

5

ONTARIO COURT OF JUSTICE

10

T o r o n t o

HER MAJESTY THE QUEEN

15

A G A I N S T

Redwan Mohammed

J U D G M E N T

20

BEFORE HIS WORSHIP, Andrew Clarke
JUSTICE OF THE PEACE

On August 3, 2000 in Toronto, Ontario

25

CHARGE: s. 106 HTA seatbelt assembly

A P P E A R A N C E

MR. A. SMITH

Provincial Prosecutor

MR. R. STEINMILLER

Agent for the Defendant

30

MR. A. SMITH: Good morning Your Worship.

MR. STEINMILLER: Good morning Your Worship.

THE COURT: Good morning. In the case of Redwan Mohammed. The facts are not in dispute.

The defendant, a taxi driver, was stopped while driving his taxi - eastbound King Street West in Toronto at 6:05 a.m. on the 25th February 1999. There was no customer in the cab and the driver wasn't wearing a seat belt. Consequently, he was charged under section 106 (3) Highway Traffic Act.

At issue is whether a taxi driver can properly be charged under section 106 (3) with failing to wear a complete seatbelt assembly in a properly adjusted and securely fastened manner.

Starting with section 106 (1). It defines a seatbelt assembly as including a pelvic restraint or an upper torso restraint or both. There is no issue the assembly in this case as in virtually all cases today is a single seatbelt assembly combining pelvic and torso restraints.

Section 106 (2) of the Highway Traffic Act prohibits removing or rendering partly or wholly inoperative or modifying a seatbelt assembly.

Section 106 (3) of the same act is the section that mandates use by a driver of the complete seatbelt assembly if the motor vehicle has one. There are certain exceptions to this, not relevant here.

Turning to Regulation 613 - 1990, this is passed pursuant to the Highway Traffic Act and regulates certain seatbelt assemblies.

5 In particular, in respect to taxis, it provides an exception to section 106 (2) and an exception to section 106 (3).

10 It exempts in section 7 (2) all motor vehicles which are licenced taxi cabs from the requirement that the upper torso restraint for drivers not be removed, rendered partly or totally inoperative or modified to reduce their effectiveness.

15 In other words, taxi cabs unlike ordinary motor vehicles may have the upper torso restraint removed.

Section 7 (3) of the Regulation goes on to say that when the driver of a taxi cab has a passenger he's exempt from section 106 (3) of the Act. In other words, he doesn't have to wear the seatbelt assembly if he has a passenger.

20 I've been referred to a number of cases dealing with the issues surrounding the use of seatbelts by taxi drivers. The position taken by the prosecutor in this case, reflects the position taken by the prosecution in those cases and basically is this:

25 That Regulation 7 (2) deals with taxi cabs as physical motor vehicles and responds to a safety concern by allowing taxi cabs to have their upper torso seatbelt modified or removed.
30 However, section 7 (3) deals with the driver and mandates

5
10
15
that, if the taxi cab has not had the upper torso portion removed or modified, the driver must wear the complete seatbelt assembly in a adjusted fashion, but only when driving alone, without a fare. If he has a fare, he doesn't have to wear the seatbelt assembly at all. The prosecution finds no confusion or contradiction in this Regulation.

20
There's also a thread through the cases. Section 7 (2) may refer to a historical situation which no longer exists. When seatbelts came in two parts, a lap and a separate torso restraint so that the torso part could be disengaged with no effect on the lap portion.

25
With today's combined assemblies, removal of the torso belt may render the entire assembly including the lap portion ineffective.

I've been referred to four Ontario Court Provincial Division cases, all out of Toronto, in which provincial court judges considered the issue upon appeal from decisions of Justices of the Peace.

30
Of these, only R. vs Johnstone - 29th June 1995, supports the prosecution's position. In that case, the learned judge found section 7 (3) was clear. However, it appears to me he doesn't consider the interaction of 7 (2).

5
The three cases relied on by Mr. Steinmiller for the defendant are R. vs Szepiecewicz before His Honour Judge Climans on 20th December 1984. R. vs Hardeep Hundal before Judge Graham on January 16th, 1995 and R. vs McIntyre before Mr. Justice Salem on 16th October 1998.

10
15
In Szepiecewicz, the prosecution admitted that the regulation was poorly worded and confusing and the court balked at acceding to convicting on a charge of failing to wear a complete seatbelt assembly when the motor vehicle was not obliged to physically have a complete seatbelt assembly in the first place.

20
The same concern was expressed in Hardeep Hundal both by Justice of the Peace Kant and by Judge Graham in upholding the Justice of the Peace decision.

25
In McIntyre, Mr. Justice Salem describes a Highway Traffic offences as quasi-criminal and as such holds that they demand some consistency, something he found lacking in the prosecution's logic. i.e. if it's there, you have to use it, if you don't have a passenger or risk being charged with an offence, but if it's removed, you are free to drive without it at all times.

30
Seatbelt offences are regulatory in nature. They are offences that if successfully prosecuted lead to demerit points and financial penalties. The current scheme, being two demerit points and a set

fine of ninety dollars, plus provincial victim surcharge. How much is that for \$90?

MR. STEINMILLER: Twenty dollars Your Worship.

THE COURT: Twenty dollars. These are not insignificant penalties for those who earn their livelihood in driving a taxi. There is a time-honoured rule of statutory interpretation which demands that taxing or penal statutes be given the strictest of interpretations so that a citizen is not taxed or penalized unless his activity falls foursquare within the ambit of the statute.

Since there were no reasons given in the Johnstone case, I find myself bound by the cases cited by Mr. Steinmiller. But further, I do concur with the reasons given by the provincial offences Appeal Court in R. vs Szepiecewicz and particular in R. vs McIntyre.

While I appreciate the logic of the prosecution's position, I find that logic strained and a bit artificial. There are no answers to certain basis questions such as with today's combined assemblies would disabling the torso portion also necessarily disable the lap portion. If that is the case, that is something the regulation condones.

I find that the regulation in section 7 (2) and (3) creates confusion. Consequently, I find the charge of failing to wear a complete seatbelt assembly in context with this case is improper. The charge is dismissed.

MR. STEINMILLER: Thank you Your Worship.

MR. S. SMITH: Thank you Your Worship.
THE COURT: Thank you.

THIS IS TO CERTIFY THE foregoing
is a true and accurate trans-
cription from the record to
the best of my skill and ability.


Micki McDougall, Court Reporter.