

ONTARIO COURT OF JUSTICE

BETWEEN

HER MAJESTY THE QUEEN

RESPONDENT

- and -

SUSAN TUPPER

APPELLANT

PROCEEDINGS AT
APPEAL HEARING

BEFORE THE HONOURABLE JUSTICE D. HARRIS
on February 6, 2008 at CAYUGA, Ontario

CHARGE: Section 130 H.T.A. - Careless Driving

APPEARANCES:

J.P. Maloney

Counsel for the Provincial Prosecutor

D. Kerridge

Agent for Susan Tupper

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R. v. Susan Tupper

WEDNESDAY, FEBRUARY 6, 2008

THE COURT: Are counsel here with respect to the, the Tupper matter?

MR. MALONEY: Yes, Your Honour. It's, for the record is Maloney, initial J.P. I act as Crown for the Part I matters on this appeal. Mr. Kerridge is agent for Ms. Tupper. He is here although not in the courtroom right now.

MR. O'BRIEN: And he was just here a moment ago.

MR. MALONEY: Yes.

THE COURT: Well why don't we page Mr. Kerridge and Ms. Tupper.

...MR. KERRIDGE PAGED

...SUSAN TUPPER PAGED

THE COURT: Are you ready to go ahead with this Mr. Kerridge?

MR. KERRIDGE: Yes, Your Honour.

...DISCUSSION WITH MR. O'BRIEN, CROWN ATTORNEY, AND COURT CLERK REGARDING OTHER MATTERS NOT REQUIRED

THE COURT: Mr. Maloney, you counsel?

MR. MALONEY: Yes, Your Honour.

THE COURT: Is Ms. Tupper present?

MR. KERRIDGE: No she's not, Your, Your Honour.

THE COURT: Okay. Mr. Kerridge.

MR. KERRIDGE: Yes. Your Honour, for the record Kerridge, initial D., appearing as agent on behalf of the Appellant, Susan Tupper, and as I've indicated she's not present. Your Honour, this is a matter, a careless driving charge arising out of a single motor vehicle incident where Ms. Tupper was the driver. All of that came out at, in, in the evidence that she was driving on a rural

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country road, a paved, straight, level country road.

THE COURT: If it helps, I'll point out I have read the transcript. I....

MR. KERRIDGE: Thank you, Your Honour.
Essentially....

THE COURT: In fact, in fact, I read it this morning.

MR. KERRIDGE: Okay. Essentially, my problem with the trial is that, number 1) I submit that the learned Justice of the Peace did not fully consider the case law put before the court, and indeed, only considers the case law after he's clearly reached his decision. And in that vein, I would refer Your Honour to page 80, paragraphs 1 and 2 where His Worship indicates at about line 4,

In any case you chose rather than slow down, which in my opinion a reasonable and prudent person would have done, you chose to take one hand off the wheel, take your eyes off the road and reach down.

Everything subsequent to that I believe is incidental to the charge before the court. The mere action of taking your eyes off the road, taking your hand off the wheel, in my opinion, constitute a violation, a statutory breach under [the] Section [of] 130 and does constitute careless driving.

So clearly, in those two paragraphs His, His

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Worship indicates that he's reached a decision. Then he goes on to talk about "objective assessment" and moves on to page 81 where he begins to consider the three matters of case law put before him. And I submit secondarily that he did not fully consider these when he did turn to, his attention to those cases. And in that regard I refer Your Worship, or Your Honour, to the fact that he somewhat single-mindedly continually refers to the issue of "eyes off the road". At page 81, in considering the case of Regina v. Calcone he says at line 3,

... [there's] ... no evidence in there that the driver took his eyes off the road. There was evidence that perhaps an inexperienced nineteen year old ... was not able to control the ... van [and I paraphrase there] and [that's] ... why he ran into the difficulties ... he did.

Moving on to Namink, on the same page, he talks about the ingredients of the case and alludes to certain "icy patches on the road" which, in fact, was not part of the evidence in Namink. But again, he returns to the issue of "eyes off the road" - and that's three lines up from the bottom of the page. So once again, no evidence that the incident was caused by taking his eyes off the road. In moving on to Beauchamp, in page....

THE COURT: Well let's deal with those two.

MR. KERRIDGE: Yes.

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THE COURT: So what are you saying is the error there?

MR. KERRIDGE: Well I'm saying that he did not fully consider the issues at hand in those two cases. One, in Namink in particular, the issue in Namink is inadvertent negligence, perhaps momentary inattention. And I'm submitting that he doesn't deal with those issues. He simply returns to the issue of eyes off the road every time. And in Calcone, the question at hand is the consideration of the aftermath of a collision in the path to reaching a decision of guilt in careless driving. And Calcone says that it should not be the aftermath that's considered but the driving leading up to the incident. And again, His Worship condenses it down to the issue of eyes off the road. I submit in both of those cases, that's not proper consideration of the law given to him.

THE COURT: Well what's the point of law in those cases that you want me to rely on...

MR. KERRIDGE: Well I'm submitting....

THE COURT: ...or that you're suggesting that the Justice of the Peace should have relied on?

MR. KERRIDGE: I'm submitting, Your Honour, that he....

THE COURT: Do we have copies of either Calcone or Namink?

MR. KERRIDGE: I'm sorry, we don't. As a matter of fact, I had discussion with my friend this morning about the fact that I really feel this should have been submitted by factum. But I was not able to do that in the time allowed to me because of various

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issues that took place over the past few months, or two months. So I, I apologize to the court, I do not. I have a copy of Namink, I have a copy of Beauchamp, but do not have a copy of Calcone.

5 THE COURT: I mean quite frankly, Mr. Kerridge, I would have thought that copies of those cases should have been provided to the Justice of the Peace.

10 MR. KERRIDGE: Oh, they were. Oh yes, they were. Those cases were provided to him.

THE COURT: Okay. I must have missed that particular - I thought there was an indication...

MR. KERRIDGE: I can, I can assist the court.

THE COURT: ...in the material suggesting that....

15 MR. KERRIDGE: I can assist the court there, Your Honour. At page, at page 62 I spell out the case Calcone and provide, it's on the record that I provide a copy to His Worship at about line....

THE COURT: Oh yes - I'm sorry.

20 MR. KERRIDGE: Yeah. And then on 65 I provide a, on page 65 I provide a copy of Beauchamp. And page 69 I provide of copy of Namink.

THE COURT: Okay.

25 MR. KERRIDGE: So my issue with His Worship is that I think there's clear indication that he had reached this decision before considering these cases, and that in considering these cases, he was somewhat single-minded, single-minded, and I say that with the greatest respect. I submit that he was somewhat cursory in his considerations. As I said earlier, he refers to ice in the case of Namink and if it had been thoroughly considered he

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5 would not have referred to an allegation of ice,
"icy patches" as he does on page 81 at line 21. In
fact, there was an allegation that an ice patch
happened in that case, and there was no allegation
of ice. There was a consideration that perhaps
that might be a reasonable conclusion that
something like that caused that collision in
10 Namink, but there was no, there was no evidentiary
indication that there was ice. So relating back to
Namink, the issue there is inadvertent negligence
or momentary inattention, in which, in my
submission this case was identical to. And, of
course, Namink says that it's not sufficient....

15 THE COURT: Well again, let's deal with this. Am I
not correct that careless driving has been
characterized in the past as inadvertent
negligence?

MR. KERRIDGE: It has been.

20 THE COURT: Don't I, don't I recall something
indicating that the, the difference between
dangerous driving and careless driving...

MR. KERRIDGE: Yes.

25 THE COURT: ...is advertent versus inadvertent
negligence?

MR. KERRIDGE: That's correct. That is correct.

THE COURT: Going, going back almost to, if not
right to law school.

MR. KERRIDGE: I think that's McIvor, if I'm not
mistaken.

30 THE COURT: No, McIvor was a different point.

MR. KERRIDGE: No? Okay. I can't remember. But
you're absolutely right....

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5 THE COURT: But I, but I'm taking it that what you're, after reading the materials, I'm taking it that your objection and your ground of appeal is that he erred in finding that, that the - excuse me - that the momentary inattention in this particular case constituted a lack of due care and attention or....

MR. KERRIDGE: Yes.

10 THE COURT: ...failure to keep, to have a proper regard for others using the highway.

MR. KERRIDGE: That's fundamentally my position, yes.

15 THE COURT: Okay. Is there anything more to it than that?

MR. KERRIDGE: Well there is. I, I believe that His Worship failed to consider, misapprehended or misapplied the weight to the evidence of mud on the tires in this instance. That happened before the enormous amount of damage as he refers to it. And that, those, that mud on those tires, from having entered the shoulder of the ditch, the mud they picked up when she over-corrected, that contributed to her sliding across the road in essence. And the rollover was caused by the depth of the ditch.

20 THE COURT: No, but she got to that point because of the fact that she was dealing with the package and the way...

25 MR. KERRIDGE: That's correct.

30 THE COURT: ...she's, she did. And as I get it, looking at page 80, the Justice of the Peace in this case reduced the careless driving portion of this to the mere, the action of taking her eyes off

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the road and taking her hand off the wheel.

MR. KERRIDGE: That's correct.

THE COURT: And as he said, anything that occurred after that was incidental.

MR. KERRIDGE: And that, that is my point coming out of Calcone that the aftermath should not be considered in, in, in the path to making the determination.

THE COURT: Then he clearly indicates that he is not...

MR. KERRIDGE: Yeah, he does.

THE COURT: ...that he's not considering the aftermath, he's considering the act itself.

MR. KERRIDGE: That's what he says. I'm submitting to the court his words and actions say differently. And I guess - again, I say that with the greatest respect. I think His Worship did a really good job at boiling this, this down to the essential issue. But going to page 83, Your Honour, at the top, His Worship says, well it starts out with regards to, "... the prudent and proper thing that a driver would do would be to slow down and then retrieve the package rather than try to do it [at] ... 80 kilometres an hour", which by the way was the speed limit. And then he says, "There was an accident." So, clearly he's focused on the aftermath there. And he goes on to say, "[You're] ... fortunate ... the majority of the damage was to the motor vehicle and that you were not seriously hurt or killed as a result of the accident." So, I submit that's somewhat of a contradiction. He says....

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THE COURT: Does he appear to be....

MR. KERRIDGE: Well he says....

THE COURT: I don't see, I don't see how he is
doing his reasoning on the basis of an accident.
The comment there is, "There was an accident."

MR. KERRIDGE: Yes.

THE COURT: Quite frankly, had there not been an
accident there would have been nothing for police
to investigate, there would have been no charge.

MR. KERRIDGE: That's right. But he says in the
next line, "So I am not considering the
consequences of the accident."

THE COURT: Right.

MR. KERRIDGE: But he clearly is. That is my, my
consideration there. And then the other part about
the application of the, or consideration of
physical evidence, I don't believe that he gave
appropriate weight to that issue of the....

THE COURT: Which evidence?

MR. KERRIDGE: The, the gathering of mud on the two
tires that lead to the vehicle sliding across the
road and ending up on the ditch on the other side.

THE COURT: But did I not understand it that based
on the evidence, the suggestion is that the
gathering of mud occurs after the, the looking down
and taking ...

MR. KERRIDGE: Yes.

THE COURT: ...the hand off the wheel?

MR. KERRIDGE: Yes, that's correct.

THE COURT: So this is all the aftermath, the
result, the part that we shouldn't be considering
anyway. He's not suggesting that she's careless in

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her operation of the motor vehicle at that point.

MR. KERRIDGE: That's correct, yes.

THE COURT: He's suggesting that is the result of the careless driving.

MR. KERRIDGE: Yes. But he attribute....

THE COURT: Which gets us, which gets us back to....

MR. KERRIDGE: To taking your...

THE COURT: Isn't, isn't your....

MR. KERRIDGE: ...hand off the wheel and....

THE COURT: Isn't your, isn't your strongest argument whether or not the mere action of taking your eyes off the road, taking your hand off the wheel constitute careless driving?

MR. KERRIDGE: That, that essentially is my argument, and that then would relate to Beauchamp. And it's my submission that he misinterprets and misquotes Beauchamp, missing the point of the standard of care issue. And her error in judgment was in misjudging her skill in, in being able to keep the car on the road while looking down. And I'm submitting to Your Honour that that's something that a person, a person of ordinary prudent judgment would do in those circumstances. It's just that she didn't carry it out with the skill that perhaps other people might have. But Beauchamp refers to the standard of care not being that one of perfection. So for, for the learned Justice of the Peace to require her, or at least to not consider that that is a reasonable thing to do, I'm submitting that that holds her to a very high standard of care being close to perfection. It's

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5 not unreasonable I submit to Your Honour, that she
took her eyes off the road momentarily, and very
quickly. What's problematic is that in, in her
left hand pulled down and she drove a little bit
off the road, and everything else flowed from that.
And so, yes, the issue, central issue is whether or
not that action constitutes a lack of due care and
attention and, therefore, careless driving. And I
10 think I've covered most of my points, Your Honour,
pending any further questions.

THE COURT: Mr. Maloney.

15 MR. MALONEY: Thank you, Your Honour. I'd like to
provide the court with a copy of the Crown v.
Beauchamp if, if you will accept, and provide my
friend with a copy.

MR. KERRIDGE: I have a copy of mine, so.

20 MR. MALONEY: Okay. I think the, the crux of this
issue is, is to, the consideration of a test of, of
Beauchamp, and not necessarily what was provided in
Calcone or, or Namink. The, the leading case is,
it was Beauchamp. In the, the substance of that
decision is really in paragraph 18 and 19. In
25 paragraph 18, what the, what the Court does is, it,
it states a quote from Mazengarb. And the, at the
very end of the quotation that the Court considers
is,

30 The question always is "What would an ordinary
prudent person in the position of the
plaintiff have done in [in] relation to the
end complained of [end complained of]?"

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5 I respectfully submit, Your Honour, that the court
took proper consideration of this case and, and
considered what the, an ordinary prudent person in
the position of the plaintiff would, would have
done in relation to the, to the end complained of.
And he even provides what, what, what that person
would have done in the fact that they would have
10 slowed down and perhaps pulled over. The second
part that I'd like to address is....

THE COURT: Just a second please.

MR. MALONEY: Sorry.

THE COURT: Okay. Go ahead.

15 MR. MALONEY: I would, if I may deal with paragraph
19, about halfway down the, the paragraph, perhaps
the second sentence, beginning of the second
sentence, the court states,

20 It must also be born in mind that the test,
where an accident has occurred, is not
whether, if the accused had used greater care
or skill, the accident would not have
happened. It is whether [the Crown -
25 paraphrase] ... proved beyond reasonable doubt
that this [that the] accused, in ... light of
existing circumstances of which he was aware
or of which a driver exercising ordinary care
should have been aware, failed to use the care
and attention or to give to other persons
30 using the highway the consideration that a
driver of ordinary care would have used or
given in the circumstances.

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Your Honour, I would respectfully submit that the initial culpable act was the accused taking her eyes off the road, taking a hand off the road[sic] and reaching down and to pick up the, the package. The subsequent events that followed with veering off the road to the, to the left side and then going across the road and ending up in a ditch and, and rolling over, is perhaps a continuing act and sort of ancillary to the initial act of taking the eyes off the road, reaching down and taking a hand off the, the steering wheel. And I respectfully submit that the trial judge in this case carefully considered the test in Beauchamp, carefully considered what an ordinary reasonable person would have done before Ms. Tupper took her eyes off the road, and, and ruled accordingly. With the respect to Calcone and Namink, Calcone deals, in Namink actually - sorry - deals with momentarily inattention. I respectfully submit that taking your eyes off the road and reaching down is not momentary inattention. So I, the, I think the trial judge in this instance properly considered it in his mind. Whether he did it chronologically in his, in his judgment is, in his oral judgment, is, I don't think is necessary. On this case, I think he appropriately considered the case and, and disregarded it. Calcone, again should, the, the case deal with, the case dealt with whether you should consider the after effects of the, of the case. And I think, again, I respectfully submit that the trial judge considered that case,

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5 disregarded in the fact that it dealt with the
subsequent and ancillary effects to that initial,
initial culpable act, if you will, and again, I
think he adequately disregarded it. Your Honour, I
think, I think what is sort of clouding the issue,
and I think we need to focus strictly on what
10 exactly happened, that initial taking the eyes off
the road, in reaching down, and, and the, and the
subsequent events don't really, I don't want to say
they don't matter as much, but they're, like I
said, ancillary. And I respectfully submit that
the trial judge ruled accordingly after the Crown
proved each of the elements, and I ask that the
15 court dismiss the appeal and, and uphold the
conviction. Subject to any questions, Your Honour,
those are my submissions.

THE COURT: Bottom of page 82.

MR. MALONEY: Yes, Your Honour.

20 THE COURT: The Justice of the Peace says,

25 So I am back to my original premise, would a
reasonable and prudent person take their eyes
off the road and reach down to retrieve a
package when it was clear, at least from your
testimony, that there was no traffic on the
road. So the prudent and proper thing that a
driver would do would be to slow down and then
retrieve the package rather than try to do it
30 in 80 kilometres an hour and we all know what
the result was. There was an accident.

Now let's, let's stop the reasoning even at the,

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rather than try and do it in the 80 kilometres an hour.

MR. MALONEY: Sure.

5 THE COURT: Might I take it from this that the Justice of the Peace is saying that the, this is an offence because she did it at this speed?

MR. MALONEY: No, Your, or, Your Honour. I'm, what it sort of he's qualifying what the test is in Beauchamp. And the Beauchamp is due care and, well the section with the....

10 THE COURT: It's a lack of due care and attention.

MR. MALONEY: Lack of due care and attention. The initial act of....

15 THE COURT: And Beauchamp doesn't say it, but other cases clearly say that momentary....

MR. MALONEY: Sure. And as well, the, the section of the 130 of H.T.A.

20 THE COURT: No, no. What I'm getting at is that other cases say that momentary inattention is not a lack of due care and attention necessarily, correct?

MR. MALONEY: Correct. May I submit that taking eyes off the road and reaching down is not a momentary inadvertence or inattention - excuse me.

25 THE COURT: What is momentary inattention then?

MR. MALONEY: I, I don't, I can think of examples, but....

THE COURT: Then give me one.

30 MR. MALONEY: Perhaps quickly daydreaming and then taking your mind off the road for a moment, not actually conscientiously taking your eyes off the road. That's a, that requires a positive act of

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doing something else. Where I would submit that mere inadvertence is something perhaps accidental but not requiring a, a positive act of, of actually taking your attention away from the road and, and focusing somewhere else. Where....

THE COURT: Allowing your mind to drift is less culpable than looking, looking down when something beside you falls down to the area next to your...

MR. MALONEY: No, Your Honour. But I, I don't....

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THE COURT: ...to the foot that you're using to operate the brake and the accelerator?

MR. MALONEY: Sure. Excuse me. I, I don't need to justify what something else might be. What I'm suggesting in this particular case, yes, taking the eyes off the road is more than mere inadvertence. It's....

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THE COURT: It's not mere inadvertence. It's mere inattention.

MR. MALONEY: Mere inattention.

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THE COURT: I mean, momentary to me is referring to how long this takes...

MR. MALONEY: Sure.

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THE COURT: ...not why it happened. I'm not so certain that I'd forgive, I, I wouldn't find that someone who is daydreaming as they go down the road for more than a second or two, I would suspect that that constitutes operating the motor vehicle without due care and attention, and probably would be warranting of, of conviction. The question is, is the mere, the act of looking down, in response to her evidence, and the thing -- I mean, if I've got this correct, I don't see any rejection of her
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evidence by the Justice of the Peace. He seems to be accepting her evidence that the package falls down and she looks down and she reaches for it. And he seems to be saying that as soon as she looks down and she reaches, takes her hand off the wheel, that that now falls into a situation where she's either showing a lack of due care and attention or a proper, lack of a proper regard for others using the highway.

10 MR. MALONEY: That's correct.

THE COURT: And you would submit that that, that that act does in fact constitute that?

15 MR. MALONEY: It does. It constitute a lack of due care and attention to the road. To, she, she failed to continue to pay attention to her driving on the vehicle, or on the road. Her, her mind-set changed from driving the vehicle on the road to taking her eyes off the road and removing....

20 THE COURT: No, there's no, I, I don't think anybody here is arguing that there is not inattention.

MR. MALONEY: Right.

25 THE COURT: There is at least a moment of inattention. The question is, does this constitute momentary inattention or does it go to something beyond that?

MR. MALONEY: I, I would respectfully....

THE COURT: And has the Crown proven something more than that beyond a reasonable doubt?

30 MR. MALONEY: I respect, I respectfully submit that the Crown did prove beyond a reasonable doubt. The explanation given by the, the, the accused did not

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provide a full explanation for why she was not driving with due care and attention, Your Honour.

THE COURT: Well the Justice of the Peace accepted her evidence as to what happened, did he not?

MR. MALONEY: That's correct, Your, Your Honour.

THE COURT: So we're working on that basis. We're working on the basis that she's driving down the road, she's driving at 80 kilometres an hour or 50 miles an hour as she put it, this parcel falls, and at that point she looks down and she reaches for it. We have no indication of how long it is before she looks up again, but when she, she indicates it's a short period of time, and at this point she's no longer going straight down the road, she's heading off the road. And we then get the course of events that lead to the car rolling...

MR. MALONEY: That's correct.

THE COURT: ...and being there when the police arrive.

MR. MALONEY: That's correct.

THE COURT: Okay. Thank you.

MR. MALONEY: Thank you, Your Honour.

THE COURT: Okay. We're going to take the morning break. I'll give my decision after the break. We'll come back at 12:05.

R E C E S S

U P O N R E S U M I N G :

R. v. Susan Tupper**Reasons for Judgment - Harris, J.**

REASONS FOR JUDGMENT

HARRIS, J. (Orally):

5 The Appellant, Susan Tupper, appeals against being
found guilty of careless driving. The facts in
this case are not in dispute. The Justice of the
Peace found that the Appellant was driving her
motor vehicle on Decewesville Road in North Cayuga
on December 24, 2006. She was driving at the
10 posted speed limit of 80 kilometres an hour. There
was no other traffic on the road. A Christmas
package fell from the passenger's seat beside her
onto the floor of the car near her right foot. She
reached down to pick it up. When she came up her
vehicle was on the left shoulder of the road. In
15 responding to this, she over-corrected and her car
left the roadway on the right-hand side of the
road.

20 In finding the Appellant guilty of careless
driving, the Justice of the Peace said at page 80
of the transcript,

25 ... you chose rather than slow down which in
my opinion a reasonable and prudent person
would have done, you chose to take one hand
off the wheel, take your eyes off the road and
reach down.

30 Everything subsequent to that I believe is
incidental to the charge before the court.
The mere action of taking your eyes off the

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road, taking your hand off of the wheel, in my opinion, constitute a violation, a statutory breach under section 130 and does constitute careless driving.

He reviews certain cases referred to by the agent for the Appellant, and at pages 82 through 83 refers to the decision of the Ontario Court of Appeal in Regina v. Beauchamp [1952] O.J. No. 495, and says,

... the reason that Beauchamp is quoted so often is [that] in the third paragraph on page 1 saying "The driver is required to exercise a reasonable amount of skill and to do what an ordinary, prudent person would do in the circumstances. And then goes on to talk about due care and attention.

So I am back to my original premise, would a reasonable and prudent person take their eyes off the road and reach down to retrieve a package when it was clear, at least from your testimony, that there was no traffic on the road. So the prudent and proper thing that a driver would do would be to slow down and then retrieve the package rather than try to do it in 80 kilometres an hour

The charge, however, is not one of failing to do what a reasonable and prudent person would do. The charge is set out in Beauchamp at paragraph 18

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where it says,

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To support a charge under s. 29(1) of The Highway Traffic Act, the evidence must be such as to prove beyond reasonable doubt that the accused drove in the manner prohibited by the subsection, namely, without due care and attention or without reasonable consideration for others. The standard of care and skill to be applied has [long] been ... established and is not that of perfection.

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It is further elaborated on at paragraph 19 where the Court of Appeal says,

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It must also be born in mind that the test, where an accident has occurred, is not whether, if the accused had used greater care or skill, the accident would not have happened. It is whether it is proved beyond reasonable doubt that this accused, in the light of existing circumstances of which he was aware or of which a driver exercising ordinary care should have been aware, failed to use the care and attention or to give to other persons using the highway the consideration that a driver of ordinary care would have used or given in the circumstances.

Numerous cases have held that momentary inattention does not constitute a lack of due care and attention or a lack of reasonable consideration for

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others using the highway. The Justice of the Peace here does not discuss whether the Appellant taking her eyes off the road constituted momentary inattention or something more prolonged. He does not discuss whether the Appellant was driving without due care and attention or without reasonable consideration of others. The failure to consider these factors was an error on his part.

The Appellant, in her testimony, described a momentary act of reaching down to pick up the parcel. His Worship accepted that evidence. The inattention on the part of the Appellant then was momentary and would not constitute careless driving. The "mere action of taking your eyes off the road, taking your hand off the wheel" if done momentarily does not constitute careless driving. The appeal is allowed. The finding of guilt is set aside, and an acquittal is entered.

MR. KERRIDGE: Thank you, Your Honour.

MR. MALONEY: Thank you, Your Honour.

...WHEREUPON THESE PROCEEDINGS WERE CONCLUDED

23.
Certification

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FORM 2

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Certificate of Transcript
Evidence Act, Subsection 5(2)

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I, J. H. Fleet certify that this document is a true and accurate transcription of the recording of R. v. Susan Tupper in the Ontario Court of Justice held at 55 Munsee Street North, Cayuga, Ontario, taken from Recording No. 25/2008 (5280 - 7027) and Recording No. 26/2008 (00 - 1436), which has been certified in Form 1.

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March 4, 2008

(Date)



(Signature of authorized person)

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