

IN THE ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

GLEN JOHNSTONE

COURT PROCEEDINGS

BEFORE THE HONOURABLE JUDGE P. H. REINHARDT
AT TORONTO, ON 29TH JUNE, 1995

APPEARANCES

COUNSEL FOR THE CROWN

COUNSEL FOR THE ACCUSED

MR. D. POWELL

MR. G. ZLOIS

OLD CITY HALL

5 MR. POWELL: Number 15 on the appeal docket.
Glen Johnstone.

MR. ZLOIS: Good morning Your Honour, my name
for the record is Zlois, Z-L-O-I-S, initial
G. I appear as agent for Mr. Johnstone. He is
not before the court today.

10 THE COURT: Okay. So what's happening here.

MR. ZLOIS: Your Honour basically in a
nutshell, I believe page four sums it up.

THE COURT: Page four of the transcript?

MR. ZLOIS: Of the transcript. Yes.

15 The evidence in chief of the officer is very
simple. The fact that he is standing besides
the road and saw a vehicle coming that didn't
have its upper torso attached, stopped it and
found ---

20 THE COURT: The vehicle did not have its
upper torso.

MR. ZLOIS: The driver of the vehicle didn't
have ---

THE COURT: The driver of the vehicle

25 MR. ZLOIS: the upper torso restraint on Your
Honour. It came out in the evidence that the
fact that the driver of the vehicle was a
taxi cab operating as a taxi cab at that
time. Your Honour it was argued that sec.
7(2) of the Regulation 613 of the Highway
Traffic Act states " taxi cabs are exempted
from requirement that upper torso restraint
for drivers seating positions and seat belt
assembly --

30 THE COURT: Where is that?

5 MR. ZLOIS: Regulation 613 of the Highway Traffic Act. In that particular book Your Honour page 354.

THE COURT: And then what section?

10 MR. ZLOIS: Section 7(2). sub. 2. Your Honour there has been a decision by one of your brothers in this particular court on January 26th, 95 by Judge Graham on this particular issue. The name of the defendant was Hardy Hundell (ph) who represented himself. I am sorry I only have one copy that I managed to procure this morning.

15 THE COURT: What does that say?

MR. ZLOIS: That agrees with the fact that because taxi cabs are exempt from having them in the vehicle they are exempt from wearing them.

20 THE COURT: In other words this says ---

MR. ZLOIS: It says that taxi cabs are exempt from requirement, the upper torso restraints for driver seats positions, seating positions and seat belt assemblies in the front seats positions. They are exempt from having it not removed, rendered partially or wholly inoperative, modify this to reduce their effectiveness.

25 THE COURT: What does that mean?

30 MR. ZLOIS: Well, it means normally a vehicle, it is against the law for a normal vehicle to remove the seat belts assemblies or to render them inoperative in any way. That is an offence. However, the taxi cabs

under this regulation are exempt from being able to modify --

THE COURT: From not been able to modify?

MR. ZLOIS: The same as police cars Your Honour in that respect. They are exempt from removing the front seat belts assemblies in this Regulation as well Your Honour. I believe that is at the top of the same Regulation.

THE COURT: And Judge Graham ruled that is in effect permitting them not to ---

MR. ZLOIS: Not to wear the seat belt assemblies Your Honour.

THE COURT: I see. What is your position on this?

MR. POWELL: I haven't seen the case Your Honour, but my position would be this regulation is with respect to seat bets and taxi cabs and not about taxi cab operators wearing their seat belts. It indicates in sub.2 of sec. 7. Taxi cabs are exempt from the requirement, so the taxi cab itself is exempt from having that requirement or having the upper torso, not the driver wearing it, but if there is a case, it indicates that this also exempts ---

THE COURT: It says upper torso restraints for drivers seating positions and seat belt assemblies in the center front seat position. Does that not modify taxi cabs, so that the drivers of the taxi cabs ---

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MR. POWELL: I believe it is with respect to the driver seating position in a taxi cab and not the driver itself.

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THE COURT: What does that mean. I am saying that a lot on this argument. I am trying to understand. You are saying that the language of this section means that the taxi cab is not required to have an upper torso restraint, but that the taxi cab driver is required to wear an upper torso restraint.

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MR. POWELL: Well, the taxi cab driver is covered in sec. 106.

THE COURT: 106 of?

MR. POWELL: The Highway Traffic Act.

THE COURT: And what does that say?

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MR. ZLOIS: It is also dealt with in the same Regulation Your Honour. Just a little bit further down in sec. 3.

THE COURT: I am just trying to understand the position of the Attorney General.

THE COURT: 106 says something about this?

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MR. POWELL: That is the seat belt section. Sub. 5 of that section, those are the exemptions. And the exemptions are; the driver of a motor vehicle in reverse who holds a certificate signed by a legal qualified medical practitioner, and a period of time which he cannot wear this, one who is actually engaged in work which requires him/her to alight and re-enter the motor vehicle on frequent intervals and while engaged in the work does not travel in the

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5 vehicle at a speed exceeding forty kilometres an hour, or someone under the age of sixteen.

10 My position basically is that sec. 7(2) of Regulation 613, doesn't speak about drivers of taxi cabs, it's a section which -- the spirit of the section is about the assembly and the seat belt itself within a taxi cab, not about the driver, the operator of the taxi cab, and there is no evidence at this trial, whether or not the taxi cab driver was in and out of his vehicle and travelling under forty kilometres an hour
15 THE COURT: What does that have to do with it.

20 MR. POWELL: That is the only exemption under sec. 106, for persons who do not have to wear their seat belts with respect to taxi cab drivers.

25 THE COURT: So what section did you say of the Regulation deals with this.

30 MR. ZLOIS: Just the next section down. sec. 3, the driver of a taxi cab while transporting for hire of passengers exempt from sub. sec. 1 (6) sub. 3 of the Act. In the decision that you have before you Judge Graham has argued that sec. 106 (3) says, driver had been charged as failing to wear complete seat belt assembly and Judge Graham also reported in that that he was on the Commission at one point. I think it is referred to in the argument there, that he was on the Commission in building these

5 Regulations Your Honour. And basically he
sees it as ---

THE COURT: Okay. But he is talking also
about whether or not he is transporting for
hire.

10 MR. ZLOIS: Yes. And it did come out in that
particular argument that that gentleman Mr.
Hardy Hundell was not transporting for hire
but operating his taxi cab. That comes out
quite clearly to Judge Graham in his
15 decision. I think it eludes to that two or
three times through the process of the
argument, that was made very clear to the
court that at that point and time, that he
was not in fact driving somebody for hire,
and I believe if you look at the last page or
20 so of Judge Graham's decision, it might
clarify it to you. Of his reasons. And this
is also slightly different in this particular
matter, the defendant does give testimony
that when he first saw the officer on the
side of the road, he didn't know that he was
an officer, he thought he was a fare and was
25 approaching the officer and pulled out his
seat belt at that point and time.

THE COURT: What I am not understanding
though, you are asking me to look at Judge
Graham's decision. He says, "if the driver of
a taxi cab while driving for hire" and the
30 other things that -- I am not sure what --
what has he done?

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MR. ZLOIS: From the best from reading through it from my understanding, he has decided that these two sections do conflict and in fact that this section of The Highway Traffic Act do conflict, and that he feels that it is for the benefit of the defendant, and that's The case, he doesn't have to wear a seat belt.

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THE COURT: So in the case of Mr. Hundell. Mr. Hundell was convicted by the Justice of the Peace?

MR. ZLOIS: Actually I believe the Justice of the Peace --- I believe it was a Crown appeal Your Honour. Having read through it now.

THE COURT: This is a Crown appeal it says.

MR. ZLOIS: Yes. Where the learned Justice of the Peace ---

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THE COURT: Okay. So he is allowing the Crown Appeal.

MR. ZLOIS: He dismissed the Crown's appeal.

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THE COURT: Oh no. First of all he says I am allowing the appeal, Then he says I am dismissing the Crown Appeal.

MR. ZLOIS: I think it was a slight mistake Your Honour. It is not often that the Crown Appeals in these courts as much as the defendant.

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THE COURT: Well I saw Mr. Hundell referred to the fact that there were a bunch of these cases and on his case the Crown had appealed.

MR. ZLOIS: Apparently from reading through the transcript that you are holding Your

5 Honour, one would assume that Mr. -- one, has been charged several times in this section and it is being granted in his favour.

10 THE COURT: In any event what I am trying to understand, is the position of the Attorney General Agent is, that there is no exemption for taxis, and your position is that the Regulation specifically refers to that.

15 MR. ZLOIS: Section 3 does, it does also specifically use, the driver of a taxi cab. In that section it says, it does have, I will grant, "while transporting for hire passenger is exempt from sec. 106 (3) However, the argument --

20 THE COURT: Are those the facts of this case?

25 MR. ZLOIS: No. He wasn't actually engaged. The facts come out on page ten I believe, as a matter of fact his exacts words "I saw the officer at the time in the middle of the road, I didn't know he was an officer, I thought he was a fare, so I undone the button at that point. Then he pulled me over and said that I didn't have my seat belt on, and I said no. I tried to explain to him that I had a rough time with the other fare, and that's why I popped this one off"

30 MR. POWELL: If I may Your Honour, that is all well and good, but the officer has indicated in his evidence on page four as Mr. Zlois has pointed out. He was standing outside number 4690 Kingston road, in Scarborough, the intersection of Beachgrove

5 road. He observed the westbound Chevrolet
motor vehicle, and he could clearly see the
driver of the motor vehicle was not wearing
the one piece seat belt assembly, and the
upper portion of it. At that time, as he has
10 indicated at line sixteen "I signalled the
vehicle to stop and confirmed my
observations", so Mr. Zlois is suggesting to
this court that the officer was there to flag
a cab. I have difficulty with that. He is
there for enforcement purposes, and as a
15 result of making these observations, he steps
out on the road and signals this vehicle to
stop. And also with respect to ---

THE COURT: Is he in uniform?

MR. ZLOIS: One would believe that the
officer was in uniform.

20 THE COURT: Was?

MR. POWELL: It doesn't actually indicate in
the transcript.

MR. ZLOIS: I believe he would be at that
point in time. I don't think I have seen too
many plain clothes officers ---

25 THE COURT: Doing traffic.

MR. ZLOIS: Standing on the side of the road
pulling over traffic Your Honour. Having been
a policeman myself for many years, I just
couldn't see that. I think that the
30 assumption there was the officer was a
uniformed officer there for the purpose of
enforcement. However, it is not often you see
an officer standing on the side of the road.

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THE COURT: Well, I am just trying to understand though, because the reference in the Regulation is to; while transporting for hire a passenger is exempt. Now that is pretty specific, that is directing to the circumstances in which a driver of a taxi cab is exempt. Mainly while transporting.

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MR. ZLOIS: Which is in conflict Your Honour, with the fact that taxi cabs don't even have to have them in at all. Just like a police car, they can be modified, removed, taken, rendered wholly or partially inoperative. It seems to be in direct conflict. I think that was dealt with in the Hundell matter by Judge Graham, in favour of the defendant.

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THE COURT: But isn't the logic of these two sections, sections two and section 3 that, when you are operating this taxi cab with customers, you can modify their effectiveness or reduce their effectiveness by modifying the seat belts, including the driver's seating, the upper torso restraints, but the exemption from wearing a seat belt altogether, which is referred to in seat belt assembly 106 and so forth, when it refers to the complete seat belt assembly, the exemption in 106 (3) applies; while transporting for hire a passenger.

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MR. ZLOIS: Your Honour, yet at the same time the cab driver is quite free to remove the seat belts entirely and yet ---

5 THE COURT: And why do you say that. Because it doesn't appear to be ---

10 MR. ZLOIS: Regulation 513 (7) (2) says, exempt from not removing it or any partial modification along the way. So in effect it is okay as a taxi cab to remove the entire seat belt assembly right completely from the car and yet to still have him wear it then only under specific conditions. There is a conflict.

15 MR. POWELL: Your Honour, I think Mr. Zlois is confusing the matter. Section 7, sub. 2 speaks of taxi cabs, not of taxi drivers. This whole Regulation where it begins at seat belt assemblies, is speaking about seat belt assemblies itself, not about the drivers of taxi cabs. Section 7(2) says very
20 specifically, taxi cabs are exempted from the requirement. So it is speaking about the Regulation, the spirit of it, is about the equipment in the taxi cab and not about the driver. Any exemption I would agree with Your Honour is in section 3; the driver of a taxi cab, while transporting for hire a passenger, is exempted from the sub-sec. 106(3) of the
25 Act. That's the only exemption that I see, and the only evidence we have in the transcript, is that the officer observes the taxi cab coming down the road, and he stops the vehicle because he observes the upper torso is not in operation, and with Mr. Zlois
30 trying to suggest that the officer was

5 flagging a cab I think is ludicrous, and I
would suggest there is no merit to this Your
Honour. The section 7(2) clearly speaks of
10 taxi cabs, and I understand Judge Graham has
made a decision, but with respect I would
indicate that is not binding on Your Honour
this morning. The law itself is clear and I
would suggest to Your Honour, there is no
merit at this time with respect to this
appeal.

15 THE COURT: I think I agree. So on the
appeal, the appeal is dismissed. Because in
my view, the plain wording of sub. sec. 7,
sub.(3) is that the exemption is while the
driver of the taxi cab is transporting for
hire a passenger and that's an exemption to
20 106, sub.3. for the driver. So appeal is
dismissed.

MR. ZLOIS: Thank you Your Honour.

MR. POWELL: Thank you Your Honour.

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