

ONTARIO COURTS (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

JIM CRITTENDEN

APPEAL AGAINST CONVICTION

HELD BEFORE HIS HONOUR JUDGE R.J. NADEAU
ON JULY 19TH, 1990 AT NEWMARKET PROVINCIAL
COURT.

CHARGE: Drive Under Suspension

A P P E A R A N C E S:

J. MILLIGAN Esq.

Counsel for the Crown

M. CALVERT Esq.

Agent for the Accused

July 19, 1990.

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Crittenden matter now. Mr. Calvert of course represents the complainant.

MR. CALVERT: Your Honour.

THE COURT: Just a moment now. Just let me read the Notice of Appeal Mr. Calvert?

MR. CALVERT: Yes thank you.

THE COURT: Just dealing with Appendix I the representation made in paragraph one is that the Justice erred in law in admitting the documents is that what you're saying?

MR. CALVERT: No Your Honour not the admission of evidence, clearly the documents received from the Ministry are in fact admissible pursuant to the Highway Traffic Act.

THE COURT: But it hasn't been relating to the accused ---

MR. CALVERT: The appellant, yes Your Honour.

THE COURT: Alright. I have some difficulty with paragraph three. What do you mean when you say 'the learned Justice misapprehended the evidence'?

MR. CALVERT: I was going to go, when I was going to go through the grounds for the appeal I was going suggest that to be fair to the Court that I was not going to press those.

THE COURT: Oh, alright.

MR. CALVERT: I was going to specifically deal with the first and second grounds and then stop at that point.

THE COURT: Alright. The transcripts are

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not very long. Perhaps the most expeditious way of proceeding Mr. Calvert is for me to hear your submissions and those of the Crown and I take it your going to be referring to specific portions of the transcript or generally?

MR. CALVERT: Yes Your Honour.

THE COURT: And I'm required to read the transcript and I'll recess for a few minutes and do so.

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MR. CALVERT: Thank you Your Honour.

THE COURT: No, no I'm going to hear his submissions first

MADAM CLERK: Oh, I'm sorry.

MR. CALVERT: I'm sorry I understood that too.

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THE COURT: Mr. Calvert go ahead.

MR. CALVERT: Thank you Your Honour. Your Honour dealing with the first ground of the appeal that the learned Justice erred in finding the documents presented as evidence of the Court were in any way related to the appellant I would direct Your Honour to the evidence in-chief of the Officer, the investigating Officer. I can go through the transcript and suggest the pages to you at this time.

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THE COURT: Alright.

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MR. CALVERT: That I'm referring to. On page three at approximately line number twenty-three. The investigating Officer indicates that the driver of the vehicle involved identified himself verbally as Jim
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Crittenden of 771 Sedore Avenue in Willow Beach. Perhaps to make a long story short I could suggest that that is the only identification that the Officer ever receives as to who the appellant was, Jim Crittenden at that address. There was evidence a little further at page four at approximately line fifteen from the Officer in his evidence in chief that he received the photo portion of an Ontario driver's license but just the photograph part.

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In any event at no time does the Officer ever indicate that he received a date of birth or a driver's license number from the person that he stopped on the day in question. Referring to page five the documents which my position are admissible pursuant to the Highway Traffic Act were read in and specifically what was on those documents and starting at approximately line number sixteen the documents referred to Alfred J. Crittenden with a date of birth the 26th day of April, 1962 and an address of 771 Sedore Avenue in Willow Beach Ontario and those documents go on to indicate that Alfred J. Crittenden's driver's license was suspended on the 8th of October, 1988 which is the date that the Officer stopped Jim Crittenden.

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I would submit with respect Your Honour that one of the fundamental requirements

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is that the documents received from the Ministry must in fact be proven to apply to the defendant before the Court and not having a driver's license number the Officer not being able to offer a driver's license number or a date of birth it would be fragile at best to accept that Alfred J. Crittenden is Jim Crittenden.

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Now as we proceed through the transcript you will find there is more than one Jim Crittenden at the address of 77 Sedore Avenue in Willow Beach and the second Jim Crittenden at that address and again we don't have driver's license number and date of birth but however we still go back to the first base that Alfred J. Crittenden could be either one of those Jim Crittenden's at that address of 771 Sedore Avenue.
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Having said that it is with respect that the Justice erred in accepting the Ministry documents were in fact relative to the defendant on the date of the trial.
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To then proceed to the second ground for the appeal Your Honour I would submit that the second document or the second ground is only relevant if Your Honour finds that Alfred J. Critten as named in the Ministry documents is in fact Jim Crittenden the appellant. Specifically I would refer Your Honour to S.34 of the Highway Traffic Act which
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indicates that notice of the suspension is

sufficiently given if delivered personally or by registered mail to the person at the latest address at the records of the Ministry however also in S.34 being a presumption section I would suggest that unless the person to whom the notice is given establishes that he did not acting in good faith through absence, accident, illness or other cause beyond his control receive the notice. I guess we could summarize that but one is presumed to have been served by way of registered mail unless he can indicate to the Court that he did in fact not receive the documents and that is exactly what occurred in this trial in that Mr. Crittenden took the stand and indicated that yes 771 Sedore Avenue is my address.

He also indicates that he lives a fair bit of the time at his girlfriend's house and that at no time was he ever notified of the suspension nor did he receive documents from the Ministry by way of registered mail. And again I would submit that that would only apply if Your Honour accepts that Alfred J. Crittenden as indicated on the Ministry documents is Jim Crittenden.

That's pretty well the two grounds of the appeal that I wanted to address this afternoon in a nutshell. Certainly the trial goes on through a number of other things dealing with fines. Mr. Crittenden

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of an information was properly convicted on another count or part of the information. The appeal is not decided in favour of the appellant on any ground mentioned in (a) or not withstanding that the Court is of the opinion that on any ground mentioned in (a)(2) the appeal might be decided in favour of the appellant. It is of the opinion that no substantial wrong or miscarriage of justice has occurred".

Taking Mr. Calvert's first point he states that the learned Justice erred in finding that the documents, the certificates tendered did not relate to the defendant before the Court. Mr. Dullage, agent at the trial, brought a motion to dismiss at the end of the Crown's case alleging the Crown had not shown a prima facia case. The motion was dismissed by the learned Justice and I would submit correctly or incorrectly after it was dismissed the defense called evidence . Mr. Crittenden himself gave evidence and he admits that at page eleven that he had an unpaid fine.

He got at page twelve a temporary driver's license, the Court's indulgence. And that his, that his address 771 Sedore Avenue corresponds with the address indicated on the certificate. I would submit that the, that when one takes into account the evidence called by the defense taking that

5 evidence and coupling it with the evidence
called by the Crown Your Honour can come
to no other conclusion that no substantial
wrong or miscarriage of justice has
10 occurred on the first ground as put forth
by my friend. There is enough evidence when
all of it is viewed that the finding of the
learned Justice of the Peace was reasonable
and can be supported by the evidence.

15 As regards the second ground the accused
stated he didn't receive the documents
from the Ministry of Transportation and
Communications and I had a great, when I
read this last night I had a great deal of
trouble following his evidence and in fact
I still do, I have a great deal of trouble
if I may say and submit that is because his
evidence is in places really quite unclear.

20 If I could start on page ten line thirty:
"Mr. Crittenden you've heard the evidence
given here today. At the time that you were
stopped what was your address? It was
771 Sedore Avenue. Would you repeat that?
771 Sedore Avenue, Willow Beach. I still
25 didn't get it? 771 Sedore Avenue, Willow
Beach. At what point did you move from
that address? I moved about a week after
that. After what?". He was stopped by the
Police Officer on the 8th of October, 1988.
When he moves from his residence 771 Sedore
30 Avenue, Willow Beach is unclear.

5 He then goes and Your Honour will have to
forgive me I'll be quoting extensively from
the evidence here. Page eleven: "Now I
have some documents here to show you. I
want you to look at them and tell me if you
have received those documents? No I haven't.
10 Q. Now you've heard evidence of unpaid fines.
Did you at some point become aware of any
fines that were outstanding against you? Yes
I did. And if I said to you that that was at
some point in July or August of 1988 would
you agree or disagree with that? It's a
leading question, a patently leading question
Your Honour. Agree. You said you paid the
ticket? Paid it in Bradford about two or
15 three weeks before I got stopped". Two weeks
he says. This presumably is in the month
of September, 1988 because the evidence
is that he was stopped in October of '88 so
he paid that ticket if I read this correctly
about a month after he moved.
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25 He then later states at the bottom of the
page: "And when you" --- "Q. And when you
were stopped did you have anything, did you
show anything to the Officer? A. Yeah I
had my whole driver's license, I just showed
him the picture, the driver's license and
the whole bit. It wasn't just the picture,
there was the license too". Well that's
completely at odds with what the Police
Officer says. The Police Officer says he
30 was only handed the printed portion. I

beg your pardon, the picture portion of the license, the rest was missing.

That's lines twenty to twenty-five on page four. P.C. Woods says "He only produced the picture portion", that was it. Page twelve: "Did you show him anything else?. I showed him the receipt for paying the ticket. And what was that? It was a money order at Provincial Court, \$52.00 Barrie, Ontario". He said earlier that he paid in Bradford. Page eleven, "The ticket for speeding, I paid it. And where was that? That was in Bradford". The money order or the receipt whatever it was doesn't correspond with evidence given very shortly before.

"Did you ever receive your driver's license back? Yes, about three days later I got a temporary driver's license. Three days later than what? Then when I got stopped. I don't know I think it was a Friday, three days after". But he just said Your Honour that he had his whole driver's license when he got stopped and then later he says he got his temporary license back. He says it was green and has temporary license on top and a letter saying the license would be sent to you in ten days or so. I don't want to belabour the point but just lines before he said he had a whole driver's license when he was stopped.

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In cross-examination he says that he lived with his, he used to live with his family at 771 Sedore Avenue in Willow Beach. His father Jim Crittenden lives there, his brother, his mother Edie Crittenden lived there. He said he lived there in August and had trouble getting mail because he was never there half the time, he was at his girlfriend's, didn't know anything about the suspension. I refer to page fourteen.

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He's asked if he knows when his license was issued and at first he says he doesn't know and then he agrees that it was the 24th day of August, the 24th day of August, 1988. I would suggest Your Honour that the evidence of the defendant is at the very least difficult to understand and to reconcile with the evidence given by the Police Officer.

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The Justice of the Peace, His Worship L.M. Clement his reasons for judgment start at page twenty of the transcript. He says on page twenty-one and I quote: "As far as the notice is concerned of the suspension it was sent to an address by registered mail to the address supplied by him where his mail should go. Whether he resides at other places most of the time or some of the time he is still required to have a mailing address and he's admitted that

this is his mailing address".

THE COURT: May I just stop you there. Do you think that's a position which is supportable in law, that a person is required to have a mailing address?

MR. MILLIGAN: For the purposes of the Highway Traffic Act, yes.

THE COURT: And what would you base that assertion on? Where is it in the Highway Traffic Act -- does the requirement exist for a person ---

MR. MILLIGAN: I beg your pardon Your Honour, with the Court's indulgence ---

THE COURT: Perhaps while you are -- we could speak to Mr. Piccin.

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OTHER MATTERS SPOKEN TO.

MR. MILLIGAN: Thank you. If I can refer Your Honour to the Highway Traffic Act. S.34 it says that "Notice to a person of the suspension of his driver's license is sufficiently given if delivered personally or sent by registered mail addressed to the person to whom the license was issued at the latest current address of the person appearing on the records of the Ministry and where notice is given by registered mail

5 it shall be deemed to have been given on the fifth day after the mailing unless the person to whom notice is given establishes that he did not acting in good faith through absence, accident, illness or other cause beyond his control receive the notice".

10 As I read that section that suggests that the Ministry has a mailing address or a current address as they call it for everyone holding a driver's license. I cannot quote the section or the provision to Your Honour but I believe it is an offense to withhold one's address from the Ministry if one moves. I don't know whether that's
15 punishable under the Highway Traffic Act or some other provincial legislation.

THE COURT: It is a provision I think of failing to notify the Ministry of the change of address.

MR. MILLIGAN: That's quite correct.

20 THE COURT: But I'm asking you to show me where in the law does it say that that has to be the mailing address? The fact that there's a presumption that a notice sent to the current address is one
25 thing.

MR. MILLIGAN: I think I follow Your Honour. It does not have to be a mailing address.

THE COURT: Well that's the point that I am making.

MR. MILLIGAN: Yes, yes.

30 THE COURT: The Justice says that he has

to have a mailing address and there's nothing in law that I know of that requires anybody to have a mailing address. He is required to provide his current address.

MR. MILLIGAN: His current address but not necessarily a mailing address.

THE COURT: He may have his mailing address somewhere else.

MR. MILLIGAN: I quite agree.

THE COURT: Alright. That's the only point I wanted to make.

MR. MILLIGAN: I quite agree.

THE COURT: That just seems to, seems to, the fixation that he has to have a mailing address and is required to file with the Ministry something of an address.

MR. MILLIGAN: I suppose that -- I apologize to Your Honour, I would submit that the evidence of the defendant is confusing and contradictory and is scarcely coherent in places. One might have to read the page and reread the page to understand what is happening. The learned Justice made a finding it's towards the bottom of page twenty-one: "I'm quite satisfied that the notice was sent out properly. It was properly received. Because he wishes to live at other than that address most of the time it is still his responsibility to see that he receives his mail.

There has been no evidence whatsoever

5 that mail had been sent to that address,
has resulted in him not getting it. His
only statement is that he didn't get it".
Well it's apparent, it's not said so
expressly but it's apparent that the
learned Justice didn't believe the
defendant in his assertion he didn't get
it and I would suggest that implicitly
that is a finding of credibility, that's
10 a finding of fact. I would go so far to
say that the finding of fact is well
supported by the, what I submit is the
incoherent manner in which the defendant
gives his evidence. It's very difficult,
I submit it's very difficult to follow.

15 Having made a finding of fact based at
least implicitly on credibility I would
suggest with the utmost respect that Your
Honour should be reluctant to disturb that
finding not having enjoyed the opportunity
20 that the learned Justice did in assessing
the credibility of the witnesses by
observing their demeanour and so forth.
Those are my submissions unless Your Honour
has any other questions of me.

25 THE COURT: Thank you Mr. Milligan. Response
Mr. Calvert?

30 MR. CALVERT: Very briefly if I may Your
Honour. As I indicated originally the
transcript is clear that Mr. Crittenden,
Jim Crittenden as he appeared before the
Court admits that he did have some tickets

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in the past and at one point he was reminded of an unpaid ticket and he did in fact pay that some time before being stopped by the Officer on this occasion. I must differ with my friend's testament of timing when Mr. Crittenden indicated that he paid the outstanding ticket practically two to three weeks prior to this traffic stop if I can call it that, that date being the 8th of October which was approximately, roughly in the middle September.

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There is also, the Court's indulgence -- evidence by way of the Ministry documents at page six roughly line number fourteen dealing with a Notice of Suspension and again I'm only addressing this if Your Honour is satisfied that the documents pertain to the appellant, but at approximately line fourteen it indicates the minimum of ten working days be required after the Court proceeding. If Your Honour accepts Mr. Crittenden's evidence that he paid this fine some two to three weeks prior to the date of being stopped initially I would submit that an administrative delay on the part of the Ministry in returning the license is not sufficient cause for the suspension to be enforced but in any event if we accept the Ministry's own documents by way of documentary evidence admitted, Mr. Crittenden would have had his license.

It would have been in effect some ten working days after the fine was paid.

Now Mr. Crittenden indicates that he did receive a temporary driver's license approximately three days after being stopped by the Officer but I would submit that receipt of the temporary driver's license, the only reason why he received one was not because his suspension has expired for instance, change of class of driver license or additions or restrictions or air brake endorsements or what have you, certainly may cause the creation of a temporary driver's license while the Ministry processs the new one so to speak.

But that's not in the evidence and the only evidence is that he did receive some temporary driver's license after approximately three days after the date he was stopped. I would agree in part with my friend that the transcript does go on and there are numerous objections and some conflict between the Crown and agent for the appellant although I would submit that that is very clear in the transcript what everybody was saying, very clear what Mr. Crittenden was saying.

And the one, I'm sorry I forget the page, where he had to repeat himself there's

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element the Crown is required to establish here that at the time that he was stopped the defendant's license was under suspension.

5 The defendant admitted residing at the same address as the one set out in the notice but there is no other evidence in the transcript either in the Crown's case or defense which completes the circle between the person in the certificate and the accused person and it was not asked whether he had ever used the name Alfred J. Crittenden. He was not asked if his date of birth was that as set out in the certificate.

10 At the conclusion of the, all of the evidence the additional assistance the Crown received was the admission of the defendant that he resided at the address 771 Sedore Avenue, Willow Beach and the final question is on all of the evidence was there evidence from which the Justice might reasonably conclude that the Crown had established the suspended status of the defendant beyond a reasonable doubt. My conclusion was that there was not. That there was not therefore evidence of an essential element and the conviction is therefore unreasonable and unsupported by the evidence and the conviction is set aside and an acquittal will be entered and I will order that the fine be remitted to the defendant.

Are there any further findings of either
fact or law that either party would ask
me to make?

MR. CALVERT: No, thank you Your Honour.

MR. MILLIGAN: No, thank you.

CERTIFICATION SUBJECT TO AN
ORIGINAL SIGNATURE HEREON.

THIS IS TO CERTIFY THAT THE FOREGOING
IS A TRUE AND ACCURATE TRANSCRIPTION
OF SYLVIA TALLIS' RECORDINGS TO THE
BEST OF MY ABILITY AND SKILL.

MARION HUNT,
OFFICIAL COURT REPORTER