

Date: 20020109
Docket: CAC 169846

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Briand, 2002 NSCA 3]

Glube, C.J.N.S.; Roscoe and Bateman, J.J.A.

BETWEEN:

TROY C. BRIAND

Appellant

- and -

HER MAJESTY THE QUEEN

(on the Information of Constable K. Hovey)

Respondent

REASONS FOR JUDGMENT

Counsel: Appellant in person
Donna I. Keats for the respondent

Appeal Heard: January 8, 2002

Judgment Delivered: January 9, 2002

THE COURT: Leave to appeal is granted and the appeal is allowed per reasons for judgment of Bateman, J.A.; Glube, C.J.N.S. and Roscoe, J.A. concurring.

BATEMAN, J.A.:

[1] Mr. Briand appeals his conviction for driving while uninsured, contrary to s. 230(1) of the **Motor Vehicle Act**, R.S.N.S. 1989, c. 298 as amended.

[2] Mr. Briand was involved in a motor vehicle accident on October 12, 1999, when the vehicle which he was driving rear-ended another. At that time he produced an insurance card relating to a 1988 Pontiac Sunbird. The police accident report listed him as driving a 1988 Sunbird. Shortly after the accident Mr. Briand attended at the offices of his insurance agent, reporting to them that he had had an accident while driving his 1985 Sunbird. The agent advised him that his insurance applied only to the 1988 Sunbird, and, accordingly, he was uninsured for the October 12 accident. It appears from the record that Mr. Briand has a number of vehicles and changes his insurance from one to the other, depending upon which is operative.

[3] Upon further investigation after the accident, the police concluded that Mr. Briand had, in fact, been driving the 1985 Sunbird. Accordingly, in February 2000 a summons issued, charging Mr. Briand with driving while uninsured.

[4] The trial took place in Provincial Court before adjudicator Angus MacIntyre on August 21, 2000. Mr. Briand was not present for the start of the trial and did not arrive until the first two witnesses, one of whom was his insurance agent Hadley Sweet, had concluded their evidence. Mr. Briand was not represented by counsel. It is unclear whether Mr. Briand knew that the agent had testified in his absence.

[5] Mr. Briand repeatedly expressed his confusion with the proceedings. He was interrupted frequently by the adjudicator both in his submission to the court and during his evidence. It was his evidence, generally, that he believed that he was insured for the 1985 Sunbird, having told the insurer to switch the coverage from the 1988 vehicle. Mr. Briand was convicted.

[6] His appeal to the Summary Conviction Appeal Court was dismissed, Justice Heather Robertson of the Supreme Court, concluding that the record revealed no error. It is fair to say that Mr. Briand has difficulty in expressing himself in a concise way. His submissions before the Summary Conviction Appeal Court judge

were somewhat unfocussed. That fact may have contributed to his lack of success on appeal.

[7] An appeal to this Court from the Summary Conviction Appeal Court requires leave and must be based upon an error of law. We are satisfied that there is such error.

[8] It is our view that the process before the adjudicator was flawed such that Mr. Briand did not receive a fair trial. Upon arriving late for the proceeding, the adjudicator did not explore with Mr. Briand the reason therefor. When it became clear that Mr. Briand's position was that he was insured on the 1985 Sunbird, the adjudicator should have provided Mr. Briand with an opportunity to recall and cross-examine Hadley Sweet, the Crown's key witness on this point. The frequency of interruption by the adjudicator leaves the impression that Mr. Briand was prevented from adequately speaking on his own behalf. Finally, the adjudicator did not consider the defence of due diligence, which was a live issue on this record. He should have considered whether, in these circumstances, Mr. Briand had a reasonably held belief that he was driving the vehicle with valid insurance. This possible defence arises from two circumstances: (1) Mr. Briand says that shortly before the accident he informed the agency that he was switching cars and asked that the 1985 Sunbird be covered; and (2) under the replacement vehicle section of the policy he may, in fact, have been insured vis a vis the damage to the other vehicle (see **Bates v. Pettipas** (1988), 83 N.S.R. (2d) 94; N.S.J. No. 62 (Q.L.) (N.S.S.C.)). In summary, the adjudicator failed to ensure that Mr. Briand had a fair trial (**R. v. McGibbon** (1988), 45 C.C.C. (3d) 334; O.J. No. 1936 (Q.L.) (Ont.C.A.)).

[9] These are errors of law at the trial level which should have prompted a successful appeal to the Summary Conviction Appeal Court. Accordingly, we would grant leave, allow the appeal, set aside the decision of the Summary Conviction Appeal Court and order a new trial before a different adjudicator.

Bateman, J.A.

Concurred in:

Glube, C.J.N.S.

Roscoe, J.A.