Buffalo Law Review

Volume 10 | Number 1 Article 83

10-1-1960

Evidence—Admissibility of Prior Plea of Guilty to Traffic Infraction in Subsequent Civil Action

Buffalo Law Review

the trial evidence was produced which would have been sufficient for conviction cannot alter this result.[24] Secondly, where defendant properly moves for a dismissal of the indictment which should have been granted, a subsequent plea of guilty to a lesser charge shall be considered as null and void.[25]

ADMISSIBILITY OF PRIOR PLEA OF GUILTY TO TRAFFIC INFRACTION IN SUBSEQUENT CIVIL ACTION.

May a defendant's prior plea of guilt to a traffic offense be introduced as evidence of his carelessness in a civil action for damages?

This was precisely the question the Court of Appeals was faced with in *Ando v. Woodberry*[26] and it was one of first impression in that Court.

Upon the trial plaintiff sought to prove the plea of guilty by the defendant on the ground that such plea was an admission against interest but the trial court excluded the proffered evidence,[27] and such exclusion was upheld by the Appellate Division.[28] However, the Court of Appeals held otherwise, stating that the defendant's prior plea of guilty to the traffic offense should have been received as evidence of his asserted negligence.[29]

It has been held in lower courts of this state that evidence of conviction on a plea of guilty to violation of traffic laws is admissible against the defendant in a civil action. The reasoning is that in such a case the record or proof of the defendant's plea of guilty is received not as a judgment establishing a fact or truth of the facts in support of the charge of negligence, but as a declaration or admission against interest.[30]

"All facts showing rational probative value are admissible unless there is sound reason to exclude them, unless, that is, some specific rule forbids."[31] Is there any justification for excluding the prior plea of guilty to a traffic infraction?

The defendant claimed there was, arguing that there is a public policy which requires the court to treat the admission implicit in pleading guilty to a traffic offense differently from others. He stated that a plea of guilt is entered in traffic court for numerous reasons unrelated to guilt. It was contended that one charged with a traffic violation pleads guilty, even though he believes himself innocent, in order to avoid the expenditure of time and money

24. People v. Nitzberg, 289 N.Y. 523, 47 N.E.2d 37 (1943).
25. People v. Chirieleison, 3 N.Y.2d 170, 164 N.Y.S.2d 726 (1957). Here defendant, indicted for robbery in the first degree, moved for a dismissal of the indictment because of undue delay. It was denied. He pleaded guilty to petty larceny and appealed. The Court of Appeals reversed the conviction and dismissed the indictment.
26. 8 N.Y.2d 165, 203 N.Y.S.2d 74 (1960).
27. 15 Misc. 2d 774, 181 N.Y.S.2d 905 (Sup. Ct. 1958).
28. 9 A.D.2d 125, 192 N.Y.S.2d 414 (1st Dep't 1959).
29. Supra note 26.
30. Stanton v. Major, 274 App. Div. 864, 82 N.Y.S.2d 134 (3d Dep't 1948); Same v. Davison, 253 App. Div. 123, 1 N.Y.S.2d 374 (4th Dep't 1937); McDowell v. Birchett, — Misc. —, 126 N.Y.S.2d 78 (Sup. Ct. 1953).
31. Wigmore, Evidence 293 (3d ed. 1940).

which would be involved if guilt were denied and the charge contested. In effect, it is urged that such plea amounts to one of *nolo contendere.*

For additional support of his public policy argument, the defendant relied heavily on Section 2(29) of the Vehicle and Traffic Law and the case of *Walther v. News Syndicate Co.*[32]

> Section 2(29) of the Vehicle and Traffic Law states:
> A traffic infraction is not a crime and the penalty or punishment imposed therefor . . . shall not affect credibility as a witness or otherwise, of any person convicted thereof.

It was the defendant's contention that this Section establishes a public policy against the use of evidence of a traffic infraction for any purpose in a subsequent civil action. However, the Court pointed out that this Section is directed solely against the use of a conviction of a traffic offense to affect or impair credibility as a witness of the person convicted and not against the use of the plea as evidence in chief.

Walther v. News Syndicate Co.[33] was concerned with the admission of a prior conviction for a traffic infraction after trial on a not guilty plea. The Court held that such conviction was not admissible against a defendant in a civil suit arising out of the same occurrence. The Court felt that the statute,[34] protecting a witness against disclosure of his conviction for a traffic infraction to affect his credibility, is an expression of public policy having some bearing on the right of the plaintiff in his civil action to disclose to the jury that the defendant had been found guilty of a traffic infraction in connection with the very accident underlying the civil suit.

It was on this reasoning that the defendant relies so heavily in the case at bar. However, the Court in the *Walther* case made a distinction between admission of a prior conviction or a plea of not guilty and admission of a conviction on a plea of guilty. The opinion supports, rather than detracts from the conclusion that a guilty plea deliberately recorded by the defendant is admissible against him on the issue of his negligence in a subsequent civil action.

In effect, the defendant is arguing that when he pleaded guilty he "really didn't mean what he said." However, this claim is one that goes to the weight of the evidence and the effect of such evidence is to be determined by the jury. Such a claim should not cause the evidence to be excluded.

In reality, there is probably a great deal of truth to the claim that a plea of guilt is entered in traffic court for numerous reasons unrelated to guilt, but if the prospective defendant is going to take the easy way out for the sake of convenience, he does so at his own risk. He has the opportunity to contest the charge. If he chooses not to do so, why should he be allowed to contest

32. 276 App. Div. 169, 93 N.Y.S.2d 537 (1st Dep't 1949).
33. Ibid.
34. N.Y. Vehicle and Traffic Law § 2(29) (now § 155); N.Y. Civ. Prac. Act § 355.

his own admission of guilt in a subsequent civil action arising out of the same occurrence? The use of the conviction in the subsequent action is the price he may have to pay for such convenience.

REVOCATION OF OPERATOR'S LICENSE

Under the authority vested in him by the New York Vehicle and Traffic Law Section 71(2)(b),[35] the Commissioner of Motor Vehicles revoked respondent's driver's license following a Massachusetts conviction for driving "under the influence." Since this determination was made without a hearing it was subject to judicial review.[36] This review resulted in the trial court annulling the revocation.[37] After an Appellate Division affirmance,[38] the Court of Appeals, in *Sullivan v. Kelly*,[39] unanimously reversed the lower courts, upholding the Commissioner's determination to revoke.

The respondent felt the Commissioner lacked adequate grounds upon which to revoke the license. The revocation was based upon three documents before the Commissioner: (1) A copy of the notice of suspension addressed to the respondent by the Registrar of Motor Vehicles in Massachusetts which labeled the conviction as one of operating a motor vehicle while under the influence of intoxicating liquor; (2) a letter from the Massachusetts Registrar to the Bureau of Motor Vehicles in New York; and (3) a certified abstract of the Massachusetts court record which identified the respondent as the party involved and stated the offense as "operating under the influence."

None of these documents mentioned the Massachusetts statute under which respondent was convicted. The respondent contended that New York Vehicle and Traffic Law Section 71(2)(b) was not operative without identification of the Massachusetts statute. He also contended that the copy of the court record was the only document which the Commissioner could consider, claiming that the notice of suspension and the letter from the Massachusetts Registrar lacked probative value and were unreliable sources for supplying the essentials required to justify revocation. On the basis of the court record abstract alone, the offense was labeled as "operating under the influence." This document, coupled with the absence of the Massachusetts statute, was, the respondent felt, inconclusive enough to prevent the Commissioner from acting under Section 71.

To substantiate his position the respondent referred to *Moore v. Macduff*,[40] where only the statute under which the driver was convicted was con-

35. Now § 510 of the N.Y. Vehicle and Traffic Law:
. . . licenses must be revoked . . . where the holder is convicted . . . (of) an offense consisting of operating a motor vehicle or motorcycle while under the influence of intoxicating liquor where the conviction was had outside this state; . . . .
36. N.Y. Vehicle and Traffic Law § 510(6).
37. Sullivan v. Kelly, 16 Misc. 2d 699, 184 N.Y.S.2d 310 (Sup. Ct. 1959).
38. 9 A.D.2d 865, 194 N.Y.S.2d 460 (4th Dep't 1959).
39. 7 N.Y.2d 462, 199 N.Y.S.2d 481 (1960).
40. 309 N.Y. 35, 127 N.E.2d 741 (1955).