SUPREME COURT OF NOVA SCOTIA

Citation: ***R. v. Roshanimeydan,*** 2013 NSSC 106

Date: 20130318
Docket: Hfx 407679A
Registry: Halifax

Between:

Alireza Roshanimeydan

Appellant

v.

Her Majesty the Queen

Respondent

Judge: The Honourable Justice Gregory M. Warner

Heard: January 16, 2013 and March 18, 2013, Halifax, Nova Scotia

Oral decision and written release: March 18, 2013

Counsel: **J. Brian Church**, **Q.C.**, counsel for the Appellant
Joshua J. Judah, counsel for the Respondent

By the Court:

A ***Summary of Facts***

[1] The Appellant was convicted of three counts of breaching *s. 3(1)(e)* of the *Protection of Property Act* (*"PPA")*. The essence of the counts is that the Appellant entered Halifax International Airport property ("Airport") on at least three occasions in early February 2012, after he had been served on January 31, 2012, with a written notice prohibiting him from entering the Airport for six months.

[2] The notice was issued because the Appellant, who operates a taxi service under Halifax Regional Municipality Taxi Bylaw persistently refused to comply with rules for operation of taxis at the airport. The Appellant was of the view that they did not apply to his activities.

[3] The Government of Canada owns the lands on which the Airport is situated. The Airport is occupied by the Halifax Airport Authority ("Authority"), a privately-run, non-profit corporation.

[4] The Authority controls access to the Airport by commercial passenger vehicles by a set of rules that include licensing a limited number of commercial passenger vehicles who pay for a license, and limitations on and fees for the pick-up of passengers by non-licenced commercial passenger vehicles.

[5] Specifically, non-licenced commercial passenger vehicles are not restricted from dropping off passengers at the Airport but are restricted by the Authority in the types and manner of picking up passengers at the Airport. They may not pick up passengers unless they hold a license from the airport (the number of which are limited) or unless an airline passenger has a specific contract or agreement with a taxi/shuttle to pick him or her up, in which event there is a procedure for the taxi/shuttle to pick up the passenger and pay a fee for each pick up.

[6] The Appellant did not hold a license from the Authority, and picked up passengers contrary to the Authority's rules without paying the fees. The Appellant and Authority had many discussions with respect to the Authority's rules and the Appellant's failure to comply with those rules, but it did not change the Appellant's activities.

[7] On January 31, 2012, pursuant to the *PPA*, the Authority served a written Notice on the Appellant prohibiting the Appellant from entering the Airport premises for six months. The Appellant ignored the Notice, continued to enter the Airport and carried on his taxi/shuttle business.

B ***Standard of Review***

[8] The Appellant was convicted at trial by a Justice of the Peace. This is a summary conviction appeal. Counsel agreed that the applicable standard of review is that set out by Saunders JA in ***Wilmot** v **Ulnooweg Development Group***, 2007 NSCA 49, at paras 24 and 25. An appeal is not a

second trial. On questions of law, the standard of review is correctness. On matters of fact or inferences of fact the trial judge is given deference; the standard is palpable and overriding error. On mixed questions of fact and law, the second standard applies unless the mistake is easily linked to a legal principle.

C ***The Submissions***

[9] Section *3(1)(e)* of the *PPA* reads:

> 3(1) Every person who, without legal justification, whether conferred by an enactment or otherwise, or without the permission of the occupier or a person authorized by the occupier, the proof of which rests upon the person asserting justification or permission,
>
> ...
>
> (e) enters on premises where entry is prohibited by notice;
>
> ...
>
> is guilty of an offence and on summary conviction is liable to a fine of not more than five hundred dollars.

[10] *Section 5(1)* reads:

> 5 (1) It is a defence to a charge under Section 3 or 4 that the person charged reasonably believed that he had legal justification, or permission of the occupier or a person authorized by the occupier, to enter on the premises or to do the act complained of.

[11] At trial, the Appellant argued that:

i his taxi license, issued under the Halifax Regional Municipality Taxi and Limousine by-law ("*HRM Taxi bylaw*") authorized him to pick up and drop off passengers at the Airport; and,

ii he was not subject to the Authority's rules and regulations.

As a result, the Authority had no authority under the *PPA* to issue the Notice prohibiting him from entering the Airport.

[12] Alternatively, he argued that if the Notice under the *PPA* was lawful, the portion of Bell Boulevard, which runs in front of the terminal building, together with the sidewalk adjacent to it, is a public highway pursuant to the *Motor Vehicle Act* ("*MVA")*. As a result, he was entitled by statute to be on a public highway. The highway was not "premises" of the Airport (as defined in the *PPA*) and, if it is, the fact that it was a public highway constituted a legal justification pursuant to *s. 3(1)* of the *PPA*.

[13] The Respondent argued at trial that the *HRM Taxi bylaw* did not authorize the Appellant to enter onto private property and pick up or deliver passengers contrary to rules or regulations of a property owner or occupier. The Respondent further argued that, as found as a fact by the trial judge,

the roadway in front of the terminal building was a private roadway occupied by the Authority and not a public highway.

[14] In its original brief to this Court, the Appellant made the same arguments as at trial.

[15] In its original brief, the Respondent argued that the trial judge found as a fact that the Authority was the occupier of the lands at the Airport that included the roadway in front of the terminal. The roadway is not a public highway.

[16] With respect to the Appellant's defence that the *HRM Taxi bylaw* constituted a defence to the charge, the Respondent submitted that the trial judge had sufficient evidence before him of the knowledge of the Appellant with respect to the controls in place at the Airport that the Appellant could not have reasonably believed that he had either a legal justification, or permission of the occupier, to enter the Airport.

[17] At the hearing of the Appeal on January 16, 2013, the Court asked counsel to brief three other questions:

I Whether the *PPA*, provincial legislation, applied to Federal (Government of Canada) property?

II Whether the onus was on the Crown or Defendant to prove that the lands in question were subject to the *PPA*?

III Whether the learned trial judge erred in finding that the roadway in front of the terminal building was private property?

[18] In its supplementary brief, the Respondent answered the first question in the affirmative, referring this Court to the decision of the Ontario Court of Appeal in ***R v Trabulsey*** [1995] 97 CCC (3d) 147 and the Supreme Court of Canada in ***R v Asante-Mensah*** [2003] 2 SCR 3.

[19] The Appellant, in his supplementary brief, agreed that the *PPA* can apply to Federal property, including the Airport.

[20] On the second question, the Respondent submitted that once it had established that the written notice was served on the Appellant prohibiting the Appellant from entering Airport property, the Appellant had the burden of proving a legal justification or permission of the occupier.

[21] In this case, it is not disputed that the Authority did not consent to the Appellant's entry on the property. Also, it is not disputed that a written notice was served on the Appellant by the Authority on January 31, 2012, prohibiting him from entering the Airport property for six months.

[22] The Respondent further submitted that the trial judge found as a fact that the roadway in question was property occupied by the Authority and properly the subject matter of a *PPA* Notice. The standard of review of a finding of fact is the standard of palpable and overriding error.

[23] The Appellant did not address the second question - who bore the burden of proof.

[24] On the third question, whether the trial judge erred in finding that the roadway was private property, the Respondent directs the Court to several excerpts from the trial evidence of the Airport's ground transportation manager. The Respondent submits these excerpts constitute evidence upon which the trial judge could reasonably, and did, find as a fact that the portion of the roadway leading to the Airport changed from a public highway to a private roadway when it entered onto Airport property, and that the roadway in front of the terminal building was not part of the public highway.

[25] In his submissions, the Appellant agrees that the highway in question is on property leased to the Authority by the Federal government.

[26] The Appellant argues, however, that the definition of "premises" in the *PPA* must be reconciled with *s. 2(u)(ii)* of the *Motor Vehicle Act* and interpreted in accordance with the modern principles of interpretation.

[27] *Section 2(u)* of the *MVA* defines a highway as:

> (u) "highway" means
> (i) a public highway, street, lane, road, alley, park, beach or place including the bridges thereon, and
> (ii) private property that is designed to be and is accessible to the general public for the operation of a motor vehicle;

[28] The Appellant argues that no reported decision has determined that the *PPA* can be applied to prevent entry onto a highway on private property as defined in *s. 2(u)(ii)* of the *MVA*. He argues that, in ***Parnell v Collicutt***, 2007 NSSC 256 and ***Rafuse v Swinimer***, 2009 NSSC 179, cases dealing with private roads, notices given pursuant the *PPA* were struck down.

[29] He argues that ***R v MacLean***, (1974) 46 DLR 10, a decision of County Court Judge O'Hearn, cited by the Respondent, is not relevant to the circumstances of this case.

[30] He argues that ***Asante-Mensah*** should be distinguished because, in that case, the taxi driver was an "incorrigible scooper", who parked his cab at Pearson International Airport for extended periods, in a manner very much unlike the circumstances of the Appellant in this case, and that, in ***Asante-Mensah***, the conduct of the accused "... might very well favour allowing an occupier to exclude the parked vehicle."

[31] In summary, the Appellant argues that reading the *PPA* and *MVA* together, the Court should be lead to the conclusion that the *PPA* should not be interpreted so as to include highways within the

meaning of the term "premises" in the *PPA*, from which a person, like the Appellant, may be excluded by notice.

D ***Analysis***

[32] I accept and apply the standard of review described by the Nova Scotia Court of Appeal in ***Wilmot***.

[33] As a matter of law, I agree with counsel that the *PPA* can apply to the Airport, property owned by the Government of Canada, and occupied by lease from the Government of Canada by the Authority.

[34] It is not disputed that the Appellant was in fact served with a written Notice pursuant to the *PPA* prohibiting his entrance onto the premises occupied by the Authority for six months from January 31, 2012. I find that there was evidence before the trial judge upon which he could reasonably find as a fact that the Appellant entered the property occupied by the Authority on three occasions in early February.

[35] I conclude, and the Appellant concedes, that there was evidence before the trial judge upon which he could find that the roadway in front of the airport terminal, known as Bell Boulevard, was not a public highway as defined in *MVA, s. 2(u)(i)*, but rather private property occupied by the Authority as defined in *MVA, s.2(u)(ii)*.

[36] These conclusions leave two outstanding legal issues.

[37] First, is the Appellant's argument that he is licensed under the *HRM Taxi bylaw* to pick up and deliver passengers in Halifax County, which licence includes the private property occupied by the Authority at the Airport, and therefore, he is not subject to any further rules or regulations of the Authority as occupier of Airport.

[38] The Appellant advances no basis in a statute, regulation, bylaw, or in case law that holding a licence under the *HRM Taxi bylaw* entitles him to enter private property to carry out his taxi activities without regard to any restrictions placed by the owner or occupier of the property.

[39] The Respondent argues that ***Trabulsey*** is an example of an appellate court (in Ontario) finding that the occupier of an airport has the authority to control licenced taxis on airport property.

[40] I am satisfied that the holding of a license under the *HRM Taxi bylaw*, which authorizes the license holder to pick up, deliver and drop off passengers within HRM, does not entitle the holder of the license to enter onto any private property without the permission of the owner or occupier, and without being subject to any restrictions or terms that the owner or occupier of the private property may impose as a condition of entry.

[41] If a taxi bylaw could legally impose on the owner or occupier of private property a duty to permit taxis and license holders to enter onto private property without the permission of the owner and without being subject to the conditions imposed by the owner, no evidence of such a bylaw was tendered or entered into evidence before the trial judge or this court.

[42] In summary, the Appellant has not established as legal justification that holding of a license under the *HRM Taxi Bylaw* to pick up, deliver and drop off passengers in HRM entitles him to enter any private property in HRM without the consent of the property owner or being subject to any restrictions, terms and conditions imposed by the property owner or occupier.

[43] Second, the Appellant argues that the *PPA* should be interpreted so as to exclude roadways on private property, as defined in *s. 2(u)(ii)* of the *MVA* from the definition of "premises" in the *PPA*. The Appellant acknowledges, and the trial judge found, that the roadway on the Airport property in front of the terminal was not a public highway pursuant to *s. 2(u)(i)* of the *MVA*.

[44] In the common law, public highways were ways over which all members of the public were entitled to pass, but which entitlement may be subject to some kinds of restrictions imposed for the benefit of the public as a whole. The common law has, in many jurisdictions, been codified, and the right of the public to pass on public highways has been made subject to some restrictions.

[45] The common law also recognized the existence of private roadways. Private roadways do not have the essential characteristic of a public highway. Private roadways exist on privately owned property. They are generally subject to the control of the property owner.

[46] Roadways on private property may, in addition, be subject to legislation. One example of legislation affecting roadways on private property in Nova Scotia is the control of the operation of motor vehicles on roadways on private property, which roadways are designed to be and are accessible to the general public by the *MVA*.

[47] Bell Boulevard, within the boundaries of the lands owned by the Government of Canada and leased by it to and occupied by the Authority, is a private roadway on private property. It was designed to be and is accessible to the general public for the operation of motor vehicles; that is, the operation of motor vehicles on that roadway is subject to the provisions of the *MVA*. The fact that the provisions of the *MVA* apply to the operation of motor vehicles on that roadway does not detract from the underlying fact that it is a private roadway and not a public highway.

[48] The essential characteristic of a public highway, that is, the right to pass subject only to those restrictions that apply to all users alike, does not apply to a roadway on private property, whether or not the operation of motor vehicles on that roadway is subject to the provisions of the *MVA*.

[49] Said differently, the *MVA* does not grant a right of public access to a private roadway that is accessible to the general public. It only regulates the operation of motor vehicles on such a roadway.

[50] There are other statutes which have codified the common law with respect to the public's entitlement to use public highways. In Nova Scotia, these statutes include the *Public Highways Act* (which applies to all public highways within the Province not included within the boundaries of a city, town or owned by a municipality), and the *Municipal Government Act*, in particular, Part XII "Streets and Highways" (which applies to municipally owned streets and highways).

[51] The trial judge found as a fact that the roadway in front of the terminal was on Airport property. It was therefore not a "public highway" as defined in the *Public Highways Act* or *Municipal Government Act*.

[52] The provisions of the *MVA* which regulate the operations of motor vehicles on both public highways and private roads that are accessible to the general public are not inconsistent with the provisions of the *PPA*, and do not mean that such roadways cannot be part of the "premises" of the Authority.

[53] Premises are defined in *s. 2(d)* of the *PPA* as meaning "lands and structures, or either of them ...". In addition, the definition includes "trailers and portable structures designed or used for residence, business or shelter". The portion of the definition relating to trailers and portable structures designed or used for residence, business or shelter is not relevant to this particular case. The interpretation of what is meant by "lands and structures or either of them" is aided by the types of areas that are described in the other subsections of *s. 3(1)* of the *PPA*. The type of lands and land uses that are described in *s. 3(1)(a-d),* suggest an expansive definition of the term "premises".

[54] It is eminently logical that lands, occupied by an Authority for use as an airport, would include not only structures, runways, open spaces, parking areas and sidewalks, hangers and terminals, but also the roadways into, out of, and within the airport lands.

[55] It is illogical and not plausible that the premises (lands and structures) of an airport would include lands used for other purposes related to (and necessary for) the operation of an airport, but not to the roadways occupied by an airport authority, just because they are accessible to the general public to gain entry to, and leave, the airport property and therefore subject to the *MVA* respecting the operation of motor vehicles on them.

[56] The trial judge did not err in finding that the private roadway in front of the terminal building was part of the premises of the Airport from which the Appellant was prohibited from entering by reason of the written Notice served on him on January 31, 2012.

[57] The appeal is dismissed.

J.