

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation: *R. v. Ellis*, 2008 NSSC 178**

**Date:** 20080616  
**Docket:** SK 285373  
**Registry:** Halifax

**Between:**

*John Floyd Ellis*

Appellant

v.

*Her Majesty the Queen*

Respondent

---

**LIBRARY SHEET**

---

**Judge:** The Honourable Justice Gregory M. Warner

**Heard:** May 22, 2008 at Kentville, Nova Scotia

**Final Written Submissions:** May 28, 2008

**Subject:** Criminal - care or control

**Issue:** What is the minimal factual basis for finding care or control in “change of mind” situations, when the 258(1)(a) presumption is rebutted?

**Summary:** An impaired person called 911 to ask for help and stating that he did not want to drink and drive. As a result and within a few minutes, the police attended upon him. It was about 5 pm on a chilly, winter evening. He was seated in the driver’s seat of his vehicle with the keys in his pocket, parked at the end of a residential cul-de-sac. There was no evidence that he had interacted with the vehicle (motor, heater, windshield wipers, radio, etc.) in any way. There was no evidence of how or when he or the vehicle came to be where it was at the time of the 911 call. His address was not in evidence. The trial judge held that the 258(1)(a) presumption was rebutted but that, based on him being very impaired and alone in the driver’s seat of his vehicle, with the

present ability to drive, there was a real risk of him changing his mind, not waiting for the police to arrive, and driving away.

**Result:**

Appeal allowed. The *actus reus* for finding care or control in “change of mind” situations, when the 258(1)(a) presumption is rebutted, requires a factual matrix that includes more than the general assumption that every impaired person in the driver’s seat with the present ability to engage the vehicle creates a risk of danger because he or she could change his or her mind.

---

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER SHEET.**

---