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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

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against

LONNY CLARKE

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P R O C E E D I N G S

BEFORE THE HONOURABLE MR. JUSTICE KHOORSHED  
On May 14, 2004, at BRAMPTON, Ontario

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APPEARANCES:

Ms. J. Anand

30 L. Clarke,

Counsel for the Crown

Appearing on His Own Behalf

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R. v. Lonny Clarke

MAY 14, 2004

5 MS. ANAND: I'd like to address number two if I  
could, Your Honour, on the appeal list, Lonny  
Clarke. Mr. Clark, this is a prosecution appeal. I  
don't anticipate it being very lengthy. It's on  
basically one main issue. And your name, sir, is?

MR. CLARKE: My name is Lonny Clarke, Your Honour.  
I'm a solicitor and I'm representing myself.

10 MR. ANAND: Your Honour, this is a prosecution  
appeal and just essentially I'm not really  
proceeding on the first ground. There's three  
grounds. Really, I'm going to be proceeding on the  
fact that the justice of the peace made an error in  
15 law by considering a corollary conversation that  
didn't relate to the seatbelt charge...

THE COURT: Yes.

20 MS. ANAND: ...and the justice found that that  
conversation would bring the administration of  
justice into disrepute. And I'm suggesting that the  
justice erred in law since that was a totally  
different incident not relating to the charge.

THE COURT: Right.

25 MR. ANAND: My second ground is that by not  
convicting the defendant when there was an admission  
to the offence -- the defendant, Mr. Clarke,  
actually admitted to the charge. I'm going to just  
refer to -- I'll just essentially tell you the  
facts, and actually on page 11 of the transcript, if  
30 Your Honour has that before you, that's when Mr.

Clarke, the defendant, is sworn and essentially he gives his testimony.

5 A summary of what occurred was that Mr. Clarke was stopped for a seatbelt offence by an Officer Olivera. As he was parking my understanding is there may have been a fire hydrant that he was parking near, and there happened to be another police cruiser parked in the vicinity, not relating to this traffic stop whatsoever. And, in fact, Officer Olivera, the investigating officer for this charge, wasn't even aware that that vehicle was there in particular and had no dealings particularly with them.

10 During the time Mr. Clarke was parking his vehicle, apparently one of the officers in that second cruiser made a comment to Mr. Clarke, and it's actually on page 12 of the transcript, where Mr. Clarke says on basically line four what the officer had said to him. It was actually a swear word to him in order for him to move his vehicle from the fire hydrant. Officer Olivera, the charging officer, was not even present at the time. She had not even yet approached his motor vehicle, and essentially Mr. Clarke admits to not wearing his seatbelt on line -- page 11, line 25. But his main argument was that this comment would bring the administration of justice into disrepute. And the justice of the peace -- I argued against that saying that there is a different venue for any kind of

5 comments that are made by police and it seemed that  
the justice of the peace seemed to agree that in his  
judgment, page 13, line 13, said, "But it certainly  
struck me as being somewhat inappropriate of a  
comment, especially for a person of authority so I'm  
going to stay the charges". And I submit,  
respectfully, there's no basis in law for the  
justice of the peace to do that. And, in fairness,  
that's why the grounds are quite simple. I'm seeking  
10 that the appeal be granted based on -- based on  
those facts.

THE COURT: Yes.

MR. CLARKE: Your Honour, the facts as related were  
not the facts and it's not reflected in the  
transcript either. The circumstances that were in  
15 play were that the officer that was pulling me over  
for the seatbelt ticket pulled me around a corner.  
There was a fire hydrant where I'd stopped. Another  
vehicle -- as she was stopped in the next to the  
parking lane -- another vehicle, police vehicle,  
20 pulled up and started talking facing the same  
direction as the officer that pulled me over's  
vehicle and inquired whether they needed -- she  
needed any assistance.

25 The -- at that time, I saw there was a fire hydrant  
there so I backed up, and I note the officer in the  
car two over speaking to the officer that pulled me  
over wondered why I was backing up and said, "What  
the hell is he doing?" and this is reflected in the  
transcript. And I said, in probably a slightly  
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irritated voice, "There's a fire hydrant there", and he said, "Fuck you". Subsequent to that....

THE COURT: Let me - let me understand this. Somebody else was parking near the fire hydrant?

MR. CLARKE: No.

THE COURT: You were parking in front?

MR. CLARKE: The officer pulled me around the corner...

THE COURT: Yes.

MR. CLARKE: ...where I pulled to stop because the first available blank spot was near a -- there was a fire hydrant there, which I didn't immediately notice...

THE COURT: Right.

MR. CLARKE: ...because there -- I was being pulled over...

THE COURT: Right.

MR. CLARKE: ...I thought maybe I shouldn't be parking by the hydrant. There was enough room behind me to back up.

THE COURT: Right.

MR. CLARKE: So I backed up into that spot so that I would be in line with the officer's car who was stopped speaking with the officer's vehicle that pulled up. There were two officers in the vehicle that pulled up so the one -- the one on the passenger's side was speaking to the officer who pulled me over, and they pull -- my understanding is they pulled -- they stopped to see if she needed any assistance. She was on her own as well and that's when I started backing up and I -- so I was becoming

parallel. The officer made the comment, "What the hell is he doing?" I responded, "There's a fire hydrant there." and he said, "Fuck you". I subsequently ended up very upset. That car pulled away. The officer came over. I tried to get the officer's name. She started to say his name. She said one name. I said is that his first or last name? She wouldn't tell me his name. So I -- I disagree with my friend that there were other venues that I could have pursued reasonably. The officer, and again this is reflected in the transcript as well, started to backpedal a little bit. She suggested she hadn't heard the comment but the officer was in training and if he did make that comment, he shouldn't have made the comment and that she would speak to him and see if, you know, speak to him for me if I wanted to. But she wouldn't tell me his name.

So on -- on those facts, the -- the justice of the peace agreed with me that this conduct brings the administration of justice into disrepute. My opinion is this is not some totally isolated event from the -- me being pulled over. It's connected with that -- the officer was pulled over to speak to the one that had pulled me over. It was during the enforcement of the offence. It was not totally unrelated to this and if we hypothesize into a more obvious extreme example, what if, in that situation, I had responded back with other derogatory comments and it lead to that officer getting out, coming over

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and pummel -- pummeling me? Would the court then say, well that's a totally unrelated offence. This does not bring the administration of justice into disrepute in the enforcement of that offence. So, you know, the justice of the peace, in my mind, was making a very commonsense and reasonable decision based on the fairness and the fact that the police need to be held to a certain accountable standard in enforcement of their duties. We've seen -- heard various stories in the news lately about police conduct and....

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THE COURT: Counsel, I have absolutely no doubt as to the authenticity of what you're saying. No police officer should treat the public in that fashion. My only concern is, is this the proper remedy? And if you show how this is -- how do you stay a proceeding under these circumstances? I mean, what has this police officer got to do with what was happening to you? He was not even involved with giving you the ticket, right?

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MR. CLARKE: Well, Your Honour, I would suggest that the fact is the officer came along. It was during the enforcement of that offence. Whether or not they were the initial officer -- I think that's connected to the offence. It's the conduct itself that needs to be examined while the enforcement of the law is trying to be conducted.

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THE COURT: And you have made a second statement that the officer who was going to give you -- who was objecting to your parking would not give you the name of the other fellow, correct?

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MR. CLARKE: She gave -- she gave me one name but would not say what -- then when I started to say I want to make a complaint and said was that his first name or his last name, she refused to say and then started to say, well I'll talk to him and -- so in that sense I believe there is some extra connection to the -- to the actual offence.

THE COURT: I see your point.

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MR. CLARKE: The other -- the other interesting fact here, and this is -- this is less to do with the merits and I think that the justice of the peace was looking at fairness and what's the reasonable conduct for police and that, I think, Your Honour, there is jurisdiction to stay the charge in those  
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circumstances. I previously have been involved in a circumstance where a justice of the peace stayed charges where it would the administration of justice in disrepute. I don't know if Your Honour wants to hear the facts of that case?

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THE COURT: No, I don't want to hear that.

MR. CLARKE: But aside from that, Your Honour, even if Your Honour thought that there was some question from a purely legal analysis whether that was the proper connection or whether his ability to stay the charges, on a more technical basis, this occurred in  
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August of 2002, Your Honour.

THE COURT: Yes.

MR. CLARKE: Appeals in -- may I approach, Your Honour?

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THE COURT: Yes.



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MR. CLARKE: The deadlines for filing an appeal as Your Honour's probably aware is 15 days from the decision appealed from, which I believe was done in this case.

THE COURT: Yes.

MR. CLARKE: Section 135(3) of the *Provincial Offences Act* requires that the clerk shall, as soon as practicable, give a notice to the defendant and prosecutor of the time and place of the hearing. It was actually a year and a month after the original offence where that notice was given. And if Your Honour refers to the dictionary definitions of practicable that I've outlined for you, I think there's a very good argument that this file was -- this appeal was not -- the notice did not go out as soon it was practicable. It actually appears, Your Honour, that what happened is that I received a notice from my friend on February 19<sup>th</sup>. The notice from the clerk went out on March 1<sup>st</sup> of the time and place of the hearing.

THE COURT: This year?

MR. CLARKE: Yes, of this year. So it appears that my friend was directing the clerk as to when it was convenient or when she was prepared to proceed with the appeal and the clerk issued it at that stage. And I would suggest that that is not what's contemplated by Section 135, especially if you've combined that with the requirement to issue the notice of appeal within 15 days, followed immediately thereafter by issuing the notice of the time and place of the hearing to both defendant and

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prosecutor as soon as it is practicable. I had thrown my initial notes in research on the -- bringing the administration of justice into disrepute away at about Christmas time figuring that this appeal was abandoned given the lapse in time from the original offence date, which has been now a year and nine months, I believe, approximately. So on that basis, Your Honour, I think if you have any lack of comfort on the pure legal side, I think there's a good basis on this to say that my friend should not sustain her appeal.

THE COURT: Yes.

MS. ANAND: Your Worship(sic) a comment on the length of time, it just takes Your Honour to note all of the dates in this jurisdiction for all of the matters that are not placed on a list right away. In terms of my friend suggesting that I would know well in advance what the date was of the appeal is not entirely clear and true. I certainly got the transcript and was given a date by the court and out of courtesy to this gentleman -- to Mr. Clarke I sent him the transcript right away and said that this was the date that I understood to be the appeal date.

THE COURT: No, I don't think there is anything pointed at you personally.

MS. ANAND: Yes.

THE COURT: But I think under these circumstances doesn't the Crown feel that the officer's behaviour was such that something should be done about it?

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MS. ANAND: Your Honour, this is my -- this is my impression. If it takes looking at Officer Olivera's testimony, it is my submission, respectfully, she had said that she had never heard any conversation. That when she was approaching his vehicle there was nothing taking place between this gentleman and her and anyone else....

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THE COURT: Fair enough. Why didn't she give him the name of the other officer?

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MS. ANAND: She gave -- this is her words to this gentleman or this is what he said she had said to him. She said his name was Doran and she asked him if it was his first or last name. She said she wouldn't tell him. That's what he says and she said that she will speak to the officer. Now that's not entirely what Officer Olivera says. If I could finish -- just a moment, Mr. Clarke. Mr. Clarke appeared to be upset so Mr. Clarke was asking -- it's on page seven of the transcript at approximately line 15. Of course there was some -- there were some injections about hearsay since other officers weren't there to ask Officer Olivera what other persons said. But certainly it was -- Mr. Clarke was allowed to ask questions about why he may have been upset.

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THE COURT: Yes.

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MS. ANAND: And, I'm sorry, I'm just looking at -- I apologize. There's lots of argument with the court and I'm looking to see what the officer -- how the officer responds. I'm quite sure from my recollection that the officer -- well the officer on

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page seven said, she doesn't have it in her notes but she believes she was upset, line 15, that some comments of some other officers. But I wasn't there, so.

5 THE COURT: Yes.

MS. ANAND: Your Honour, my -- I'm still of the opinion that -- that the officer did say Doran to this gentleman and Mr. Clarke didn't do anything with that -- with that name. Mr. Doran -- Mr. 10 Clarke, rather, could have made, in my submission, inquiries at another venue with that last name or that name period, and I'm submitting respectfully that still the justice had no basis to stay the charge on this.

15 THE COURT: No, under these circumstances I think I'm not going to interfere with what the justice of the peace has done and his decision will stay.

MR. CLARKE: Thank you, Your Honour.

MS. ANAND: Thank you. Your Honour,....

20 THE COURT: All right. Now, sir, you don't make a habit of this, okay?

MR. CLARKE: No.

THE COURT: Getting into arguments because you just told me you had a previous incident of similar 25 nature.

MR. CLARKE: But....

THE COURT: So make this the last one, will you?

MR. CLARKE: Thank you, Your Honour.

THE COURT: If somebody calls you a rude name, sir, he only exhibits his own ignorance, not yours.

30 MR. CLARKE: I agree. Thank you.

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THE COURT: Thank you.

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**FORM 1**  
Certificate of Recording  
Evidence Act, Subsection 5(1)

I, Brenda Ferland certify that Recording No. R11-04/83, is the recording of the evidence and proceedings in the ☒ OCJ or ☐ SCJ held at ☒ 7755 Hurontario St., Brampton, or ☐ 7765 Hurontario St., Brampton on May 14, 2004, and that I was in charge of the sound recording device during those proceedings.

May 14, 2004  
(Date)

B. Ferland  
(Signature of Authorized Person)

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**FORM 2**  
Certificate of Transcript  
Evidence Act, Subsection 5(2)

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I, Brenda Ferland certify that this document is a true and accurate transcript of the recording of R v. Lonny Clarke in the ☒ OCJ or ☐ SCJ held at ☒ 7755 Hurontario St., Brampton, or ☐ 7765 Hurontario St., Brampton taken from Recording No. R11-04/83.

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October 29, 2004  
(Date)

B. Ferland  
(Signature of Authorized Person)

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THIS IS TO CERTIFY THAT  
the foregoing is a true  
and accurate transcription  
from recordings made herein,  
to the best of my skill and  
ability.

*B. Ferland*.....

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B. Ferland  
Court Monitor

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Transcript Order Received: September 3, 2004

Transcript Completed: October 29, 2004

Ordering Party Notified: November 2, 2004

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