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R. v. Lemieux

Between
Her Majesty the Queen, appellant, and
Gerard Lemieux, respondent

[1982] O.J. No. 84

Ontario Supreme Court - Court of Appeal
Toronto, Ontario
Dubin, Weatherston and Goodman JJ.A.

Heard: March 16, 1982.
Judgment: May 26, 1982.
(8 pp.)

Counsel:

R.A. Cormack, Q.C., for the appellant.
G. Zito, for the respondent.

Reasons for judgment were delivered by Weatherston J.A., concurred in by Dubin J.A. Separate reasons were delivered by Goodman J.A.

¶ 1 **WEATHERSTON J.A.**:— The respondent was convicted July 20, 1978 on an information contained in a ticket under the Summary Convictions Act, R.S.O. 1970, c. 450, s. 7 as re-enacted by 1971 (Ont.), c. 10, s. 1. alleging that he:

> at Lasalle, Sudbury did commit the offence of speeding 79 km/h. in a 50 km/h zone contrary to H.T.A. section 82, subsection 16.

¶ 2 He was arraigned in the following words:

> You stand charged the 3rd day of April 1978, 8:32 p.m. at Lasalle, Sudbury did commit the offence of speeding seventy-nine kilometres in a fifty kilometre per hour zone contrary to the Highway Traffic Act of Ontario. How do you plead to this charge? Guilty or not guilty?

¶ 3 Before pleading, an objection was made on his behalf as to the use in the ticket of the initials "H.T.A." instead of "Highway Traffic Act", but the prosecutor and the justice of the peace treated the objection as without merit. The ticket was not amended, and, following a plea of not guilty, the respondent was convicted. His appeal to the District Court was dismissed by Judge Loukidelis, whose reasons are reported at 1 M.V.R. 27. A further appeal to the Divisional Court was allowed, the court holding that without the proper name of the statute creating the offence, the information was incomplete and a conviction on it was a nullity. The reasons of the Divisional Court are reported at (1981), 63 C.C.C. (2d) 327.

¶ 4 The Summary Convictions Act has been repealed and replaced by the Provincial Offences Act, R.S.O. 1980, c. 400. At the time relevant to this appeal, s. 7 of the former statute authorized the use of a traffic ticket "for an offence under any provision of an Act ... designated by the regulations ...". Section 2 of O.Reg. 376/71 provided:

> 2. For the purposes of section 7 of the Act, the offences under the provisions set out in column 2 of a schedule are designated as the offences under the provisions of the Act or regulations set out in the heading to the schedule.

¶ 5 Schedule 5 of that Regulation (remade by O.Reg. 333/73 s. 2) was headed "The Highway Traffic Act" and item 218 of the schedule had in column 2 the word and number "section 82". Therefore the offence created by s. 82 of the Highway Traffic Act was a designated offence for which a ticket might be used.

¶ 6 Section 7(3) of the Summary Convictions Act empowered the Lieutenant Governor in Council to make regulations:

> (c) authorizing the use on a ticket of any word or expression to designate an offence under any provision of an Act or regulation designated by the regulations ...

and by subsection (5) it was provided:

> (5) The use on a ticket of any word or expression authorized by the regulations to designate an offence under any provision of an Act or regulation designated by the regulations is sufficient for all purposes to describe the offence designated by such word or expression.

Section 3 of O.Reg. 376/71 provided:

> The words or expressions set out in column 1 of a schedule may be used on a ticket to designate the offence under the provision set out opposite thereto in column 2 of the Act ... set out in the heading to the schedule.

¶ 7 Item 218 of Schedule 5, hereinbefore referred to, sets out in column 1 the word "speeding". Opposite thereto in column 2 is the word and figure "section 82". Therefore, the word "speeding" designated the offence created by s. 82 of the Highway Traffic Act, and, by section 7 (5) of the Summary Convictions Act, that word was "sufficient for all purposes" to describe that offence.

¶ 8 It was also an offence under the Motorized Snow Vehicles Act, 1976, and regulations thereunder, to operate a vehicle at greater than prescribed rates of speed. Schedule 25 of O.Reg. 376/71 was headed "Regulation 614 of Revised Regulations of Ontario, 1970 under the Motorized Snow Vehicles Act". In column 1 was the word "speeding", and opposite that word, in column 2, was the word and figure "section 16". Therefore, the word "speeding" designated an offence under section 16 of Regulation 614 under the Motorized Snow Vehicles Act, as well as an offence under s. 82 of the Highway Traffic Act.

¶ 9 If the description of the offence had been limited to the word "speeding", the ticket would describe either one of two different offences. The prescribed form of ticket provides for particulars of the offence, in that it says "contrary to" and, after a blank line, a box for a section and subsection number. The ticket given to the respondent gave the following particulars: "contrary to H.T.A., section 82, subsection 16". As regards the sufficiency of an information, "the golden rule is for the accused to be reasonably informed of the transaction alleged against him, thus giving him the possibility of a full defence and a fair trial" per de Grandpré J. in Regina v. Cote (1977), 33 C.C.C. (2d) 353 at p. 357. The respondent in the present case knew he was operating a motor car, not a snowmobile, and the words "contrary to H.T.A. section 82, subsection 16", by specifying "section 82" exclude the ticket being for an offence under Regulation 614 under the Motorized Snow Vehicles Act. There is nothing left but a sufficient description of the offence created by section 82(16) of the Highway Traffic Act.

¶ 10 The appeal should be allowed and the conviction and sentence imposed by the justice of the peace restored.

WEATHERSTON J.A.
DUBIN J.A.

¶ 11 **GOODMAN J.A.** (dissenting):— I have had the opportunity of considering the reasons of my brother Weatherston J.A. With respect I am unable to agree with the result reached by him. In my opinion the Divisional Court was right in quashing the information for the reasons stated in the unanimous opinion of that Court. I note that the Divisional Court in its reasons relies on the wording of s. 7 of The Summary Convictions Act, R.S.O. 1970, c. 450 prior to its repeal and reenactment by S.O. 1971, c. 10, s. 1 and also upon the wording of O.Reg. 376/71 Schedule 5 prior to it being re-made by O.Reg. 333/73, all of which are correctly set forth in the reasons of Weatherston J.A. The changes in wording do not, however, affect the merits of this appeal. I would accordingly dismiss the appeal.

GOODMAN J.A.

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