

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Chair, 2015 ONCA 868

DATE: 20151209

DOCKET: C59667

Doherty, Pepall and Tulloch JJ.A.

BETWEEN

Her Majesty the Queen Ex Rel. the Regional Municipality of York

Appellant

and

Wai-On A. Chair

Respondent

Hans J. Saamen, for the appellant

Arvin Ross, for the respondent

Heard: December 8, 2015

On appeal from the order of Justice W. Gorewich of the Ontario Court of Justice, dated August 8, 2014, setting aside a conviction and ordering a new trial.

APPEAL BOOK ENDORSEMENT

[1] The parties acknowledge that the law as stated in *R. v. Bigioni*, [1988] O.J. No. 2220 stands. We agree. Nothing in the subsequent case law should be taken as diminishing that authority.

[2] In this case, there was evidence that the officer tested the device before and after its use in accordance with the procedure set out in the manual. There was also evidence that the officer was a qualified operator. The trial judge accepted the evidence. As indicated in *Bigioni*, that evidence was “sufficient to evidence of a *prima facie* case”.

[3] The appeal judge, therefore, erred in finding that “the Justice of the Peace erred in law by making a finding on the facts that he was not entitled to make”. The appeal must be allowed on that basis.

[4] We do not reach the broader question posed by the appellant. In our view, the record does not permit the kind of examination necessary to a determination of whether the court should create a presumption of accuracy in respect of the readings registered by radar “guns”.

[5] Appeal allowed and conviction restored.