

Case Name:

R. v. [REDACTED]

**Between
Her Majesty the Queen, and**

[REDACTED]

[2013] O.J. No. 6480

Ontario Court of Justice
Burlington, Ontario

A. Zuraw J.

Heard: October 8, 2013.
Oral judgment: October 8, 2013.

(13 paras.)

Counsel:

J. Dipsky, Esq., Counsel for the Crown.

A. Stastny, Esq., Counsel for the Accused.

REASONS FOR JUDGMENT

1 A. ZURAW J. (orally):-- [REDACTED] is charged that between the 1st of May in 2012, and October the 31st, 2012, she did, in the Town of Milton, or elsewhere in the Province of Ontario, willfully attempt to obstruct, pervert, or defeat the course of justice, by offering a financial incentive to Frank Donkin, contrary to s.139(2) of *The Criminal Code*.

2 Initially the charge contained the allegation that she asked Mr. [REDACTED] to give false information that was subsequently amended to delete that particular. The evidence showed that Mr. and Mrs. [REDACTED] separated after being together for some time, and Mrs. [REDACTED] began a relationship with Mr. [REDACTED] boss.

3 Difficulties ensued. There appears that there were some issues between the two of them with respect to various matters, and that at one point Mr. Donkin instituted charges of assaulting a child of Mr. and Mrs. [REDACTED]. That charge being laid against Mrs. [REDACTED] new partner.

4 During this period of time Mr. [REDACTED] had made a false tax claim, claiming an entitlement that he was not entitled to, and that he knew he was not entitled to, and to the detriment of Mrs. [REDACTED]. He found himself in difficulty with the tax authorities, and was in difficult financial straits. He asked Mrs. [REDACTED] with whom he had been feuding over different matters, to help him out. She eventually said that she would if he would, and this is the evidence, drop the stupid charges against her partner, which she felt were false, and were only laid at the request of Mr. [REDACTED].

5 While no evidence was led as to the facts in that particular matter, and I was told that that matter is coming up for trial in November, Mr. [REDACTED] as a result of his observations and some investigation that he had done on his own, had gone to the police and advised them with respect to this alleged assault. And now, Mrs. [REDACTED] believing that Mr. [REDACTED] was the person who was in charge of this and who could do something about it, wanted him to drop the charges.

6 Mr. [REDACTED] went to the police, and the police very helpfully laid Obstructing Justice charges against Mrs. [REDACTED]. Mrs. [REDACTED] testified that she did not believe the charges were valid, that is to say, the Assault charges, and that she did not believe that she was committing a crime when she asked Mr. [REDACTED] to end the proceedings.

7 Mr. Khoorshed, for the Crown, in effect says, too bad so sad, ignorance of the law is no excuse. And the Ontario Court of Appeal in *R. v. Pare*, 2010 ONCA 563, clearly states that offering money to someone to prevent justice from running its proper course is the crime of obstructing justice, even if the accused believes that all she is trying to do is to get someone to tell the truth.

8 Here Mr. [REDACTED] only passed on what he says he saw, and it is the person who allegedly was assaulted who advised Mr. [REDACTED] of the identity of the person who did that. Mr. [REDACTED] had no ability to do anything with respect to these charges he had no evidence to change, and no evidence was led that the accused asked Mr. [REDACTED] to lie or in any way tamper with his evidence.

9 Can it be said that the accused should still be found guilty, as she offered a monetary incentive to Mr. [REDACTED] to do something that he did not have the power to do. There was no request to give false evidence. There was no request to do something that was corrupt. If that were the case, than every complainant who asked the Crown or the police to drop charges could find themselves in the same position that Mrs. [REDACTED] finds herself in today.

10 As I debated the legal issues, I was stuck with a thought throughout. That Mr. [REDACTED] was trying very hard to cause as much trouble as he could for Mrs. [REDACTED]. I also believe that the authorities exercised their discretion to use a sledgehammer in this case, where a caution may well have sufficed.

11 I am troubled, overly, on the evidence. I went back and forth believing that there was certainly the *actus reus* and that Mrs. ██████ did want the proceedings to come to an end. But at the end of the day I do have a doubt as to whether or not there was any intent to obstruct justice. I therefore find that I do have a reasonable doubt. And while Mrs. ██████ should not have attempted to link these two things together, as part of the give and take that occurs in proceedings in family matters between two parties, as I say, I am not satisfied that the full extent of the law was appropriate, and I do not find that there is the context in which I would find that the accused was attempting to obstruct, to pervert, or defeat the course of justice. Accordingly, the case is dismissed.

12 MR. STASTNY: Thank you Your Honour.

13 MR. DIPSKY: Yes, thank you Your Honour.