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R. v. Mitrevski

Between
Her Majesty the Queen, respondent, and
Sime Mitrevski, applicant

[2001] O.J. No. 2202

Ontario Superior Court of Justice
Toronto, Ontario
O'Driscoll J.

May 14, 2001.
(8 paras.)

Counsel:

E. Penalagan, for the respondent.
G. Argiris, for the applicant.

¶ 1 **O'DRISCOLL J.**:— The applicant, Sime Mitrevski, on March 28, 2001, launched an application seeking an extension of time within which to bring this application and for an order granting prohibition regarding Her Worship, Justice of the Peace, T. Jewitt.

¶ 2 The matter arose this way: The applicant was charged with careless driving arising out of an accident which took place on Danforth Avenue near Dewhurst Blvd. in the City of Toronto on September 8, 2000. Following the accident, P.C. David Stewart charged the accused with careless driving contrary to Section 130 of the Highway Traffic Act. Prior to the matter coming before Her Worship on January 22, 2001, there was a meeting attended by the prosecutor, defence counsel, the accused, the officer, P.C. Stewart, and the person whose vehicle had been struck by Mr. Mitrevski at about 11:15 on the evening in question.

¶ 3 The transcript of January 22 reads, in part, as follows:

> COURT CLERK: Sime Mitrevski, you stand charged on or about the eighth day of the ninth month of the year 2000 at 11:15 p.m., at eastbound Danforth Avenue, Toronto, did commit the offence of careless driving, contrary to the Highway Traffic Act, Section 130. On behalf of the defendant, sir, how do you plead? Guilty or not guilty?
> MR. ARGIRIS: Not guilty but guilty to the included offence of failing to turn away from a collision, Section 148(5).
> MS. JACKSON [the prosecutor]: I believe that's fail to turn left to avoid collision.
>
> THE COURT: Yes. Allegations, please.

MS. JACKSON: On Friday, the 8th of September, 2000, at about 11:15 p.m., the defendant was driving a motor vehicle eastbound on Danforth Avenue in Toronto, near the intersection with Dewhurst Blvd. His motor vehicle came into a collision with another motor vehicle which was waiting to make a left hand turn from the Danforth onto Dewhurst Blvd.

MR. ARGIRIS: Those facts are substantially --

THE COURT: This is fail to turn left. The vehicle hehit was already in the left lane.
MS. JACKSON: He was turning to the left. That's correct. But in my submission, it would have been preferable for him to pull around that vehicle than for him to go into the rear end.
THE COURT: To the right, not to the left, into on-coming traffic.
MS. JACKSON: Well, your worship, there's no evidence there's on-coming traffic. In any event, in my submission it would be preferable for him to pull around the vehicle than to pull into the rear of it.
THE COURT: I really don't think this is the intent of that section. Is there anything you wish to say that would have caused the court to believe that that section is applicable? Anything further you wish to add?

MS. JACKSON: Nothing.

THE COURT: Defence, is there anything you wish to say about whether or not that section is applicable to the allegations the court has heard?
MR. ARGIRIS: Pardon me? I didn't hear your request, Your Worship. My information is there was no traffic proceeding westbound on Danforth. My client was proceeding eastbound and he was in the left lane, and I think that is a given amongst all who were involved. However, I cannot speak for the two witnesses that are here. But there's no question that they are ad idem, that is the three witnesses, two for the Crown and one for the defence, that my client was in the left lane and it's a two-lane roadway going eastbound.
THE COURT: In the absence of any further allegations or to case law on point, the Court is of the opinion that the section is not applicable at this time. The court is unable to accept the plea of guilty.
MS. JACKSON: Very well. In that case, I'd be seeking an adjournment in this matter, your worship. We're not going to be able to proceed with it today.
THE COURT: And the reason for requesting the adjournment?
Ms. JACKSON: I believe that we're not going to have time, your worship. There are a number of other trials.
THE COURT: I am seized with the matter. There is a plea of not guilty.

¶ 4 The matter returned to court on February 26, 2001, but there is nothing in that transcript that is of any assistance with regard to the matter that is now before me.

¶ 5 The Provincial Offences Act states in Section

45(1):

After being informed of the substance of the information or certificate, the defendant shall

be asked whether the defendant pleads guilty or not guilty to the offence charged therein.

(2):

Where the defendant pleads guilty, the court may accept the plea and convict the defendant.

(3):

Where the defendant refuses to plead or does nor answer directly, the court shall enter a plea of not guilty.

(4):

Where the defendant pleads not guilty to the offence charged but guilty of any other offence, whether or not it is an included offence, the court may, with the consent of the prosecutor, accept such plea of guilty, accordingly amend the information or substitute the offence to which the defendant pleads guilty.

Section 46(1):

Subject to section 6, where the defendant pleads not guilty, the court shall hold the trial.

(2) The defendant is entitled to make full answer and defence.
(3) The prosecutor or the defendant, as the case may be, may examine or cross-examine witnesses.
(4) The court way receive and act upon any facts agreed upon by the defendant and prosecutor without proof or evidence.

Here, the presiding Justice of the Peace decided not to accept the plea, as was her right, under Section 45(4) of the Provincial Offences Act, but then, in my view, having refused the proffered plea, the Justice of the Peace should have adjourned the matter to another Justice of the Peace.

¶ 6 The defendant (through counsel) entered the plea knowing that it was with the concurrence of the prosecutor, the officer who had laid the charge against him, his own counsel and the person whose car he had struck. The defendant entered the plea with the understanding that such a plea would be accepted and the charge of careless driving was no longer in issue.

¶ 7 All of a sudden, the world is turned upside down and the defendant is facing a charge of careless driving where the presiding officer has heard a plea from him followed by an admission to the facts as stated. In my view, the proper procedure was that stated by Finlayson, J.A. giving the judgment of the court in Re daSilva and the Queen, (1985), 18 C.C.C. (3d), 102, 104:

Counsel for the accused had not requested that the plea be struck and, in our opinion, the better course for the trial judge to have followed would have been to have called for evidence on the issue of sentence, or, alternatively, to have sentenced the accused solely on his admissions through counsel. Out of an abundance of fairness to the accused, he chose to strike the plea altogether; but, having done so, it was preferable the matter be referred to another trier of fact.

Later on, on the same page:

> ... the fact of the essential admissions already made would raise a reasonable apprehension of bias.
> In the result, the appeal is allowed and the order of Montgomery, J. is set aside and an order will issue prohibiting His Honour Judge Addison from proceeding with the trial of the accused and directing a new trial before another judge of the provincial court.

¶ 8 In the result, an order will go that the Justice of the Peace be prohibited from proceeding with the trial of this charge and the matter is to proceed before a different Justice of the Peace.

> MR. ARGIRIS: Thank you, my lord.
>
> MS. PENALAGAN: Thank you.
>
> THE COURT: The matter of costs, is it in issue here?
>
> MR. ARGIRIS: I'm not seeking costs. I think the point in law was of sufficient importance that it ought to be brought before a higher court.
> **THE COURT**: For oral reasons recorded, order to go prohibiting the Justice of the Peace from proceeding with this charge. It shall be heard by another Justice of the Peace. No order as to costs.

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