Case Name:

R. v. Martin

Between
Her Majesty the Queen ex. rel. the Regional Municipality of York (Applicant) and
Craig M. Martin (Respondent)

[2008] O.J. No. 2709

No. M36187

Ontario Court of Appeal
Toronto, Ontario

R.A. Blair J.A.

June 20, 2008.

(2 paras.)

Counsel:

H. Saamen: for the Regional Municipality of York.

M. Riddell, agent: for Craig M. Martin.

L. Joyal: for Ontario Ministry of Attorney General.

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1 R.A. BLAIR J.A.:-- In my view, the test for leave to appeal under s. 131 of the Provincial Offences Act is not met in this case. The proposed appeal does not raise a question of law alone. There is no confusion about the Crown's evidentiary burden in speeding cases; the Crown must prove its case beyond a reasonable doubt. Whether the Crown must show that a laser device used by police officers to record the speed of vehicles had been tested both before and after the event or whether the police officer is qualified to use the device, are questions that go to the sufficiency of the Crown's evidence. Whether evidence is "sufficient" - as opposed to whether there is no evidence

at all - is not a question of law but rather a question of mixed fact and law. An appeal lies to this court under s. 131 of the POA only upon a "question of law alone", and then only on "special grounds" and in circumstances where "it is essential in the public interest or for the due administration of justice that leave be granted". I am not satisfied the latter criteria are met here either. Mr. Saamen submits forcefully that judges below are interpreting this court's decision in R. v. Vancrey [2000] O.J. No. 3033 (Ont. C.A.) differently. It is pretty clear from Vancrey and from this court's earlier decision in R. v. Bigioni [1988] O.J. No. 2220 (C.A.), however, what evidence has been found to be sufficient on the issues raised in this case.

2 Leave to appeal is refused.

R.A. BLAIR J.A.

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