

ONTARIO COURT OF JUSTICE
Provincial Offences Appeals

In The Matter Of:

DANYELLE ALVARO

Appellant

v.

HER MAJESTY THE QUEEN

Respondent

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONOURABLE JUSTICE B. CAVION
On Thursday, July 19th, 2001, at Toronto

CHARGE: Disobey Stop Sign

APPEARANCES:

Agent for the Crown

Agent for the Accused

Ms. E. Jackson

T. Brown, Esq.

MS. JACKSON: Danyelle Alvaro.

MR. BROWN: That's also my appeal. Once again, it's Brown, initial T.

I don't know if Your Honour has had the opportunity to read these transcripts. It's probably not necessary if you haven't. The complaint stems from what took place at the conclusion of the Crown's case. I think it's on page 9.

THE COURT: All right. Let me take a look at it.

MR. BROWN: "That's the case for the Crown."

"I am not providing a defence." That's Mr. Pelaccia, he's agent for the defendant.

THE COURT: You are on page 9?

MR. BROWN: Page 9, line 5. The court says, "Okay." Protocol, of course, dictates, "No defence."

THE COURT: That's right. "That's the case for the Crown. Thank you."

"Your Worship, I am not providing a defence."

"Okay."

"I guess my friend makes submissions."

"Right."

MR. BROWN: Right. I think the ball goes to the Crown's court on that issue. The Crown makes submissions. They are not relevant to my argument.

The court, at line 19, at that point indicates that he is satisfied on the evidence, etc.,

5 etc., makes out a conviction and then says, "Okay" to Mr. Pelaccia. He says, "Certainly, Your Worship."

10 The very narrow complaint being that the learned Justice of the Peace, in my respectful view, ought to have entertained submissions on the evidence from the defence, in this case, Mr. Pelaccia.

15 Nothing's going to leap out of the transcripts at you, whereby Mr. Pelaccia was doing stride-jumps complaining he didn't get the opportunity to make submissions. Having said that, I think it would have been most appropriate to hear the comments from the defence with respect to the evidence as led. They can be very, very helpful in the trial, of course, as we all know.

20 THE COURT: What you are saying is that defence was never given a chance to make submissions at the end of the case?

MR. BROWN: In a nutshell, that's correct.

25 THE COURT: That is usually a good basis for an appeal.

MR. BROWN: I think it is typically fatal.

THE COURT: What do you think?

30 MS. JACKSON: Well, Your Honour, obviously that opportunity should be given. The difficulty I have with this transcript is that at the end of -- the Crown makes its submissions and the court makes a conviction

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which is not, I would say, proper at that point. There should be an opportunity for submissions.

THE COURT: Right.

MS. JACKSON: He then turns to the agent and says, "Okay?", and he says, "Certainly, Your Worship." Now, isn't that the point where you say, "Well, I didn't get a chance to make submissions"? And frankly, if you are going to change the outcome --

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THE COURT: I think if he had been astute, he would have stood up and said, "But, Your Worship, you never permitted me to make submissions before you launched into your decision", and at that point the case could support it and it goes for a new trial. It is a mistrial, because the judge has made a decision before hearing the defence.

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I think this is a good one. It is a very valid -- actually, there is case law on this. This is not a new issue.

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MS. JACKSON: I am not, in any way, suggesting this trial is the way it ought to be run. I am not suggesting that. My only difficulty is we are not --

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THE COURT: All right. What if the judge said, "Okay, defence counsel, make your submissions", and the Crown is sitting down, and the judge says, "Well, I find there is a reasonable doubt." "Now, Your Honour, won't

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you give me a chance to make submissions,
too?" I mean, what I am saying --

MS. JACKSON: But that is the appropriate
response, Your Honour. I mean, that is the
appropriate response, is "Hey, what about my
submissions?" Not, "Certainly, that's great."

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THE COURT: At that point, the judge has
already made his decision. MacDonald makes
submissions, right? MacDonald says, "Your
Honour, I submit this guy is guilty", blah,
blah, blah, blah. Next thing, the court, "I
am satisfied that the evidence the officer has
given is admissible and there is proof beyond
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a reasonable doubt the defence has been made
out. There will be a finding of guilt.
Conviction. Okay?" The defence counsel says,
"Certainly, Your Worship."

MS. JACKSON: I am not disagreeing with you.

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THE COURT: You lose on this one. There is no
question that the law is clear. A person has
a God given right to make submissions. If you
don't, you are short-circuiting the whole
system. What is the charge here, disobey a
stop sign, fail to stop?

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MR. BROWN: Yes.

THE COURT: I think -- the only thing I am
going to tell you right now, this is it. I am
not sending it back for a new trial. It would
not be fair, in my opinion. It is not like
the other one. On this one here, an
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acquittal, and that is the end of it.

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This is to certify that
the foregoing is a true
and accurate transcript
of my recordings to the
best of my ability and
skill.



C. Peters
OFFICIAL COURT REPORTER

15 Photostatic copies of this transcript are not certified and
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violation of Ontario Regulation 587/91, Courts of Justice Act,
January 1, 1990.
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