IN THE SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Collins, 2005 NSSC 82

Date: 20050419
Docket Number: Cr. BW. 239015
Registry: Bridgewater

Between:

Her Majesty the Queen

Respondent

v.

Richard Collins

Appellant

Judge: The Honourable Justice Gregory M. Warner

Heard: April 14, 2005, in Bridgewater, Nova Scotia

Counsel: Michael J. O'Hara, Esq., counsel for the appellant

Lloyd C. Tancock, Esq., counsel the respondent

By the Court:

[1] Richard Collins appeals his conviction for passing a stopped school bus exhibiting flashing red lights contrary to s. 103(3) of the Nova Scotia Motor Vehicle Act ("Act").

[2] In his factums, the Appellant argues only one of the grounds of appeal:

> Did the Learned Trial Judge err by not considering that Section 103(3) of the Act was inoperative by virtue of the meaning of "exhibiting flashing red lights" not having been determined by the Governor in Council by regulation as required by Section 103(5).

[3] The relevant portion of s. 103(5) read:

> For the purposes of subsection (3) . . . "exhibiting flashing red lights" . . . ha[s] the meaning determined by the Governor in Counsel by regulation.

STANDARD OF REVIEW

[4] The standard of review was described by Cromwell, J.A., for the Nova Scotia Court of Appeal in **R. v. Nickerson** [1999] N.S.J. 210 at paragraph 6 as follows:

> The scope of review of the trial court's findings of fact by the Summary Conviction Appeal Court is the same as on appeal against conviction to the Court of Appeal in indictable offences: .. . . . Absent an error of law or a miscarriage of justice, the test to be applied by the Summary Conviction Appeal Court is whether the findings of the trial judge are unreasonable or cannot be supported by the evidence. As stated by the Supreme Court of Canada in **R. v. B. (R.H.),**

> [1994] 1 S.C.R. 656 (S.C.C.) at 657, the appeal court is entitled to review the evidence at trial, re-examine and re-weigh it, but only for the purpose of determining whether it is reasonably capable of supporting the trial judge's conclusions. If it is, the Summary Conviction Appeal Court is not entitled to substitute its view of the evidence for that of the trial judge. In short, a summary conviction appeal on the record is an appeal; it is neither a simple review to determine whether there was some evidence to support the trial judge's conclusions nor a new trial on the transcript.

THE REGULATIONS

[5] In his first factum, the Appellant argued that no regulation existed. The Crown's factum in reply, cited several regulations under the **Motor Vehicle Act** and the **Motor Carrier Act** that it considered applicable. The Regulations cited by the Crown as relevant to this appeal include the following.

[6] *Equipment Approval Regulations* made under s. 200 of the **Motor Vehicle Act** (O.I.C. 74-767, N.S. Reg. 65/74): (a) adopts “the standards and specifications established by the Canadian Standards Association in CSA Standard D250-M 1982, for school buses, without modification or variation”; (b) orders that “any equipment, material or device used on or incorporated in a large school bus manufactured on or after April 1, 1984, conform to the standards and specifications established in the said CSA Standard D250-M 1982”; (c) orders that “no person shall incorporate or use in or on a large school bus manufactured on or after April 1, 1984, any

equipment, material or device which does not conform to the standards and specifications established in the said CSA Standard D250-M 1982."; and (d) defines a large school bus "as meaning a vehicle designed to transport school children and intended to seat twenty-four or more passengers."

[7] Section 2(b)(i) of the **Motor Vehicle Act** says that a school bus "means a school bus as defined the **Motor Carrier Act** and includes a school bus marked or designated as such as provided by regulation".

[8] The Crown submits that by this definition the provisions of the **Motor Carrier Act** with respect to school buses are incorporated by explicit reference into the **Motor Vehicle Act**.

[9] Section 2(j) of the **Motor Carrier Act** says that a school bus "includes a motor vehicle, operated by or under an arrangement with a School Board as defined in the **Education Act**, for transporting pupils and teachers to and from school or for any school purposes, . . .".

[10] The **Motor Carrier Act** authorizes the making of regulations respecting school buses by the Governor in Council (s.27(3)) and by the Nova Scotia Utility and Review Board with the approval of the Governor in Council (s.27(1)). Pursuant to s. 27(4), such regulations are regulations within the meaning of the **Regulations Act**.

[11] Regulations have been prescribed pursuant to these provisions. The *Board Public Passenger Motor Carrier Act Regulations* (O.I.C. 92-1257, N.S. Reg. 283/92 as amended) made under s. 27(1) of the **Motor Carrier Act,** includes: in section 19(2), a requirement that every school bus shall conform to the requirements prescribed in CSA Standard D250-M1985, as amended; in section 31, a requirement that every motor carrier ensure that every school bus operated by the motor carrier be equipped as required in the regulations; and in sections 32 - 42 inclusive, several additional regulations respecting school buses.

[12] Section 42, the most relevant section, sets out, in great detail, the specifications and standards for the red warning lights on school buses.

[13] The *Governor in Council Public Passenger Motor Carrier Act Regulations* (O.I.C. 92-1258, N.S. Reg. 284/92 as amended) made pursuant to section 27(3) of the **Motor Carrier Act,** include additional regulations relating to school buses. Subsection 27(6) reads as follows:

> Where a school bus is stopped on a highway for the purpose of taking on or discharging passengers, the driver of the school bus shall activate the red warning lights and stop arm simultaneously, and shall continue to activate the red warning lights and stop arm during the period the school bus is so stopped for such purpose and until those passengers who of necessity must cross the highway have completed the crossing.

THE ISSUE

[14] The appellant has argued his ground in three parts:

1. The above regulations are not regulations prescribed pursuant to s. 103(5) of the Motor Vehicle Act.
2. If they are, the Court cannot take judicial notice of them and the Crown failed to prove them.
3. The onus is on the Crown to prove that the flashing red lights meet the standards and specifications set out in the regulations, and it failed to do so.

Appellant's First Argument - The above regulations are not regulations prescribed pursuant to s. 103(5) of the Motor Vehicle Act.

[15] The essence of this argument is that: (a) none of the above regulations were prescribed under s 103(5), and (b) none of them define the term "exhibiting flashing red lights"; therefore, since there is no definition of that term in a regulation, and the duty under s. 103(3) is dependent upon the existence of a regulation that defines the term, there is no duty to stop for a school bus.

The appellant cited, in support of this position, the British Columbia Supreme Court decision in **R. v. Jensen** , 1994 CarswellBC 2599.

[16] The Appellant submits that the regulation prescribed under s. 200 of the **Motor Vehicle Act** (incorporating the CSA standards for school buses) is not applicable for two reasons:

(a) It is not a regulation prescribed under s. 103(5) and

(b) It does not define the term “exhibiting flashing red lights”.

Section 200 is the general section of the Act authorizing the making of regulations, including regulations respecting the use and incorporation of equipment on vehicles that relate to the safety of persons and the safe operation of vehicles. A regulation prescribed under s. 200 is a regulation for the purposes of s. 103(5). Secondly, the term “exhibiting flashing red lights”, both by its plain meaning (ordinary dictionary definition) and read remedially - which is the manner in which all statutes are required to be read - means “ showing flashing red lights” and the *Equipment Approval Regulations* clearly prescribe the standards and specifications for showing red warning lights on school buses.

[17] The appellant further argues that the regulations under the **Motor Carrier Act** cannot be considered as regulations referred to in s. 103(5) of the

Motor Vehicle Act. The Court disagrees. The definition of a school bus in the **Motor Vehicle Act** explicitly incorporates the definition contained in the **Motor Carrier Act** and incorporates, by reference, the provisions of the **Motor Carrier Act**. There is nothing in s. 103(5) that limits a relevant regulation prescribed by Governor in Council only to a regulation promulgated under s. 103(5) of the **Motor Vehicle Act** or to the **Motor Vehicle Act** itself.

Appellant's Second Argument - If they are, the Court cannot take judicial notice of them and the Crown failed to prove them.

[18] The Appellant submits that the Crown should have proven the regulations in accordance with section 6 of the Nova Scotia **Evidence Act**, and refers the Court to **R. v. Bartin Pipe & Piling Supply Ltd.** [2004] ABQB 476 and **R. v. Air Canada** (1989) 96 N.B.R. (2d) 359 (NBQB).

[19] The portion of section 6 of the **Evidence Act** relied upon by the Appellant reads that evidence of any regulation by the Governor in Council may be given in a court by either (a) production of a copy purported to be printed by the Queen's Printer or (b) production of a copy of the official Gazette, or (c)

by production of a copy or extract certified to be a true copy by the Clerk of the Executive Council.

[20] It is acknowledged that the Crown did not tender a copy of the regulations pursuant to s. 6 of the **Evidence Act**.

[21] Section 9 of the Nova Scotia **Regulations Act** states that publication of a regulation is *prima facie* proof of its text and of its making, its approval where required, and its filing, and that judicial notice shall be taken of a regulation that is published.

[22] Section 11 of the Nova Scotia **Evidence Act** provides that notwithstanding anything in that **Act**, every proclamation and order made or issued by the Governor in Council, and every publication thereof in the Royal Gazette, shall be judicially noticed by all courts.

[23] The Supreme Court of Canada in **R. v. "Evgenia Chandris" (The),** [1977] 2 S.C.R. 97 dealt with the issue of judicial notice of a federal regulation. At Paragraph 20, the Court held that section 23 of the **Statutory Instruments Act** (which is similar to s. 9 of the Nova Scotia **Regulations Act**) required the Court to take judicial notice of regulations that are in fact published in the Gazette, **without the need to prove such publication**. This principle is

so accepted that it is difficult to find Nova Scotia decisions on the point; one such decision is **R. v. Milligan**, 2004 NSPC 9, at paragraphs 3 to 6.

[24] This Court can take judicial notice of the relevant regulations. The regulations have been published, even though it was not necessary, for the purposes of this case, for the Crown to prove it.

Appellant's Third Argument - The onus is on the Crown to prove that the flashing red lights meet the specifications in the regulations, and it failed to do so.

[25] There was an onus on the Crown to prove that the bus in question was a school bus as defined in the **Motor Vehicle Act**, and that the school bus complied with the standards and specifications of a school bus.

[26] An inference is, according to David Watt in *Watt's Manual of Criminal Evidence, 2004*, at page 101, a deduction of fact that may logically and reasonably be drawn from another fact or group of facts; it is a conclusion that may, not must, be drawn. It does not change the burden of proof , or the standard of proof to be met by the Crown. An inference can reasonably be applied where matters may not be easily proved and the surrounding circumstances add an element of probability that the fact is true. For

example, it would be difficult, in respect of a charge of failing to stop for a school bus exhibiting flashing red lights, if the Crown had to prove that all equipment on the bus, including the lights, were in conformity with every element of the regulatory specifications and standards. It is therefore permissible for a court to infer, if the evidence contains enough facts to support an inference, that the school bus was a school bus as defined in the **Motor Vehicle Act**, and complies with the standards and specifications of a school bus, including the specifications for the exhibiting of flashing red lights.

[27] The inference that the flashing red lights meet the regulatory standards could be overcome by any evidence that the flashing red lights were set up, or operated, in a manner that was not in compliance with the regulations. Any such evidence need only be evidence that would raise a reasonable doubt. Any higher standard would violate the presumption of innocence under s. 11 (d) of the Charter, as explained in **R. v. Oakes** [1986] 1 S.C.R. 103, at paragraphs 20 to 23.

[28] This Court has reviewed the trial transcript. There are several references in the transcript to the school bus and the flashing red lights from which the trial judge could reasonably conclude that it was a school bus as defined in

the **Motor Vehicle Act**, and that the lights met the regulatory standards. There was no evidence of any kind whatsoever that negates the reasonable inferences that the trial judge could draw.

CONCLUSION

[29] The appellant did not argue its other grounds of appeal.

[30] The appeal is dismissed.

J.