

R. v. LOTOZKY

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2006 ON C.A. 21041 (CanLII)

Police officers received a call early in the morning of August 30, 2001 that a suspected impaired driver was causing trouble at the drive-through of a fast-food restaurant. After the officers were given the licence plate number and a general description of the driver and the vehicle, they used the computer to locate the home address of the vehicle's registered owner, drove to the location, and parked on the street. Soon thereafter, they saw a car driving on the street very slowly. For safety reasons, the officers decided to wait until the driver had stopped the vehicle before they approached it. When the vehicle stopped in Lotozky's driveway, the police officers approached the vehicle and tapped on the car window. Lotozky left the vehicle and leaned against the door of the car. The officers asked Lotozky for his licence, ownership, and insurance. Noticing that Lotozky had watery eyes, was struggling with his balance, and smelled of alcohol, the officers formed the opinion that Lotozky was impaired by alcohol and arrested him.

At the Ontario Court of Justice, the judge held that there was a violation of section 8 of the

Charter because the officers entered the driveway for the purpose of investigating a criminal offence. The evidence of the Breathalyzer certificate was excluded under section 24(2) of the Charter. The summary conviction appeal judge also held that Lotozky had a reasonable expectation of privacy in his driveway. On appeal to the Ontario Court of Appeal, the court ruled that the officers were legitimately in the driveway because they received a report about a suspected impaired driver. They were not asked to leave Lotozky's property before they formed the reasonable grounds for arresting him and making the Breathalyzer demand. The appeal was allowed, and a new trial ordered.

1. Why did Lotozky argue that his rights had been violated?
2. Why did the Ontario Court of Appeal allow the appeal?

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