

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

(RESPONDENT)

v.

TAMMASO TAURIELLO

(APPELLANT)

A P P E A L P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE D. COLE
On November 12th, 1998, at Toronto.

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

Agent for the respondent

F. DiBello, Esq.

Agent for the appellant

B. Bauer, Esq.

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MR. DiBELLO: Call the matter of Tammaso Tauriello, Your Honour, on the appeals list. This matter was held down, Your Honour.

MR. BAUER: I appreciate the court's indulgence in holding the matter down, Your Honour.

For the record, Bauer, B-A-U-E-R, initial B. I appear as agent on behalf of the appellant. He is before you. We are prepared to proceed.

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THE COURT: Thank you.

MR. BAUER: Yes, Your Honour.

THE COURT: Just have a seat. This is Hansen, what is Hansen about?

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MR. BAUER: Your Honour, the Hansen case is a decision from your brother judge, His Honour Judge Zimmerman from Newmarket, and in the transcript in that case the defendant's conveyance was referred to as a "vehicle" rather than as a "motor vehicle." The offence of speeding pursuant to Section 128 of the Highway Traffic Act requires that it be a motor vehicle involved.

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In the matters before the court, the charge of drive under suspension pursuant to Section 53 of the Highway Traffic Act, and also the charge of pass off roadway, contrary to Section 150(2), both those sections of the Highway Traffic Act, Your Honour, are worded "motor vehicle."

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His Honour Judge Zimmerman in the Hansen case decided that the police officer's reference to a "vehicle" was not sufficient to make out the necessary elements of the offence.

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In the definitions in the Highway Traffic Act, Your Honour, a motor vehicle is a vehicle, but a vehicle is not necessarily a motor vehicle.

THE COURT: I understand.

5| MR. BAUER: And I draw Your Honour's attention to the Tauriello transcript at page five, at about line 24, the officer observes - sorry, Your Honour.

THE COURT: Page five?

MR. BAUER: Page five, please, Your Honour.

THE COURT: Line?

10| MR. BAUER: Twenty-four, approximately, Your Honour.

THE COURT: Yes.

MR. BAUER: The officer in his evidence--

THE COURT: Does not say it is a motor vehicle.

MR. BAUER: He observes a red Plymouth Voyager, licence 093 ZXO, and then at about line 27:

15| "The vehicle entered traffic..."

THE COURT: All right. He does not say it is a motor vehicle.

20| MR. BAUER: That's correct, Your Honour. Line 29, vehicle, on page six--

THE COURT: All right. I will take it from you that he does not say the magic word.

MR. BAUER: Yes.

THE COURT: Mr. DiBello?

25| MR. DiBELLO: He might not have said "motor vehicle," Your Honour, but you can take judicial notice, obviously, that a red Plymouth Voyager, with a licence plate 093 ZXO, is indeed a motor vehicle, and I'm asking you to be reasonable about this matter, instead of nitpicking, as my friend would have you do.

30| MR. BAUER: Your Honour, I respectfully submit that vehicles also have licence plates attached to them.

Section 53 of the Highway Traffic Act for drive under suspension:

5| "No one shall drive a motor
vehicle or streetcar on a
highway..."

And your brother His Honour Judge Zimmerman says that the court cannot take judicial notice that a vehicle is necessarily a motor vehicle.

10| THE COURT: All right.

MR. BAUER: And other vehicles--

THE COURT: Anything else?

MR. BAUER: No, Your Honour.

THE COURT: Thank you.

15| The Court of Appeal in the last couple of weeks has taken a very, very technical wording in the impaired section. The Court of Appeal seems to be saying that unless the police get it absolutely right, that is not good enough. I do not have the case in front of me. It is an analogous case. The Court of Appeal has said that in the last couple of
20| weeks, that is good enough for me. The appeal is allowed.

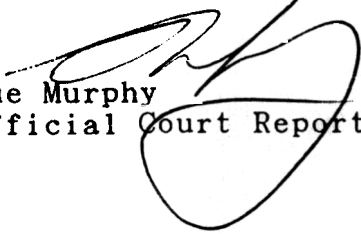
MR. BAUER: Thank you, Your Honour. Thank you, my friend.

CLERK OF THE COURT: An acquittal is entered, Your
25| Honour?

THE COURT: Yes. Thank you.

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This is to certify that
the foregoing is a true
and accurate transcript
of V. Goneau's
recordings, typed by S.
Murphy to the best of my
skill and ability.


Sue Murphy
Official Court Reporter