

ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

v.

JOHN MCINTYRE

APPEAL APPLICATION

BEFORE THE HONOURABLE JUDGE H. SALEM
on October 16th, 1998, at TORONTO, Ontario

CHARGE: - fail to wear/adjust/secure seatbelt

APPEARANCES:

R. Rosenberg, Ms.

Prosecutor for the Crown

M. McDonnell, Esq.

Prosecutor for the Crown

Accused not represented

Old City Hall
Courtroom L

MS. ROSENBERG: You're Mr. McIntyre?

THE APPLICANT: I am.

MS. ROSENBERG: And this is your transcript here?
You've had your trial?

THE APPLICANT: Yes.

MS. ROSENBERG: And the charge here being driving
without a seatbelt, and you're a taxi driver.

THE APPLICANT: That's correct.

MS. ROSENBERG: You indicated to the justice of
the peace that there was a provision to exempt
taxi drivers from wearing your seat belts.

THE APPLICANT: Which there is. Sorry. So the
reason that I'm here is I was convicted by the
j.p. of something that actually the Highway
Traffic Act allows me to do.

MS. ROSENBERG: And probably the issue in dispute
here is that you were the only one in the cab at
the time; you didn't have a fare.

THE APPLICANT: Mm-hm.

MS. ROSENBERG: And you think that exemption
applies even in that situation.

THE APPLICANT: The exemption regulation
613(7)(2) does apply, whether I have a passenger
in the car or not. At trial level, submitted was
two higher court rulings; one by Judge Clemens in
1984, one by J.P. Kant in '94, and one by Judge
Graham in '95, which was a Crown appeal of the
Kant decision. Now, in all of those cases, they
dealt with exactly the same circumstance: a cab
driver who was not wearing a complete seatbelt.
Now, they all ruled in favour of the cab driver,
and in all of those cases, the Crown brought up

5 exactly the same argument, that it only applies
when you have a passenger in the car. Now,
obviously implicit in the fact that they found in
favour of the cab driver means that they did not
agree with the Crown's position, and agreed with
the position that actually what the law says, and
that is that we are exempt from having to have or
wear a complete seatbelt assembly in our car. As
10 a result, how can we be charged with s.106(3),
failure to wear a complete seatbelt, when we're
not required to have one in the car in the first
place?

15 MS. ROSENBERG: Well, I'll show Your Honour the
section that the gentleman's referring to.

THE COURT: Do you have any transcripts of the
cases?

THE APPLICANT: I do; absolutely. And I also
have ---

20 MS. ROSENBERG: Section 7, that regulation.

THE APPLICANT: I have a copy of the regulation
and it's highlighted. It's regulation 613(7)(2).

THE COURT: Well, the section says that a driver
of a taxi-cab, while transporting for hire a
passenger ---

25 THE APPLICANT: That's section 3.

THE COURT: Yes.

THE APPLICANT: I'm dealing with s.7(2). 7(2)
states that taxi-cabs are exempt from the
requirement that upper torso restraints for the
driver's seating position - and the second part's
not really applicable - not be removed, rendered
30 partly or wholly inoperative, or modified so as

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to reduce their effectiveness. Because I'm exempt from not doing it, what it means is that I am allowed to remove my upper torso restraint. I don't need it at all, I don't have to use it. I can render my upper torso restraint partly or wholly inoperative, or I can modify it so as to reduce its effectiveness. Now, Judge Clemens in his ruling, when he read s.7(2), he says, "In other words, it says that taxis can have that removed, regarding the upper torso restraint." He then goes on to say, "So they don't need an upper torso and they don't need seatbelt assemblies in the front seat." So he comes to the conclusion here that the charge is wearing a complete seatbelt assembly, but he doesn't need a complete seatbelt assembly, according to this, which is regulation 613(7)(2). And he ends up stating that the charges on the taxi driver, in any event, failing to wear the complete seatbelt assembly doesn't apply. "I'm going to allow your appeal. It seems to be rather convoluted, but I'm going to allow your appeal and dismiss the charge." That's Judge Clemens who ruled in 1984. Now, would you like me to point out some points in Judge Graham's ruling?

THE COURT: Let me just see those transcripts that you have.

THE APPLICANT: Okay. Mine are a little marked up, so I have fresh ones for you. Or do you want the ones that are ---

THE COURT: I don't care. As long as I can read them. These are all provincial court decisions.

THE APPLICANT: Yes.

THE COURT: Let me hear from the Crown.

MS. ROSENBERG: Simply, Your Honour, that I believe the matter was brought forward in this very courtroom before your brother Judge Reinhardt, and he heard the same issue, and at that time ruled in favour of the prosecution, or suggested that if the car is built as such, without the upper torso belt, that's fine, the driver doesn't have to wear it. But if it's there, or the seatbelt is there, and he is without passengers, he has to wear the seatbelt. The car can be changed, and that's what it says here. Taxi-cabs are exempt, s.2. And then they're just talking about the cab, not the driver. And then s.3, they talk about the driver. He's exempt while transporting for hire a passenger. There's no passenger here.

THE APPLICANT: Exactly. And s.2 says nothing about a passenger, and I - which is good, because I didn't have a passenger.

MR. MACDONNELL: Read s.1, sir, definition of taxi-cab, which is referred to in s.2, defines a taxi-cab as a motor vehicle.

THE APPLICANT: Well, thank you.

MR. MACDONNELL: S.2 is referring to motor vehicles.

THE APPLICANT: I could figure that - all right.

MS. ROSENBERG: I don't see what the confusion is.

THE APPLICANT: The confusion is - actually, there's really no confusion, but if you ask, the

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confusion is on the part of the Crown, because in every particular case, they keep bringing in this issue that it's - that s.3 and s.2 are somehow contingent or related upon one another. In other words, s.2 is what you do - in other words, s.3, if I have a passenger, then I don't need to wear my upper torso restraint, and so on. They're saying that those are almost the provisions that can be used when I have a passenger in the car. But they're completely - they're completely separate circumstances, Your Honour, and I refer you to Judge Graham's decision. Now, in that decision, it was a Crown appeal of the Kant decision, so the Crown was appealing against a lower court that ruled in favour of the taxi-cab. And Judge Graham, at the end - well, actually, on page 7 in Judge Graham, he says - he's very clear about the fact that there are two separate sections. He says that the driver of a taxi-cab, while driving for hire, which is s.3 - and the other thing is that s.613(7)(2) has a complete exemption. So I don't know. I think there's confusion here. "They can amend the act, but I'm allowing the appeal," so he ruled in our favour. And at the end, he says that one looks like it's sitting independent of the other. So there's no - so what I'm saying is that s.2 - the Highway Traffic Act is something that I have to use to rule myself on the road. Now, I read s.2 as a stand-alone section. It's written in English; it's unequivocal. It states that I do not have to wear the upper torso restraint, and, for that

THE COURT: Regulation 7(2), (a) and (b), deals with the taxi-cab itself.

MS. ROSENBERG: Right, yes.

THE COURT: So if in fact there is no seatbelt in the cab, and the driver is driving without a passenger, he is committing no offence.

THE APPLICANT: That's right.

THE COURT: These are rhetorical questions.

THE APPLICANT: Oh, I'm sorry.

MS. ROSENBERG: If there's no seatbelt. All right, okay, let's go that far. If there's no seatbelt.

THE COURT: But if there is a seatbelt, then he commits the offence.

MS. ROSENBERG: Indeed.

THE COURT: Does that make sense?

MS. ROSENBERG: Yes.

THE COURT: Oh. Explain that to me.

MS. ROSENBERG: I'm not looking at that other scenario, because that's a hypothetical. I'm looking here at what the officer saw. He saw no fares and he saw the seatbelt assembly provided for this driver was not being worn, he could see the buckle hanging. That's the facts that I'm looking at, and I think that's what His Honour Judge Reinhardt looked at on the previous occasion, and found that it's there and he's not wearing it.

THE APPLICANT: I don't have to wear it.

THE COURT: Just ---

THE APPLICANT: Oh, I'm sorry.

THE COURT: She didn't interrupt you.

THE APPLICANT: That's true.

MS. ROSENBERG: It was there; he wasn't wearing it.

THE COURT: All right. So, in one place, the person has committed an offence under the Highway Traffic Act if the seatbelt was there, but he could cut the seatbelt out and not be committing an offence. Is that what you're saying?

MR. MACDONNELL: The upper torso restraint.

MS. ROSENBERG: The upper torso, right. If we went back to the old two-part, right? Okay.

THE COURT: And that has some sort of symmetry here, does it? I mean, it seems to me that when you are going to convict somebody of an offence under the Highway Traffic Act, that there is a certain basic logistic that has to be followed. I agree with the statements of these three cases, with Judge Graham, Judge Clemens, and the justice of the peace. This is quasi-criminal. If in fact this is an offence that our government feels is - or this action is sufficient to fit under a quasi-criminal section, or quasi-criminal act, then it seems to me that there should be some kind of consistency. I mean, it makes absolutely no sense to me that if a cabbie walks out to his car before he gets in it and cuts the shoulder strap off, or makes it unusable in some way, that that person is fine, and yet the person who doesn't use that part of the seatbelt, notwithstanding it's there - let me say this. Let's say that there is a person that drives a cab, and that cab is driven part-time, but as

well is used for the family. Now, why would that person - I mean, he wouldn't be allowed to destroy that seatbelt if it's being used for personal purposes, and yet he would have to destroy it to be able to function as a cabbie. I mean, the reason that this section is here is to accommodate the cabbie and his duties as a cabbie.

MS. ROSENBERG: Safety is paramount, I would suggest, Your Honour.

THE COURT: Well, we're talking about the shoulder aspect.

MS. ROSENBERG: The shoulder strap could be a dangerous ---

THE COURT: And obviously, the people that set these acts up found that the safety aspect was overruled by other aspects that would allow them this exception. The same as police officers have an exception.

MS. ROSENBERG: No, I don't think they do.

THE COURT: Pardon?

MS. ROSENBERG: I'm not certain they do, Your Honour, do they? Oh, in emergency - very limited, in transporting a person in his or her custody. But when on general patrol, he has to wear the seatbelt, safety being the issue. And I think, to allow that driver to go without a seatbelt defies the entire safety issue.

THE COURT: But so does s.7(2).

MS. ROSENBERG: No, because let's say he has a passenger, and in these dangerous times, he's ---

THE COURT: No, but 7(2) says that they're

exempt; the taxi-cab is exempt.

MS. ROSENBERG: Right.

THE COURT: Whether he's got a passenger or not.

MS. ROSENBERG: The cab. They can dent their own car, that's what they're saying.

MR. MACDONNELL: What 7(2)(a) says, Your Honour, with respect, is that a taxi-cab, the vehicle itself, in the driver's seating position, does not have to have an upper torso restraint. The reason for that is for the safety of the cab driver, because in the past, the cabbies have been attacked by holding on to the restraint, pulling it back, and slitting the cabbie's throat. That's why if the cab itself has a unified torso and lap restraint, sub 3 comes into play. They don't have to wear it, because you can't remove the upper torso restraint, so you unbuckle the entire thing while your fare is in the car. The fare can't grab you and slit your throat. 7(2) says, "A taxi-cab can be purchased and licensed if it has only the lap belt and no upper torso restraint in the driver's seat position." 7(b) says that the middle seat position doesn't have to be there at all for restraint, because the cabbies aren't supposed to have fares in the middle seat. On the passenger side, there's no exemption for the passenger side. The passenger side front seat has to have a full torso and lap restraint.

THE APPLICANT: Actually ---

MR. MCDONNELL: The exemption is there, Your Honour, only for the safety of the cabbie itself.

The taxi-cab, referred to in 7(2), is the vehicle, not the driver. The only exemption for drivers is under (3).

THE COURT: Well, I follow your logic, but it just doesn't make sense to me. It seems to me that what we're up against is that the cabbie that walks to his vehicle and cuts the shoulder strap is fine. The person that doesn't cut the shoulder strap, for whatever reason, whether he's going to use that cab for personal reasons, or whether it isn't his cab, is the one that is going to be convicted under the section. That just doesn't ring true to me. This is an appeal here.

MS. ROSENBERG: Yes.

THE COURT: So I am going to allow the appeal, then. I am not going to grant a new trial; I am just going to enter an acquittal

MS. ROSENBERG: All right.

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

Sharon Conron
Sharon Conron

S. Conron,
Court Reporter