

ONTARIO COURT OF JUSTICE
IN THE APPEAL COURT FOR ONTARIO

5 HER MAJESTY THE QUEEN

RESPONDENT

v.

10 NORMAN STEELE

APPELLANT

15 *****

PROCEEDINGS ON APPEAL

20 Before THE HONOURABLE MR. JUSTICE P. HRYN,
on June 27, 2002, at TORONTO, Ontario.

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30 APPEARANCES:

MS. J. HOSEIN

MR. R. STEINMILLER

Counsel for the Crown
Counsel for the Accused

MS. HOSEIN: Next matter Norman - Norman Steele. This is matter - is number two on the appeal list.

MR. STEINMILLER: Good afternoon, Your Honour. My name is Steinmiller, initial R, spelled S-T-E-I-N, with a miller on the end, initial R. I appear as agent this afternoon, Your Honour on behalf of Mr. Norman Steele.

THE COURT: Yes, good afternoon.

MR. STEINMILLER: He's not present, Your Honour. I do have his instruction to proceed. I am prepared to do so. I can advise, Your Honour, this is a fairly lengthy issue. It deals with an issue that has been surfacing on a regular basis. And that is taxi drivers and as to whether or not they are required to wear a seatbelt. Now, I have a copy of the transcript, I believe my friend has, and if Your Honour has as well, we can sort of go through it.

The facts are not an issue. The facts are basically agreed upon. The defendant was a cab driver. He was operating his taxicab and he was not wearing his seatbelt and those facts were not the issue. The issue is whether or not there is an exemption under the *Highway Traffic Act*, which allows a cab driver to not wear his seatbelt. Now, I was the agent who argued this case in the original - at the original trial and I was relying on an exemption, which exists under s.613 of the *Highway Traffic Act* and if I may have a brief indulgence, Your Honour; I appear to have left my briefcase back here. I'll have to get it. My

apologies. The exemption exists under regulation 613, which deals with seatbelt assemblies. In my book it appears at page 577, but I don't know if Your Honour has the same year.

THE COURT: Regulation 613?

MR. STEINMILLER: That's correct, sir.

THE COURT: Yes.

MR. STEINMILLER: If I may refer Your Honour to the s.7, subsection - I'll actually start with s.s.3. It very clearly indicates that "the driver of a taxicab, while transporting for hire, a passenger is exempt from s.s.103 of the Act". Now, very clearly that indicates...

THE COURT: I am sorry. Again, please, what section - what subsection?

MR. STEINMILLER: I'm referring to s.7, s.s.(3).

THE COURT: Right, yes.

MR. STEINMILLER: Because s.s.3 deals with a situation where if a cab driver has a passenger, he does not have to wear his seatbelt. That's very clear from that section. The issue that keeps surfacing, Your Honour, is if a taxi driver does not have a passenger, is he required to wear a seatbelt or is he not? And in my respectful submission, that issue is addressed under s.s. 2, which appears above three. And I'll just read it for the record, Your Honour. It indicates "taxicabs are exempt from the requirement that a) upper torso restraints for driver seating positions and b) seatbelt assemblies in the center front seating positions not be removed, rendered partly or wholly in operative or modified so as to reduce

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their effectiveness". So, in a double negative way what they're saying is "a taxi driver, even when he does not have a passenger is allowed to not wear the upper part of the seatbelt". In fact, he's allowed to take it right out of his cab, if he chooses to do so. He doesn't even have to have it there. And of course this regulation goes back, Your Honour, to the days when seatbelts came in two parts. You had the lap belt and then you had the torso part that would fasten into the buckle. So, back then you could choose to wear the lap belt, without wearing the shoulder part. However, nowadays seatbelts come in one piece. So the issue, of course is, is the cab driver required to wear the entire seatbelt, even though he's not even required to have the top part or is he not required to wear either of it? And this is something that has been argued on numerous occasions.

THE COURT: But where - in 7(2) where is the exemption for the lap belt?

MR. STEINMILLER: I'm sorry?

THE COURT: In 7(2), there is no exemption for the lap belt.

MR. STEINMILLER: That's right. And the problem is, if he's exempted from wearing the top part, but the top and the bottom are all one, then the question becomes does he have to wear both, or is he required to choose to not wear either one? And there are three cases that have come out of this Court, Your Honour. And I have copies of them. They were produced at the original trial and as luck would have it, my colleague was the prosecutor

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at that original trial. And if I may pass them forward, Your Honour, they're not lengthy and I don't intend to read each one verbatim, but I think there are pertinent passages in each case that refer to this issue. And if I may, the first one goes back to 1984. It's a decision that was handed down in this Court from Judge Climans and it was on the same issue and ironically enough, if I could just refer, Your Honour to the second page of the writing. Now, the pages themselves are not numbered. On the second page of the transcript, Your Honour, Mr. Manraj (ph), who is the prosecutor for the Crown on line 27 reads into the record, the exemption. And if Your Honour will note, it reads exactly...

THE COURT: I'm sorry. Is your photocopy complete cause mine is difficult to read - it does not - the lines do not end.

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MR. STEINMILLER: Perhaps, I could give you mine. I'm not sure if yours is different, but it looks like they're one and the same.

THE COURT: Yes, could I see that. Now this is - yours is better.

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MR. STEINMILLER: I'll certainly take the other one back then, Your Honour. I've seen it so many times and argued it so many times in B court, I think I...

THE COURT: Oh maybe it is not.

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MR. STEINMILLER: ...practically have it memorized.

THE COURT: No they are both the same. I was looking at a different page when...

MR. STEINMILLER: I believe all the words are

there, although...

THE COURT: On that page, but they are missing on the previous page.

MR. STEINMILLER: ...they end very close to the page.

THE COURT: Yes.

MR. STEINMILLER: It's the second page of writing that I'm referring to Your Honour. And at line 27, Mr. Manraj, as I say the Crown prosecutor reads into the record the exemption. And without repeating it word for word, I think it's noteworthy that the exemption as it existed in 1984 is exactly the same as it is worded in the 2001 *Highway Traffic Act*. And this is where the problem arises.

So Mr. Manraj reads in the exemption and there is then some discussion as to what it means because it's clearly a double negative. But I think the telling passage comes on the final page of the transcript, where Mr. Manraj refers to it and says "Your Honour, that is double dutch". He's referring to the actual regulation and the way it's worded. And on the final page after he calls it double dutch, the Court agrees and says "it sure is, in any event the charge is on a taxi driver. In any event, failing to wear a complete seatbelt assembly doesn't apply. I'm going to allow your appeal, sir. It seems rather convoluted, but I'm going to allow the appeal and dismiss the charge". So at that point, 17 years ago even the prosecutor would have to agree that the wording itself is rather confusing and I think that is where the

problem arises.

Now, if I may, Your Honour, I refer Your Honour to the next decision, which came again in this courtroom in front of Judge Graham. And that's the matter of Hardeep Hundal. Judge Graham considered the issue and again it was the same situation. A cab driver had been - in this particular case, Your Honour, the Justice of the Peace had dismissed the charge. It was for a cab driver not wearing a seatbelt and Justice of the Peace can't dismiss the charge. The Crown then appealed that decision and it was this decision that I'm referring to again, without going through the entire transcript itself, Judge Graham - they actually read the exemption again and that's on page six of the transcript, at the bottom. "Taxicabs are exempt from the requirement", etcetera, etcetera, etcetera. And it goes on, but on the bottom of page seven, I believe starting at line 22, if I may, Your Honour. His Honour, Judge Graham says "if the driver of a taxicab, while driving for hire 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, I think the Justice of the Peace was right. They can amend the Act, I'm allowing your appeal". And then, because it was a Crown appeal, they correct that in actual fact they dismiss the appeal and they allow the acquittal to stand. So here we have Judge Graham in 1995, indicating that there is a complete exemption as he reads it and that the wording itself is confusing, at best.

Again, the issue comes back into this Court in 1998, this time in the Mcintyre case in front of Judge Salem. This - in this particular case, Mr. McIntyre was not represented, he had originally been convicted and had appealed that conviction. Once again, they go through the entire issue. The wording is still the same, but I think if, to cut through to the entire crux of the matter, on page 12 of the transcript, which is the final page, His Honour, Judge Salem sums up the entire issue, very succinctly. He says "I follow your logic", referring to the prosecutor's argument, "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 even his cab, is the one that is going to be convicted under this section. That doesn't ring true to me. This is an appeal, I'm going to allow the appeal. I'm not going to grant a new trial, I'm going to enter an acquittal".

So, I certainly realize, Your Honour is not bound by those three decisions, but I think there is a common thread running through them all. Number one that the legislation is at very best - or certainly confusing. But Judge Graham considered it to be a complete exemption. And that's how I read it as well. And that's how I would invite Your Honour to

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read it this afternoon. It seems rather strange to charge somebody for not wearing a complete seatbelt assembly, which is the wording that's on the offence notice, when he's not even required to have in his car the complete seatbelt assembly. The wording on the offence notice is "driver failed to wear a complete seatbelt assembly" and yet no matter how we interpret s.s.2, we all have to agree that they are allowed to remove the top part of the seatbelt. So, if a cab driver is required - or is not even required to have it, then how can you convict him, for not wearing a complete seatbelt assembly. And that is my argument in a nutshell, Your Honour.

THE COURT: What if the charge was not wearing his lap belt?

MR. STEINMILLER: Well there is no...

THE COURT: If the offence was not wearing a lap belt - there is no such offence?

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MR. STEINMILLER: There's no such offence. It's not wearing a complete seatbelt assembly. And this is where we run into a problem because nowadays you can't wear one without wearing the other.

THE COURT: What if you were driving an old car?

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MR. STEINMILLER: Anything manufactured, I believe before 1971 is an exemption under this particular Act. You don't have to wear - you don't even to have a two part seatbelt. So, it's an issue that keeps surfacing and I deal with it almost weekly in minor Traffic Court over here and every once in a while an appeal makes it way before the Court here. It's something in my respectful submission, Your

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Honour, should be settled once and for all, and I realize you're certainly not bound by the decision of these three Judges, but certainly the logic that they used in coming to their conclusions seems to apply to the regulation as it exists today. If you're not required to have it then how can you charge somebody for not wearing it? And I would ask Your Honour to find the same way. Now, I realize from looking through the transcript, there is another case and in all fairness to the Crown, that other case was presented to the Justice of the Peace before he decided to make his decision.

THE COURT: What is the other case?

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MR. STEINMILLER: The other case is the matter of Johnstone and it was rendered in this Court. I believe it was Judge Reinhardt. He took...

MS. HOSEIN: I have a copy, I can pass it on to His Honour.

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MR. STEINMILLER: Thank you.

MS. HOSEIN: Would you like a copy from this?

MR. STEINMILLER: I'm not trying to make the prosecution's case for them...

MS. HOSEIN: Yeah, you are.

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MR. STEINMILLER: ...but I'm not trying to be very fair in my submissions here, Your Honour. So, there is at least one case that I'm aware of and it's the only one that I'm aware of that came from this Court, that took a differing position. The only thing I can say in reference to the Johnstone case is in making his decision, Judge Reinhardt on line 13...

THE COURT: Line 13 or page 13?

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MR. STEINMILLER: Sorry, on page 13, agrees with the prosecution, but he doesn't give a reason for that. He simply says "the appeal is dismissed because in my view, the plain wording of s.s. 7, s.s. 3", which we've already looked at. That is dealing - when a cab driver has a fare, "is that the exemption is while the driver of the taxicab is transporting a passenger for hire, and that's an exemption so the appeal is dismissed". But he's only referring to s.s.3, he doesn't give any reason for choosing to disregard the provisions set out in s.s.2.

So, with respect to Judge Reinhardt, I don't think his reasoning takes into account the exemption that does exist, or in my respectful submission that exists under s.s.2. I think he was simply of the opinion that s.s.3 is very specific; if you have a fare, you don't have to wear it, so he didn't have a fare, he should have been wearing it. I think the logic in the other ones is what I would ask Your Honour to adopt this afternoon and find as did your three brother Judges that certainly as the regulation reads now, it is an exemption. Those would be my submissions. Thank you, sir.

THE COURT: But it is not an exemption to the seat - to the lap belt. It is only an exemption to the shoulder belt.

MR. STEINMILLER: I agree, but the charge itself is failing to wear complete seatbelt assembly. They have to either put a separate charge saying as a cab driver you must at least wear a part of it or

take out the regulation and the exemption altogether. It's creating confusion.

THE COURT: Where is the charging document?

MR. STEINMILLER: I believe I have a copy of it. No I don't, Your Honour. But the actual offence under 106, s.s.3, I assume we have a certificate before the Court, is failing to wear a complete seatbelt assembly.

THE COURT: I do not - I cannot find the certificate in my file. It may be here, I just - I have looked a couple of times, I do not see it.

MR. STEINMILLER: I have the original transcript, so we can just look on that and in the arraignment - oh, no we don't have the arraignment, we simply have the reasons for judgment. I can advise Your Honour, that having seen many, many of these, the actual wording of the offence is "driver failed to wear complete a seatbelt assembly" and it's pursuant to 106 s.s.3.

THE COURT: The arraignment is not here and I do not have the charging document.

MS. HOSEIN: Neither do I and that was a concern actually. And also the submissions made by Mr. Steinmiller previously is not included in the transcript. But, having said that, Your Honour, I would submit that Justice Harndall's (ph) decision stands given his reasons, as articulated here in the transcript. It's quite clear he indicated that if - the matter before the Court is clearly s.s. 106, s.s.3 and as I articulated already, if the driver - the taxi - driver of a taxicab is not transporting a passenger, he should be wearing his

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seatbelt. I indicted that all the vehicles on the road right now, have the completed seatbelts. We do not have seatbelts that come in parts, so hence this subsection that is being raised, which is seven - s.s. 7, s.s.2 is actually not even in question because the vehicles on the roads, they are all - according to the Ministry of Transport legislation is - carries with it the complete seatbelt as it is. If cab drivers want to adhere, Your Honour to this particular subsection then they have - the taxicabs should then remove the upper portion, if they want to adhere to this, but seeing that they have not removed that upper portion of their seatbelts and they continue to use the complete seatbelt as it is, then that section is no longer - does not really apply at all.

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The section that applies is, s.7(3), whereas the only exemption for the cab driver not wearing his seatbelt is that when there's no fare in the cab and the facts in this matter, as in the matter in the Johnstone's matter, the cab driver was not wearing - was not carrying a fare, did have a complete seatbelt and should be wearing that complete seatbelt.

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THE COURT: Is not the idea - I am not cutting you off here, but is not that exemption in 7(2) - all it - the exemption is that you can remove it. That the taxi driver - I mean that is all this says. It says a taxi driver is not...

MS. HOSEIN: That's s.s.2 you're looking at. That's the cabs. We are talking the charge before

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the Court is a driver of a cab - taxicab, I mean there in is a distinction there. If the cab's carrying and not having the upper portion of the seatbelt, then they should be removed from the cabs, if they're going to adhere to that legislation, but that they are not adhering to that legislation, Your Honour. They all have the complete seatbelt, so hence that does not apply. What applies would be the s. 106(3).

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There are other exemptions for not wearing seatbelts, but the - that again was not brought into question. The exemptions for not wearing a complete seatbelt is if there's a medical situation that is not the case; if they - if someone under 16, that's not the case; if the driver is alighting from his vehicle; making frequent stops and traveling at less than 40 kilometers an hour, then those are some of the exemptions and that is not the case in this situation. The situation is the cab did not have a fare and was not wearing his seatbelt.

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MR. STEINMILLER: Your Honour, if I may just briefly respond, not to belabor the point. Perhaps, I could just draw your attention to the s.s.1 of that same regulation. It reads "police department vehicles are exempt from the requirement that upper torso restraints seatbelt assemblies in the front center...

THE COURT: So s.1...

MR. STEINMILLER: ...center front seating position".

THE COURT: ...not s.s.1.

MR. STEINMILLER: Yes, s.1.

THE COURT: Yes.

MR. STEINMILLER: And if we look at that exemption, "police department vehicles are exempt from the requirement that upper torso restraints not be removed, rendered partly or wholly in operative or modified so as to reduce their effectiveness". And subsection - or s.2 says "a police officer who is transporting a prisoner is exempt from 106".

So, the same exemption that applies to a taxi driver, applies to a police officer. If a police officer has a prisoner, he doesn't have to wear it. He's allowed to not wear the top part, but what about if there is no way to wear one without the other. How many times have we seen police officers driving police vehicles not wearing their seatbelt? And yet have we ever seen them charged? It's the same exemption that they rely upon...

THE COURT: But that is a different issue...

MR. STEINMILLER: It's the same exemption...

THE COURT: ...whether they are charged or not.

MR. STEINMILLER: ...it's worded identically.

THE COURT: I appreciate that part, but I - just because someone is charged or not charged I do not look at that to interpret legislation.

MR. STEINMILLER: No, I don't mean it that way in a negative manner towards the police department. What I'm saying is that police officers choose to not wear their seatbelt, while they're on general patrol. And the reason they're allowed to make

5 that choice is because the exemption exists here. They're allowed to have a police vehicle that doesn't even have an upper torso restraint. You could literally cut the top part of your seatbelt off and still be within the law.

THE COURT: So could a cab.

10 MR. STEINMILLER: My point exactly. So if a cab driver chooses to not wear the seatbelt because he doesn't even have to have the top part in the first place, but the top and the bottom are all together and he doesn't want to cut the top part off because then of course, if he uses it for his private vehicle as a lot of the cab drivers do, they're privately owned and operated, then when he's not on duty, now of course he's committing an offence because he doesn't have a complete seatbelt assembly. So it's a catch 22.

20 And my respectful submission is police vehicles are in the same situation. Police officers cannot choose to wear a lap belt without wearing the upper torso restraint. So they choose to wear neither, in some cases or in some cases, I've seen them wearing both, but the exemption is there. It gives the driver of the vehicle the option and the reason the option is there is because of that particular exemption that's been there for many, many years. The same exemption that Judge Graham called "confusing", the same exemption that the prosecutor called "double dutch" and the same one that, I would respectfully submit allows them to make a personal choice, as to whether they choose to wear

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it, or as to whether they choose not to. But to convict somebody for not wearing a complete seatbelt assembly, when he doesn't even have to have a complete seatbelt assembly, just seems to fly in the face of logic.

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THE COURT: Well, I need the charging document, I need something. I do not want to just - we do not have the transcript indicating what he was arraigned on and I don't have a copy of the certificate here.

MS. HOSEIN: Is that something that the court administration can provide - the charging document?

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MR. STEINMILLER: Normally it's here. I don't understand why it wouldn't be before the Court. If it helps at all, Your Honour, Mr. Ophano (ph) has kindly provided us with an offence notice, indicating the wording for 106(3). I could show it to my friend if you like

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MS. HOSEIN: That - again that will not be...

THE COURT: No I need the one for this particular case.

MS. HOSEIN: Yes.

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MR. STEINMILLER: It's simply an example of how it's worded.

THE COURT: Why do we not take the afternoon recess, see if we can find that and we will come back and finish off the list.

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MR. STEINMILLER: Certainly, Your Honour. My concern is that it might be at Edward Street.

THE COURT: That is fine, if we do not find it then we will have to do something else about it, but we will take the - we have not had the afternoon

recess, it is already after four.

CLERK OF THE COURT: All rise.

THE COURT: And maybe you - the prosecution could speak to the remaining cases and see what can or cannot be resolved and whether anybody wants to adjourn their cases because I do not want to sit too late, but we will take a break and then we will come back.

R E C E S S

U P O N R E S U M I N G :

THE COURT: Yes.

MS. HOSEIN: Yes, Your Honour, I have spoken to my office and I'm informed because of the transition, the certificate was held in one location and the staff is another location, so at this time a staff member is coming from 137 Edward to go to the fourth floor to try and retrieve the certificate. I'm not sure we can get it done before the Court ends today, but it is certainly available for the Court's viewing.

THE COURT: Yes, and the case before Judge Climans.

MS. HOSEIN: Judge?

THE COURT: Climans. I have got a - first page I - it is difficult reading. But more important than that it seems that there is a page missing. I have been trying to read this. It does not make any sense. If you look at the bottom of the first page, it is Mr. Manraj speaking and then at the top - that sort of ends without...

MR. STEINMILLER: Yes.

THE COURT: And then at the top of...

MR. STEINMILLER: Mr. Manraj speaks twice.

THE COURT: He is saying "that's right, Your Honour" as if he is responding to something that the Judge said, but I do not have what the Judge said.

MR. STEINMILLER: I think the pages are reversed, Your Honour, because I think if we read at the bottom of that page you're referring to where Mr. Manraj is talking.

THE COURT: Yes.

MR. STEINMILLER: He says "Your Honour I'll find it; exemption for a taxi cab" and then it appears driver is cut off, but if we skip a page and go to the next one, is regulation 485, "yes, Your Honour, it says here". So I think, with my apologies, I think the second and third pages have been switched around.

THE COURT: Just so we all have the same case what are you saying the order should be?

MR. STEINMILLER: It should be...

THE COURT: Can I have a staple please.

MR. STEINMILLER: I'm going to have to number these when I make up a new batch. Every time I make the argument I give a whole new set to the prosecutor and obviously this one got messed up. So, it should be in the order of Mr. Manraj at the top of the first page, where he says "Now, Your Honour, we go back to" something that's cut off a...

THE COURT: Yes.

MR. STEINMILLER: ...little bit and then the second page should start "is regulation 485". And then

5 the third page is Mr. Manraj again where it says
"that's right, Your Honour". I do believe I have
better copies back at my office. If we're going to
have to put this over to find the certificate I'll
certainly bring a better one.

THE COURT: Yes, what date then, please?

MR. STEINMILLER: Is Your Honour here tomorrow?

10 THE COURT: No, I am here next week, but not in
this - not assigned to this Court. I am sorry, I
am away next week, I am back the week after that.
Let me just look.

MR. STEINMILLER: I'm here everyday, Your Honour,
so whatever is agreeable with you and my friend is
certainly fine with me.

15 THE COURT: Well, I am in criminal courts on the
eighth, ninth, 11th and 12th. I am not sitting on
the tenth and I am on vacation and I do not think
the courts are sitting on the week of the 22nd.

MS. HOSEIN: No.

20 THE COURT: And in August it seems that I am -
August the 14th I appear to be in L court.

MS. HOSEIN: August 14th?

THE COURT: Yes.

25 MS. HOSEIN: Is it blocked off there? I believe
it's blocked off.

CLERK OF THE COURT: No it's not.

MS. HOSEIN: No? Oh, okay.

CLERK OF THE COURT: It's open now.

30 MS. HOSEIN: August 14th?

THE COURT: That is the only one that I can see and
I do not have any - yes that is right. Yes, August
14th. Is that a date that is...

MR. STEINMILLER: It's fine with me, Your Honour, it happens to be my daughter's birthday.

THE COURT: Wish her happy birthday.

CLERK OF THE COURT: Back in this Court.

MS. HOSEIN: Yes.

MR. STEINMILLER: I see I'm here in the morning, is it possible we could put it on...

THE COURT: Yes.

MR. STEINMILLER: ...the ten o'clock list?

THE COURT: Yes. And if you have better copies of those cases, if you could just drop them off at the Judge's secretaries.

MR. STEINMILLER: I will. Are the other two legible, Your Honour or is it just the Szepiecewicz matter that got chopped off? I think I'll try and find better ones of all three.

THE COURT: No the other seems to be fine.

MR. STEINMILLER: I know the Hundal one seems to be a little bit...

THE COURT: It is a bit chopped.

MR. STEINMILLER: I'll try and get a better copy of them. As I said, I've photocopied them so many times, eventually they just start to disappear.

THE COURT: Yes, can I keep this file?

CLERK OF THE COURT: Yes.

THE COURT: Or is the transcript...

CLERK OF THE COURT: Just mark it on the docket.

MS. HOSEIN: Would that be at ten a.m.?

THE COURT: Yes, what day did I give again? I just did not write it down.

MS. HOSEIN: August 14th.

THE COURT: August 14th, yes that is right.

August...

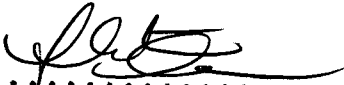
MS. HOSEIN: Ten a.m.?

THE COURT: Yes.

MR. STEINMILLER: Thank you, Your Honour.

THE COURT: Yes.

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.


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Christina Chiu

Court Monitor

ONTARIO COURT OF JUSTICE

NORMAN STEELE

v.

HER MAJESTY THE QUEEN

R E A S O N S F O R J U D G M E N T

BEFORE THE HONOURABLE, MR. JUSTICE P. HRYN
on Wednesday, August 14th, 2002, at TORONTO, Ontario
Courtroom L, Old City Hall.

CHARGE: Fail to Wear Complete Seatbelt Assembly

APPEARANCES:

T. Dimuzio, Esq.
R. Fragala, Ms.

Prosecutor for the Crown
Counsel for the appellant

2.

Reasons for Judgment - Hryn, J.

MR. DIMUZIO: Your Honour, if I could deal with number one, Norman Steele. I'm not quite certain what's happening with this matter. I don't know if Your Honour is rendering judgment with respect to this this morning or if there is still more to be done with this appeal. I'm not quite sure.

MS. FRAGALA: Good morning, Your Honour. Fragala, F-R-A-G-A-L-A, initial R. I'm appearing this morning for Norman Steele. Your Worship, initially, this was Mr. Robert Steinmiller's case. Mr. Steinmiller has passed away on July 14th and I'm appearing on his behalf this morning for Mr. Steele.

However, we don't know at this point where this case is sitting right now, as we went into his office and just took his files and we have to locate the defendant and there's no number here for the defendant -- appellant. Sorry.

THE COURT: I am ready to give judgment. You can have a seat or, if you prefer, you can stand.

MS. FRAGALA: Thank you.

R E A S O N S F O R J U D G M E N T

HRYN, J. (Orally):

In the matter of Norman Steele, the appellant appeals his conviction under s. 106(3) of the Highway Traffic Act, failed to wear complete seatbelt assembly.

3.

Reasons for Judgment - Hryn, J.

The appellant is a taxi driver who was driving his taxicab without wearing any seatbelt assembly.

At the time the appellant did not have a passenger so the exemption in Regulation 613, s. 7(3), is not applicable.

The appellant submits that, because of the taxicab exemption found in Regulation 613, s. 7(2), the matter is ambiguous and that any ambiguity should be resolved in the appellant's favour.

Section 106(3) of the Highway Traffic Act reads:

"Subject to ss. (5), every person who drives on the highway a motor vehicle in which a seatbelt assembly is provided for the driver shall wear the complete seatbelt assembly in a properly adjusted and secured fastened manner."

While s. 7(2) of Regulation 613 reads:

"Taxicabs are exempt from the requirement that upper torso restrains for drivers' seating positions and seatbelt assemblies in the center front seating positions not be removed, rendered partly or wholly inoperative or modified so as to reduce their effectiveness."

And s. 7(3) of Regulation 613 reads:

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"The driver of a taxicab, while transporting for hire passengers, is exempt from ss. 106(3) of the Act."

Section 106(3) requires the driver to wear the complete seatbelt assembly, while s. 7(2) exempts taxicabs from the requirements of s. 106(2) with respect to upper torso restraints.

I have been referred to four cases of this court, sitting as Appeal Court under the Provincial Offences Act. Those judgments are: R.v. John Szepiecewicz, dated December 20th, 1984; R.v. Hardeep Hundal, dated January 26th, 1995; R.v. Glen Johnstone, dated June 29th, 1995; R.v. John McIntyre, dated October 16th, 1998.

Three of those cases, Szepiecewicz, Hundal and McIntyre, which pre-date and post-date the fourth case of Johnstone, support the appellant's position and entered or upheld acquittals for taxicab drivers in fact situations similar to the case at bar. In Johnstone the Court found for the Crown.

I have reviewed R.v. White, 108 C.C.C. (3d), the Ontario Court of Appeal upheld at 125 C.C.C. (3d) 385 by the Supreme Court of Canada and two judgments of Justice Granger in the Ontario Court of Justice, General Division, as it then was, in R.v. Jarrett {1993} Ontario

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Judgment Number 676, and R.v. Koziolik {1999} Ontario Judgment Number 657.

In R.v. Koziolik, Justice Granger refers to R.v. Jarrett, at page 13, as follows:

"The Conformity View

This view suggests that Judges ought to follow previous decisions of their colleagues unless certain specific situations exist. In Re Hansard Spruce Mills Ltd., {1954} 4 D.L.R. 590, 13 W.W.R. (N.S.) 285, Wilson J. stated at page 286:

"But, as I said in the Cairney case, I think the power, or rather the proper discretionary duty, of a trial judge is more limited. The Court of Appeal, by overriding itself in Bell v. Klein, has settled the law. But I have no power to override a brother judge, I can only differ from him, and the effect of my doing so is not to settle but rather to unsettle the law, because, following such a difference of opinion, the unhappy litigant is confronted with conflicting opinions emanating from the same court and therefore of the same legal weight. That is the state of affairs which cannot develop in the Court of Appeal.

"Therefore, to epitomize what I have already written in the Cairney case, I say this: I will only go against a judgment of another judge of this court if:

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(a) Subsequent decisions have affected the validity of the impugned judgment;

(b) It is demonstrated that some binding authority in case law or some relevant statute was not considered;

(c) The judgment was unconsidered, a nisi prius judgment given in circumstances familiar with all trial judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.

"If none of these situations exists, I think a trial judge should follow the decisions of his brother judges."

In R.v. Northern Electric Co. Ltd. et al {1953} 3 D.L.R. 449 (Ont. H.C.) McRuer, C.J. H.C.

stated at p.466:

"Having regard to all the rights of appeal that now exist in Ontario, I think Hogg, J. stated the right common law principle to be applied in his judgment in R. ex rel. McWilliam v.

Morris, (1942) O.W.N. 447 where he said: 'The doctrine of stare decisis is one long recognized as a principle of our law'. Sir Frederick Pollock says, in his First Book of Jurisprudence, 6th ed., p. 321: 'The decisions of an ordinary superior court are binding on all courts of inferior rank within the same jurisdiction, and, though not absolutely

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binding on courts of co-ordinate authority nor on that court itself, will be followed in the absence of strong reasons to the contrary.'

I think that 'strong reasons to the contrary' does not mean a strong argumentative reason appealing to the particular judge, but something that may indicate that the prior decision was given without consideration of a statute or some authority that ought to have been followed. I do not think 'strong reasons to the contrary' is to be construed according to the flexibility of the mind of the particular judge."

According to Chief Justice McRuer and Justice Wilson, the decisions of judges of co-ordinate courts are persuasive and should be given considerable weight unless there are very cogent reasons to depart from such decision.

At the bottom of page 12, at paragraph 15, Justice Granger continues:

"In my opinion, it is imperative in a large trial court such as the Ontario Court of Justice that as much certainty as possible be brought to the law until the Court of Appeal rules on a point. This can best be achieved by following the approach as set out by Chief Justice McRuer. Accordingly, although I find much merit in the approach advocated by Mr. Thomas, I feel I must follow the judgment of

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McIsaac J. unless there is some indication that his decision was given without considering the appropriate case-law. I am satisfied that McIsaac J. considered all of the relevant case-law. The criteria to justify not following a judgment of McIsaac J. does not exist in this case and, accordingly, the appeal is dismissed."

In the case at bar, the preponderance of cases of courts of co-ordinate jurisdiction have upheld the appellant's position. The criteria to justify not following those cases does not exist in this case and, accordingly, the appeal is allowed and an acquittal entered.

MR. DIMUZIO: Thank you, Your Honour.

THE COURT: Yes.

MS. FRAGALA: Thank you, Your Honour.

* * * * *

This is to certify that the foregoing is a true and accurate transcript of my recordings to the best of my ability and skill.



Jacqueline M. Johnston,
Official Court Monitor.