

*Case Name:*

**R. v. Aquin**

**Between  
Her Majesty the Queen, and  
James Aquin**

[2015] O.J. No. 6482

Ontario Court of Justice  
Hamilton, Ontario

**R.E. Jennis J.**

Heard: October 16, 2015.  
Oral judgment: October 16, 2015.

(17 paras.)

**Counsel:**

D. Allen, Counsel for the Federal Crown.

J. Goldlist, Counsel for James Aquin.

---

**RULING**

**1** R.E. JENNIS J. (orally):-- I conclude that the police had the obligation and right to detain the accused for investigative purposes given the information they had been given as well as the initial observation of his riding of the bicycle. One: They had been informed by dispatch that a male described remarkably similar to the accused, had been yelling and dancing in the street. This was reported by a third-party. Two: Two officers from the ERU observed the accused a short distance within minutes of the report, riding his bicycle somewhat erratically on the sidewalk and at times on the roadway. This was shortly after midnight.

**2** Both officers agreed that the accused was detained by them once he responded to the direction to come over to them. Up to that point, the conduct of the police was perfectly lawful and reasonable and well within their obligations. Once detained, the accused was not given the reason for the

detention, and within minutes a patrol officer arrived, had brief interaction with the accused, and arrested him pursuant to s.34 of the Liquor License Act.

3 The basis of the arrest was that the accused was a danger to himself or others given the reported conduct from a third-party; his erratic operation of his bicycle, and his behaviours with the officers. That included at worst, some erratic motions, slurred speech, odour of alcohol, his failure to answer some questions, and his checking of his pockets over and over for identification without success.

4 Interestingly, the arresting officer did not mention being given any information regarding the operation of the bicycle. This says the Crown, is sufficient basis for arrest under the relevant section of the Liquor License Act. With respect, I disagree.

5 Public intoxication has been judicially defined to mean something more than impairment by alcohol. See R. v. Hagarty [2005] O.J. No. 5462 Ontario Court of Justice, and particularly, R. v. Giri [2001] O.J. No. 3307, a decision of Whitten, J. of the Superior Court in this jurisdiction. In particular, see paragraphs 36 and 39, which state: "But an analysis with respect to impairment, which is what PC Vanderpool appears to have approached the applicant with, is not what is required. The section speaks of an intoxicated condition. The Concise Oxford Dictionary, 10th Edition, defines intoxicated, "intoxicate, intoxicated (of alcohol, drink or drug) to cause someone to lose control of their faculties."

6 "In a similar vein, Police Magistrate MacKenzie in R. v. Tisdale Ibit, at page 219 stated, "He, the police officer, must have clear evidence that the person has been stupefied by liquor." He goes on, "The subsection" which is quite similar to the Ontario Regulation, "clearly presupposes that before the person was taken into custody had become so stupefied by alcohol, that he had lost the capacity, as distinct from the inclination, to prevent himself from causing injury to himself or to be a danger, nuisance or a disturbance to others."

7 In R. v. Twiss [1992] Y.J. No. 56 (Y. Terr. Crt), Justice Lilies is quoted as stating that, "Intoxicated requires extreme conditions of alcohol impairment."

8 The Tisdale definition is adopted in R. v. Prouix [1988] O.J. No. 890 by Justice Stortini of the district court. These cases are both referred to with approval by Justice Code in R. v. Toronto Police Services.

9 The accused in this case, did not approach that level of intoxication. He responded to police direction to speak and he provided his name and place of residence. There was no indication he had difficulty standing or performing other physical tasks. The symptoms observed by the officers certainly indicated some impairment but that is not the test.

10 Secondly, there was no real or serious consideration, assuming the accused to be sufficiently intoxicated within the meaning of the Act, to take any other steps outside of arrest to lessen the concern for safety. The accused provided a name and residence address, which was not found to be false, and no effort was made to see if he would co-operate in going home and if anyone would assist in supervising him once he got there. The arrest was made, in my view, perhaps partly motivated by good faith, but also for convenience.

11 I conclude that the arrest of the accused was unlawful and unreasonable in the circumstances. Consequently, there was no right to search the accused, and that search is *prima facie* unlawful and unreasonable. The Crown has not suggested any other basis for the search such as exigent circumstances.

**12** The considerations in R. v. Grant, [2009] 2 S.C.R. 353 on the first ground, I find that the breach is a serious one.

**13** In fact, the fact that there were several breaches magnifies the seriousness. First, there is the contravention of s.10(a) in that the accused was never told he was detained or the reason for it. Secondly, there is the unlawful arrest, and thirdly, the search without authority, neither statutory or a common-law. There may have been other breaches but I need not go further.

**14** Although, certainly not the most egregious police conduct, I have already found that it was motivated to some extent by convenience. This factor favours exclusion.

**15** Secondly, is the impact of the breach on the Charter Protected interest of the accused. The accused was arrested and search in the public street. It is not the serious impact but neither is it the least. Although a closer call than the first consideration, in my view, it favours exclusion.

**16** Finally, there is the societal interest in adjudicating the case on its merits. This is real evidence which is reliable, however it is not the category of cases that would be described as series such as large quantities of drugs for trafficking or weapons offences and so on. It is possession of drugs for personal use.

**17** I will favouring inclusion, it does not do so in a compelling manner. Given my analysis, I find the admissions of the evidence would bring the administration of justice into disrepute and be contrary to the public interests within the meaning of s.24.2 of the Charter of Rights and Freedoms, and therefore the evidence of the finding of the drugs is excluded. Charges against the accused are dismissed.

---- End of Request ----

Download Request: Current Document: 1

Time Of Request: Saturday, January 30, 2016 09:53:49