

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Wen*, 2012 NSPC 57

Date: 20120626
Docket: 2423685
Registry: Halifax

Between:

Her Majesty The Queen

v.

Yicheng Wen

Revised Decision: The text of the original judgment has been corrected according to an erratum dated July 18, 2012. The text of the erratum is attached to this decision.

Judge: Presiding Justice of the Peace Cynthia L. Chewter

Heard: June 14, 2012, at Halifax, Nova Scotia

Decision: June 26, 2012

Charge: Section 287(2) *Motor Vehicle Act*

Counsel: Alex Keavney, for the Crown
Yicheng Wen, on his own behalf

By the Court:

[1] Mr. Wen is a newly licensed driver whose licence was suspended due to the accumulation of points. On December 5, 2011 the Registrar of Motor Vehicles sent a notice of suspension to Mr. Wen by courier. Mr. Wen was busy studying for exams and then out of the country from December 15-26, 2011. He testified that he did not receive the letter, which was eventually returned undelivered to the Registrar on January 30, 2012. I accept his evidence that he did not receive the letter and was completely unaware of his suspension.

[2] On February 21, 2012 Cst. MacKay of the Halifax Regional Police was checking vehicle plates from the parking lot at the Barrington Street Superstore. He checked Mr. Wen's plate and saw that it came back to a suspended driver so he initiated a stop and ticketed Mr. Wen. Once informed of the suspension, Mr. Wen surrendered his licence to the Registrar the next day.

[3] There is no doubt that Mr. Wen's licence was properly suspended pursuant to s.283(6) of the *Motor Vehicle Act*, R.S.N.S. 1989, c. 293 as he had convictions resulting in six demerit points on his licence. The Crown introduced a certificate which amounts to conclusive proof of the suspension pursuant to s.286 of the

Motor Vehicle Act. The only issue is whether Mr. Wen has made out a due diligence defence. The burden is on Mr. Wen to establish this defence on a balance of probabilities. *R. v. Hill*, [1994] N.S.J. No. 201 (S.C.)

[4] The due diligence defence is described in *R. v. Sault Ste. Marie*, [1978] S.C.J. 59 at para. 60:

Offences in which there is no necessity for the prosecution to prove the existence of mens rea; the doing of the prohibited act prima facie imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event.

[5] Has Mr. Wen shown that he reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent? I accept that Mr. Wen honestly, but mistakenly, believed he had a valid licence. The issue turns on whether Mr. Wen's belief was reasonable.

[6] It is not open to Mr. Wen to argue that he did not know that the law provided for his licence to be suspended upon accumulating six demerit points. Ignorance of

the law cannot form the basis of a due diligence defence. *R. v. MacDougall*, [1982] 2 S.C.R. 605.

[7] The fact that Mr. Wen did not receive the Registrar's notice is relevant to his belief or lack thereof in his suspension but the Crown need not prove that the accused received the notice. No such notice is required by the *Motor Vehicle Act*, though there is case law to suggest a common law duty to send a notice, though not to ensure receipt. *R. v. Hill*, [1994] N.S.J. No. 201 (S.C.); *R. v. Lowe*, [1991] N.S.J. No. 182 (C.A.) Unlike some of the previous cases, Mr. Wen was diligent about keeping the Registrar apprised of his address and there are several address changes noted on his driving abstract.

[8] In order to show that his belief was reasonable, Mr. Wen must show that he took some steps to ascertain the status of his license in view of his previous convictions. In *R. v. Hill*, [1994] N.S.J. No. 201 the accused had three convictions under the *Motor Vehicle Act* and had received a letter from the Registrar about being interviewed after the loss of points which might result in the suspension of his license. The Registrar did suspend his license and notice was delivered to the accused's parents' home, but he did not receive it. On appeal, the court concluded

that Mr. Hill could not show due diligence as he had made no inquiries about the consequences of his convictions.

[9] In *Wile v. The Queen*, (2001) CanLII 25681 (NSSC) affirmed [2001] N.S.J. No. 523 (C.A.) the accused's license was suspended and the notice of suspension returned undeliverable. In upholding the accused's conviction the court concluded at para. 8 that:

there is a requirement of the driver to inform himself, respecting the status of his license. He was convicted of offences that have the effect of a accumulation of more than 10 points resulting an automatic suspension for a period of six months. In these circumstances, there is an onus on the person to inform himself of the status of his license. There is no evidence that the appellant made any inquiries or that he made any reasonable steps to avoid driving while suspended and therefore the fault is his that he is in violation of the *Motor Vehicle Act*. I find that he does not have the defence of due diligence open to him in these circumstances where he should have kept track of his convictions and determined the status of his drivers license. He failed to take these reasonable steps and accordingly he has not made out the defence of due diligence.

[10] In *Watters-Kimbrough v. The Queen*, [2003] NSSC 260 the accused had given the Registrar her correct address but did not receive notice of her driving suspension, notwithstanding four attempts by the Registrar to notify her. In upholding her conviction, the court noted at para. 7 "it is clear that to establish the

defence of due diligence the Appellant should have at least made some effort to inquire as to the status of her license."

[11] The only case I could find in which an accused raised a successful defence of due diligence is *R. v. Prest*, 2011 NSSC 244, appeal allowed and a new trial ordered 2012 NSCA 45. In that case, the accused's license had been suspended after he was convicted of driving without insurance. He pled guilty after receiving assurances from the prosecutor that they would not seek a suspension of his license. The prosecutor did not do so, but s.278(1) of the *Motor Vehicle Act* mandates that the Registrar impose a license suspension on conviction. The Registrar sent a letter by courier to notify Mr. Prest of the suspension but he did not receive it. A few months later, he was stopped and ticketed for driving while suspended. In overturning his conviction, the appeal court concluded that Mr. Prest's mistake was reasonable because he had made enquiries of the prosecutor and been advised that no suspension was sought. Alternately, the court accepted that the accused had made out the defence of officially induced error. The Nova Scotia Court of Appeal allowed the Crown's appeal and ordered a new trial on the basis that once the Summary Conviction Appeal Court concluded that the trial judge had misapprehended the evidence, the proper recourse was to order a new

trial rather than to enter an acquittal, as there was evidence upon which a properly instructed jury could convict.

[12] The thrust of all of the foregoing cases is that, in order to make out the defence of due diligence, an accused who has been convicted of previous offences under the *Motor Vehicle Act* cannot rely on receiving notice of suspension from the Registrar but must take action to make inquiries as to the status of his license. I heard no evidence from Mr. Wen of any such actions.

[13] I have sympathy for Mr. Wen. He is studying in a foreign country with different rules and laws and did not pay careful attention to his mail during an exam period. He diligently complies with the law when aware of it, as shown by his multiple address changes with the Registrar, and the fact that he surrendered his license the day after receiving the ticket for driving while suspended. The stop that led to the ticket did not involve poor driving or a moving violation. However, by failing to take steps to ascertain the status of his license, Mr. Wen cannot show that he acted reasonably, or with due diligence. I find him guilty as charged.

Erratum

Released: July 18, 2012

[1] C. CHEWTER: – Paragraph 11 is amended as follows: The words "appeal allowed and a new trial ordered 2012 NSCA 45" are added after the case citation in the first sentence and the following sentence is added at the end of the paragraph: "The Nova Scotia Court of Appeal allowed the Crown's appeal and ordered a new trial on the basis that once the Summary Conviction Appeal Court concluded that the trial judge had misapprehended the evidence, the proper recourse was to order a new trial rather than to enter an acquittal, as there was evidence upon which a properly instructed jury could convict."