

ONTARIO COURT OF JUSTICE
CITY OF TORONTO
IN THE MATTER OF THE PROVINCIAL OFFENCES ACT R.S.O. 1990

HER MAJESTY THE QUEEN

Vs.

MICHAEL GATBONTON

* * * * *

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

BEFORE HIS WORSHIP JUSTICE OF THE PEACE J. BARROILHET
ON OCTOBER 12TH, 2005
AT OLD CITY HALL, TORONTO, ONTARIO

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CHARGE: disobey sign - *Highway Traffic Act*, s.182(2)

* * * * *

Appearances:

Ms. K. Barybina

Municipal Prosecutor

Mr. T. Brown

Agent for the Defendant

ONTARIO COURT OF JUSTICE

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One	Copy of police constable's notes	27
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Transcript Ordered: _____ October 19, 2005

Transcript Completed: _____ DEC 21 2005

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Transcript Party Notified: _____ DEC 21 2005

WEDNESDAY, OCTOBER 12, 2005:

MS. BARYBINA: Number nine, Your Worship, Michael Gatbonton.

5 **MR. BROWN:** Thank you. Good evening, Your Worship. My name is Todd Brown. I appear as agent for Mr. Gatbonton. He is not before the Court. I'm here with his instructions. I'm not ready to proceed. This is the first time the matter has been before
10 the Court. There is an outstanding disclosure issue, Your Worship. I received disclosure from my friend's office.

THE COURT: Can I see the information, please?

CLERK OF THE COURT: Yes, Your Worship.

15 **MR. BROWN:** The disclosure that was received, Your Worship, is illegible and contains abbreviations that are undecipherable, so what I've done is I've sent a letter again to the Prosecutors office asking for clarification of what's unclear, and
20 we've received no response as yet. I think that the appropriate remedy might be an adjournment. I have the disclosure that was received here. For the record, I'm showing the Prosecutor.

MS. BARYBINA: I have the same thing.

25 **MR. BROWN:** I see. I would...

THE COURT: Can I see the information -- the letters of...

MR. BROWN: Gonna provide you the chronology, Your
30 Worship, of the case.

This is the most recent letter. I have two other letters, Your Worship.

The first request that was made for disclosure for Mr. Gatbonton was on April 20th, 2005. That was unanswered. We requested disclosure again on July 29th, 2005.

We received a call in early September that disclosure was available for pickup. We picked it up and sent the further letter that you have before you on September 20th. I guess under the circumstances September 20th till now probably wasn't a very long period of time, but we acted as soon as we received the initial disclosure.

The issue is a contested one. Notably, the information that I've handed up would seem to allege that there was -- the defendant disobeyed a sign from Bay Street to the on-ramp of the Gardiner. I'm from Toronto I didn't that there was such a ramp. I'm not of the nature of the sign that was meant of have been disobeyed. I don't know the vantage point of the investigating officer when the observations were made. There are a number of issues that remain unclear.

Incidentally, the annotations that the officer has made on the back of the certificate there appear to be in some type shorthand or short form.

THE COURT: Is the officer present?

MS. BARYBINA: Yes,...

POLICE CONSTABLE: Yes, Your Worship.

MS. BARYBINA: ...the officer is here.

MR. BROWN: I spoke with...

THE COURT: Can you come forward, please, officer.

POLICE CONSTABLE: I beg your pardon?

THE COURT: Can you come forward, please.

POLICE CONSTABLE: Yes, Your Worship.

THE COURT: This is the copy that you provided of the disclosure; this is the only material you have?

POLICE CONSTABLE: I think this is the copy that they made of my copy, but these are my notes, Your Worship, yes.

THE COURT: So this one is really cannot be read.

POLICE CONSTABLE: Well, the writing on the back of the ticket is up here, Your Worship. All this is just bleed through from the other side of the copy, the bleed through of this, but I can read this.

THE COURT: What is the difference? There is no question about it.

POLICE CONSTABLE: Mr. Brown is correct. It is short form. I didn't receive a request to -- quite frankly, it's a very simply ticket and it's a very simple issue; however, had I received the request to interpret it, I could have done that.

THE COURT: Okay. Can you take him in and then speak with Mr. Brown and explain this short writing, please? We will hold this matter down.

MS. BARYBINA: Yes.

MR. BROWN: Thank you, Your Worship.

THE COURT: And this is your opportunity, Mr. Brown, to ask any questions to clarify your...

MS. BARYBINA: Thank you, Your Worship. The next person, come forward, please.

MR. BROWN: I had some comments about that, Your Worship. Maybe I should wait till I return.

THE COURT: When you come back, you can make the comments, yes.

OTHER MATTERS WERE DEALT WITH

L A T E R :

THE COURT: Then we conclude the matter of Mr. Brown, please.

MS. BARYBINA: Gatbonton?

THE COURT: Gatbonton.

MR. BROWN: Thanks, Your Worship.

MS. BARYBINA: So, that's Michael Gatbonton?

MR. BROWN: Michael Gatbonton, yes.

THE COURT: Yes.

CLERK OF THE COURT: Your name, please.

MR. BROWN: Todd Brown for the record again, Your Worship.

THE COURT: All right.

MR. BROWN: Pursuant...

THE COURT: So, the issue is the disclosure and the handwritten...

INTERRUPTION

L A T E R :

MR. BROWN: Your Worship seemed to be in the middle of a sentence. I'd...

THE COURT: I got interrupted.

MR. BROWN: Yes.

THE COURT: But, in any case, let us go back to the

matter of Michael Gatbonton. Your name for the record is Todd Brown?

MR. BROWN: That's correct.

THE COURT: You received a copy of the disclosure or the note of the officer. One of note was a handwritten to which it was unclear and hard to read it or understand what the note said. You had the opportunity to speak with the officer to clarify for you the notes?

MR. BROWN: The officer wrote out the explanation of what this was.

THE COURT: And you are satisfied with that?

MR. BROWN: I am satisfied with the explanation of the...

THE COURT: And now you can read it and understand it?

MR. BROWN: I can, yes.

THE COURT: You had started saying that you may need a short adjournment to...

MR. BROWN: Yes, Your Worship.

THE COURT: It is an 11(b) attached to...

MR. BROWN: Yes, there is. It's a common in these buildings. There's an 11(b) before the Court, yes.

THE COURT: If the motion is going to be granted from today to the date of adjournment...

MR. BROWN: Yes. If it is?

THE COURT: If it is, the 11(b) will not be considered this time for the adjournment.

MR. BROWN: I don't know, Your Worship. That's entirely up to the defendant if he wishes to advance that claim again, I suppose.

THE COURT: Well, because it is -- my position is

very clear. This matter can be resolved and can be resolved today.

MR. BROWN: Resolved, Your Worship?

THE COURT: Yes.

MR. BROWN: By way of?

THE COURT: Some kind of resolution.

MR. BROWN: The...

THE COURT: Otherwise, the adjournment will be denied,...

MR. BROWN: I see.

THE COURT: ...and we will proceed today.

MR. BROWN: Your Worship, I think in light of the Court's comments that it might be appropriate that I make another application before the Court if you are prepared to hear it.

There has been through the course of this evening's sittings a number of references that the Court has made to the body of the court with regards to resolutions and that it's appropriate that defendants make an attempt to resolve matters with the Prosecutor. It should be noted for the record, Your Worship, that the Court actually went off the record to tell the body of the court that 98 per cent of the time it's in the defendant's best interest to seek a resolution from the prosecution.

THE COURT: No, it is on record.

MR. BROWN: It's actually off the record, Your Worship. We went off record for the purposes of that explanation by the Court to the body of the court.

THE COURT: Well, now we can put it on record

clearly.

5 My position is very clear, Mr. Brown. Everybody that has appeared in front of me the matter can be resolved, I give to everybody the possibility to resolve it. Ninety-eight per cent of the people have a conversation with the Prosecutor and try to resolve it. Sometime they do resolve it and sometime they do not. But, I will not deny the right to nobody -- person in my court. I will give every person the same privilege and right.

10 **MR. BROWN:** I appreciate that, Your Worship.

THE COURT: And that is what I am suggesting you to do.

15 **MR. BROWN:** I would like the opportunity to conclude my application.

THE COURT: Sure.

20 **THE COURT:** The difficulty that I have, Your Worship, is that every defendant, including Mr. Gabonton, in this country is presumed innocent under section 11(d) of the Canadian Charter of Rights and Freedoms. They are entitled to a trial before a jurist who is cognizant and prepared to apply that presumption of innocence.

25 The suggestion by the Court that Mr. Gatbonton either enter into a guilty plea resolution or face the consequences of his proper application for an adjournment being denied, in my view, with the utmost respect to this Court, is highly improper. I think that it gives rise to what one could reasonably describe as reasonable apprehension of

30

bias as defined in the Committee for Justice of Liberty and Regina vs S.R.D. from the Supreme Court of Canada. It's a position through me that...

THE COURT: Do you have that case with you, Mr...

MR. BROWN: I do not, Your Worship, no.

THE COURT: If you do not have the case, I would appreciate that you do not refer a case that you are not in a position to provide to the Court and to the prosecution so we can both be on the same level.

MR. BROWN: I'll make no further references to case law. Thank you.

The issue as I see it, Your Worship, is one of -- although this may appear to the Court, and I think the Court has made the comment that it's a simple charge, the concepts surrounding a fair trial are not simple; in fact, they are very complex. It's a very important to the perception of the body of the court that this Court is prepared to hear the matters in an impartial fashion.

I would not allege any type of impropriety on behalf of the Court, and I would not allege, Your Worship, that you are not capable of hearing these matters fairly. The difficulty that I have is that in accordance with the test for reasonable apprehension of bias is whether or not the public would actually perceive the matters to be by a reasonable mind of purposes to be heard fairly.

Mr. Gatbonton's concern for me is that the quandary

that he faces with regards to either entering into a guilty plea in a clearly contested matter or face the consequences of having his adjournment application refused is problematic.

In conclusion, Your Worship, I think you should also be mindful of the fact that through clarifying what was actually on this paper, the Court took the time to have Officer Parsons attend in the witness box. I think that it's not presumptuous of me to say that the Court was aware that there was an insufficiency. I think we all chuckled about it, actually, for the Court wasn't able to read the paper either.

So, the application for an adjournment, in my respectful view, does have some merit. The defendant entitled -- is entitled under section seven not simply to disclosure but timely disclosure. He will not be pleading guilty under any circumstances. The remedy that I seek for this application is the Court respectfully refuse itself from hearing Mr. Gatbonton's matter and put it before another jurist.

THE COURT: Well, it is not -- that is not going to be the case, Mr. Brown.

MR. BROWN: Thank you.

THE COURT: Your request for the -- your motion for adjournment is denied.

MR. BROWN: Thank you, Your Worship. I will not be entering a guilty plea.

THE COURT: All right.

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R. v. Michael Gatbonton
Stuart Parsons - in-Ch.

MS. BARYBINA: Thank you, Your Worship. We are ready to proceed adjourn -- oh, arraign.

CLERK OF THE COURT: Michael Gatbonton stands charged on or about the 4th day of November, 2004 at 5:00 p.m. at southbound Bay Street to on-ramp to eastbound Fred Gardiner Expressway in the Municipality of Toronto, did commit the offence of disobey sign, contrary to the *Highway Traffic Act*, section 182(2).

On behalf of the defendant, how do you plead, guilty or not guilty?

MR. BROWN: Not guilty, Your Worship.

THE COURT: Thank you.

MS. BARYBINA: Your Worship, there is a motion before the Court

THE COURT: There is an 11(b)...

MS. BARYBINA: Are we going to deal with it?

THE COURT: ...motion. Mr. Brown?

MR. BROWN: Your Worship, the application that's before you is not one of a great strength at this time, so I'm not going to pursue it.

THE COURT: Thank you. This is considered to be abandoned?

MR. BROWN: Thank you.

STUART PARSONS: SWORN

EXAMINATION IN-CHIEF BY MS. BARYBINA:

Q: Officer, on November 4th, 2004, were employed for the City of Toronto as a police officer?

A: Yes, I was.

Q: Did you make any notes regarding the matter before the Court?

5 A: Yes, I did. I have them here today. I'd like to use them to refresh my memory. There's been no additions, deletions or changes to them.

Q: Officer, with regards to the notes, do you have any independent recollection of the events that happened on that date?

10 A: Yes.

Q: And do you actually -- can you actually read your own notes and can you understand what happened at the location?

15 A: The notes are very legible. As I indicated, the photocopy that wasn't made by myself bled through. The notes are very clear and very legible. There's no bleed through on my copy.

Q: And you can basically make out what happened on that date, you can understand what you wrote there?

20 A: I certainly can. It's very easy.

MS. BARYBINA: Okay, excellent, thank you. With the leave of the Court, Your Worship?

THE COURT: Thank you. Mr. Brown. any objection...

MR. BROWN: No objection.

25 **THE COURT:** ...to the officer...

MR. BROWN: No objection.

THE COURT: Thanks. Go ahead, officer.

THE WITNESS: Thank you, Your Worship.

30 A. It was the 4th of November in the year 2004 at approximately 5:00 p.m. in the afternoon. I was situated on the on-ramp to the eastbound Gardiner Expressway from Bay Street,

and I was on the on-ramp for the sole purpose to enforce signs that are at the foot of the on-ramp on Bay Street facing traffic that travels southbound.

5 Bay Street at this location has five lanes in total; two of them were southbound lanes, three of them were northbound lanes. If you're travelling northbound in the right-hand lane or the curb lane, that lane forces you to get on to on-ramp to the eastbound Gardiner Expressway. So, if you're
10 travelling northbound, it bends 90 degrees to the right and then it travels up towards the Gardiner Expressway.

If you're travelling southbound on Bay Street as indicated there are two lanes, a passing lane and a curb lane, and there are three signs in the area of the foot of the on-ramp
15 that all face the traffic that travels southbound. The first two signs are international no left-hand turn signs. These are a black left-hand turn arrow with a circle -- red circle and red slash through the left-hand turn symbol. This is the international symbol for the left-hand turn. These signs are in
20 effect seven days a week 24 hours a day. One sign is located on the west side of Bay Street on one of the hydro poles, and the second sign is parallel to the first sign, it's located on the small cement island. There's a pole that's right on the cement island. This island separates the northbound centre lane from
25 the northbound curb lane that is forced to get onto the eastbound Gardiner Expressway. Both of the signs are there for the same purpose to prohibit traffic southbound from turning left onto the on-ramp to the eastbound Gardiner Expressway.

30 If a motorist was to continue southbound on Bay Street, approximately 20 metres south of these two no left-hand turn signs is a no U-turn sign. This sign is located again on the west side of Bay Street facing southbound traffic and this

5 is an international no U-turn sign. The purpose of this sign is the same as the no left-turn signs. All three signs have the same purpose to prohibit southbound traffic from either turning left or going slightly farther south and making a U-turn and getting on to the on-ramp to the eastbound Gardiner Expressway at this location.

10 A motorist that wishes to get onto the eastbound Gardiner Expressway would need to continue south to the next intersection, which is the extension of Lakeshore for eastbound traffic. You can make a left turn and then proceed eastbound and get onto the Gardiner Expressway at Jarvis Street.

15 This is a problem area with -- especially in rush hour with rush hour traffic not wanting to go through the couple of intersections that it would otherwise require, and that was the reason that I was at the on-ramp to enforce these signs.

20 I was actually halfway up the on-ramp, so I was elevated, I was actually higher in elevation than the -- than Bay Street where the motorists were travelling. This offered me an even better vantage point. I had a clear unobstructed view of Bay Street, and I can clearly see the defendant -- defendant's vehicle when it travelled southbound, and I could clearly see it when it made a left-hand turn and disobeyed these two international no left turn signs.

25 I kept observations on the vehicle as it travelled up the ramp directly towards me. I pulled it over at my location. The vehicle in question was a Toyota product licensed ASCY 133. I spoke with the driver. He identified himself with his driver's licence at my request identifying himself as Michael Gatbonton of an address in Toronto. I did charge him with the offence before the Court.

30 The weather at the time, there was a light rain,

rainfall. The streetlights were on. Visibility was good.
There was two occupants in the motor vehicle that I stopped, one
of them obviously being the driver, which was the defendant.
5 And the offence happened in the City of Toronto.

MS. BARYBINA: Q: All right. Officer, can you
tell me if those no left turn signs apply at any specific time
or are they valid at anytime?

A: They're seven days a week, 24 hours a day.
10 There's no times. They're always in effect.

Q: Okay. The defendant's vehicle, as I
understand, if I could just confirm it with you, the defendant's
vehicle was travelling from -- it was travelling southbound on
Bay Street...

15 A: Yes.

Q: ...right, and it was probably travelling
somewhere from before Front Street, which is directly northbound
from the Gardiner Expressway?

MR. BROWN: Your Worship, I don't think that was in
20 evidence, anything about Front Street.

MS. BARYBINA: Q: All right. Okay, in relation to
the intersection, Gardiner and Bay, is that the intersection
there?

A: That's correct.

25 Q: Okay. And so the vehicle was travelling
towards Gardiner southbound on Bay, is that correct?

A: The vehicle was travelling southbound on Bay.
It was south of the westbound lanes of Lakeshore Boulevard, and
it proceeded to turn left at the on-ramp to the eastbound
30 Gardiner Expressway.

It is not an intersection, because you're not
supposed to do this. You are -- if you're travelling

5 northbound, the only access to the on-ramp at this location is for northbound Bay Street, so it's not an intersection. If you're travelling southbound, you're not supposed to turn left here. But, if you're travelling south and you want to -- you physically can turn left or you can continue south and make a U-turn if you choose, but these are moves that are governed by the signs and they're not supposed to be done.

10 Q: Officer, is there a traffic light at the intersection there?

A: There's a traffic light at the intersection of Bay Street and the westbound lanes for Lakeshore and if you -- as soon as you clear the westbound lanes for Lakeshore just south of that area is where these two no left-hand turn signs are. If you continue south on Bay Street approximately another 15 125 metres, then you'll get to the traffic signal at an intersection for the eastbound lanes of Lakeshore Boulevard.

20 Q: Is that possible for the defendant to consider those signs not to apply past the westbound lanes there? Okay, you said that the defendant was travelling southbound.

A: Yes.

Q: He passed the westbound lanes on -- that turns onto the Gardiner?

A: There's no westbound lanes at...

25 Q: Is that what you were saying?

A: No, there's no westbound lanes that turn onto the Gardiner.

Q: Okay. The defendant's travelling southbound...

30 A: Lakeshore really has nothing to do with the intersection.

Q: Right.

A: The defendant's travelling southbound on Bay

Street,...

Q: Yes.

5 A: ...and directly ahead of him on either side of Bay Street are two signs that say no left-hand turn.

Q: Right.

A: The defendant got the exact area where those two signs are and he made a left-hand turn and got onto the on-ramp to the eastbound Gardiner Expressway.

10 Q: Okay. And had he not done that, could he possibly continue through the -- through southbound further?

A: That's what he is supposed to do. Bay Street continues southbound about another 125 to maybe 150 metres. South of where these signs are is the intersection for eastbound Lakeshore Boulevard. And at that intersection it's a normal
15 four-way intersection. You can keep going south of there or you can turn left.

MS. BARYBINA: Thank you. One moment, Your Worship, just one second here. Thank you, I have
20 no more questions.

THE COURT: Thank you.

MR. BROWN: If I may, Your Worship?

THE COURT: Sure.

25 **CROSS-EXAMINATION BY MR. BROWN:**

Q: Officer Parsons, you indicated that you were on the on-ramp. I guess that would be for the Gardiner Expressway?

A: That's right. I was about halfway up the on-ramp.

30 Q: Is that in your notes?

A: No.

Q: I gather from that that it wasn't disclosed,

that piece of information?

A: Ah, that would be correct.

5 Q: You were higher in elevation and had a better
vantage point at that time?

A: Yes.

Q: Was that in your notes?

A: Ah, no, it's not.

Q: I gather it wasn't disclosed then?

10 A: No.

Q: The defendant was pulled over at your location?

A: That's correct.

Q: Prior to our conversation in the hallway with
regards to clarifying the disclosure, was that disclosed?

15 A: Well, it was disclosed. I put that I stopped
the defendant at me, which is my location.

Q: So, the annotation in your notes was me?

A: Correct.

Q: Okay. You'd indicated that there were five
20 lanes, two southbound and three north?

A: That's correct.

Q: Is that in your notes?

A: No, it's not.

Q: You indicated that -- I think you said the
25 roadway bends 90 degrees to the left, is that right?

A: If you're travelling northbound on Bay Street,
the curb lane bends 90 degrees to the right and then it travels
upwards...

Q: I see.

A: ...to the Gardiner Expressway.

30 Q: Is that in your notes?

A: No.

Q: You'd indicated that there are three signs prohibiting this conduct at this location?

A: That's correct.

Q: Is that in your notes?

A: In my notes are the two signs that the defendant specifically disobeyed, and that's in my notes where I have two, and then I have the left-hand turn with a circle around it and a slash through it. There is actually a third sign; however, it's not really that one that the defendant obeyed -- disobeyed he disobeyed the two no left-turn signs.

Q: That sign governs the same intersection, does it or...

A: The no U-turn?

Q: It's a no U-turn sign?

A: Again it's not -- this isn't an intersection,...

Q: Okay.

A: ...this is an area on Bay Street but the purpose of the three signs are the same purpose...

Q: I see.

A: ...to prohibit southbound traffic...

Q: I understand.

A: ...to get onto the on-ramp.

Q: You've set up at this location before?

A: Many times.

Q: Okay, the conduct that's complained of in this case was a left turn?

A: Correct.

Q: Okay. In the instance that a driver defeats the traffic control here and makes a U-turn, there's a sign prohibiting that also?

A: Correct.

Q: That sign is also caught under section 182(2) of the Highway Traffic Act as you understand it?

A: That's correct.

Q: A person who is being governed by both of those signs and has been charged with disobey sign, the certificate you've issued or the Provincial Offences Notice doesn't distinguish between a U-turn sign and the left-turn sign does it?

A: That's correct. The charge is disobey sign.

Q: All right, and had it been the conduct complained of was that he made a U-turn, maybe he would get probably the same ticket under these circumstances, is that right?

A: The face of the ticket would be the same. My evidence on the back it would be slightly different.

Q: Of course. You'd indicated that in effect these signs are in effect for 24 hours a day and seven days a week I think you said?

A: That is correct, yes.

Q: Is that anywhere in your notes?

A: No, it's not. Well, actually - well, technically, no it's not. If there were times that -- or dates, like, for example, Monday to Friday, or times then I would've -- that would've been in my notes, but...

Q: It's not something...

A: It's not there -- it's not in my notes because that's not the case,...

Q: It's not something that...

A: ...the sign's in effect 24 hours a day.

Q: It's not something a person like myself would

be aware of based on your notes?

A: I'm not sure whether or not you'd be aware or not.

5 Q: The system that you use for preparing notes for the purposes...

A: It would be impossible to write things in my notes that weren't the case. Certainly, I can -- some of the questions you may have merit that you may feel I should have put something in my notes. I believe the notes are for my -- to refresh my memory. However, it would be impossible for me to put stuff in my notes that didn't happen because there are so many more things that didn't happen than did, so on that point, I didn't put that there was dates or times because there were no dates or times.

15 Q: In your estimation, was it clear prior to our conversation in the hallway that the defendant Mr. Gatbonton had identified himself to you with a driver's licence?

A: It was. In my notes, I have that he identified himself with his driver's licence.

20 Q: That -- could you describe the actual annotation that you have in your notes?

A: "DL", driver's licence.

25 Q: Is it the last entry on the -- there's one of two pages, is that what it...

A: Yes, sir.

Q: You'd agree with me that if you look at it I'm sure it's a "DL" to you. Does it actually look like a "DL"?

A: It looks like a "DL" to me. It looks like a "DL" to me.

30 Q: In your estimation, would it look like a "DL" to somebody who didn't write it?

5 A: I would agree that you might have some difficulty discerning a "DL". It is "DL" to me.

Q: You'd indicated that there was an island?

A: Correct.

Q: Concrete island, I think you said?

A: That's right.

10 Q: It's for northbound traffic, was it, northbound centre -- between the northbound lanes and southbound lanes, is that right?

A: It's basically the island is right at the point where the northbound curb lane bends 90 degrees, and it's -- at that point, it's separating that lane from the northbound curb lane.

15 Q: Right. Did you make any notes with regards to a conversation...

20 **MS. BARYBINA:** Your Worship, may I object? If the notes are not an issue, which the defence here clearly indicated at the very beginning when we just started with the officer when we asked him whether or not he could read them whether or not he explained everything to the defence, and the defence at the time indicated that there was no issue with the notes and there was nothing to object to the officer using his notes, which is exactly what he did. And why are we discussing this right now?

25 **MR. BROWN:** So, let's get this straight. I think the Prosecutor perhaps was out the room when I made an application for an adjournment because of insufficient disclosure? Perhaps the Prosecutor missed that Your Worship ordered us into the

30

5 hallway for the purposes of clarifying the notes.
That I returned and renewed my application for an
adjournment, and that when Officer Parsons made an
application to you to permit him to look at his
notes to refresh his memory, I didn't oppose. Do
you think that that's somehow some type of
concession that I was satisfied with his notes or
that the disclosure in my view was sufficient?
10 They're entirely...

MS. BARYBINA: But, Your Worship, this matter
already been dealt with. I apologize.

MR. BROWN: Thank you. The fact that I can see no
reason why this officer ought not be permitted to
15 use his memoranda to refresh his memory has
absolutely nothing to do with the sufficiency of
disclosure. These notes perform a two step
function. One is to remind the officer of what it
is that he observed, and the second sometimes is to
20 advise me of what the case against the defendant
is. And if the notes don't fulfill that dual
obligation, then we are entitled to more. One has
nothing to do with the other. I conceded that the
officer should be permitted to refer to this notes.
25 I conceded that because there's no rational reason
that I should be able to stand here and tell you
that Officer Parsons can't look at his notes for
one reason or another. They were made
contemporaneously with the event. They're in his
30 own handwriting. He has the originals here. What
am I going to complain about? And somehow this has
been turned around as to some type of concession

5 that the evidence is before the Court and where it came from is somehow acceptable. Given all of my objections through the course of these proceedings, that's absurd.

I'd like to continue, Your Worship.

THE COURT: Go ahead, continue.

MR. BROWN: Thank you.

10 Q: The notes that you have, officer, you explained to me in the hallway, correct me if I'm wrong, that they indicate that there were two occupants in the vehicle?

A: That's correct.

15 Q: What do you have in your notes that gives rise to there being two occupants in the vehicle? How do you know that based on these notes?

A: Because I have the number two at the top left corner of the -- my notes.

20 Q: It simply says number two?

A: That's right.

Q: Just the number two? Nothing else, right?

A: Correct.

25 Q: All right. And you had drawn a picture or some type of annotation. It was a circle, and it's something that you've described to me, correct me if I am wrong, that would represent a now left turn sign. Is that correct?

A: That's right.

Q: Is that what that picture was?

30 A: I think it's very clear a left-hand turn arrow with the circle on it and the slash through, and, yes, that's what it is.

Q: Okay, and that's another piece of information

that you clarified for me in the hallway, is it?

A: I think that's fair to say, yes.

MR. BROWN: I'm going to -- Your Worship, I'd like to approach Officer Parsons and show him the copy of his notes that I'd received. May I do that please.

THE COURT: Go ahead.

MR. BROWN: Thank you. The Prosecutor has seen these earlier.

Q: Officer Parsons, I ask you to look at those and see if you can identify them?

A: Yes, I can. These are photocopy the front and back of my notes.

Q: You would agree with me that the quality and clarity of the copy I've just presented to you and the copy that you have is significantly different?

A: Certainly on the back. The front is, I would suggest, is as clear or as legible. The problem on the back isn't necessarily the legibility; however, because of the type of paper that's used, because it's so thin...

Q: Yes.

A: ...when you photocopy it, quite often there's bleed through, as there is in this case, so it does make it more challenging to read.

MR. BROWN: Yes. Thank you for that. Your Worship, I wonder if the notes that I've provided to Officer Parsons could be marked as an exhibit? I'll indicate that they contain some annotations made in my handwriting of what Officer Parsons had explained to me with regards to the...

THE COURT: Madam Clerk.

CLERK OF THE COURT: Yes.

MR. BROWN: ...contents.

THE COURT: Would you mark this as an exhibit one, please.

CLERK OF THE COURT: Yes, Your Worship.

EXHIBIT NUMBER ONE: Copy of officer's notes -
Produced and marked.

MR. BROWN: I have no further questions, Your Worship.

THE COURT: Thank you. Do you have any other questions?

MS. BARYBINA: No, I have no more questions.

THE COURT: Thank you.

THE WITNESS: Thank you, Your Worship.

MR. BROWN: I'm not calling a defence, Your Worship.

THE COURT: It is now a quarter to nine. We have three more defendants in the body of the court. Before the Court hears submission with respect to this matter, the Court will adjourn this case to another date in which submissions will be made and the decision will be given.

MR. BROWN: Thank you, Your Worship.

THE COURT: Do you need this? Madam Clerk?

MR. BROWN: Oh, yes, I would like that back if I could. Thank you.

THE COURT: Can I have a date? I need to be a little bit early on that.

THE WITNESS: Early?

THE COURT: Yes, I am leaving...

THE WITNESS: This year?

THE COURT: I am leaving on the 25th. I don't want to be rushing on the 24th.

THE WITNESS: January?

THE COURT: January. So, any day...

THE WITNESS: January 12th.

MS. BARYBINA: January 12th? Night court?

THE WITNESS: One thirty.

THE COURT: Night court.

MS. BARYBINA: No, we can't do it night court.

THE COURT: It is a night court, so...

MS. BARYBINA: Your Worship, I don't think we can do it night court.

THE WITNESS: I don't think there's night court next year.

CLERK OF THE COURT: Your Worship, there's no more night courts in January.

THE COURT: Oh, all right. Do you have any problem with day court?

MR. BROWN: Not at all. I prefer it, actually.

THE COURT: All right.

MR. BROWN: It makes for a long day to be here.

MS. BARYBINA: One thirty?

THE WITNESS: January 12th?

CLERK OF THE COURT: Yes, there's a spot available at 1:30 in H court.

MS. BARYBINA: H court.

THE COURT: Nine o'clock is not possible?

CLERK OF THE COURT: No, Your Worship. It's full.

THE COURT: Full. Ten thirty?

CLERK OF THE COURT: I'm sorry, 9:00 a.m. there's one spot.

THE COURT: And at 3:00 o'clock?

THE WITNESS: Three o'clock is not available for me. Ten thirty I can do.

CLERK OF THE COURT: One spot is left.

THE WITNESS: Ten thirty or 1:30 is...

THE COURT: One thirty.

MS. BARYBINA: One thirty, "H" court?

MR. BROWN: I'm agreeable. If I could just have the Court repeat the date. I didn't write it down.

THE COURT: Will be on the 12th of January, "H" -- "C" court or "H" court?

CLERK OF THE COURT: "H" Court, Your Worship.

THE COURT: "H" Court at 1:30.

MR. BROWN: Thank you for that, Your Worship, and you have a good evening. Thank my friend. I'm sorry, that's for the purposes of receiving submissions...

THE COURT: Submissions and a decision, yes.

MR. BROWN: ...and judgment, Your Worship? Thank you. Good evening, Your Worship.

THE COURT: Good evening.

MS. BARYBINA: Thank you, Your Worship.

* * *

FORM 2
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

I, S. Marriner, certify that this document is a true and accurate transcript of the recording of S. Perretta in the matter of ***Regina vs. Michael Gatbonton*** in the PROVINCIAL OFFENCES COURT held at 60 QUEEN STREET WEST, OLD CITY HALL taken from recording numbers 492 and 493 (2005), which has been certified in Form 1.

DEC 14 2005

Date

(Signature of authorized person)