evidence to the contrary that it came to a stop. He has also indicated to the Court the sequence of events, that there is a three second delay on red. He's indicated that his light had turned green. The vehicle in the curb lane was already halfway through the intersection when this vehicle made the right hand turn.

So clearly what the Court must derive from the evidence and certainly no evidence to the contrary the vehicle did enter and make the right hand turn without first coming to a stop.

There will be a conviction for the offence.

Now anything you wish to say with regard to penalty sir?

MR. PERITI: No, Your Worship.

THE COURT: All right, there will be a penalty imposed of $100.

How much time to pay that?

MR. PERITI: Thirty days please.

THE COURT: Thirty days to pay.

Thank you.

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THIS IS TO CERTIFY that the foregoing is a true and accurate transcription from the taped recordings of the proceedings to the best of my skill and ability.

Joan Guppy

(Mrs) Joan Guppy
Certified Court Reporter (retired)

THE ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

JAMES KIRSTEN

P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE B. CAVION,
ON JANUARY 21, 2002 AT TORONTO, ONTARIO.

* * *

APPEARANCES:

C. Sweeney - Prosecutor for the Crown

S. Pelacci - Agent for the defendant

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0087 (12/94)

January 21, 2002

THE COURT: Next matter?
MR. SWEENEY: Kirsten James, line number six.
MR. PELACCI: Good morning again, Your Honour.
The last name for the record is Pelacci, initial "S" I'm appearing as the agent for appellant who is not before the Court, Your Honour.
THE COURT: Yes, the bottom line?
MR. PELACCI: The bottom line, Your Honour, there was no evidence as to the year the offence had occurred, this is an essential element that must be established, Your Honour.
THE COURT: Did your client show up in court?
MR. PELACCI: The agent for the defendant did appear, Your Honour, and they had a trial.
THE COURT: The agent appeared.
MR. PELACCI: That's correct. A trial did ensue a not guilty plea was entered a trial did ensue. There was no evidence as to the year the offence took place, Your Honour.
THE COURT: Yes, but it says on the ticket.
MR. PELACCI: Very well, Your Honour, however, it goes directly to the jurisdiction of the Court, Your Honour. Essentially, if I can draw the analogy if the --
THE COURT: Does it really, does it really?

What are we slicing here, are we playing word games here?
MR. PELACCI: I'm sorry, Your Honour?
THE COURT: Are we playing word games here?
MR. PELACCI: Not at all, Your Honour. If I may, Your Honour.
THE COURT: I think we are. Go on keep talking.
MR. PELACCI: Essentially, if I were to draw the analogy, if the name of the defendant was not given in evidence --
THE COURT: The name is different, the name is different.
MR. PELACCI: Certainly.
THE COURT: Because that would affect - you know the name is different.
MR. PELACCI: It certainly is, Your Honour. It's the issue pertaining to the actual charging document which is an allegation in which the defendant has pled not guilty to. There were no concessions made, there was no pre-trial were concessions were made as far as identity or other elements that are required for the crown to establish. And essentially in this particular case a not guilty plea was entered and in regards to evidence as to the year there was no evidence as to that, Your Honour.

And I believe the justice of the peace turns the certificate and makes some assumptions that well it couldn't have been 2001 and it couldn't have been 1999 so thus it must be 2000 and I would suggest, Your Honour, that that's not proving a case beyond a reasonable doubt and I would suggest that it's not a way in establishing a *prima facie* case in regards to the issue as to the year.

THE COURT: Any comments from the Crown?

MR. SWEENEY: Well as Your Honour has noted, he was arraigned on the year 2000. The fact that His Worship also drew some - for the fact where the filing date was, there are restrictions on when matters can be filed within the time frames. On that evidence and just pure common sense it's quite clear that what year was being discussed, and I think rendering an appeal on this basis wouldn't be fair.

THE COURT: Response counsel, any response?

MR. PELACCI: The response, Your Honour, essentially it goes to the jurisdiction of the Court, Your Honour. If the evidence is not in in regards to what that year is then the Court cannot be satisfied that certain proceedings were done in the prescribed manner. You cannot rely on the charging document to

satisfy you that a particular essential element --

THE COURT: I agree, I agree.

MR. PELACCI: I have no more submissions then.

THE COURT: I agree with that.

MR. PELACCI: Very well. In regards to making assumptions, Your Honour, he indicates it can't be 1999 because then the filing date would be out of - I would say out wack. However, Your Honour, it does occur and we can't again rely on the document itself which is an allegation and that's to establish that that one fact which is essential, because unfortunately without that evidence then we cannot establish was it filed within the 30 days, was it served within the 30 days, because essentially that evidence is not before the Court in regards to evidence, *viva voce* evidence, Your Honour.

THE COURT: Fine, appeal allowed, the conviction set aside.

MR. PELACCI: Thank you, Your Honour. I thank my friend.

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THIS IS TO CERTIFY THAT the foregoing is a true and accurate transcription of my recordings to the best of my skill and ability.

J. Somai

J. Somai, Bilingual Court Reporter