

THE ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

against

LUIS MACIEL

TRIAL PROCEEDING

BEFORE HIS WORSHIP JUSTICE R. ROMAIN
on November 21, 2002 at Mississauga, Ontario

OFFENCES: s. 136 (1) (a) - Highway Traffic Act;

APPEARANCES:

R. Craig, Ms.

Municipal Prosecutor

C. Walpole, Mr.

Agent for the Defendant

ONTARIO COURT OF JUSTICE

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THURSDAY, DECEMBER 21, 2002

MS. CRAIG: Final matter number eight, Luis Maciel.

MR. WALPOLE: Yes, Your Worship, I am also the agent on record in regards to Mr. Maciel, who is not before you, with instructions to proceed in his absence and authority to do so, Your Worship. Ready to proceed.

MS. CRAIG: Ready to proceed in that matter, Your Worship.

THE COURT: Thank you. May the 7th, 2002, McDowell Drive at Delle Donne-Belle Donne(ph), I do not know, Drive, Mississauga, disobey stop sign fail to stop, 136 (1) (a). On behalf of the defendant guilty or not guilty?

MR. WALPOLE: Not guilty, Your Worship.

MS. CRAIG: Call Constable Whitlock.

MIKE WHITLOCK: SWORN

THE COURT: Any additions or deletions to your notes, officer?

CONSTABLE WHITLOCK: No, sir.

THE COURT: Require them solely for the purpose of refreshing your memory?

CONSTABLE WHITLOCK: Yes, sir.

THE COURT: Thank you. I am satisfied. Go ahead, please.

EXAMINATION IN-CHIEF BY MS. CRAIG:

A. On Tuesday May 7th, 2002, I was working day shift from 0600 to 1600 hours. I was in a fully marked cruiser working in uniform capacity. At 6:40 a.m. I set up stop sign enforcement at the intersection of McDowell Drive and Delle Donne Drive in the City of Mississauga.

McDowell-Drive runs east/west while Delle Donne runs north/south and ends on the north side of McDowell. On the south side of McDowell Drive it's a private drive of Churchill Meadows Public School. There's stop signs for each direction of travel but no stop line. The area is residential and a school zone and there was construction just down the street.

Like I said I was in a fully marked cruiser sitting in the private drive of Churchill Meadows Public School approximately five metres south of the intersection. I had a clear unobstructed view of approximately 100 metres east and west of the intersection at McDowell

Drive. The weather was slightly overcast. The roads were dirty but dry.

At 0730 hours, I observed a red motor vehicle eastbound on McDowell Drive approximately 30 metres west of the intersection travelling at approximately 50 kilometres an hour. As the vehicle approached the intersection it slowed to approximately ten kilometres an hour to the point where it was at the intersection. However, the vehicle did not come to a complete stop. It continued through the intersection without making any attempt to come to a complete stop. At no time did the wheels of the vehicle stop rotating. When the vehicle was just east of the intersection I activated my roof lights as I was pulling the vehicle over.

After having a brief conversation with the driver who identified himself with a valid Ontario driver's licence as Luis Maciel of 5841 Churchill Meadow Boulevard, I issued the accused Provincial Offence number 63207910 for the offence of disobey stop sign fail to stop.

Q. And, what city were in at the time?

A. The City of Mississauga.

Q. And, did you indicate the name on the driver's licence in your evidence?

A. Yes, I did.

Q. And, did you observe the picture portion on the driver's licence?

A. Yes, I did.

Q. And, were you satisfied with the identity of this driver?

A. Yes, I was.

Q. All right. And, what vehicle was the driver operating?

A. It was a 1990 Passat two door red in colour bearing Ontario marker AAKP

729.

Q. Is that a motor vehicle as described under the Highway Traffic Act?

A. Yes, it is.

Q. And, you've indicated there are no stop lines on this roadway....

A. No there aren't.

Q. ...is that correct, on McDowell?

A. Just stop signs.

Q. All right. And, were these stop signs properly posted on this day?

A. Yes, they were.

Q. And, to regulation?

A. Yes, they were.

Q. And, officer, with respect to the intersection for the eastbound traffic where is the stop sign with respect to the curve or mouth of the intersection?

A. It's actually—approximately a foot back of the of the curve of each direction.

Q. And, officer, where—I'm sorry, I didn't understand exactly where it was you pulled this vehicle over?

A. It was just west of the intersection, sorry, or sorry, just east of the intersection.

Q. East of the intersection?

A. Yes, just east.

MS. CRAIG: Thank you. No further questions.

THE COURT: Mr. Walpole.

MR. WALPOLE: Thank you.

CROSS-EXAMINATION BY MR. WALPOLE:

Q. Officer, you're a—you have a independent recollection of this incident?

A. Yes, I do.

Q. Explain to the court then, officer, why when giving your evidence you read pretty much verbatim from your notebook?

A. Just easier to do it that way, I guess.

Q. But, you're—again that you recall this incident fresh in your memory then?

A. I don't call it fresh in memory.

Q. Okay. So, is it true that there are some things that you may forget about the incident?

A. That's why I have a notebook.

Q. Okay. You said there's construction in the area, officer?

A. Just down the street.

Q. Where down the street, officer, east or west?

A. West down the street.

Q. West down the street?

A. Yes.

Q. So, would the defendant have been going through this construction zone prior to entering your stop sign....

A. Mh'mm.

Q. ...enforcement?

A. Yes.

Q. Okay. Officer, when you were approaching the intersection how did you get there?

A. How did I get there?

Q. Yes.

A. I came from the opposite direction. I was travelling westbound down McDowell.

Q. Okay. So, you went down McDowell and you turned left onto...

A. Into the public school.

Q. Is it called Delle Donna(ph)? What's it called?

A. Delle Donne.

Q. Delle Donne. Thank you. Even I had trouble with that one. And, so you turned left onto Delle Donne and you start your enforcement right there and then....

A. Yes.

Q. ...is that correct? Okay. So, you never actually observed the stop sign the defendant was facing did you officer?

A. I didn't drive that way, no.

Q. Okay. You're saying a-stop sign was erected one foot from the intersection.

A. Approximately.

Q. ...is that what....

A. That's just....

Q. So, you don't....

A. ...recollection.

Q. ...know. Recollection. So, it could have been one metre then?

A. No, it wouldn't have been that far.

Q. Did you actually get out and go over there and measure it, officer?

A. No.

Q. Okay. So, how do you know it's one foot?

A. It's just a-visual guess.

Q. Okay. How far are the lanes, the width of the lanes? Is there two lanes on Delle Donne?

A. One for each direction but it's not marked.

Q. It's not marked, and as you say, officer, there are no stop lines?

A. No.

Q. Okay. This construction that we're talking about, officer, what was the construction?

A. I believe, it's a school, I think, it's a high school being built just-down the street, east down the street on the south side.

Q. Okay. As a result of the construction, officer, is traffic re-routed, is there a...

A. No. It's not effecting the street other than causing dirt to build up on the street.

MR. WALPOLE: Build up on the street. Okay. Thank you. I have no further questions.

THE COURT: Thank you.

MS. CRAIG: Thank you, officer. Case, Your Worship.

THE COURT: Thank you.

MR. WALPOLE: I'm not calling a-defence, Your Worship. I'll save my-for my submissions.

THE COURT: Go ahead.

MR. WALPOLE: Your Worship, the officer has given a candid evidence in regards to the incident before, Your Worship; however what is worthy of note, Your Worship, is that the officer admitted that there was construction down the street and there's dirt on the road. The officer indicated the route he travelled to get to this location, Your Worship, he travelled westbound on McDowell and turned left onto Delle Donne and set up his location there.

The officer has stated to the court and quite honestly that he never physically got out and checked that the-sign that was on the corner was in fact a

Submissions by Mr. Walpole
Ruling

stop sign, of course he said that stop signs are erected. Your Worship, I can't state to the court and, Your Worship, can't take judicial notice that on the front of that sign was the three-four letters S-T-O-P and it's red with the white lettering, Your Worship. There's nothing indicating at all in the officer's evidence, Your Worship.

As a result, Your Worship, the officer is indicating that there's dirt on the roads, Your Worship, it could be possible that because the construction that the sign itself was obstructed or....

THE COURT: It is possible that Air Canada is going to land in this courtroom in about two minutes.

MR. WALPOLE: At that time, Your Worship, I'll grab a parachute and we'll continue on with that.

THE COURT: All right. We will see what happens in two minutes.

MR. WALPOLE: Yes, okay. I'll-sure, I'll stay here. As such, Your Worship, the officer cannot state that a stop sign is erected at that point, Your Worship. He's indicated that he turned onto the location and only had signs viewed from his vantage point. However, that sign that the officer is speaking of that the defendant apparently did not stop for was not viewed by the officer. The officer can't give you an exact estimate, or-accurate measurement of how far from this intersection this sign is supposed to be erected. He's indicated that from his vantage point it appears to be one foot. Those are my submissions, Your Worship. You cannot take judicial notice, Your Worship, that that sign as erected is a stop sign. You have no evidence that it was an octagon, eight sided sign even, it could have been a fail to yield sign for all I know. Those are my respectful submissions.

R U L I N G

ROMAIN, Justice of the Peace: (Orally)

We are getting close to two minutes. Nothing has landed yet. Guilty, conviction.

\$90, 15 days.

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


Jean Court, Court Reporter