

MAY 13th

Ask to see original Certificate of Offence before trial starts.

If amendment to charge is requested OBJECT because not prepared to fight new charge.

NOTES: If charge is changed to 75(4) "unnecessary noise" instead of 75(1) then need to focus on the word "CAUSED" meaning "cause to make" or "done on purpose". How did I cause? I did NOT!! Also use R. vs Haddad 2009 ONCJ 536 for subjective opinion. And in cross-examination get officer to say it was LOUD as opposed to UNNECESSARY. Never ask if he sure it was my vehicle.

MOTION to Dismiss Charge for lack of disclosure

Before entering plea I would like to make a motion to have charge dismissed because I have not received the disclosure I requested, and can therefore not make full answer or properly prepare a defense.

- First disclosure request sent April 7th
- Disclosure received May 8th (last Friday afternoon)
- Second disclosure request sent May 10th (on Sunday)

If trial goes ahead, MOTION to have all officers notes and testimony excluded from evidence since I never got a version of his notes that I could read.

If officer present, then ask for adjournment since only got disclosure last Friday and have not received other disclosure yet.

BURDEN OF PROOF

Motor Vehicle [] As defined in HTA? []

Highway [] As defined in HTA? []

Improper Muffler []

Noise due to improper muffler []

Excessive Noise []

Before cross examination do MOTION OF NON-SUIT if they missed an essential element.

CROSS EXAMINATION OF OFFICER

MUFFLER

Where was the sound coming from on the muffler?

Was it coming from the front or the back the muffler?

Was it coming from the top or bottom of the muffler?

Did you get down on the ground and examine the muffler under the vehicle?

Was the muffler disconnected?

So it is possible the sound could have been coming from somewhere else like the tailpipe or the manifold, and not necessarily from the muffler itself?

So you just assumed the muffler was improper but never actually checked it?

So you just assumed the noise was due to an improper muffler even though you never actually checked the muffler, and you never checked where the noise was coming from?

SOUND LEVEL SUBJECTIVE OPINION

What training do you have in the determination of how loud a sound or noise is?

So you have no formal training and are not an expert in determining how loud a noise is?

Did you use any kind of sound measuring device to get a decibel reading of how loud the vehicle was?

So it is only your subjective opinion as to how loud the noise from the vehicle was?

Does the HTA set any kind of standard for or define the term "loud" (or "excessive" or "unusual" ... use whatever term the officer used)?

Can you demonstrate for the court how loud my vehicle was that day?

SOUND LEVELS EXPERT OPINION

If we bought a brand new car today, could we be reasonably certain that the noise the vehicle makes would not be too loud, and would probably not give a police officer a reason to issue an improper muffler charge?

And if we bought a brand new car today, could we be reasonably certain that it meets all the federal and provincial standards that it is supposed too?

Including any standards for mufflers and noise?

EVIDENCE:

SECTION V.1: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1038/section-sched6.html

FULL: http://laws-lois.justice.gc.ca/eng/regulations/C.R.C.,_c._1038/index.html

I have a document I would like the officer to read from and submit it as an exhibit and evidence.

It is the Noise Emissions Standard in Schedule V.1 (five point 1) of the Federal Motor Vehicle Safety Regulations (C.R.C., c. 1038)

I have a copy for the court and the crown and a copy for the officer to read.

May I approach the officer?

Officer please read paragraph 2(b)(iii) which are just the parts already highlighted in yellow for you.

So new car would have to meet this standard?

So would you agree that the new car we talked about buying earlier, would have to have been at or below this 80dbA level mentioned in this Federal standard?

You agreed earlier that we could be reasonably certain that the noise a new vehicle makes would not be too loud and would probably not give a police officer a reason to issue an improper muffler charge, correct?

So that means that a noise level greater than 80dbA would be a good legal standard to compare too?

Can you demonstrate how loud 80dbA is?

So you can not say for sure whether or not the noise from my vehicle was louder than 80dbA or not?

SUBMISSIONS

The burden of proof rests with the Crown to prove its case beyond a reasonable doubt. The Crown must then prove:

- that the muffler was improper (meaning muffler was not in good working order or muffler was not in constant operation), and
- the noise from the vehicle was due to the improper muffler, and
- the noise from the vehicle was "excessive/unusual".

The officer testified that:

- he never examined the muffler, and
- he does not know where the sound was coming from, and
- he assumed the muffler was improper and assumed that's where the noise was coming from.
 - o Therefore there is no evidence of the muffler being improper and no evidence that any noise coming from the vehicle was due to an improper muffler.

The officer testified that:

- he is not an expert with determining sound levels and decibel levels, and
- the noise being loud was simply his opinion, and
- in his notes he refers to the noise being "loud" three times but never "excessive/unusual"
- he has no way of knowing whether the noise was above or below the 80dbA standard in Section V.1 of the Motor Vehicle Safety Regulations.

Also the loudness of the noise of the vehicle is strictly the subjective opinion of the officer and the prosecution has not provided any expert opinion on the level of noise, and therefore the officer's testimony cannot be afforded significant weight as it does not prove beyond a reasonable doubt that the noise was excessive.

In closing,

- The Crown has failed to prove beyond a reasonable doubt that the muffler was improper, or that it was not in good working order or that it was not in constant operation, and
- The Crown has failed to prove beyond a reasonable doubt that the noise from the vehicle was due to the improper muffler, and
- The Crown has failed to prove beyond a reasonable doubt that the noise from the vehicle was excessive/unusual.

And therefore for these reasons the charges should be dismissed.

AMOUNT OF FINE SUBMISSION (if found guilty)- Request no Victim Surcharge