

ONTARIO COURT OF JUSTICE

THE CORPORATION OF THE CITY OF MISSISSAUGA

against

SHAWN CASSISTA

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P R O C E E D I N G S

BEFORE HER WORSHIP JUSTICE H. WEISS

on January 20, 2005 at MISSISSAUGA, Ontario

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OFFENCE: s. 3(1) - Compulsory Automobile Insurance Act

s. 7(5)(a) - Highway Traffic Act

s. 106(3) - Highway Traffic Act

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APPEARANCES:

C. Mariuz, Ms.

Prosecutor

S. Cassista, Mr.

In Person

THURSDAY, JANUARY 20, 2005

MS. MARIUZ: Numbers two, three and four, Shawn Cassista, please. And we're ready to proceed.

CLERK OF THE COURT: Stand up, sir, please. Shawn Cassista, you are charge on the 14<sup>th</sup> of June, 2004, 8:25 p.m., Winston Churchill Boulevard, northbound at Dundas Street West, Mississauga, did commit the offence of driver fail to wear complete seatbelt assembly, contrary to the Highway Traffic Act, section 106(3). How do you plea to that, sir

MR. CASSISTA: Not guilty.

CLERK OF THE COURT: And you are further charged on the 14<sup>th</sup> of June, 2004, Dundas Street West, west of Winston Churchill Boulevard, Mississauga, did commit the offence of fail to surrender insurance card, contrary to the Compulsory Automobile Insurance Act, section 3(1). And how do you plea to that, sir?

MR. CASSISTA: Not guilty.

CLERK OF THE COURT: And you are further charged on the 14<sup>th</sup> of June, 2004, Dundas Street West, west of Winston Churchill Boulevard, Mississauga, did commit the offence of driver fail to surrender permit for motor vehicle, contrary to the Highway Traffic Act, section 7(5)(a). And how do you plea to that?

MR. CASSISTA: Not guilty.

CLERK OF THE COURT: Have a seat there, please.

MS. MARIUZ: Officer Michel.

IAN C. MICHEL: Sworn

EXAMINATION IN-CHIEF BY MS. MARIUZ:

Q. Sir, on the date of the matters before the court, were you employed by the Ontario Provincial Police?

A. Yes, I was.

Q. Did you investigate this matter?

A. I did.

Q. Did you take notes with respect to that?

A. I did. I took notes immediately after this occurrence. They're before me today in black ink. I've made no alterations or deletions to these notes and require them today purely for the refreshment of my memory, though I do have a very clear and independent recollection of these events.

MS. MARIUZ: Seeking leave of the court, Your Worship.

THE COURT: All right with you, Mr. Cassista?

MR. CASSISTA: Sorry?

THE COURT: All right with you if the officer uses his notes to refresh his memory?

MR. CASSISTA: Oh, yeah, sure.

THE COURT: Go ahead, officer.

MS. MARIUZ: Thank you.

A. On Monday, the 14<sup>th</sup> of June, 2004 at approximately 10:25 p.m. I was on routine patrol, Winston Churchill Boulevard northbound at Dundas Street West in the City of Mississauga, Region of Peel.

MS. MARIUZ: Q. Can you repeat that time for me, please?

A. 10:25 p.m.

Q. Okay. The certificate reflects 8:25 p.m., all three certificates. I'd ask that you clarify that.

A. I'm sorry, the certificate is wrong-the time on the certificate is incorrect. It's 10:25. At 8:25 I was still at the office.

MS. MARIUZ: All right. Thank you, Your Worship. Seeking an amendment to the certificate to reflect

10:25 p.m. in accordance with the officer's evidence and in accordance with section 34 of the Provincial Offences Act.

5 THE COURT: All right, Mr. Cassista, the prosecutor is asking that I amend your certificate to change the time from 8:25 to 10:25 as per the officer's evidence on the stand. Is there anything you wish to say to that?

MR. CASSISTA: No, it was 10:25.

10 THE COURT: Amendment made. Go ahead.

MS. MARIUZ: Thank you.

15 A. At this time I observed a Ford motor vehicle with Ontario licence plate number of ALMH 783. This motor vehicle was in the left turn lane of Winston Churchill Boulevard, northbound. I had a clear view of the interior of this motor vehicle through the rear window of the motor vehicle. The motor vehicle's rear window did have a decal on it, but that decal did not prevent me from seeing the interior of the motor vehicle. I observed two male occupants inside the motor vehicle. The driver was a male. I observed two maroon coloured straps of the seatbelt assembly and a chrome buckle hanging freely beside the driver's left arm and shoulder. The straps were hanging in a vertical matter. It was dark at the time, however the area is well lit, being an intersection. There are numerous traffic lights illuminating the roadway at that time, and I was able to see the interior of the motor vehicle, the strap and the buckle. The buckle is actually reflecting the light from the street lights, which drew my attention to it. As the motor vehicle moved through the intersection turning left, I activated my cruiser's lights and sirens and stopped this motor vehicle on Dundas Street West, westbound near Winston Churchill Boulevard. At this time,

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5 prior to him stopping, I observed the male driver of the vehicle pull the seatbelt assembly across his chest, starting from his shoulder and then downward, diagonal manner; pulled the buckle across his chest with one of the straps. Upon approaching the vehicle, after I had it stopped I observed that the seatbelt assembly was in a secured position across his chest, different from what I originally observed when behind him. The driver of the motor vehicle was wearing a grey tank top at this time. The driver identified himself with an Ontario photo drivers licence card as Shawn A., I'll spell the surname of, C-A-S-S-I-S-T-A; with a date of birth of 06 July 10 1966. After a brief investigation for a criminal matter I issued the driver Provincial-I'm sorry, upon my request the driver failed to surrender the permit for the motor vehicle and upon my request he surrendered an expired insurance card for 15 Western(ph) Insurance, policy number 69WAH013025556 with an expiry of 28 January, 2004. It was an expired insurance card.

Q. Sorry, that was January 8<sup>th</sup>, 2004?

A. No, 28<sup>th</sup> of January, 2004, I'm sorry.

Q. Thank you.

20 A. As a result of my investigation and my dealings with the accused, who is seated before the court today, I served Provincial Offence number 67857243 for the offence of fail to surrender insurance card, contrary to section 3(1) of the Compulsory Automobile Insurance Act; as well as Provincial 25 Offence number 67857244 for the offence of driver, fail to surrender permit for the motor vehicle, contrary to section 7(5)(a) of the Highway Traffic Act; and Provincial Offence Notice number 67857242 for the offence of driver fail to wear complete seatbelt assembly, contrary to section 106(3) of the Ontario Highway Traffic Act. I did confirm the identification 30 of the driver with the photo on the photo driver's licence card

## I. Michel - In-ch.

and compared the picture to the operator and was satisfied that it was one in the same. Prior to my departure I had the accused again fasten his seatbelt in a secured matter. I observed the male portion and female portion lock tight and heard a click at that time and I was satisfied that the seatbelt was in good working order.

Q. Was there any permit that was provided to you at all?

A. None.

Q. Did you provide a reasonable opportunity to the defendant to obtain these documents within the motor vehicle?

A. I believe so. I was with the accused party for more than ten minutes.

Q. Okay. Thank you. All right, when you made your first set of observations, where were you with respect to that first set? When I refer to the first set, I mean your observations as the vehicle was in the left turn lane.

A. I was directly behind this motor vehicle.

Q. No motor vehicles in front?

A. None.

Q. And your second set of observations, when you refer to the defendant putting the seatbelt, where were you at that point?

A. Again, I was behind this motor vehicle. We were coming to a stop on Dundas Street.

Q. Any medical documentation provided to you?

A. None.

Q. To your recollection have you had previous or subsequent dealings with this defendant?

A. No.

Q. Did you ever lose sight of the vehicle?

A. No, I did not.

Q. Are you confident you stopped the vehicle that you initially observed?

A. Yes, I am. If I had any doubts in my mind I would not have stopped this motor vehicle.

Q. And in what city did this offence take place?

A. The City of Mississauga, Region of Peel.

Q. Thank you. I should ask, where these offences took place. All in the City of Mississauga?

A. Yes.

MS. MARIUZ: All right. Thank you. I have no other questions, Your Worship. Thank you.

THE COURT: Mr. Cassista, could you stand, please? Do you have any questions of the officer's evidence? Don't give your evidence at this time, just questions of him.

MR. CASSISTA: No, I've heard his statement, I guess I can't-I don't.

THE COURT: All right. Then you wish to give your evidence? You have no questions, is that correct?

MR. CASSISTA: That's right.

THE COURT: All right. Thank you, officer.

MS. MARIUZ: Case for the prosecution.

THE COURT: Thank you. Now, you wish to give your evidence?

MR. CASSISTA: Well....

THE COURT: You need to take the stand, sir.

MR. CASSISTA: All right.

SHAWN CASSISTA: Sworn

THE COURT: Go ahead.

EVIDENCE IN-CHIEF:

MR. CASSISTA: Basically, Your Honour....

THE COURT: You've got some notes there, I see.

MR. CASSISTA: Yeah.

THE COURT: Madam Prosecutor may want to see those.

MS. CASSISTA: Actually these notes were based on the time error.

THE COURT: Okay, let-perhaps-would you like to ask him questions about them, or seem them first?

MS. MARIUZ: Sure, I'll qualify the notes. Yes. I don't need to see them at this point, sir. When did you make the notes?

MR. CASSISTA: Well, I went over things in my head some time after the incident?

MS. MARIUZ: Do you know how far after the incident?

MR. CASSISTA: A couple weeks.

MS. MARIUZ: How long after, rather? A few weeks?

MR. CASSISTA: Yeah.

MS. MARIUZ: They appear to be on the computer, is that right?

MR. CASSISTA: Computer paper, yeah.

MS. MARIUZ: Okay, did you input them on the computer or did you write them and then transfer them onto the computer?

MR. CASSISTA: Basically just typed them into the computer.

MS. MARIUZ: Okay. But you don't when you did that?

MR. CASSISTA: Some time thereafter, you know, just to keep my memory fresh on-- basically what the officer did, make some notes.

MS. MARIUZ: Okay. And today you have some recollection of what happened on that day?



MR. CASSISTA: Yeah. Basically....

MS. MARIUZ: Without getting into what your recollection is, do you remember some of the details of that day?

MR. CASSISTA: Yeah.

MS. MARIUZ: Okay, Thank you, Your Worship. I don't have any objection.

THE COURT: All right. Go ahead, sir, explain what happened.

MR. CASSISTA: Basically the officer is right. He pulled me-well at the time he pulled me over, I was wearing my seatbelt. I never had it off at any time. He's saying that I put my seatbelt on after he pulled me over. That's totally false. I was wearing it well before then. Also, in regards to the ten minutes that he spent, the prosecutor asked if he gave me enough-if the police officer gave me enough time to look for my identification, my vehicle papers. He only gave me about a minute and a half. And, also, he left out an entire section where he actually asked me if I had anything to drink. I told him I had one beer and I spent about a minute and a half looking for my papers, which were in my glove box, but I couldn't see them because of the darkness. And in that minute and a half I was actually arguing with him about getting out of my vehicle, going into the-into his vehicle to blow into the Breathalyzer, and at that point he basically said these exact words, after I finally said I would commit and blow into the Breathalyzer; I basically said-or he basically said, don't worry about the papers we'll take care of it later. That was the last thing I heard about that. I went into the police officer's vehicle, blew into the Breathalyzer, waited in my car for about five minutes until he wrote up the tickets and he handed me the tickets. Now, I do have photos of my vehicle,

S. Cassista - In-ch.

S. Cassista - Cr-ex.

which has tinted windows....

THE COURT: Do you want to see the pictures, Madam Prosecutor?

MS. MARIUZ: I will after the evidence is given, thank you, Your Worship.

MR. CASSISTA: My vehicle has tinted windows; it was dark and obviously he made a mistake with the seatbelt. And as far as giving me enough time to look for my identification, there wasn't enough time and like I said he was basically arguing with me in the minute and a half that I was looking for the identification. So I didn't get much time to look at it, but it was in my glove box and it was tucked into a slot up in the upper section of the glove box. I did have my lights tinted-or my interior lights were on. And basically here is a picture during the day-I took a picture in daylight of the sunlight shining into the glove box and it's basically the same angle of the interior lights and that I couldn't see it. Now, he didn't give me any reasonable time to produce the identification, you know, 24 hours, 48 hours or what, which I kind of thought was usually the procedure, but obviously not. So he did just fine me.

THE COURT: Any questions, Madam Prosecutor?

**CROSS-EXAMINATION BY MS. MARIUZ:**

Q. At the beginning of your testimony, sir, you indicated that I basically agree with the officer, and in terms of that, do you agree with where you were travelling, the left turn that you made, the positioning of your motor vehicle, where that officer stopped you?

A. Pretty much, yeah.

Q. All right. So you agree with all of that. When

A. As soon as he flashed the lights.

Q. Okay. As soon as he flashed the lights, so not before that?

A. No.

Q. Okay. All right. And, sir, you have a photo with you today.

A. That's right.

Q. Is it a digital photo?

A. Pardon me?

Q. Is it a digital photo?

A. It's from a digital camera that I basically printed it off my computer.

Q. Have there been any alterations to the photo?

A. Well, I just put a couple of pen marks to show where the....

Q. Okay.

A. ...identification was on the slot.

Q. When did you take the photo?

A. About a month after the incident.

Q. Okay. All right.

A. It was actually in the parking lot, the exact area where I was pulled over.

MS. MARIUZ: Thank you. If I could approach, Your Worship?

THE COURT: Yes.

MS. MARIUZ: You can just stay up there, sir. If I could have the court's indulgence. If I could ask the officer to come forward, please. I appreciate the defendant's unrepresented, but typically the photos would have been produced to the officer by way of cross-examination.

THE COURT: Yes, that's exactly....

MS. MARIUZ: If I could just have a moment.

A. And actually, can I point something else out too?

MS. MARIUZ: Not at this time, sir. Just a moment.

5 Thank you. Q. Did you take the photo? Did you take that photo?

A. Yes.

Q. All right. And, sir, certainly when you obtained the tint—did you obtain the tint on these windows?

10 A. No, it's been on the windows for as long as I've had the vehicle.

Q. All right. And would you agree that they are the tint that is within the parameters of the Highway Traffic Act? They're not illegal tint, if you will?

A. I guess so, yeah.

15 Q. All right. Okay. The officer indicated visibility was quite good at this location, a lot of artificial lighting, you agree with that statement of the officer, the evidence of the officer in that regard?

A. I think it was pretty dark in that area.

20 Q. With respect to the lighting, is there artificial lighting at that intersection?

A. Some, yeah.

Q. All right.

A. Still pretty dark.

25 Q. Okay. All right. And, sir, had you had previous or any subsequent dealings with Officer Michel?

A. No.

Q. You had never met him before?

A. No.

Q. And haven't met him since?

30 A. That's right.

Q. All right.

THE COURT: Can I see your pictures, sir?

A. Sure.

THE COURT: I haven't had a chance. And this is an exhibit then?

MR. CASSISTA: Yeah.

THE COURT: All right. It will be exhibit one.

EXHIBIT NUMBER 1 - Digital Photograph (produced and marked).

THE COURT: Thank you.

MR. CASSISTA: And can I make that....

MS. MARIUZ: Q. Sir, you indicated that....

THE COURT: Just answer the questions.

MR. MARIUZ: Q. ...you had your seatbelt on for quite a bit before then. How long did you have your seatbelt on?

A. Since I left my friend's place.

Q. Is there anything that might explain what the officer had observed as you pulling towards the seatbelt and placing it on? Anything come to mind?

A. That didn't happen.

MS. MARIUZ: All right. Okay. All right, thank you. I have no other questions, Your Worship.

THE COURT: You may step down, sir. Thank you. Anything else you wish to say in closing?

MR. CASSISTA: Yes, actually there was one thing that I did not state and it was about the time when the officer was at my police vehicle(sic). He had his flashlights out and they were shining it in our faces....

MS. MARIUZ: Further evidence, Your Worship.

THE COURT: All right, just to sum up without repeating evidence. Just to sum up. Anything else

that you wish to say?

MR. CASSISTA: Well, I could have had some help finding this piece of-these documents in the glove box if the police officer would have shined the flashlights in there, instead of in our faces.

That's all I have to say.

THE COURT: Thank you, sir, Madam Prosecutor?

MS. MARIUZ: With respect to the defendant providing the documents, the evidence is not in dispute that they were not provided to the officer. Certainly no dispute at all with respect to the insurance card, the expired insurance card being provided. With respect to the permit, when I indicate a reasonable opportunity, of course I mean allow the driver an opportunity to obtain the documents within the motor vehicle. There is certainly no requirement for the officer to allow the gentleman 24 or 48 hours to provide the documentation. The officer indicated, also consistent with the defendant's testimony, that he was with the gentleman for approximately ten minutes, consistent with the defendant who indicates that the officer returned to his motor vehicle to write the ticket, during which time the defendant would have had an opportunity to obtain the documentation and to, at the very least, provide it to the officer prior to the traffic stop being completed. There is no evidence either from the officer or the defendant that that was done. I would suggest that there was a reasonable opportunity given and there is no dispute that those documents were not provided. With respect to the seatbelt defence, certainly the evidence of the

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officer and the defendant is diametrically opposed, however only with respect to whether or not the defendant was wearing the seatbelt. The defendant acknowledges his location, he agrees with the officer as to their placement with each other. He does indicate he did not know the officer was behind him until his emergency lights were activated; unaware of his presence behind him prior to that. The defendant can not explain what the officer had observed with respect to the motioning towards the seatbelt to place it on, and the officer's observations. The defendant did not provide any particulars with respect to the colour of the seatbelt or what he was wearing, whereas the officer offered very detailed, precise and exact information with respect to that contrast and his ability to see within the motor vehicle. In fact, he indicated that he observed the buckle, which brought his attention to it was the refraction of the light from the buckle. **Very clear testimony, Your Worship. It does come down to credibility. I ask the court to prefer and rely on the officer's testimony with respect to the issue of the seatbelt and enter a conviction on all three matters.**

**R U L I N G**

**WEISS: Justice of the Peace (Orally)**

Stand up, please, sir. All right, assessing the evidence....

MR. CASSISTA: Actually....

THE COURT: No, your turn is finished. It is my turn.

MR. CASSISTA: All right.

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THE COURT: The evidence regarding the insurance card and the permit, certainly the evidence is very clear that they were not produced and you gave submissions with regards to why that was so. Certainly those submissions can be taken into consideration when I assess a penalty. The bottom line is the facts do support convictions on those two and basically you did not surrender them. So I find you guilty of those two offences, the fail to surrender permit and fail to surrender insurance card. We will deal with the fines after.

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Now, when it comes to the seatbelt, the officer's evidence seemed to be pretty clear and he gave very thorough, detailed evidence. Then when you took the stand, you basically said that's not possible, I had my seatbelt on the whole time; you took some pictures, which were entered as an exhibit which I looked at. Certainly in the officer's evidence he did indicate there was a decal on the back, and I am thinking in my mind decal, little decal. When I see the exhibit, the back window is pretty much covered with printing and the officer did indicate his view through the back window. There is some doubt in my mind with regard to the seatbelt issue. I am dismissing that charge.

With regards to the other two, Madam Prosecutor, do you have submissions with the fines there?

MS. MARIUZ: Seeking the set fine, Your Worship.

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THE COURT: The fines for those, \$45 on the permit.



I am taking into consideration the submissions that you made with regards you didn't feel that you had a fair opportunity to look for these things. \$25 on the other one. So, we are looking at 45 and 25, and what time do you need to pay?

MR. CASSISTA: Thirty days.

THE COURT: Thirty days. Thank you.

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FORM 2  
CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2)).

Evidence Act

we K. ENNIS, certify that  
(Please print name of authorized person(s))

This document is a true and accurate transcript of the recording of  
SHAWN CASSISTA in the MISS. PROV. OFF. COURT  
(Case name) (Name of Court)  
taken at 424 HENSALL CIRCLE taken from Recording No.  
#2 21-05 (Court address), which has been certified in Form 1.

Mar 11/05  
(Date)

  
(Signature of authorized person (s))