



SUPREME COURT OF CANADA

CITATION: R. v. Manning, 2013 SCC 1

DATE: 20130117

DOCKET: 34358

BETWEEN:

Her Majesty The Queen

Appellant

and

Alphide Manning

Respondent

- and -

**Director of Public Prosecutions of Canada, Attorney General of Ontario,
Canadian Civil Liberties Association and British Columbia Civil Liberties
Association**

Interveners

CORAM: McLachlin C.J. and LeBel, Fish, Abella, Cromwell, Karakatsanis and
Wagner JJ.

REASONS FOR JUDGMENT: Fish J. (McLachlin C.J. and LeBel, Abella, Cromwell,
(paras. 1 to 8): Karakatsanis and Wagner JJ. concurring)

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2012: December 5; 2013: January 17.

Present: McLachlin C.J. and LeBel, Fish, Abella, Cromwell, Karakatsanis and
Wagner JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Criminal law — Forfeiture orders — Accused who had previously been convicted for multiple alcohol-related driving offences and breaches of probation orders and undertakings pleading guilty to the charge of driving a motor vehicle while impaired by drugs or alcohol — Crown requesting order of forfeiture of motor vehicle — Whether trial judge erred in refusing to issue order.

Held: The appeal should be allowed and the forfeiture order granted.

In applying s. 490.41(3) of the *Criminal Code*, the trial judge held that he was bound to consider the objectives and principles of sentencing set out in s. 718 and following of the *Code*. This error is fatal to his conclusion. The respondent failed to satisfy this Court that the impact of forfeiture would be “disproportionate” within the meaning of s. 490.41(3). The order of forfeiture sought by the Crown should therefore be granted.

Cases Cited

Referred to: *R. v. Craig*, 2009 SCC 23, [2009] 1 S.C.R. 762.

Statutes and Regulations Cited

Criminal Code, R.S.C. 1985, c. C-46, s. 490.41(3).

APPEAL from a judgment of the Quebec Court of Appeal (Thibault, Pelletier and Dufresne JJ.A.), 2011 QCCA 900 (CanLII), [2011] Q.J. No. 5287 (QL), 2011 CarswellQue 15720, SOQUIJ AZ-50753167, affirming a decision of Boisjoli J. refusing to order the forfeiture of offence-related property. Appeal allowed.

Robin Tremblay and Jean-François Bouvette, for the appellant.

Patrick Jacques, for the respondent.

Written submissions only by *Simon William* and *François Lacasse*, for the intervener the Director of Public Prosecutions of Canada.

Susan Ficek and *Melissa Adams*, for the intervener the Attorney General of Ontario.

Catherine Beagan Flood and *Joshua A. Krane*, for the intervener the Canadian Civil Liberties Association.

Audrey Boctor and *Douglas C. Mitchell*, for the intervener the British Columbia Civil Liberties Association.

The judgment of the Court was delivered by

FISH J. —

[1] Alphide Manning, the respondent on this appeal, pleaded guilty at trial to impaired driving and the Crown, upon his conviction, sought forfeiture of the truck driven by Mr. Manning at the time of his arrest.

[2] The trial judge declined to grant the order of forfeiture requested by the Crown.

[3] Our sole concern here is with s. 490.41(3) of the *Criminal Code*, R.S.C. 1985, c. C-46, which, in its relevant part, reads as follows:

. . . if a court is satisfied that the impact of an order of forfeiture made under subsection 490.1(1) or 490.2(2) would be disproportionate to the nature and gravity of the offence, the circumstances surrounding the commission of the offence and the criminal record, if any, of the person charged with or convicted of the offence, as the case may be, it may decide not to order the forfeiture of the property or part of the property and may revoke any restraint order made in respect of that property or part.

[4] In applying that provision here, the trial judge held that he was bound to consider the objectives and principles of sentencing set out in s. 718 and following of the *Criminal Code*.

[5] We agree with the Quebec Court of Appeal (2011 QCCA 900 (CanLII)) that the trial judge erred in this regard: see *R. v. Craig*, 2009 SCC 23, [2009] 1 S.C.R. 762, at para. 13.

[6] Unlike the Court of Appeal, however, and with the greatest of respect, we believe that the trial judge's error is fatal to his conclusion.

[7] Moreover, on the record as we have it, we are not satisfied that the impact of the order of forfeiture sought by the Crown was “disproportionate”, within the meaning of s. 490.41(3) of the *Criminal Code*. In concluding otherwise, the trial judge erroneously emphasized Mr. Manning's personal circumstances and failed to give appropriate weight, as required by s. 490.41(3), to Mr. Manning's criminal record, including *five* convictions for alcohol-related driving offences and *three* for breaches of probation orders or undertakings.

[8] Accordingly, we would allow the appeal and grant the order of forfeiture sought by the Crown.

Appeal allowed.

*Solicitor for the appellant: Poursuites criminelles et pénales du Québec,
Baie-Comeau, Quebec.*

Solicitor for the respondent: Patrick Jacques, Beaupré, Quebec.

*Solicitor for the intervener the Director of Public Prosecutions of
Canada: Public Prosecution Service of Canada, Ottawa.*

*Solicitor for the intervener the Attorney General of Ontario: Attorney
General of Ontario, Toronto.*

*Solicitors for the intervener the Canadian Civil Liberties
Association: Blake, Cassels & Graydon, Toronto.*

*Solicitors for the intervener the British Columbia Civil Liberties
Association: Irving Mitchell Kalichman, Montréal.*