SUPREME COURT OF YUKON

Citation: *R.* v. *Abdullahi,* 2009 YKSC 67

Date: 20091028
Docket S.C. No.: 08-AP013
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

AND:

MOHAMED M. ABDULLAHI

Appellant

Before: Mr. Justice R. Foisy

Appearances:

Mark Pindara	Appearing for the Respondent
Mohamed Abdullahi	Appearing on his own behalf

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] FOISY J. (Oral): Mr. Abdullahi, as I mentioned earlier, you have a tough row to hoe here because the person that has to be convinced, or at least has to have a reasonable doubt, is the trial judge, not me. I cannot substitute my view for his unless he made some mistakes in law, and that is what I am here to decide.

[2] Some points were raised and I will touch on them briefly. Basically, this was a question of credibility. There were two witnesses: the accused and the police officer. The trial justice of the peace accepted the police officer’s version. In the face of the contradictions that the appellant raised himself as to where his vehicle was as the light turned amber and then red, this is not surprising.

[3] He allowed the Crown to re-examine on an issue that was raised by the accused in cross-examination, and that was only to clarify. As Crown just said, it was not anything new; it was something that you had raised. So that is proper; that can be done.

[4] It is true that a judge cannot unduly interfere in the process of a trial. He is the trial judge, but you and the Crown have the right to present your cases without him unduly interfering and without making the trial seem unfair, such as favouring one side or the other. But here the questions were basically only after the evidence was in, and it was to clarify one point; namely, where was your vehicle when the light turned amber and then red? In examination-in-chief two versions came out and he was troubled by that. So it was quite proper for him to clarify that point.

[5] Then, during your answers to him, you gave a third version, which made it even more confusing. So at the end of the day, when he said I accept the evidence of the Crown as opposed to your evidence, there is nothing unlawful about that. That was his call and I think it was proper in the circumstances.

[6] He did use some words that seemed a little unusual, if I might use that word, in his judgment, but I think he was trying to be kind to you. He did not want to upset you and he did not want to say what some other judges might have said under the circumstances. But it is clear, at the end of the day, he accepted the police officer's evidence over yours and that your evidence did not raise a reasonable doubt.

[7] So I am going to dismiss the appeal for those reasons. I am sorry if it is going to affect your livelihood, but that is something that we cannot take into account unless we

are dealing with a sentence. The sentence here is prescribed by law, so there was no choice. When we are dealing with innocence or guilt, we cannot take into account how it is going to hurt a person's life or livelihood. So I am sorry if it does affect you negatively, but there is nothing that we can do about that.

[8] In his written argument, the appellant submitted that the trial justice had misapplied or misapprehended the burden of proof. I would simply suggest that it might be a better practice for any trial judge or justice to refer to the steps as laid down in the Supreme Court of Canada case of *R.* v. *W.(D.)*, [1991] S.C.J. No. 26, when dealing with issues of reasonable doubt. That would normally be sufficient to put the issue to rest.

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FOISY J.