

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

FRANKIE JAMES SMITH

Transcript of the Reasons for Judgement held before
The Honourable Justice A. M. Mahar sitting in Yellowknife,
in the Northwest Territories, on 27th day of November,
2015.

APPEARANCES:

Mr. S. Lafrance: Counsel for the Crown

(No Counsel): For the Accused

Charged under s. 267(b) Criminal Code of Canada

1 THE COURT: I have considered this issue
2 very carefully. Given that we are dealing with
3 an unrepresented person on the other side of the
4 equation, where I would normally reserve and
5 write, I think it is only fair to Mr. Smith that
6 I make a decision and that he hear what that
7 decision is as quickly as possible. I mean
8 absolutely no disrespect to Judge Schmaltz in the
9 timing of my decision, but I will give an oral
10 judgement now.

11 This case, at its core, is very simple. It
12 is a question of the interpretation of the
13 consequences, that flow from failure of the
14 police officer who swore the information in this
15 case to properly identify the informant and
16 occupation of the informant in the spaces
17 provided for this in the information.

18 Judge Schmaltz's position, which I take from
19 her written decision, paragraphs 24 and 25, is,
20 and I quote:

21
22 In the instant case, the error
23 is even more egregious, and
24 this is not a situation where
25 no information was put in the
26 blank spaces for the name,
27 address, and occupation of the
informant, which then may be
able to be corrected by an
amendment.

In this case, the Crown has
not sought to provide the
name, address, and occupation

1 of the informant. That
2 information is already on the
3 information. But the Crown
4 now seeks to change who the
5 informant was in order to make
6 the information a valid
7 information.

8 The existence of an
9 informant is essential to a
10 valid information, i.e., an
11 information that will vest a
12 Court with jurisdiction to
13 commence proceedings. And the
14 informant must swear his or
15 her written statement. Where
16 the informant has not sworn
17 the information, no
18 information exists.

19 The difficulty is one of approach in this
20 case. I have before me a well-reasoned,
21 well-constructed decision by a highly experienced
22 and learned trial judge with which I disagree.
23 Because of the nature of the court system in
24 Canada and because of the standard of review with
25 respect to a question of pure law, my
26 interpretation of the law and statutory
27 requirements trumps, and the decision will be
28 overturned.

29 What Judge Schmaltz had in front of her was,
30 in fact, a sworn information. There was a
31 signature, clearly legible, naming the informant
32 as well as a signature of the reviewing justice
33 of the peace before whom the information was
34 sworn. There was an obvious mistake made by the
35 officer producing the information in putting the

1 name of the accused and his occupation, or lack
2 thereof, in the spaces that were provided.

3 To suggest that this case was inherently
4 different than the situation in which the
5 informant's name was not filled in is a
6 suggestion that I do not agree with. I think
7 this is basically exactly the same situation as a
8 situation in which the informant forgot to write
9 in the name and the occupation. If we had
10 another police officer's name that might be more
11 problematic, because then there really would be a
12 discrepancy between the two which would call into
13 question whether or not the information had
14 actually been properly sworn.

15 The mistake in this case is so blatant on
16 the face of it that, while I am not saying the
17 judge could take judicial notice of what
18 occurred, the judge could have ignored the name
19 of the accused and the occupation of the accused
20 as having any impact on who the actual informant
21 was. It does not determine anything. I agree
22 with Judge Schmaltz that it is no major
23 undertaking for a police officer to correctly
24 fill in the form, and her censure in that regard
25 is echoed.

26 This is also just a question of different
27 approaches. There was a time when defects in

1 informations were essentially fatal and when the
2 standard method of dealing with them was to quash
3 the information. That time has passed. The
4 default position of the court of first instance
5 should be to amend unless it is simply impossible
6 to do so.

7 There is case law pointing in both
8 directions. I am certainly not suggesting that
9 the decision of the learned trial judge was
10 unfounded in law, but it is simply not, in my
11 view, the correct decision given the current
12 state of the law and the current spirit of the
13 law, especially the spirit of that law coming
14 from the Supreme Court of Canada which has been
15 to adopt a far more openly principled as opposed
16 to, for lack of a better word, a strictly formal
17 approach in these matters.

18 For those reasons, I am granting the appeal.
19 We will order a new trial, and I will order that
20 the information be amended to reflect the proper
21 name and occupation of the police officer who
22 swore it. Thank you.

23 -----
24 **PROCEEDINGS CONCLUDED**
25 -----

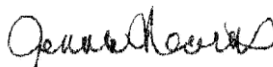
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 1st day of February, 2016.



Jenna Mearns CSR(A)
Court Reporter