

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Pizzacalla, 2014 ONCA 706

DATE: 20141017

DOCKET: C56687

Feldman, Epstein and Benotto JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Ricky Pizzacalla

Appellant

Ricky Pizzacalla, acting in person

Joanne Stuart, for the respondent

Heard: October 6, 2014

On appeal from the decision of the Summary Convictions Appeal Court dated February 1, 2013, by Justice James A. Ramsay of the Superior Court of Justice, dismissing the appeal from the conviction entered on May 3, 2012, by Justice Joseph Nadel of the Ontario Court of Justice.

ENDORSEMENT

[1] As a result of being convicted of impaired driving, Mr. Pizzacalla was prohibited from driving a motor vehicle for a period of three years pursuant to s. 259(1) of the *Criminal Code*, R.S.C. 1985, c. C-46. The prohibition was in place when, on July 13, 2011, Mr. Pizzacalla was stopped by police while driving a

device described as looking like a moped or a scooter. He was charged, under s. 259(4) of the *Code*, with operating a motor vehicle while disqualified from doing so.

[2] Mr. Pizzacalla was convicted at trial and his summary conviction appeal was dismissed. He seeks leave to appeal to this court and, if leave is granted, appeals his conviction.

[3] Both at trial and before the summary conviction appeal judge, Mr. Pizzacalla's primary position was that the device he was driving was a power-assisted bicycle, as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8, and colloquially referred to as an "e-bike". He argued that his prohibition from driving did not prevent him from operating his e-bike since the *Highway Traffic Act* does not require drivers of e-bikes to be licensed.

[4] The trial judge did not accept this argument. He held that the device Mr. Pizzacalla was driving was not a power-assisted bicycle as, under the *Highway Traffic Act*, at s. 1(1), such a machine is defined, among other things, as having "affixed to it pedals that are operable" and as being "capable of being propelled solely by muscular power".

[5] The device Mr. Pizzacalla was driving did have two pedals. However, neither was operable. One was attached to the device but not in a way that would allow the driver to propel the device by muscular power. The other pedal

was not attached to the device at all; it was in a storage compartment on the device.

[6] The trial judge went on to find that, as the device Mr. Pizzacalla was driving was not capable of being propelled by muscular power, it fell within the definition of a “motor vehicle” in s. 2 of the *Code*. A motor vehicle is defined in that section as “a vehicle that is drawn, propelled or driven by any means other than muscular power, but does not include railway equipment”.

[7] Mr. Pizzacalla was caught driving a motor vehicle while prohibited from doing so. The trial judge therefore found him guilty of driving while disqualified, pursuant to s. 259(4) of the *Code*.

[8] The summary conviction appeal judge dismissed the appeal. He agreed with the trial judge’s conclusion that Mr. Pizzacalla was driving a motor vehicle as defined by the *Code*. Mr. Pizzacalla’s disqualification from driving, which the summary conviction appeal judge found was validly proven, was under the *Code*. In these circumstances, the *Highway Traffic Act* had no application.

[9] Appeals to this court in summary conviction proceedings are not as of right or unrestricted in the nature of the grounds that may be advanced. This court, in *R. v. R.(R.)* (2008), 90 O.R. (3d) 641, set out factors that inform the exercise of discretion in granting leave. However, the starting point is s. 839(1) of the *Code*.

This section provides that the ground of appeal must involve a question of law alone.

[10] Before this court, Mr. Pizzacalla proposes again to advance the argument that the prohibition does not apply as he required no license under the *Highway Traffic Act*. He stated that he was not challenging the finding that his device was a motor vehicle under the *Code*. Mr. Pizzacalla attempts to rely on his reading of s. 259(1.2) of the *Code*, which relates to circumstances in which permission may be obtained to operate motor vehicles equipped with an alcohol ignition interlock device. However, he acknowledged that there was no evidence at trial that the device he was driving had an interlock system. Mr. Pizzacalla also alluded to certain requirements when making a prohibition order, as set out in s. 260(1)(c) of the *Code*. However, the summary conviction appeal judge considered this argument and found that Mr. Pizzacalla had been informed of s. 259(4) of the *Code*, as required by s. 260(1)(c).

[11] None of Mr. Pizzacalla's arguments raise an issue of law alone. They do not provide a basis to grant leave to appeal.

[12] For these reasons, leave to appeal is dismissed.

"K. Feldman J.A."

"Gloria Epstein J.A."

"M.L. Benotto J.A."