ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

against

SKINDERPAL SINGH

****

PROCEEDINGS AT TRIAL

BEFORE THE HONOURABLE MR. JUSTICE W.J. BLACKLOCK
on the 14th day of January, 2000
at BRAMPTON, Ontario

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A P P E A R A N C E S:

R. CRAIG, ESQ. — Prosecution for the Crown

G. BURD, ESQ. — Agent for the defendant

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FRIDAY, JANUARY 14, 2000

THE COURT: Okay, next case?
MS. CRAIG: Yes, the last matter, Your Honour, that I have is the appeal matter of Singh with Mr. Burd and that's number 35 on the appeal docket. I don't know whether Your Honour may be content just with materials that may be filed to consider this and give a decision on another day or whether you wish to deal with it today.
THE COURT: Well, I'd like to hear what you has to say.
MS. CRAIG: Yes.
THE COURT: Now, this case, Mr. Singh's case, is a case where he fails to respond. Is that right?
MR. BURD: Well, deems not -- is not to dispute.
THE COURT: Well, he does respond....
MS. CRAIG: Yes.
THE COURT: ...but deem not to dispute....
MR. BURD: That's correct.
THE COURT: ...to convict.
MR. BURD: And which distinguishes it quite a bit. And you had made a comment when you had ruled on the Regalado matter that....
THE COURT: Right.
MR. BURD: ...that might be a whole different ball of wax.
THE COURT: Right.

MR. BURD: Those weren't the words, but certainly it distinguishes the matter and the matter....
THE COURT: Now, Justice Hawke's....
MR. BURD: It's directly on point with Justice Hawke's decision.
THE COURT: Justice Hawke's is a fail to....
MR. BURD: No, it's the same, it's a deem not to dispute.
THE COURT: Deem not to dispute.
MR. BURD: Yes.
THE COURT: Okay. What do you say, Mr. Burd, about 124?
MR. BURD: I say that 124 is not applicable, because it's clear from that section that that's only during the -- it encompasses that there is a trial or it's at trial....
THE COURT: Right.
MR. BURD: ...and it doesn't -- if I read it correctly:

> "Judgment shall not be given in favour of an appellant, based on any alleged defect in the substance or form of an information certificate or process of any variance between the information, certificate or process and the evidence adduced at trial, unless it is show that the objection was taken at the trial and that in the case of a variance or an adjournment of the trial

was refused, although the variance has misled the opponent."

So it surmises that this is at trial, which again makes it applicable on the Regalado matter that Your Honour had ruled on previously, but it's not applicable when 9.1 is the issue. And I know the case that my friend had put to Your Honour with respect to 124 is clearly distinguishable in that 9.1 was not legislation that existed at that point in time and that all matters had to be heard by way of a trial, whether ex parte or whether the defendant was present.

THE COURT: Which case was that, the Spencer case?

MR. BURD: The Beck matter that I have. The Spencer matter is....

THE COURT: Sorry, I don't know -- well, that's Justice Than's decision, the Beck matter.

MR. BURD: Yes.

THE COURT: You say that Section 9.1 didn't exist?

MR. BURD: No. I'm sure my friend is not going to argue that point, that it's....

THE COURT: Okay.

MR. BURD: It wasn't even a consideration at the time. I'm just apprising myself again. I think the Spencer issue -- okay, that they did not contain the make of the motor

vehicle in question in the parking and I think in the Spencer matter, the learned court found that that's not prima facia to the charge before the court. It's not prima facia to any of the process or the filing date or anything of that kind. But certainly the service date is an essential part of the process. The filing date is surrounded by the service date. The only -- the time starts counting from the service date.

And as Her Honour Hawke put it quite succinctly, the officer when he certifies the certificate of offence is certifying many things, but for certain the court must know that the -- first of all, the Provincial Offences notice was served on the defendant and when it was served, so that they can make some conclusions with respect to the filing date and other proprieties that are required as a result of the process.

So -- and I think that argument was put to Her Honour or at least she addresses it in the decision of Rodrigues.

MS. CRAIG: Does Your Honour have a copy of Rodrigues?

THE COURT: M'hmm.

MR. BURD: And indicates likewise that this

is part of the process and she doesn't think she's being unnecessarily harsh in finding that that is a requirement of the certificate, that it notify the court that has -- that has -- that is dealing with the matter of when service was.

THE COURT: Okay.

MR. BURD: And then 9.1 gives you two options, you quash or you convict, if it's deemed proper.

THE COURT: Okay. Ms. Craig?

MS. CRAIG: Yes, Your Honour, the difference between this matter and the Regalado matter, which is the decision Your Honour gave on the prior matter, is that the defendant did not appear for the trial, but had appeared, I don't have the differentiating dates between the date of the offence and the date that the notice of intention was filed in this particular matter, I don't have a copy of the notice of -- or the actual offence certificate. But the defendant did appear and set a date for trial and under the regulations, he would have then received a notice of trial and under Section 13 of Regulation 200, it is to be assumed on its face that that would be received.

The defendant does not appear on the date of the trial and under Regulation -- or under Section 9.1 then to be deemed. And I would

submit, Your Honour, that this isn't much different from the Regalado situation....
THE COURT: Well, it's different this way....
MS. CRAIG: Yes.
THE COURT: ...in order to put the 9.1 power on its feet, the certificate has to be complete and regular on its face.
MS. CRAIG: Yes, yes.
THE COURT: There's no requirement, I think once you get into a trial, that the certificate -- well....
MS. CRAIG: Well, I guess it's a matter of interpretation whether it be complete and regular on its face. I would submit first of all, that Section 124, that the certificate is not -- it's not a nullity and it's not a fatality on its face, that it would appear to be complete and regular on its face and that it was served. Whether or not there was some irregularity or defect in the actual form, I would submit would then go to a request then for an amendment or to a motion being brought at the trial, but there was no attendance of anyone at the trial.

And so I would submit it is not fatal, as in Section 124, first of all, would apply before we move on to any other matters.
THE COURT: Well, if you're right about 124,

that means that every time a Justice of the Peace convicts on a fail to respond docket....

MS. CRAIG: But this isn't fail -- yes, go ahead. Sorry.

THE COURT: No, but just assume -- you're right.

MS. CRAIG: Yes.

THE COURT: Just follow me with this.

MS. CRAIG: Yes.

THE COURT: Every time a Justice of the Peace convicts on a fail to respond docket, even if they've convicted on a blank certificate....

MS. CRAIG: Yes.

THE COURT: ...there's no appeal.

MS. CRAIG: No, I do not agree. And this morning Your Honour may have remembered that I would -- I requested a matter be quashed because there wasn't....

THE COURT: Well, that was an unusual circumstance.

MS. CRAIG: There was a fatality. I mean, it was obviously a nullity and it was fatal. The certificate was not complete and proper on its face.

THE COURT: Well, where is my ability to do that in the face of 124?

MS. CRAIG: Well, I believe there are cases that are attached to Section 124 that indicate....

THE COURT: If it's a nullity around 124.
MS. CRAIG: Yes.
THE COURT: Okay.
MS. CRAIG: So I would submit it definitely falls within Section 124 and I can -- I guess that's the first issue. I can also indicate that Her Worship -- Her Honour, rather, Justice Hawke's view of this matter is different from Your Honour's. In her decision she indicates that no amendment was sought. Your Honour has indicated that you didn't believe under Regalado that an amendment would make any difference, whether it was sought or whether it was made. As well, Her Honour indicates there was no indication in her matter, the Rodrigues matter, that the Justice of the Peace considered....
THE COURT: I think I said I remained to be convinced whether or not any formal amendment had to be made.
MS. CRAIG: Yes.
THE COURT: I don't think I said....
MS. CRAIG: That's exactly what you said, Your Honour.
THE COURT: ...much beyond that.
MS. CRAIG: Also, Her Honour indicates in her decision that the notice of intention, that whether or not -- there's no indication the Justice of the Peace considered the notice of intention filed or could consider

the notice of intention filed and Your Honour clearly does in the Regalado decision, indicate that when you look at the documents before the court, the notice of intention....

THE COURT: I think the only thing I looked at was the face of the certificate and the fact that the accused appeared, didn't I? Did I go further than that?

MS. CRAIG: Well....

MR. BURD: If I can assist, Your Honour, I think you looked at the face of the certificate and you came to -- that there could be only one logical conclusion, in that the certificate was written in the evening, the filing date appearing on the face of the certificate was for the very next day and that the notice of intention, you did reflect on that, was also filed the very next day....

MS. CRAIG: Yes.

MR. BURD: ...and the court in viewing all of that information, could only come to one logical conclusion, in that the service was made on the offence date. But again, I don't think that's in error, because it was a trial situation where the defence appears and then the court is then entitled to look at all the documents before the court. And there was -- it fits into 124, because the Crown did seek to make an amendment to

conform and even though the amendment wasn't formally made to the certificate, evidence was adduced at the trial proper, that led the court to the conclusion that the service date was on the offence date and then it falls under 124.

THE COURT: Okay.

MR. BURD: But in a 9.1, there is no trial, there is no....

MS. CRAIG: Mr. Burd....

THE COURT: Let me finish with Ms. Craig first of all, Mr. Burd.

MS. CRAIG: Yes.

THE COURT: Ms. Craig, I have one other question for you though.

MS. CRAIG: Yes.

THE COURT: It seems to me that all the decisions that deal with a fail to respond situation have found....

MS. CRAIG: Deemed.

THE COURT: Or deemed not to dispute....

MS. CRAIG: Yes.

THE COURT: ...have struck the certificates down.

MS. CRAIG: The only one that was argued....

THE COURT: Rose....

MS. CRAIG: Yes.

THE COURT: ...is that situation.

MS. CRAIG: It is a situation in which the Crown conceded there was no argument.

THE COURT: Right. But nonetheless....

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MS CRAIG would Your Honour th eci i your own isi page thr th t deci i ind ing

Once tri i requested wh ch wou d add i itse i strong evidence tha i the of ence noti had

occurred and the matter appears on the trial docket, other considerations in my view come to bear."

And of course, you have the decision in front of you and you made it yourself, Your Honour.

But I would submit that Section 124 in these circumstances would apply, because I do not believe it is a nullity and I do not believe at this point in time that my friend can raise this issue, as it was not -- no one appeared on the date of trial.

THE COURT: Okay.

MS. CRAIG: And Her Honour Judge Hawke's decision is -- she does take a different view from Your Honour with respect to a couple of aspects and that's all I'll say on that matter. Thank you.

THE COURT: Thank you. Well, I am going to deal with this.

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R U L I N G

BLACKLOCK, J. (Orally):

This is a matter involving Skinderpal Singh and it is a situation in which the

certificate of offence has been certified by the officer in a way which leaves blank the date upon which the certificate of offence was served. This case flowed out of a conviction registered by the Justice of the Peace, pursuant to the powers of the Provincial Offences Act under 9.1, namely a failure to appear.

That section is an exceptional section, in that it permits the Justice of the Peace without any evidence at all to convict an accused person who does not appear and it seems to me that to invoke that exceptional power and section requires compliance with its terms.

That is a different scenario, in my view, than arises when an accused person appears for trial and the normal trial process occurs.

A similar defect arose in that latter situation that I have attempted to describe in R. v. Regalado and in that context I rendered a decision earlier, indicating that the defect was not fatal to the trial with respect to that matter.

I see this situation, however, as different For reasons I gave in Regalado, the

certificate to some extent may be regular on its face, but to be frank, I see it as difficult to characterize the certificate as complete on its face. I recognize that not all defects on a certificate would mean that the certificate cease to be complete and regular on their face, within the meaning of 9.1 or the fail to respond docket situation.

There are illustrations, however, of defects in certificates, which according to Drinkwalter and Muir, the text on Ontario Provincial Offence Procedure, do render certificates quashable and they are set out at page 62 of the text. One of them is the failure to include a certificate of service or affidavit of service in the certificate of offence.

This defect goes to that item. It may be that for reasons that I gave in Regalado, it is difficult to say that there is no certificate of service at all on this offence certificate, but it is equally difficult in my view to characterize that important part of the certificate as being complete.

That being the case, it seems to me that there is a fundamental problem in upholding a conviction registered pursuant to 9.1,

which is dependent upon a finding that certificate be complete and regular on face.

I would note that all of the decisions which I have referred to, that deal with this situation, i.e. this defect in the context of a failure to appear, have held in favour of the defence that this defect is fatal and ought to result in an Appeal Court quashing the certificate and I refer to the decision of my Sister Justice Hawke in R. v. Rodrigues and a decision referred to earlier by me in Regalado, R. v. Rose, the latter decision being October the 5th, 1999; Justice Hawke's decision being November 14th, 1999.

For the purposes of at least some consistency with my colleagues, I also think that the result I have come to in this case makes some sense. Whether all of us are right or wrong, there is some element in a desirability of consistency amongst judges of this court.

The Crown has argued in front of me that 124 bars any relief in the situation. I view this complaint as being more than a complaint based on a defect in an information or certificate or a process. I

view this as a complaint that there was no basis to properly exercise the extraordinary powers under 9.1 of the Criminal Code before me and that being the case, I do not think 124 bars me dealing with this matter.

For those reasons, the conviction with respect to Mr. Singh will be quashed.

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MR. BURD: Thank you, Your Honour.
MS. CRAIG: Thank you, Your Honour. I believe that's all the matters that I have in your court today....
THE COURT: Okay, thank you.
MS. CRAIG: ...and I think you for your consideration of that matter.
THE COURT: Okay.

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THIS IS TO CERTIFY THAT the foregoing is a true and accurate transcription of the recording (my notes), to the best of my skill and ability.

L. Divell

Linda Divell, Court Reporter