

CANADA / JUDGMENT

R. v. Braut

2004 BCCA 587

COURT

British Columbia Court of Appeal

DECIDED

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2004 BCCA 587 R. v. Braut COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Braut, 2004 BCCA 587 Date: 20041124 Docket: CA031957; CA031958 Between: Regina Respondent And Ivan John Braut Applicant/Appellant Before: The Honourable Madam Justice Prowse (In Chambers) D. Karp Counsel for the Applicant A. Budlovsky Counsel for the Respondent Place and Date of Hearing: Vancouver, British Columbia November 18, 2004 Place and Date of Judgment: Vancouver, British Columbia November 24, 2004 Reasons for Judgment of the Honourable Madam Justice Prowse:

- [1] Mr. Braut is applying for leave to appeal from the decision of Madam Justice Allan made March 24, 2004, allowing the Crown's appeals from acquittal and entering convictions on two counts of driving while prohibited, contrary to s. 95 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318. Madam Justice Allan's decision dealt with Crown appeals from two separate Provincial Court decisions raising the same issue.
- [2] The issue, as framed by Madam Justice Allan at para. 13 of her decision, was "whether the learned trial judges erred in law in finding that Mr. Braut's driver's record constituted 'evidence to the contrary' that raised a reasonable doubt as to whether the alleged prohibition was authorized by law."
- [3] In summary, the trial judges found that the reference in Mr. Braut's driving record to "MV-SEC93(1)(A)(II)" (rather than s. 93(1)(a)(ii)), referred to a non-existent section of the Motor Vehicle Act, thereby casting doubt on the reliability of the Certificate of the Superintendent certifying that Mr. Braut was prohibited from driving on the dates he was charged, with the result that Mr. Braut should be acquitted. In acquitting Mr. Braut, the trial judges followed an earlier decision of the Provincial Court, R. v. Hirst (5 February 2003), Surrey Registry, 122319, which dealt with the same issue.
- [4] Madam Justice Allan concluded that Hirst and the two decisions under appeal were wrongly decided. In so doing, she found that the reference to "MV-SEC93(1)(A)(II)" in the driving record could be nothing other than a reference to s. 93(1)(a)(ii) of the Motor Vehicle Act, and that what amounted to a typographical error (typing the section number in upper case) did not constitute evidence to the contrary so as to render the Certificate of the Superintendent unreliable. In coming to her conclusion, she referred to several cases, including the decision

of this Court in *R. v. Alexis*; *R. v. Sloan* (1999), 181 D.L.R. (4th) 719, which dealt with a similar issue.

- [5] Madam Justice Allan sets forth her conclusion with respect to both counts at paras. 25 and 26 of her reasons: I do not agree that the phrase "PROHIBITION-SUPERINTENDENT-MV-SEC93 (1)(A)(II)" in the driver's record refers to a non-existent section. The phrase refers to a prohibition by the Superintendent under s. 93(1)(a)(ii) of the Act. In my opinion, *Hirst*, supra, is wrongly decided and the reasoning in *Alexis*, *Sloan* [supra] and *Frederick* [[1998] B.C.J. No. 2245 (QL) (S.C.)], is applicable and determinative. The impugned phrase in the driver's record is not ambiguous and could not have misled or prejudiced the respondent. The Crown proved beyond reasonable doubt that Mr. Braut was prohibited from driving from July 2, 2001 to November 2, 2001 pursuant to the relevant section of the Act. The driver's record did not constitute evidence to the contrary or render the Certificate unreliable. Accordingly, the acquittals of the respondent were unreasonable and should be set aside.
- [6] It is common ground that in order to obtain leave to appeal in a summary conviction matter, the proposed appellant must establish that: (1) the issue involves a question of law alone; (2) the issue is one of importance; and (3) the issue raised has a reasonable prospect of success.
- [7] Counsel for the Crown agrees that Mr. Braut has raised a question of law in his proposed appeal. He submits, however, that the issue is not one of importance and that it does not have a reasonable prospect of success.
- [8] I agree with the submissions of counsel for the Crown. In my view, there is nothing in this case to distinguish it in any meaningful way from this Court's decision in *Alexis*. The facts are different, but the underlying principle is the same. I am not persuaded that this case raises an issue of importance or that it has any reasonable prospect of success.
- [9] In the result, I would dismiss the application for leave to appeal. "The Honourable Madam Justice Prowse"

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