

Indexed as:
R. v. Kotar

Between
Her Majesty The Queen, and
Kenneth Kotar

[1994] O.J. No. 763
DRS 94-09921

**Ontario Court of Justice - Provincial Division
Brantford, Ontario
Lenz Prov. Div. J.**

February 23, 1994.
(24 pp.)

Criminal law — Offences against person and reputation — Motor vehicle — Careless driving — Elements of offence — Burden of proof.

Summary conviction appeal by the Crown from the acquittal of an accused charged with careless driving and from the sentence imposed for driving while suspended. The burden of proof was at issue. This was a second offence. The accused had received a further suspension and was ordered to pay a \$5,000 fine.

HELD: Appeal from conviction dismissed. Appeal from sentence allowed and accused sentenced to 60 days imprisonment in lieu of the fine. The Crown had to prove beyond a reasonable doubt that the defendant drove without due care and attention. It was inappropriate to shift the burden to the accused to prove absence of negligence on a balance of probabilities. The Justice of the Peace had, if anything, erred on the Crown's side in considering the issue of the burden of proof.

Statutes, Regulations and Rules Cited:

Canadian Charter of Rights and Freedoms, 1982, s. 7. Highway Traffic Act, ss. 53, 130. Provincial Offences Act, s. 122.

R. Kindon, on behalf of the Crown.
A. Fiszauf, on behalf of Mr. Kotar.

¶ 1 **LENZ PROV. DIV. J.:**— I appreciate all the efforts that have been put into this matter by the Crown and by defence, or in this case, by the Appellant and the Respondent, being the Crown, and the Respondent being the defence on behalf of Mr. Kotar. I have read all the materials three times now, and needless to say, had occasion to make some notes in regards to my conclusions. Counsel's submissions were useful and redirected me to the areas which I was initially concerned with. I have come to a conclusion in regards to this matter, and although submissions have been exceptionally helpful, it has not greatly changed my conclusion.

¶ 2 In regards to this particular matter, I do want to address at some length, a certain legal issue which seems to give rise to a problem in the Ontario Court of Justice (Provincial Division), in what we call Provincial Offence Act court. In that regard, I will want a transcript of this particular judgment, not because it will be brilliant, but

because it might offer some guidance to Justices of the Peace who constantly deal with the issue of the burden of proof as it relates to careless driving, and certain statements which were made.

¶ 3 Counsel for the Crown, in its submissions in respect of conviction at trial relied on case called R. v. McIver. This is a leading case in the area of careless driving, and it is fair to say that the offence of careless driving has changed not a whit since this particular case in 1965. It is a decision of the Ontario Court of Appeal. If my memory serves me correctly, the Chief Judge, Chief Justice Porter, I think, delivered the judgment, and it was a judgment of Porter, Roach, Gibson, McKay and Kelly. But it involved a separate judgment by McKay, which was unnecessary, and that is the area that seems to have given rise to some concern. R. v. McIver, in my opinion, for the guidance of the Justices of the Peace is primarily a case which involved the application of what we used to call Hodges Rule, or the rule as it relates to circumstantial evidence. Basically the facts are that the defendant in that case drove a car and struck another parked car which was off the roadway, and had been drinking at the time. There was no other evidence that would have accounted for this individual driving off the roadway and striking a parked car. The Crown proved at trial in McIver, those particular facts, and the defendant did not call evidence. The defendant then requested an acquittal based on a number of possible explanations for how the accident could have occurred, which were not in evidence, and what the court basically said was that Hodges Rule applied, the rule of circumstantial evidence; the Crown had proved its case beyond a reasonable doubt, and that the driving was careless in the circumstances, based upon the evidence which had been offered, and the application of the rule as it relates to circumstantial evidence. The court went on to say that the court ought not to be required to speculate in respect of possible explanations that the defendant might have offered, or could have been true; and in the circumstances of that case based on the evidence, the accused was found guilty.

¶ 4 His Lordship Justice McKay, in what in my opinion is an obiter and unnecessary addendum to the major decision at page 128, desired to express his views in regards to the issue of strict liability and the defence's thereto. And he proclaimed at that stage, a rule of law which is relied upon from time to time in Provincial Offence Act court in respect of careless driving. It went this way: "the Crown need only prove the accused committed the prohibited act and the accused will be convicted, unless he can show the forbidden act was done without negligence or fault on his part." This has given rise, quite frankly, to a shifting burden approach by some Justices of the Peace to careless driving, which in my opinion, is not correct. In fact, the statement of McKay in R. v. McIver generally speaking, begs the question in most cases. In a careless driving case, what the Crown must prove, beyond a reasonable doubt, is that the defendant drove without due care and attention. Careless driving is substantially different for instance, than a fail to stop case, where one only need to prove a failure to stop and the Crown has proven its case. Proving an accident for instance, may not necessarily prove that a defendant was driving without due care and attention unless for instance, Hodges Rule can be applied, and in the circumstances, the accident gives rise to only one logical conclusion and that is, the accused was driving without due care and attention. In my opinion, it is still necessary for the Crown to prove that a defendant drove without due care and attention beyond a reasonable doubt. They may do so by way of direct evidence or they may do so by way of circumstantial evidence, but they must still meet the burden of establishing beyond a reasonable doubt, driving without due care and attention. In my opinion then, if the defendant wishes to avoid conviction, the defendant may call evidence to raise a reasonable doubt that he drove without due care and attention. That could be done in my opinion, by an evidentiary recounting which might reasonably be true. Then, in my opinion, if a Justice of the Peace finds the evidence of the defendant sufficiently credible that it might reasonably be true or that the explanation might reasonably be true, that must raise a reasonable doubt. In the circumstances, if it raises a reasonable doubt, the accused is entitled to be acquitted.

¶ 5 Certainly since the passing of the Charter of Rights, and specifically section 7 in respect of fundamental justice, it is inappropriate for the offence of careless driving to require a shifting burden of proof on a balance of probabilities that what was done was done without negligence on the defendant's part, although usually raising a

reasonable doubt and proof on a balance of probabilities that something was done without negligence will produce the same result. In my opinion, quite frankly, the statement and comment in R. v. McIver was unnecessary to the decision; it is obiter; is not binding; and I am persuaded, quite frankly, that it is in fact, wrong. There is never a burden on an accused to establish a lack of negligence or carelessness in a case such as this. The only burden on the accused is to give evidence which might reasonably be true and is sufficient to raise a reasonable doubt that the manner of his driving infringes this section.

¶ 6 In this specific case, the Justice of the Peace was aware quite frankly, in my opinion, of the two possible ways of achieving an acquittal in respect of the facts of this particular matter. If you look at page two of her judgment, she says "it is an offence of strict liability, leaving it open to the defence to prove due diligence and reasonable care, and that all reasonable care was taken under the circumstances, considering what a normal, prudent driver would have done under the same set of circumstances." That actually, I think, is putting too heavy a burden on the accused in regards to what the accused has to do in order to be acquitted, but it is consistent with the decision in McIver. She correctly summarized the facts contended by the defence and the Crown, and she correctly summarized the cases supporting the defendant's contentions. I agree that where the defendant can show, in circumstances that might be reasonably be true, that the defendant was faced with an unexpected, unforeseeable sudden circumstance, and that he reacted as best any reasonable, prudent driver could, that this should raise a reasonable doubt.

¶ 7 The Justice of the Peace, through pages four, five and six, reviewed the cases and their contents and at page six, she came to a conclusion. She concluded that, "considering the case law and the evidence submitted, Mr. Kotar has given a reasonable explanation for his vehicle being on the wrong side of the road; that being the sudden, severe cough, the jerking of the wheel." In my opinion, at that stage, she came to a conclusion based on evidence, that she was entitled to reach, that the defendant in this matter had given a reasonable explanation for his vehicle being on the wrong side of the road. She described it as a sudden, violent, unexpected coughing, and that it was apparently a reasonable explanation. From that I take it she meant it reasonably could be true. Also at page six, she explained why it was that the accused was not able to give an explanation promptly, which is largely supported by the facts on the trial, that is that he had slight amnesia and a concussion. Again at page six the Justice of the Peace came to another factual conclusion. She came to the conclusion that for the court to determine that the accused had fallen asleep as opposed to any other explanation had not been proven to her satisfaction. She did not express it in exactly the way one might expect. She said that, "...for the court to come to the conclusion that the accused had fallen asleep would be for the court to speculate and conjecture, and that a court ought not to be involved in speculation and conjecture." With that I agree. It is clear at that stage that she addressed the issue of the Crown's contention and its theory, and was not satisfied that the Crown had proved that theory beyond a reasonable doubt. She then went on to say, "...on the balance of probabilities, the defendant has raised a certain amount of doubt, and the prosecution has not proven their case beyond a reasonable doubt." I take it from that, that what she is saying is that on a balance of probabilities, the defendant raised a reasonable doubt. That is probably, in my opinion, a higher standard than is required. What is required is that the accused give an explanation which might reasonably be true. The Justice of the Peace has put it on even a higher plane. She has come to the conclusion that on a balance of probabilities, the explanation was true, and because on a balance of probabilities the explanation was true or could be true, that a reasonable doubt had been raised, and as a result, the Crown could not be said to have proven its case beyond a reasonable doubt. It is fair to say that I might not have come to the same conclusions as the Justice of the Peace, based on the evidence, but I cannot, in all the circumstances, fault the Justice of the Peace for her assessment of the evidence or her application of the law to the evidence. If nothing else, her application of the law to the evidence put a higher standard upon the accused than I think is appropriate. It is not for me to substitute my findings of fact for the Justice of the Peace's, who heard the viva voce testimony, had the best opportunity to assess credibility, honesty, weight; all of the hallmarks of whether a person is being truthful or not being truthful, has a good recollection or does not have a good

recollection. All of those have been denied me because I have not seen the individuals testify viva voce (in person) and as a result of that, as has always been the case with appellate courts, it is not desirable that I substitute my opinions for the opinions of the Justice of the Peace.

¶ 8 I might, quite frankly, express my concern that she did not seem to make note of, nor mention the fact that Mr. Kotar appeared to have drifted over the roadway once before his sharp departure into the wrong lane of traffic, something which the Crown brought to my attention. I appreciate that. I indeed, had noted it myself. I think that as a sitting presiding member of the judiciary, I might have made a good deal more of that than the Justice of the Peace. Just because she does not note it specifically does not mean that she did not consider it, and clearly she has a much better perspective than I can ever have, reading a transcript.

¶ 9 In the circumstances, I cannot say that the Justice of the Peace was wrong in her assessment of the evidence or in her application of the law. In fact, as I said before, if anything, she was more favourable to the Crown in respect of the issue of the burden of proof that I think she ought to have been.

¶ 10 The only error in law that I could find was in regards to the admissibility of the statement made to the police. Briefly, the circumstances surrounding the statement - the defendant was involved, obviously, in a serious accident. He was in the hospital in Intensive Care. He had a concussion and some amnesia. He was bleeding from cuts above the eyes. There is substantial evidence from many people, of a lack of recollection and disorientation, and I believe, the officer may have inadvertently suggested to the defendant that he fell asleep. It was a statement, in those circumstances, which the Crown sought to have admitted. The officer, quite fairly conceded at page 70 of the transcript that at the scene, Mr. Kotar said he did not know what had happened, and he was not sure where he was. At the hospital at page 76, the officer fairly described the scene of the accident, and expressed an opinion that it looked like the defendant was in the wrong lane, after Mr. Kotar asked the officer what had happened. Finally, when asked what did Mr. Kotar remember, Mr. Kotar answered, "I assume I fell asleep. I don't remember. I just remember waking up when the ambulance and fire trucks were there."

¶ 11 This particular statement is equivocal at best, is most certainly supportive of the defendants contention that he had a head injury and a loss of memory. What it really says, quite frankly, is at the time that the defendant gave the statement, he does not recall at all what happened, or why it was he had been involved in a collision. It says that he came to an assumption. He made a conclusion based on information which he had been supplied by the officer, and the very minimal information that he had.

¶ 12 Additionally the police did not advise Mr. Kotar of his right to counsel before questioning.

¶ 13 If one looks at section 199(1) of the Highway Traffic Act, as I have previously indicated in my discussions with defence, this provides that "...every person in charge of a motor vehicle or street car who is directly or indirectly involved in an accident shall, if the accident results in personal injuries or damage to property exceeding a prescribed amount, report the accident forthwith to the nearest provincial or municipal police officer and furnish him or her with the information concerning the accident as may be required by the officer under subsection 3." In my opinion, that particular section, when coupled with subsection 3, which imposes an obligation on the officer to in fact, obtain such information, is of substantial importance in regards to what transpired. So soon as an officer says to an individual involved in an accident, tell me what happened, in my opinion, the officer has invited, in fact perhaps become involved in a compulsion to self-incrimination, because at law, the minute that question is asked by an officer, a person involved in an accident is obliged by Statute to answer and tell the officer what took place. In fact, he is obliged to self-incriminate if he has been negligent. In my opinion, the moment that an officer asks the question, "Tell me what happened in the accident", there is a substantial change in the defendant's legal position. Before being asked, an accused is obliged to say nothing. He has a right to remain silent. He has a right, quite frankly, to retain and instruct counsel without delay. But

most importantly, he has a right to remain silent. The moment he is asked the question, "How did this accident happen; what took place", there is a legal obligation upon him to answer. That clearly changes his legal position substantially; and in my opinion at that stage, based upon all the law that I know, especially the law as it relates to the same situation where a demand is made for a sample of your breath, the defendant is under detention, and the moment he is under detention, the Charter indicates that he has a right to be advised of the right to retain and instruct counsel without delay.

¶ 14 If that is the case, in my opinion, on this factual circumstance, the moment that Officer Smith said, "Tell me in your own words what happened. Do you know what happened? Let me know what took place." The accused ought to have been advised of his right to counsel. Now I do not say for a moment that the police cannot ask investigatory questions. They can ask as many investigatory questions as they can get answers to. They are obliged to. I think they are obliged to investigate. I think they could interview Mr. Kotar until the cows came home in that stretcher, in that gurney outside the Intensive Care Unit - they just ought not expect to get the statement into evidence unless they first tell a person that he has a right to retain and instruct counsel and give him an opportunity of doing so before he starts answering the questions. If he is under a compulsion to answer them, he should at the very least, be advised of his rights, what will transpire if he does not answer them, and his right to remain silent and not to answer them.

¶ 15 At page 109, the Justice of the Peace made a ruling in regards to her reason for excluding this particular statement. It is unclear to me whether she excluded it because it was not voluntary, because it was not the product of an operating mind, or because there was an infringement of Charter rights. The Justice of the Peace says it was made without threats or inducements, but because of the accused's physical or mental state, that the statement was not voluntary. That in itself is contradictory and in all of the circumstances, I find it difficult to follow. The state of mind or the physical health of the accused could go to the issue of whether or not this was a statement of an operating mind or it could go to the weight to be given to the statement, but in my opinion in this case, it does not go to the issue of voluntariness. In fact, I believe the statement was voluntarily given. It would appear that the Justice of the Peace excluded the statement either because she had a reasonable doubt as to whether or not it was the function of an operating mind, or because there was a section 10(b) infringement. In my opinion, there indeed was a section 10(b) infringement. The accused ought to have been advised of his right to counsel before he was required to answer these questions which he has a legal obligation or statutory compulsion to answer, and I, upon thought, would probably have excluded the statement on that particular basis. In that regard, I think the Justice of the Peace reached the right conclusion, probably for the wrong reason, or a reason which was not sufficiently clear. However, it strikes me that in addition to all of that, even if she had admitted that particular statement, and even if I am indeed, wrong as to it being properly excluded, the statement is of so little value due to its equivocal nature and the surroundings in which it was taken, that little or no weight could ever be attached to that statement. Quite frankly, it is unlikely that this particular error in law, if it was an error in law, because I think the Justice of the Peace probably reached the right conclusion for the wrong reason, it is still highly unlikely, in my opinion, bearing in mind the nature of the statement (which is: "I don't really remember; I assume I fell asleep.") could possibly have any effect on the outcome of the trial.

¶ 16 In the circumstances and in conclusion therefore, in regards to the issue of the careless driving charge, I believe that the Justice of the Peace properly assessed the evidence, almost properly assessed the burden of proof, (and even if she did not, she gave the benefit to the Crown, in perhaps establishing a slightly higher burden for the defendant) she found as a conclusion on all of the facts, the defendant had reached that burden in any event. She clearly understood the context and issue of reasonable doubt. She clearly had a reasonable doubt on the facts of this matter. She could have, in my opinion, had a reasonable doubt, and I could perhaps have seen myself having some doubt in this matter as well.

¶ 17 If she made an error in law in regards to excluding the statement, she reached the right conclusion for the wrong reason, I too, would have excluded the statement based upon the law as it related to the right of the accused to be advised of his right to counsel. But even if the statement was improperly excluded, if it had been admitted, I cannot see where it would have had any effect on the decision of the Justice of the Peace, because I do not believe it would have had any effect on my decision in regards to the reasonableness of the Justice of the Peace's decision.

¶ 18 We then come to the issue of sentencing. In that regard, the Justice of the Peace was clearly wrong, and clearly misinterpreted the Statute. Page 19 of the Reasons for Sentence, delivered July 22nd, 1993 - the Justice of the Peace, having found the accused guilty of the offence of driving while under suspension says at the bottom of page 19 "...however it would appear that this is a first offence under the Highway Traffic Act. The Highway Traffic Act provides that upon conviction of a first offence, a fine of not less than \$500.00 and not more than \$5,000.00. There are no provisions for a period of incarceration on a first offence, or you, Mr. Kotar, would be looking at a period of incarceration at this time. However, the court is bound by the law and can only do what the Statutes tell us to do. Considering everything that has been presented..." and she goes on and talks about general deterrence and other things, and imposes a fine of \$5,000.00, which is the maximum fine she felt she was capable of imposing. She is of course, not correct. I should not say that. I do not mean she is of course, not correct. She is not correct if one reads the Statute. The Statute provides "...that every person who drives a motor vehicle or street car on a highway while his or her driver's licence is suspended under an Act of the legislature or a Regulation made thereunder, is guilty of an offence, and on conviction, is liable for a first offence, to a fine of not less than \$500.00 and not more than \$5,000.00 and for each subsequent offence, the fine not less than \$1,000.00 and not more than \$5,000.00, or to imprisonment for a term of not more than six months, or both."

¶ 19 In the circumstances, this is a normal type of legislative wording for a sentence which permits fines or imprisonment or both, and it is clear, in all the circumstances, that the Justice of the Peace was incorrect in her belief that the accused could not be sentenced to a term of incarceration. Being incorrect, there was clearly an error in law, and an error in law which clearly needs to be corrected, because the Justice of the Peace, at that time, expressed herself that if she had thought that she was empowered to incarcerate, she would have done so at that particular time, and I think she was right in that conclusion.

¶ 20 Section 122 of the Provincial Offenses Act provides that "...where an appeal is taken against sentence, the court shall consider the fitness of the sentence appealed from and may, upon such evidence, if any, as it thinks fit to require or receive, by order, dismiss the appeal; or vary the sentence within the limits prescribed by law for the offence of which the defendant was convicted, and in making any such order under clause (b), shall take into account any time spent in custody by the defendant as a result of the offence." The accused has spent no time in custody. Levied against him was a fine of \$5,000.00 which he has not paid because he is unable to pay it at this particular time, and because he was probably wise not to pay it because the matter was under appeal.

¶ 21 In the circumstances of this particular matter then, it is now open for this court to consider the issue of sentence. The accused was operating a motor vehicle on the day in question and did so knowing full well that he was under suspension and was not entitled to operate a motor vehicle. Not only had he been operating a motor vehicle that day, he had been operating it the day before, he had been operating it to get to and from work, and he had been operating it to get from work to Hamilton, and then from Hamilton to a party, and then back to a friend's house, and then up in the morning and back to McMaster University to do his job, and then apparently operated the motor vehicle from McMaster University to Brantford to drop off workmen, and was fully intent on operating the motor vehicle from Brantford to his home in Townsend where, I suspect, the vehicle would have been operated on the day following, because I think, from the sound of things, it was probably a company truck.

¶ 22 It is apparent to me that around this particular time, the accused was operating this particular motor

vehicle, or motor vehicles, as he saw fit. If he had to go to work, then he operated the motor vehicle. And he did not appear, from all the evidence that I read in the transcripts, to be terribly concerned about the issue of the fact that he was under suspension at the time and ought not to have been operating a motor vehicle.

¶ 23 In fact, this is not the first time the accused had taken that attitude towards court orders prohibiting the accused from operating a motor vehicle. The accused was convicted of impaired driving in Simcoe, Ontario in April of 1990, was fined \$1,100.00 and suspended for 18 months. It looks, in fact, to have been a sentence that I might have imposed, from the size of the fine and the length of the prohibition. The accused was then convicted less than a year later, February 4th, 1991, driving while disqualified. Same offence, same delict, just a different Statute. At that time he received 24 days in jail intermittent, and a further six months' probation. I have not sat down to calculate it, but it would strike me that the accused was probably still on probation, and if not on probation, just off probation when on the 2nd of January, 1992 and in fact on the 1st of January and on the 31st of December 1991, the accused chose to operate a motor vehicle again. On this occasion, most unfortunately for everyone, in operating a motor vehicle, he became involved in a head-on collision in which someone was killed. If the accused had not been operating the motor vehicle on the day in question, he would not be in the financial circumstances that he finds himself in now. In fact, there is every likelihood that if he had not been operating that motor vehicle, the accident would never have happened.

¶ 24 However, one does not sentence accused on the basis of the results of the suspended driving, but rather on the fact that he was driving while under suspension on the day in question. The only effect that the death can have is that it probably heightens the need for general deterrence, because it heightens in fact, the likelihood of public interest in a case such as this.

¶ 25 Mr. Fiszau has argued long and hard that the accused ought not to be incarcerated in regards to his conviction for suspended driving, and I cannot possibly see how the accused can be dealt with otherwise, without running roughshod over all of the sentencing principles which apply.

¶ 26 In regards to sentencing on suspended driving, it is just the same as disqualified driving, the primary sentencing objective is that of general deterrence - deterring others similarly prohibited, from operating their motor vehicle in the same circumstances. Fining is not appropriate. Fining is nothing more or less than licensing people who are prohibited and allowing them to drive. If, in fact, the public thought that all that would happen would be that you would be fined if you drove while prohibited, most people would look upon it and say, well, I like driving my automobile. It's much more convenient. If I get caught I'll pay the fine. And it is just like a licence. If I can afford to pay the fine, I can afford to drive.

¶ 27 Suspension of driving privileges, prohibition of driving privileges are probably the most serious impact that convictions for Highway Traffic Act matters or convictions for Criminal Code matters involving operation of a motor vehicle have in respect of sentence. I would hazard a guess that most people coming here and being convicted of impaired driving would pay fines twice that which are levied if they could avoid having their licenses suspended.

¶ 28 In order to uphold the scheme of driving prohibition, which in turn is designed to prevent and deter people from operating motor vehicles improperly, periods of incarceration have to result, in my opinion, for suspended driving as well as for disqualified driving. In respect of suspended driving, it may not always be the case that a person has to serve a term of incarceration because there are many reasons for your licence to be suspended. I mean, it can be as simple as forgetting to go in and renew your licence, forgetting to renew your plates, not paying a minor parking ticket or fine, which can result in a suspension.

¶ 29 On the other hand, in this particular case, this accused knew full well that he ought not to be driving a

motor vehicle. He had already had a taste of jail. For me to say now that the penalty should go down and it should be a big fine when Mr. Kotar has driven while disqualified on a second occasion, especially with such disastrous results, bears absolutely no relationship in regards to proper sentencing principles. In addition to general deterrence, Mr. Kotar clearly is a person who requires specific deterrence from driving his motor vehicle while interdicted from doing so. He did it once in 1991 or thereabouts and was convicted and went to jail, and it had no effect on Mr. Kotar at all. He chose, specifically chose for his own reasons, be they good or bad, to continue to drive a motor vehicle, and if 24 days did not get his attention, it does not strike me that a large fine is going to help matters at all at this stage.

¶ 30 Mr. Kotar, stand up. Step into the prisoner's dock now. In the circumstances of this matter Mr. Kotar, the penalty imposed by the Justice of the Peace was first of all in my opinion, wrong in regards to the issue of the appropriate penalty that should have been imposed. She was clearly operating under a substantial misconception as it related to the issue of whether or not she could impose a term of incarceration. She was right however, in her conclusion that you ought to have been incarcerated for this offence when you were convicted. She just did not think she had the power to do so. She clearly did though, and the appropriate sentence is indeed, incarceration.

¶ 31 I know this matter has been hanging over your head for a long period of time, and I know this will be difficult for you to deal with. It will probably be a terrible problem for your family, although I strongly suspect, Mr. Kotar, knowing the system as I do, that you will not spend nearly as long in an institution as you think you will. There are Temporary Absence Programs galore in our institutions, and I have no doubt, with your lack of substantial criminal record and your attitude towards, generally speaking, being law abiding, that your period of incarceration will not be nearly as long as the court imposes.

¶ 32 In respect sir, of the offence of suspended driving, you have a term of incarceration of 60 days to serve. You got the benefit of serving a sentence intermittently in the past, and it did not have any effect at all. In the circumstances, I am not about to give you that particular privilege again. That sentence will be served, as all sentences are. You have 60 days at this time to serve.

¶ 33 In addition sir, your driving privileges are automatically suspended - no they are not; it is not an automatic suspension. Your driver's licence is suspended for a period of six months in addition to any other period for which your licence is suspended. I would think that suspension commenced on the day of your conviction and has probably now expired. It is not my intention to add to that suspension, because I do not think that would be at all appropriate. You have already served your suspension, and the only change that I would make in the penalty is that as opposed to a fine of \$5,000.00, you have a period of 60 days to serve in jail, starting now.

¶ 34 Thank you, Mr. Kotar.

DRS/DRS/DRS