

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

LUMEN C. MARIANAYAGAM

Appellant

-and-

HER MAJESTY THE QUEEN

Respondent

MEMORANDUM OF JUDGMENT

- [1] The appellant was convicted by a Justice of the Peace of the summary conviction offence of failing to wear a seat belt while operating a motor vehicle, contrary to s.146(2) of the Motor Vehicles Act. He appeals that conviction.
- [2] At trial, two municipal by-law officers testified under oath that they observed the appellant operating the vehicle without wearing a seat belt on the date and at the location in question. The essence of the appellant's testimony and argument at trial was that it was impossible for the officers to see what they said they saw, because of the tinted glass on the rear window of his vehicle, because of frost or snow on the front window, because of the lighting conditions, etc. The Justice of the Peace assessed all of the evidence that was presented to him, and considered the submissions made to him, and in the result he accepted the evidence of the two officers and was satisfied beyond a reasonable doubt that the offence was committed.
- [3] The appellant was unrepresented at trial and on this appeal. I am satisfied that the appellant has made a knowing choice to represent himself on this appeal, following advice from the Court regarding the wisdom of having legal counsel.
- [4] Before turning to the grounds of appeal, I shall refer to the notion of fresh evidence. In affidavit material, in his factum, and in oral submissions, the appellant attempted to refer this Court to evidence that was not before the trial judge . Examples:
- a) photographs which were not included in the group of photographs presented to the Justice of the Peace;

- b) evidence that the appellant and his friend had earlier stored some tires in the luggage compartment of the vehicle;
- c) a diagram of the seat belt assembly obtained from the vehicle manufacturer;
- d) an article on light reflection and light refraction.

[5] An appeal court can admit fresh evidence when it is in the interests of justice to do so. See s.683 C.C. and *R v. Palmer* [1980] 1 S.C.R. 759. However, there is no justification for doing so in this case. This appellant simply attempts to re-litigate the evidentiary issues at trial. He could have, with reasonable diligence, presented this very evidence at his trial but failed to do so. It is not the role of this Court on this appeal to re-try the case. To re-try cases at will is to the general detriment of the administration of justice. The Court's responsibility is to ascertain whether the conviction was supported by the trial evidence, whether the conviction was unreasonable, whether the trial judge made any error of law in his conduct of the trial.

[6] I turn now to the grounds of appeal. The notice of appeal cites three.

[7] Firstly, the appellant says that the by-law officers committed perjury. This is a serious allegation, indeed it suggests deliberate criminal activity by two peace officers. Yet there is no foundation in the record nor in the appellant's submissions to support such a grievous assertion.

[8] Secondly, the appellant says that the Justice of the Peace erred in refusing to allow the appellant to introduce photographs and other material into evidence at the trial. A review of the trial record discloses no substantiation for this assertion. There is no reference to any refusal by the Justice of the Peace to consider any evidence tendered by the appellant at his trial. Indeed, the record shows that the Justice of the Peace took into consideration the photographs adduced by the appellant at his trial.

[9] Thirdly, the appellant says that the Justice of the Peace erred in refusing to consider material from the vehicle manufacturer. A careful review of the trial record shows that no such evidence was tendered before the Justice of the Peace.

[10] Each ground of appeal is clearly without merit.

[11] The appellant's conviction was not unreasonable, and was supported by the trial evidence. I find no error by the Justice of the Peace. The appeal must be dismissed.

[12] In the appellant's filed factum, under "Relief Requested" the appellant asks not only that the conviction be set aside but also that:

- a) the Court instruct the respondent to gain knowledge of and comply with the Canadian Charter of Rights and Freedoms;
- b) the Court award him exemplary damages for mental distress suffered from harassment, and;

c) The Court order that the infrastructure known as the City of Yellowknife Municipal Enforcement Office be “dismantled”.

[13] It is trite to say that this Court on this appeal has no jurisdiction to entertain any of these matters. Accordingly this relief is also denied.

[14] For these reasons, the appeal is dismissed. The appellant shall pay to the respondent its costs of this appeal which I hereby set at \$300 inclusive of disbursements.

J. E. Richard
J.S.C.

Dated this 26th day of July, 1999
at Yellowknife NT .

For the Appellant: Lumen C. Marianayagam
Counsel for the Respondent: Paul Smith