SUPREME COURT OF NOVA SCOTIA
Citation: R. v. Corkum, 2013 NSSC 62

Date: 20130220
Docket: Hfx No. 406211A
Registry: Halifax

Between:

Ralph Douglas Corkum

Appellant

v.

Her Majesty the Queen

Respondent

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Heard: November 7, 2012

Counsel: Ralph Douglas Corkum, on his own
Katherine E. Salsman, for respondent

Moir J.:

A Misguided Police Officer

[1] In 2011, Mr. Corkum was charged under s. 175(2) of the *Motor Vehicle Act* with operating a motor vehicle while not wearing a seatbelt. He successfully defended the charge by mounting a defence under s. 175(7)(h), which provides an exception for "a person while engaged in work which requires the person to leave and enter his seating position in the vehicle at frequent intervals".

[2] A year later the same police office charged Mr. Corkum for driving without a seatbelt again. Mr. Corkum tried to explain the earlier finding, but the officer said "he would keep ticketing me as many times as it took for him to find the right judge". Mr. Corkum says this in his brief, but he elicited about as much from the officer in cross-examination:

> Well, if I may answer, each ticket potentially has a different judge listening to the case. Interpretation of the law is – is the judge's prerogative. Some – some judges will convict for the offence, some judges will find a person not guilty for the offence. I fell you, along with other people, are not above the law and that they have to wear a seatbelt, and that's why I laid the charge.

[3] This time Mr. Corkum was convicted. He writes, "The law should not be open to interpretation by the judge you happen to appear before." He says he wants to know "Is the law the law or is the police officer right?"

[4] The officer's views are seriously misguided. Judges have to interpret the law correctly. They have no discretion or prerogative in that regard. Police have no business saying that an acquittal results in an accused person being placed above the law, and it would be fundamentally wrong to keep charging a person until the police get their way despite findings by a judge.

[5] As will be seen, the differing results have nothing to do with different judges. The differing results have to do with different facts. However, the views expressed by the officer mislead people like Mr. Corkum and tend to undermine confidence in the rule of law.

Evidence

[6] The officer testified to the elements of the offence.

[7] Mr. Corkum took the stand to establish his defence. He and his wife own Sainte-Famille Wines in Falmouth. He testified as follows in direct:

> Your Honour, I do pick up and delivery for Saint-Famille Wines and I have been doing for 20 years. My routine is very simple. I buckle up when I leave the winery, I unbuckle when I make my first pickup or delivery, and I buckle up when I make my last pickup or delivery before heading back to Falmouth.
>
> My understanding is that pickup and deliveries, when you're doing pickup and deliveries, you are not required to wear a seatbelt. So I – I just can't justify that I was doing something wrong because I do pickup and deliveries. And on that day, I showed the man not something that I was going to deliver, I showed him my first pickup that I had made. And I had other pickups and deliveries to do.

[8] This might have provided compelling evidence for a s. 175(7)(h) defence. However, important details were brought out in cross-examination.

[9] On the day in question, Mr. Corkum left Falmouth for his first stop in Bedford. He drove there at the speed limit on Highway 102 without a seatbelt. It was not a regular pickup day. He came to the city for a medical appointment. His first stop was in Bedford to buy a chalk line for use in the winery. His next stop was for his medical appointment. That is where he was going when he was stopped. He was planning just two more stops. They were related to the business.

Decision Under Appeal

[10] The trial was heard by Presiding Justice of the Peace Cynthia Chewter.

[11] The justice reviewed the evidence. She accepted the evidence given by Mr. Corkum. She quoted s. 175(7)(h). "This section does not apply to ..."

> (h) a person while engaged in work which requires the person to leave and enter his seating position in the vehicle at frequent intervals.

[12] Justice of the Peace Chewter then applied the law to the facts as found by her. She said that on regular pickup days the exception may well apply. However, "it's not broad enough to encompass what you were doing on that particular day".

[13] For one thing, Mr. Corkum was only running "a couple errands". "[T]o apply the section, I would have to find that you were leaving and entering your seating position at frequent intervals ...". That becomes unlikely the further one gets between stops. And, the unbelted drive along Highway 102, which would not normally involve stops at frequent intervals, was also a "factor".

[14] Another issue is "you had a personal appointment in between" the merely three business stops. Indeed, he was headed for his medical appointment when he was charged. But for that, the exception "might" apply. However, "in this particular case, what you were doing at the time that you were stopped does not give you the exception".

Standard of Review

[15] Although Mr. Corkum's exchange with the police officer may have made it seem that this case, when juxtaposed with the earlier one, turned on statutory interpretation, the questions before me are all about fact finding. Was Mr. Corkum "engaged in work" when he was stopped? If so, did the work require him to "leave and enter … at frequent intervals"?

[16] So, the standard is "whether the findings of the trial judge are unreasonable or cannot be supported by the evidence": *R. v. Nickerson*, [1999] N.S.J. 210 (C.A.).

Disposition

[17] The findings that Mr. Corkum had a personal appointment that day and was only doing a couple business errands were fully supported by the evidence. In my view, the finding that he was on a personal appointment when he was charged is preclusive of s. 175(7)(h).

[18] Similarly, the evidence that Mr. Corkum had only a few business errands to run, interrupted by an appointment, fully supports the finding that the stops were not at frequent intervals. And, there were no stops along Highway 102.

Conclusion

[19] The troubling reports of the officer who charged Mr. Corkum are answered this way at the end of Justice of the Peace Chewter's decision:

> And I just want to say about the previous situation, I don't have any of the facts of that case, and I can't say what the situation was, but because you do deliveries for Sainte-Famille Wineries, it's entirely consistent that while you're on deliveries and making stops at frequent intervals that the exception would apply to you, but in this situation I find that it does not.

[20] The appeal is dismissed.

J.