Case Name:

R. v. Briggs

Between
Her Majesty the Queen, and
Kevin Briggs

[2002] O.J. No. 5416

Ontario Court of Justice
Newmarket, Ontario
Vaillancourt J.

December 9, 2002.
(102 paras.)

Criminal Law — Procedure — Pleas — Acceptance of guilty plea — Guilty plea to included or related offence, effect on main offence.

Trial of Briggs for dangerous driving in breach of the Criminal Code. Briggs drove a motorcycle at 150 km per hour in an 80 km per hour zone. He pleaded not guilty to dangerous driving and pleaded guilty to speeding under the Highway Traffic Act.

HELD: Briggs was convicted of speeding and the dangerous driving charge was dismissed. The Criminal Code permitted guilty pleas to any other offence, which included provincial highway traffic offences.

Statutes, Regulations and Rules Cited:

Criminal Code, s. 249(1)(a).
Highway Traffic Act, s. 128(1).

Charge: Criminal Code

Counsel:

L. Thompson, for the Crown.
C. Penney, for the accused.

VAILLANCOURT J.:—

¶ 1 MS. THOMPSON: The next matter is Kevin Briggs. I believe it's at line one on the docket. The 201 docket.

¶ 2 **THE COURT**: Yes.

¶ 3 MS. THOMPSON: Is Mr. Briggs here?

¶ 4 MR. PENNEY: No, he isn't. I intend to appear as agent on that, Your Honour. The intention is to enter a plea to a speeding fine. I was going to do that as had been discussed.

¶ 5 **THE COURT**: Do you have written instructions in ...

¶ 6 MR. PENNEY: I have ...

¶ 7 **THE COURT**: ... the file?

¶ 8 MR. PENNEY: ... written instruction. Yes, Your Honour. I can file it if necessary.

¶ 9 **THE COURT**: Well, I'm just looking for your well being.

¶ 10 MR. PENNEY: Yeah. My interests are protected.

¶ 11 **THE COURT**: All right. Is the ...

¶ 12 MR. PENNEY: I would ...

¶ 13 **THE COURT**: ... Crown content that he's to be arraigned on the dangerous operation of a motor vehicle?

¶ 14 MR. PENNEY: We had - we had some discussion last time. I'm - I think there are different ways of doing it. One way is - is pleading not guilty to that offence and then guilty to speeding under ...

¶ 15 MS. THOMPSON: Umhm.

¶ 16 MR. PENNEY: ... the Highway Traffic Act with my friend's consent.

¶ 17 MS. THOMPSON: Umhm.

¶ 18 MR. PENNEY: If Your Honour's content ...

¶ 19 **THE COURT**: I know that is a very common and popular modus operendi in Newmarket. Not so in other jurisdictions. I take a more restrictive reading of 606 where it says "any other offence". I think when the Criminal Code is referring to any other offence it has to restrict itself to an offence under the Criminal Code and that cannot apply to Provincial ...

¶ 20 MS. THOMPSON: Highway Traffic Act.

¶ 21 **THE COURT**: ... legislation. That - but having said that when I was here on Friday I turned a blind eye and we did an over 80 into a careless ...

¶ 22 MR. PENNEY: Okay.

¶ 23 **THE COURT**: ... because that seemed to be the practice here so reluctantly I would be prepared to do that.

¶ 24 MR. PENNEY: The - the other way we could do this and this was canvassed last time as well was to amend the information ...

¶ 25 MS. THOMPSON: Amend the information.

¶ 26 MR. PENNEY: ... but I don't know if ...

¶ 27 **THE COURT**: But again ...

¶ 28 MR. PENNEY: This seems even more ...

¶ 29 **THE COURT**: Yes, again - well, it's really an art of fiction ...

¶ 30 MR. PENNEY: Yes.

¶ 31 **THE COURT**: ... to amend the Criminal Code information to be a Highway Traffic Act information.

¶ 32 MR. PENNEY: Yeah, because ...

¶ 33 **THE COURT**: On those two choices I prefer ...

¶ 34 MS. THOMPSON: Okay.

¶ 35 **THE COURT**: ... the first choice.

¶ 36 MR. PENNEY: Yes.

¶ 37 MS. THOMPSON: I can just indicate for the record that Mr. Kasko of my office was dealing with counsel and he indicates that the Crown is content that Mr. Penney appear as agent for the purposes of the guilty plea.

¶ 38 **THE COURT**: All right. Let's arraign him on then the dangerous operation.

¶ 39 CLERK OF THE COURT: Kevin Lawrence Briggs stands charged on or about the 28th day of July in the year 2002 at the Town of Markham, in the said Regional Municipality of York, did operate a motor vehicle on a highway in a manner that was dangerous to the public contrary to section 249(1)(a) of the Criminal Code. On September third, 2002 the Crown elected to proceed summarily. How you plead to this charge, sir? Guilty or not guilty?

¶ 40 MR. PENNEY: On behalf of the client, Kevin Briggs, I enter a plea of not guilty to the offence as charged and we enter a plea of guilty to speeding, section 128(1) of the Highway Traffic Act.

¶ 41 **THE COURT**: And the Crown is content with that ...

¶ 42 MS. THOMPSON: Yes, ...

¶ 43 **THE COURT**: ... plea?

¶ 44 MS. THOMPSON: ... Your Honour. Thank you.

¶ 45 **THE COURT**: And the facts then?

¶ 46 MS. THOMPSON: All right. On the 28th of July of this year at approximately eight-45 in the evening police were on patrol northbound on Highway 48 north of Elgin Mills Road in the Town of Markham, in the Region of York. It was still daylight and the roads were dry. At this time police observed a red motorcycle heading southbound on Highway 48. This motor vehicle appeared to be moving at an extremely high rate of speed. It's an 80 kilometre posted zone. Police made a U-turn. The motorcycle appeared to accelerate even faster. Police attempted to catch up to the vehicle and reach 130 kilometres an hour without gaining any ground on the motorcycle. As the motorcycle approached southbound traffic it passed vehicles using the northbound lane and quickly darted back into the southbound lane. The motorcycle repeated this manoeuvre several times and on two occasions was in danger of colliding with northbound traffic. The traffic light for the intersection at Major Mack [sic] and Highway 48 was red for southbound traffic and several cars were stopped at the time. Following - the police car that was following had its lights and sirens on and was about 200 metres behind the motorcycle and as the motorcycle approached the intersection in the right turn lane the southbound traffic light turned green and the motorcycle continued southbound on Highway 48 cutting off southbound traffic in the through lane. It appeared he was trying to evade police. He continued southbound on Highway 48 at a high rate of speed and as it approached 16th Avenue it slowed as the light was red for southbound traffic and there were many vehicles stopped. It was at this time that the motorcycle and Mr. Briggs were stopped by the police. Now if I could just have a very brief moment. Those are the - those are the facts, Your Honour.

¶ 47 **THE COURT**: So as far as the speeding goes am I looking at 130 in an 80?

¶ 48 MS. THOMPSON: Yes.

¶ 49 MR. PENNEY: Yes, that's correct, Your Honour. The facts ...

¶ 50 **THE COURT**: So 50 kilometres over?

¶ 51 MS. THOMPSON: Yes.

¶ 52 MR. PENNEY: That's correct, Your Honour. It's a big statutory fine. I have the section from Quicklaw, Your Honour.

¶ 53 **THE COURT**: Yes.

¶ 54 MR. PENNEY: It's $9.75 for every kilometre over so it's 4-87-50 is the fixed amount. That's the penalty under section 128(14) of the Highway Traffic Act. And the facts, of course, as they relate to the speeding that my friend - my friend has read out are admitted. Mr. Briggs has given me written instructions to admit that he was driving his motorcycle on the 28th of July, 2002 in Markham at a speed of 130 kilometres per hour in posted 80 kilometre an hour zone.

¶ 55 **THE COURT**: All right. The charge of dangerous operation will be dismissed. There will be a conviction under 128(1) of the Highway Traffic Act, the speed of 130 in an 80. The penalty will be $487.50 and I think that also attracts a 20 per cent victim fine surcharge for whatever it is. I'll let the office play with the math [sic]. And how much time do you require to have that ...

¶ 56 MR. PENNEY: We were seeking ...

¶ 57 **THE COURT**: ... paid?

¶ 58 MR. PENNEY: ... 90 days, please, Your Honour.

¶ 59 **THE COURT**: Time to pay 90 days.

¶ 60 MS. THOMPSON: And, Your Honour, Mr. Kasko has indicated that the section allows the justice to consider a licence suspension not in excess of 30 days. So not ...

¶ 61 **THE COURT**: That's the situation regarding licence suspension.

¶ 62 MR. PENNEY: Well, I - I'd understood that it was a joint submission for a fine. And if my friend is seeking that and I don't think I have - I don't think I'll be making an informed and voluntary plea on behalf of the accused 'cause [sic] this was the whole point of doing this in the first place.

¶ 63 **THE COURT**: I would have thought that if there was going to be a suspension of licence that that would have been clearly indicated to both parties and that counsel would have been in possession of a licence to surrender.

¶ 64 MS. THOMPSON: Okay. I'm just indicating for the record what Mr. Kasko's position on the green sheet was that was entertained so ...

¶ 65 **THE COURT**: Well, what ...

¶ 66 MS. THOMPSON: ... if that's not what was ...

¶ 67 **THE COURT**: ... was ...

¶ 68 MS. THOMPSON: ... canvassed.

¶ 69 **THE COURT**: ... your position.

¶ 70 MS. THOMPSON: Well, my position is I was asking my friend - I don't know if he's - if he was aware of that. If he wasn't aware of it I'm certainly not ...

¶ 71 MR. PENNEY: Well, we had ...

¶ 72 MS. THOMPSON: ... going to ...

¶ 73 MR. PENNEY: ... discussed it 'cause [sic] I'm - I'm aware of that provision. I'm - I'm - I understand when it is 50 the judge has the discretion to impose a suspension but this was discussed at the judicial pre-trial.

¶ 74 MS. THOMPSON: And did Mr. Kasko indicate he was asking for a licence suspension?

¶ 75 MR. PENNEY: My understanding was that he wasn't.

¶ 76 MS. THOMPSON: All right. Well, if counsel - I mean I take counsel's word for it. I ...

¶ 77 **THE COURT**: All right.

¶ 78 MS. THOMPSON: ... don't - and again I don't have anything in addition to this.

¶ 79 **THE COURT**: So we'll leave it as is.

¶ 80 MS. THOMPSON: Thank you.

¶ 81 MR. PENNEY: Okay. I thank, Your Honour, and I thank my friend as well. Madam Clerk, do you have his most ...

¶ 82 CLERK OF THE COURT: Mr. Penney, the fine - the fine, etcetera, will be mailed to your client.

¶ 83 MR. PENNEY: That's right. Because I don't think it's under the Criminal Code so ...

¶ 84 CLERK OF THE COURT: Provincial Offences Act.

¶ 85 MR. PENNEY: Yeah. Do you have his correct address? 105 Barnes Drive?

¶ 86 CLERK OF THE COURT: 105 Barnes Drive, Ajax?

¶ 87 MR. PENNEY: Yeah. L1S 5E7.

¶ 88 CLERK OF THE COURT: L1S ...

¶ 89 MR. PENNEY: 5E7.

¶ 90 CLERK OF THE COURT: And do you have his phone number handy? Just in case.

¶ 91 MR. PENNEY: I don't think I have instructions to give that out.

¶ 92 CLERK OF THE COURT: Okay. All right then.

¶ 93 MR. PENNEY: I can - actually I can give you his cell phone number. 647-292-8466.

¶ 94 MS. THOMPSON: I'm sorry. What is it you're indicating you don't the - I didn't hear what you said.

¶ 95 MR. PENNEY: She was asking ...

¶ 96 CLERK OF THE COURT: His cell phone.

¶ 97 MR. PENNEY: ... me for his phone ...

¶ 98 MS. THOMPSON: Oh, the cell ...

¶ 99 MR. PENNEY: ... number.

¶ 100 MS. THOMPSON: ... phone number. Okay.

¶ 101 MR. PENNEY: And I told ...

¶ 102 MS. THOMPSON: 'Cause [sic] the address is certainly - okay. Thank you very much.

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