

ONTARIO COURT (PROVINCIAL DIVISION)

HER MAJESTY THE QUEEN

against

JEAN P. NOLET

PROCEEDINGS AT TRIAL

BEFORE HIS WORSHIP JUSTICE OF THE PEACE
J. FARNUM
on the 28th day of January, 1994.
at BRAMPTON, Ontario

Charges: Section 142(2) H.T.A.

A P P E A R A N C E S:

C. LETMAN, MS.

Prosecutor for the Crown

G. ELLIS, ESQ.

Agent for the accused

ONTARIO COURT (PROVINCIAL DIVISION)

T A B L E O F C O N T E N T S

WITNESSES

IN-CH

CR-EX

RE-EX

DASILVA, Manuel

By Ms. Letman

2

By Mr. Ellis

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THURSDAY, JANUARY 28, 1994

5 MS. LEFTMAN: If we could deal with the matter of Jean Nolet?

MR. ELLIS: Good morning, Your Worship. My name....

THE COURT: Good morning, sir.

10 MR. ELLIS: My name for the record is Ellis, E-L-L-I-S, initial G. I appear as agent for Mr. Nolet. Mr. Nolet is not before the court today, however, I have instructions to proceed on his behalf. Mr. Nolet is away on business.

THE COURT: It is your intention to proceed. The Crown is ready to proceed?

15 MS. LEFTMAN: Yes. I believe from Mr. Dash, that there is a witness here.

THE COURT: So, Jean P. Nolet has been charged on the 30th of September, '93, 4:14 p.m., Queen Street north of Pearl Street, in the City of Mississauga, did commit the offence start from stop position not in safety, 20 contrary to the Highway Traffic Act, Section 142(2). A plea of not guilty, Mr. Ellis....

MR. ELLIS: Yes, Your Worship.

THE COURT: ...will be entered then on his behalf.

25 MS. LEFTMAN: Manuel DaSilva.

MR. DUARTE: Good morning, sir.

THE COURT: Good morning, sir. It's nice to see you here again this morning.

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M. DUARTE - SWORN AS INTERPRETER: English/Portuguese

MANUEL DASILVA, SWORN

Testifies through Interpreter.

EXAMINATION IN-CHIEF BY MS. LETMAN:

Q. I understand, sir, that you were driving a motor vehicle on the 3rd of September, 1993?

A. Yes.

Q. Approximately 4:14 in the afternoon or four o'clock in the afternoon?

A. Yes.

Q. And I understand that you were driving in the area of Queen Street and Pearl Street, in the City of Mississauga, is that correct?

A. Yes.

Q. I understand, sir, that something happened at that location that brings you here to court today?

A. Yes, it was an accident.

Q. Can you tell the court, sir, what happened in the accident, that brings you here?

A. I was on Queen. I think it was southbound. There was quite a number of cars running. As I was passing by a car that was parked, all of a sudden the car come out. I could not avoid the accident and I struck him broadside.

Q. Can you indicate, sir, what type of vehicle you were driving?

A. A Jetta.

Q. And the vehicle that -- you've indicated

this vehicle was parked. Was there room for parking on the side of the road there?

A. He was parked and he came out.

Q. Can you indicate, sir, how far away you were from him when you first observed him?

A. Possibly ten metres, but it was raining. The road becomes slippery and I could not stop. That's why I struck it.

Q. Do you know what type of motor vehicle you struck?

A. It was a Mercedes and it was Model 540 Sports.

Q. Did you take any note of the licence number?

A. No, because the police arrived and took note of it.

Q. And did you have any dealings with the driver of that vehicle?

A. No.

Q. Could you indicate whether the driver was male or female?

A. It was a male.

Q. And can you indicate, prior to making contact with the vehicle, what if any actions you took?

A. I tried to avoid the accident, but I had not that much choice, because either I would strike that one or the other cars that were passing.

Q. Can you indicate, sir, what the lighting conditions were like?

A. It was raining.

Q. It was raining. Was it day or night?

A. Day.

MS. LETMAN: I have no other questions.

5 CROSS-EXAMINATION BY MR. ELLIS:

Q. Sir, at this portion of Queen Street, how many lanes of traffic are there?

A. One lane and the one that the cars were parked.

10 Q. When you first saw this car, how far away from it were you?

A. I was more or less ten metres from it, but what happens is that the car all of sudden moved out.

Q. How fast were you going at this time?

15 A. I was following the traffic, the same speed that the other traffic was going. I would say 20, 30 kilometres per hour.

Q. You say it's less than the normal speed?

A. The speed there is 40. I was -- as the traffic would go, I would go. I could not go further.

20 Q. When you first saw this vehicle, was it moving?

A. It was stopped.

Q. It was stopped. Did you have a very long stop?

A. No.

25 Q. Was there a car in front of you?

A. Yes, there were cars in front of mine.

Q. Okay. And was there a set of traffic lights in front of you?

30 A. I am not so sure, but I assume there was traffic lights ahead. That is why the traffic stopped and

started again.

Q. Well, was the traffic stopped at the time you were approaching this vehicle?

A. No, it was not.

Q. Had it just started going?

A. The cars that were ahead of mine, they did not stop. They continued to go.

Q. Okay. And ten metres is the point in which he pulled out in front of you?

A. I had to keep -- I was keeping the distance the proper amount. It was a certain move and I was on this side.

MR. ELLIS: Okay, I have no further questions. Thank you very much.

THE COURT: Re-examination, Madam Crown?

MS. LETMAN: No.

THE COURT: Thank you, sir. Submissions, Madam Crown?

MS. LETMAN: The consideration, Your Worship, of whether the actions of the defendant, who is not here, constitutes starting from a stopped position not in safety, whether he had an opportunity to inspect the roadway prior to exiting the parking spot, and given the circumstances, should have seen the vehicle that was approaching from behind.

THE COURT: Thank you, Madam Crown. Mr. Ellis.

MR. ELLIS: Your Worship, first, may I ask my friend, I guess she's -- I didn't hear it. Did you close your case?

MS. LETMAN: Yes.

MR. ELLIS: Okay. I'm sorry, Your Worship. My submission at this point in time would be that there's three main elements to most crimes and/or offences, Your Worship, act, intent and identity, the identity being a big part of it. I would submit that the prima facie identification has not been made here today, Your Worship and I would be asking you to withdraw -- or dismiss the charge for that reason.

THE COURT: Rebuttal, Madam Crown?

MS. LETMAN: How can you make identity when you don't have a defendant. The Highway Traffic Act allows for people to appear by agent. That seems to me didn't intend -- it wasn't the intention of that provision to allow for cases to be dismissed because of the failure to identify, if the accused chooses to hire an agent.

MR. ELLIS: Your Worship, my friend did have the availability of an officer and that -- he is not here today, Your Worship, to identify the defendant and that normally is taken as proper identification by the court, Your Worship. Whether or not the defendant has chosen to be here or not today, it's not his choice. It wasn't a case of even weather in this case. It was a case of business, Your Worship.

THE COURT: Mr. Ellis, your pleadings on this

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motion, if the officer is not present, the defendant and the witness is present, the court will accept that as sufficient identification. Your client is not here. You have stated clearly the Act provides that a person may be represented by himself or his agent. You are representing this individual. The evidence was given. There was never a question as to identity. It hasn't been raised. The Crown's case is closed and submissions in determining or deciding to raise a motion for identity. It was never in question during the trial. It wasn't in question during the Crown's case, and certainly you did not have a case to put forward because your client is not here.

MR. ELLIS: Your Worship....

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THE COURT: Your motion then is denied, your seeking a motion to have an acquittal. Now, if you wish to make proper submissions on the facts that you have heard, the court will hear it.

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MR. ELLIS: Well, Your Worship, I can make submissions on the facts, Your Worship. You're talking about a defendant -- or a vehicle that was travelling at less than the speed limit in slippery conditions. I would contend that in this particular case, that ten metres at the time when he moves out in front of him in those particular conditions, would not be an abnormal and unsafe proposition,

Your Worship. It's slower than normal speeds the flow of the traffic, Your Worship.

Unfortunately Mr. Nolet is not here today. I guess it's a little late to ask you to put it over so that Mr. Nolet can attend at another date to give evidence, Your Worship, as he is out of town on business. But Your Worship, I would submit that there is a reasonable doubt there as to whether or not it was just a sudden accident here or is one where the car pulled out into traffic and then the other one failed to see it in time to actually avoid the collision, Your Worship. How many times have we come here today with a lane change or a rear ender that was caused in a similar fashion, Your Worship. I would suggest that maybe a lane change may have been more appropriate in this particular matter.

THE COURT: Mr. Ellis, the court has heard in evidence from the Crown's witness, Mr.

DaSilva, that in actual fact, he was some 30 feet back from this vehicle when the vehicle made this move from the curb into his lane.

He has also indicated that if he had moved into the other lane, he may have struck other vehicles. You're saying that the speed is abnormal. The speed as stated by him, he was doing some 30 kilometres an hour. He's travelling at 25 feet per second and this vehicle pulled out 30 feet ahead of him. It is obvious that he would not have had the

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opportunity to avoid the collision. On the evidence the court has heard, the court accepts the evidence of the Crown and a conviction then is registered. Is there a record?

MS. LETMAN: I'm not aware of one, Your Worship.

THE COURT: As to penalty, Mr. Ellis, the fine stands at \$90.

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MR. ELLIS: Thank you for the gist of the submissions, Your Worship.

THE COURT: Certainly, sir. Are you authorized to pay that today, sir?

MR. ELLIS: No, I'm not, Your Worship.

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THE COURT: How much time are you seeking?

MR. ELLIS: Because of the fact that Mr. Nolet is out of the country on business, I would be requesting 60 days on behalf, so to make sure that he does get back in time and also to give him the normal time period....

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THE COURT: Sixty days then is granted. Please tell him he can pay that any court.

MR. ELLIS: Thank you, Your Worship.

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THE COURT: Thank you again for your time, sir.

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

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M. Balloomeah

M. Balloomeah, Court Reporter

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