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Citation: *Montréal (Ville) v. Sigalit*, 1998 CanLII 11337 (QC C.S.)

Date: 1998-07-03

Docket: 500-36-001484-982

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
NO : 500-36-001484-982

DATE : 1998-07-03

EN PRÉSENCE DE :

PIERRE BÉLIVEAU , J.C.S.

Ville de Montréal
Appellant
v.
Nissel Sigalit
Respondent

Béliveau J.S.C.:-

1 Mr. Nissel Sigalit has been charged under section 381 of the *Code de la Sécurité routière* for having left his car unattended while the door was unlocked.

2 Section 381 of the said Code states the following:

Nul ne peut laisser sans surveillance un véhicule routier dont il a la garde sans avoir préalablement enlevé la clef de contact et verrouillé les portières.

3 In first instance, Judge St-Jacques, referring to the decision of Mr Justice Guérin in *Ville de Montréal c. Gauthier* , C.S., no. 500-36-001331-977, 17 Decembre 1997, upholding her own judgment, acquitted the Appellant declaring that section 381 of the *Code de la sécurité routière* means that to be guilty an accused must contravene both obligations provided for by section 381, which means that he must have left the key in the ignition and the door unlocked.

- 4 The City of Montreal appeals from that judgment alleging decisions to the contrary by Mr Justice Greenberg (*Ville de Montréal c. Polycarpe* , C.S., no. 500-36-001365-975, 26 February 1998), Mr Justice Boilard (*Ville de Montréal c. Pacheco* , C.S., no. 500-36-001485-989, 3 June 1998) and Her Honour Judge Manon Bourbonnais (*Ville de Longueuil c. Nadon* , C.M., no. 96-03569, 22 July 1996). Judge St-Jacques was the first instance judge in the first two cases.

- 5 The Court is in accordance with Her Honour Judge Bourbonnais when she states in the case of *Ville de Longueuil c. Nadon* that the word “et” means:

Le mot “et” contenu dans cet article signifie-t-il qu'une personne contrevient à l'article... c'est-à-dire que pour qu'une personne contrevienne à l'article il faut qu'un seul des éléments soit prouvé ou que les deux (2) doivent l'être? Je crois qu'un seul élément suffit. Il m'apparaît que le législateur ait voulu qu'en quittant son véhicule le conducteur doit s'assurer que la clé ne soit plus dans le contact et également que les portières soient verrouillées. Le tout évidemment dans le but d'éviter des vols et du vandalisme sur les véhicules. (p. 3. The emphasis is by this Court)

- 6 Mr. Justice Greenberg came to the same conclusion in the case of *Ville de Montréal c. Polycarpe* . He stated the following:

Parce que la question, c'est de lire l'article tout simplement. L'article dit, à chaque personne qui a le contrôle d'un véhicule moteur, qu'il ne laisse pas le véhicule sans surveillance, sans faire deux (2) choses: il doit enlever les clés du contact et en plus, il doit verrouiller, il ou elle doit verrouiller les portières. Pour laisser la voiture sans surveillance, il faut faire deux choses (2) choses, et l'article dit: vous ne laisserez pas votre voiture sans surveillance à moins que vous ne fassiez deux (2) choses. Et si vous faites l'une ou l'autre seulement de ces deux (2) choses, sans faire l'autre, vous commettez l'infraction. Parce que vous n'aviez pas le droit de laisser votre voiture sans surveillance à moins qu'au préalable vous enleviez les clés du contact et que vous verrouilliez les portes.

Donc l'un ou l'autre, comme a jugé Madame le juge Bourbonnais de la Cour municipale de Longueuil, manquer à l'un ou l'autre constitue l'infraction. Manquer aux deux (2), il va de soi, constitue, a fortiori, à plus grande raison, l'infraction. (p. 2)

- 7 The Court is also in agreement with Mr. Justice Guérin when he stated that section 381 provides for two obligations, declaring that the word “et” is not disjunctive but it's conjunctive, thus creating two obligations. So, the courts are unanimous on this point.
- 8 The problem is then how could an accused be declared guilty. One must read section 506 of the Code that states the following:

Quiconque contrevient à l'article [...] 381 [...] commet une infraction et est possible d'une amende de 30 \$ à 60 \$.

- 9 Thus, the Code provides that if one contravenes section 381, he is guilty. The Court comes to the same conclusion that Mr. Justice Greenberg that you can contravene either by leaving the car unattended with the key in the ignition or by leaving the car unattended while the doors are unlocked.
- 10 The Court must add that if the legislator had used the word “ou”, its intent would not then be fulfilled because manifestly, and the Court is in accordance with Mrs. Justice Bourbonnais as to what is the intent of the legislator, the legislator saw a danger if a car is left unlocked or if a car is locked but the key is in the ignition, it constitutes an invitation to theft. That is the evil that the legislator wanted to avoid.
- 11 That's why the legislator used the term “et” because he wanted to create two obligations. The term “ou” would defeat his intent because then, the prosecution would need to prove that the accused had done both things. Actually, the only way to have a person declared guilty if he/she contravenes one of the obligation provided for in section 381 is to use the word “et”.
- 12 By analogy, one could look at the next section in the Code, section 383(2) which states the following:

Si le véhicule est stationné dans une pente, le frein d'urgence de ce véhicule doit être appliqué et ses roues avant doivent être orientées de façon à ce que tout déplacement de l'avant du véhicule se fasse vers la bordure la plus rapprochée de la chaussée.

- 13 What is the intent of the legislator in that case? Of course, when one is parked in a hill, the legislator wants to avoid that the car goes into motion by itself and thus cause an accident. So he created two obligations to avoid an accident: put the car breaks on and steer the wheels so that it will hit the curb of the sidewalk if the car should get in motion. Could one reasonably think that to commit an offence somebody would have to contravene to the two obligations? That could not be the intent of the legislator.
- 14 Taking into consideration that this case has been appealed much more for the clarification of the law than for the sake of the present case, Respondent's attorney, with fairness, acknowledged that should it be granted, a stay of proceedings would be appropriate.

For the above reasons, the Court:

Grants the appeal;
Quashes the verdict of acquittal;
Declares, pursuant to its inherent jurisdiction, a stay of proceedings;
The whole, without costs.

BÉLIVEAU J.S.C.

Me Patrick Long, for the Appellant.
Mr Nissel Sigalit, on his own behalf.