

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

DARRYL ROSS

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

BEFORE THE HONOURABLE JUSTICE A.M. ALDER
on May 25, 2017, at OTTAWA, Ontario

APPEARANCES:

J. Lalande
W. Murray

Counsel for the Crown
Counsel for Darryl Ross

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ONTARIO COURT OF JUSTICE
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Legend

[sic] - Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) - Indicates preceding word has been spelled phonetically.

Transcript Ordered: June 26, 2017

30 Transcript Completed: July 6, 2017

Ordering Party Notified: July 6, 2017

1.
Arraignment and Plea

THURSDAY, MAY 25, 2017

M A T T E R C O M M E N C E D

MR. MURRAY: Darryl Ross is at lines 250 through to 252 on Your Honour's docket. He's present, coming forward.

CLERK REGISTRAR: Your name for the record?

MR. MURRAY: My name's Murray, M-U-R-R-A-Y, initial W. Thank you. If he could be arraigned, please, on the first two counts in the information?

CLERK REGISTRAR: Darryl J.M. Ross, you are charged that on or about the 1st day of March, the year 2017, at the City of Ottawa, in the East Region, did having the care, charge or control of a vehicle on 120 Riocan Drive [sic] that was involved in an accident with a vehicle, and with intent to escape civil or criminal liability, failed to stop the vehicle and give his name and address, contrary to section 262(1.1) of the *Criminal Code of Canada*. You are further charged that on or about the 1st day of March, in the year 2017, at the City of Ottawa, in the East Region, did while his ability to operate a motor vehicle was impaired by alcohol and a drug, operate a motor vehicle and thereby commit an offence under section 253(1)(a) of the *Criminal Code*, contrary to section 255(1) of the *Criminal Code of Canada*. Crown election?

MR. LALANDE: A summary election, please.

CLERK REGISTRAR: The *Highway Traffic Act* provides that upon conviction of the offence with you are charged, your driver's licence shall be suspended

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Arraignment and Plea

forthwith for the period prescribed by statute.
How do you plead to this charge, guilty or not
guilty?

DARRYL ROSS: Guilty.

CLERK REGISTRAR: Thank you. You may be seated.

MR. LALANDE: March 1st, 1:15 p.m., there was a
witness travelling northbound on Greenbank near
Cambrian. She saw a vehicle traveling northbound
and veering to the side of the road several times.
That person followed the vehicle as it turned it
into the Riocan plaza. It turned out to be the
vehicle of the accused. The vehicle was seen
eastbound on the through road near the LCBO. It
veered out of its lane around that area and struck
an oncoming car. It was about 1:25 p.m.

Significant damage was caused to both cars. The
accused's car immediately left the scene of the
collision. He had failed to stop and provide main
details or assistance, as required. His front
bumper was left at the scene. Attached to it was
his plate. Police were contacted and able to look
up that plate number. They were informed of some
suspicions the driver may be intoxicated. The car
was found at 2:04 p.m. by the police. It was
heading west on Strandherd just west of Greenbank.
Officers saw the car swerving within
the curb lane and they stopped it at the
intersection of Strandherd - I believe that's
Strandherd and Greenbank. The car had put its
right signal on to pull over and as it stopped,
the officer got out of his car and walked up, saw
that there was extensive damage, of course, to the

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front of the car. Mr. Ross was the lone occupant and driver. He had what's described here as a "droopy look on his face," his eyelids were not fully opened. He was asked to get out of the car and had trouble doing that; he was moving very slowly. Police began to speak with Mr. Ross about the damage. He claimed it happened the previous night. When he did so there was an odour of alcohol on his breath and he had flush cheeks, a slight slur and spoke slowly. His eyes were bloodshot, he was unsteady on his feet. At one point, the officer had to hold his arm to keep him steady as he was turning towards the cruiser, where they walked. The officer placed Mr. Ross under arrest for impaired and leaving the scene. He was taken to the station. The symptoms of impairment that I've described remained constant. In addition, Ms. Ross was — Mr. Ross, excuse me — was speaking to himself during the ride to the detachment. He spoke also of a sleep disorder. After speaking with counsel, he was turned over to a qualified technician. At 3:47, he gave a sample of his breath indicating a truncated result of 30 milligrams of alcohol in a 100 millilitres of blood. At 4:08, another truncated result of 30 milligrams. Despite the low readings, the officers were confident that there was some impairment either by a combination of alcohol and drug. There was also, as I mentioned, some discussion of medication for a sleep disorder. A drug recognition effort — expert, excuse me — was summoned to the detachment to evaluate the

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accused. There was a urine sample provided – or demanded, excuse me – but Mr. Ross refused to provide that. After several opportunities, he was told of the consequences and continued to refuse. I understand he was charged with the refusal as well. If I can just beg your indulgence one moment, please?

...[ALARM SOUNDS AND BUILDING EVACUATION ANNOUNCED ON LOUDSPEAKER]

...[MR. LALANDE SPEAKING TO SOMEONE *SOTTO VOCE*]
MR. LALANDE: I was just trying to confirm that there was no evaluation done for the drug after he refused to provide a sample. Often that's disclosed a bit later and I wasn't sure if there was an expert conclusion on that issue or not.

MR. MURRAY: I think I can add a fact that I spoke to Mr. Tallim (ph) about, there's no doubt that he was impaired by a drug or a combination of drug, that's certainly....Those facts that my friend read are admitted. I do think it's important to point out, as part of the facts, that Mr. Ross is under the care of Dr. Alan Douglas...

...[ALARM SOUNDS AND BUILDING EVACUATION ANNOUNCED ON LOUDSPEAKER]

MR. MURRAY: ...of the Royal Ottawa Hospital for a sleep disorder, for depression and anxiety, for which he is prescribed clonazepam [*sic*], a powerful medication, which Your Honour is familiar with. Can I continue to try or do you prefer I stop?

THE COURT: We have to stop. We can't....Cause see, we know it's gonna happen in a minute. It's

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gonna get worse, right?

CLERK REGISTRAR: Would you like us to adjourn or we keep checking?

THE COURT: No, we're gonna have to adjourn cause once that starts, you won't hear anything. So, quarter to two. Sorry. We were close.

MR. MURRAY: Quarter to two?

THE COURT: Yeah.

MR. MURRAY: Thanks.

THE COURT: Thank you.

CLERK REGISTRAR: All rise.

A D J O U R N M E N T D U E T O A L A R M
M A T T E R R E S U M E D

MR. MURRAY: Appropriate to continue with my plea or to deal with the in custody? I'm in Your Honour's hands.

THE COURT: No, we'll finish yours. Thank you.

MR. MURRAY: Thank you. Continuing with matter 250 to 252, Darryl Ross. Murray, initial W. I believe when we were finishing my friend had just read in the facts and I was adding to those facts before submissions, indicating that my client is in the care of Dr. Alan Douglas, who is a physician at the Royal Ottawa Hospital. And my client's being treated for sleep disorders, depression and anxiety, for which he is prescribed a very powerful medication: clonazepam [sic]. And on the day in question, he had his prescribed pill in the morning, as he was supposed to do, and then had two beers at lunch. And it is inappropriate for him to have had to beers while on the medication. More to the point, after lunch he

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5 then took what he thought were two Advil from a
bottle of pills that were in his knapsack.
Unfortunately, those were two more clonazepam
[sic] and at that point he was driving and
realized that he was impaired and made the
decision to continue driving through his distorted
10 thinking. And I'll go on more about what was
happening, but those are the facts which we're
agreeing to in terms of — we're agreeing with all
the facts my friend has laid out and just by way
of explanation, including the fact that he had
taken these drugs and on that basis, he's entering
his pleas.

THE COURT: Thank you.

15 MR. LALANDE: That's fine with us and there's no
record being alleged.

THE COURT: Thank you.

20 MR. MURRAY: Thank you. Mr. Ross is thirty-seven
years old, he has no record, he is a professor at
Algonquin teaching sociology. He's been doing
that for five years, before that he was doing grad
school. Can indicate that he has two daughters,
ages five and three, and at the relevant time,
he's going through what can be fairly described as
25 an acrimonious split with his wife. And it's
quite dramatic. It's one of those disasters in
terms of there's allegations of sexual impropriety
with the children, it's just exploded, and there
have been thousands and thousands of dollars'
30 worth of legal fees with respect to the custody
issues and what not. So, as I indicated, my
client was driving realizing that he was impaired

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and made the wrong choice. In his disturbed thinking, for which we're not suggesting there's a section 16 or any kind of defence, but at that time he thought "oh no, what am I gonna do? I can't be found out drinking and driving" or "I can't be found out impaired driving", and decided to try to get home. He was so badly impaired by the drug that he got into an accident, was behaving close to irrational and certainly can indicate, behaves in a manner that he's just horrified. More than just about any other client, he cannot -- that I've had -- he's very much saddened and depressed and anxious about being considered a criminal, and it's taken a few months for us to enter the plea where a big reason is that he's horrified by his own conduct and horrified that he's before the criminal courts. Can indicate that as a professor, he earns about seventy-five, seventy-six thousand dollars but a lot of his income is taken up, at present, by this family-law dispute, and I'm suggesting, Your Honour, that the Crown's request for \$2,000, which was the position taken before I explained the pill issue, is a little bit high. I'm hoping that Your Honour would find your way to consider a \$1,200 fine appropriate for the two offences for which he's pled guilty. Subject to Your Honour's questions, those are my submissions. Thank you.

MR. LALANDE: We're suggesting a \$2,000 fine, as you heard, one year prohibition. I note that the impaired, of course, will net a \$1,000 fine on its own and our suggestion is that leaving the scene

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should cost another \$1,000 for Mr. Ross. You've heard that he is gainfully employed and while we often hear on these sentencings in this court for impaired driving "we're lucky there was no accident", here there was and there was extensive damage. You'll recall before lunch, I told you his bumper was left at the scene with the plate attached to it which is suggestive of the amount of damage and we're lucky, no thanks to Mr. Ross' decision, that no one was seriously hurt. A thousand dollars for that count is our suggestion and one year prohibition. Thank you.

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MR. MURRAY: Just if I could add one thing, which I should have, it's that if you had made it five-thousand, he wouldn't feel worse about it. This is an individual who really feels remorseful about this decision, he hasn't consumed alcohol, I believe, since the incident or certainly in weeks from this point, and he's determined to go forward without consuming further alcohol and in my respectful submission, \$1,200 would be ample to bring the point home that he shouldn't be consuming alcohol of any quantity and driving.

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THE COURT: Have you considered a period of probation?

MR. MURRAY: Well, the Crown wasn't asking for it so it's not usually for me, but if I could just have one moment, please?

THE COURT: M-hm.

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MR. MURRAY: In my respectful submission, it's just that the point's already been made and he really does appreciate and he's taking steps to

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make sure that this doesn't happen again.
Furthermore, he's already with the appropriate people in the community who are giving him the care that he needs and he knows that he shouldn't be mixing alcohol; he's determined not to do that and he already has the appropriate physician at the Royal so in my respectful submissions, the message has already been brought home. And it's just I was hoping that in this instance, the situation in terms of him initially driving and then realizing his mistake of taking the wrong medication, would properly perhaps put this in a different kind of situation than somebody who makes a decision to go drinking or to drink and then to drive. His position is different in that he's already being disturbed in his thought processes by the time he made the decision not to pull over as he should have done. That's just my position, and I don't think my friend's position is out of whack, I just know that my client doesn't have a lot of resources right now and was hoping for a reduced fine, lower than what my friend is asking for. Subject to Your Honour's questions. Thank you.

THE COURT: If you could stand up please, sir, come forward. Is there anything you'd like to say?

DARRYL ROSS: It would just be lots of regret and it wouldn't change the facts.

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Reasons for Sentence
Alder, J.

R E A S O N S F O R S E N T E N C E

ALDER, J. (Orally):

Sir, I probably don't have to tell you — from what I understand you are extremely remorseful — you understand how serious this situation is. It could have been a lot worse from what I understand. I haven't heard of any injuries or anyone being hurt, but somebody could have been seriously hurt. You could have been hurt, your children could have lost their father, someone else could have lost their father or their mother or their children, and that's what happens when people make this choice. It's a vicious circle, as pointed out, once you start, whether it's drugs or alcohol or a combination, people make the wrong choice and they usually continue to make the wrong choice and that's what happened in this particular case. So that's extremely aggravating, but there are a number of mitigating factors; you've pled guilty, I accept that you're generally remorseful, you're thirty-seven years old, no prior criminal record, you have a good job, you have two children, you're going through a difficult time with the divorce and the separation, but other than that, you seem to have led a prosocial life. In the circumstances, sir, on the impaired by drugs and alcohol, it will be a \$1,000 fine. I'll give you eighteen months to pay, sir. If you need more time, you can always bring an application to extend the time. And what I'm going to do, sir, on the fail to remain, it will be a suspended

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Reasons for Sentence
Alder, J.

sentence. I'm going to place you on probation for six months, sir. I'm not trying to make it any worse for you; it won't be very difficult conditions. Statutory conditions: keep the peace, be of good behaviour, come to court if you're ever required, notify the court if you are to change your name, address, employment, or occupation. So it's not even going to be reporting but if we go to condition number — we will make it number nineteen, we'll just add it in — you are to continue.... I have to ask you if you are consenting to this but I'm assuming you are, sir. To continue to be under the care and treatment of Dr. Douglas at the ROH and follow his recommendations — so that would be the condition — and upon request by a member of the Ottawa Police Service, provide proof of same. So to understand, you do not have a probation officer to monitor you, sir. I'm going on the — again, I'm just taking it for granted that you want to continue to get the help you need to deal with these issues, that you're going to be doing that for at least six months, but if at any point a member of the Ottawa Police ask for proof that you're still seeing the doctor and that you're following his recommendations, you have to provide proof to the officer. All right? So that should lower the financial need. It still assists in your rehabilitation and I think in the long run it helps protect society as well. The victim fine surcharges do apply and I'll also give you eighteen months to pay those, sir, and again if

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Reasons for Sentence
Alder, J.

you need an extension, it can be brought. You will be prohibited from operating a motor vehicle on any road, highway or other public place for a period of one year, sir. That will apply to both counts, concurrent. Good luck, sir.

MR. MURRAY: Thank you, Your Honour.

THE COURT: Any other counts, if there are any?

MR. LALANDE: They can be withdrawn, please.

THE COURT: Withdrawn. Thank you. You can have a seat; it won't be long. There's some documents to sign.

MR. LALANDE: Did Your Honour address that surcharge?

THE COURT: I did.

MR. LALANDE: Okay. Thank you.

THE COURT: Eighteen months.

M A T T E R A D J O R N E D

13.
Certification

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5 (2))

Evidence Act

I, Lisa Ling,
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certify that this document is a true and accurate transcript of the recording of

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