

Ontario Courts of Justice
Provincial Offences Division

BETWEEN

SHAWN CASSISTA

APPELLANT

AND

HER MAJESTY THE QUEEN

RESPONDENT

FACTUM OF THE RESPONDENT, HER MAJESTY THE QUEEN

PART ONE – NATURE OF THE CASE

1. The Appellant was charged on or about the 17th day of May 2010 at approximately 12:25 PM, was on a highway in the area of Cawthra Road, in the City of Mississauga, did commit the offence of being the Owner of a Motor Vehicle, did operate the motor vehicle on a Highway when it was not under contract of automobile insurance, contrary to the Compulsory Automobile Insurance Act, Section 2(1)(a)
2. A Trial was held on the 19th day of July 2012 at 950 Burnhamthorpe Road West. The Presiding Justice of the Peace, Her Worship McLeod, at the conclusion of the trial found the Appellant guilty of the charge.

PART TWO – SUMMARY OF FACTS

1. The location of the incident was in the area of Cawthra Road near Dundas Street in the City of Mississauga.

Transcript July 19, 2012 Page 15 Lines 24 to 25

2. After some discussion Mr. Cassista entered a plea of not guilty to the charge of Operate No Insurance.

Transcript July 19, 2012 Page 13 Line 23 to 29

3. The vehicle being operated was Pontiac Montana with licence plate number [REDACTED] was stopped for a speeding violation.

Transcript July 19, 2012 Page 15 Lines 27 to 30

4. The individual was identified by an Ontario driver's licence as Shawn Cassista and the investigating Officer was satisfied with the Defendants identification at the time incident and in court.

Transcript July 19, 2012 Page 15 Lines 28 to 30, Page 16 Lines 1 to 6

5. Constable Smewing was provided ownership and driver's licence by Mr. Cassista.

Transcript July 19, 2012 Page 16 Line 7 to 8

6. Constable Smewing demanded Mr. Cassista to provide proof of insurance for the motor vehicle. At no time through the duration of the traffic stop did Mr. Cassista provide any proof of insurance for the said motor vehicle.

Transcript July 19, 2012 Page 16 Lines 10 to 11

7. Constable Smewing provided Mr. Cassista with his business card and allowed Mr. Cassista two days to proof of insurance, either by letterhead or pink slip.

Transcript July 19, 2012 Page 16 Lines 18 to 23

8. Constable Smewing waited until May 31, 2010, 14 days after the traffic stop before proceeding to submit the Part 3 Summons, and The Officer had not received any information from Mr. Cassista that the vehicle had valid insurance.

Transcript July 19, 2012 Page 16 Lines 23 to 25

9. From the traffic stop on May 17, 2010 until the trial date of July 19, 2012 Constable Swewing was never presented any valid insurance on the vehicle being operated that day.

Transcript July 19, 2012 Page 16 Lines 27 to 30

10. Mr. Cassista did not question the Constable Smewing about this evidence.

Transcript July 19, 2012 Page 17 Line 12 to 24

11. Documents were surrendered to the court under the hand and seal the registrar of motor vehicles to show that Mr. Cassista was the registered owner of the Pontiac Montana on the 17th of May 2010.

Transcript July 19, 2012 Page 17 28 to 32, Page 18 Lines 1 to 11

12. Mr. Cassista when questioned by court chooses not to say anything in defence to the charge.

Transcript July 19, 2012 Page 18 Lines 13-15

13. Her Worship McLeod convicted Mr. Cassista of the charges of Owner Operate without Insurance, as there was no evidence to contradict the Crown's Case.

Transcript July 19, 2012

Page 18 Lines 20 to 32, Page 19 Lines 1 to 32, Page 20 Line 1 to 13

PART THREE – ISSUES AND LEGAL ARGUMENTS

To the date this factum was produced the by the Crown, is still not in receipt of transcripts dated the following;

- June 23, 2010
- August 26, 2011
- January 4, 2012
- July 9, 2012

(The Crown has based its factum only on transcripts received from 20th December 2010 and the 27th May, 2011)

Mr. Cassista appeared on the 20th of December 2010 on a Defence Motion to change the original scheduled trial date for further defence preparation. Mr. Cassista motion was granted and a new Trial date was set for the 20th day of July 2011 @ 10:30am Courtroom M#2 (Transcript December 20, 2010 Pages 1 to 3)

Mr. Cassista again appeared on the 27th of May 2011 on another Defence motion to change the date of the 20th of July 2011 (Transcript May 27, 2011 Page 3) indicating he had not yet receive full disclosure. The Defence motion was granted and a new trial date was set for the 4th day of January 2012 @ 1:30 pm M#4. (Transcript May 27, 2011 Page 5 Lines 15, 17)

Mr. Cassista first requested disclosure dated on the 9th of February 2011. According this request and fax confirmation is in the Appellants authorities. Accordingly, a second request was made by Mr.Cassista on April 19, 2011 and subsequently he filed a motion on the 27th of May, 2011 on his request to change a July 20, 2011 Trial date.

The Crown supplied disclosure to Mr. Cassista and was ready on May 30, 2011. Mr. Cassista only provided a telephone number in which to be contacted when disclosure was available.

On May 31, 2011 at 1:03 pm notations were made by the disclosure clerk indicating the number provided by Mr. Cassista was called and a male spoke, who then requested a call back in ten minutes. The notations from the disclosure indicated that the same number was called another two times between 1:03pm and 1:07pm. The message received from the number dialled was the voicemail of "Shawn". A message was left accordingly indicating disclosure was ready to be picked up.

With the first request given on February 9th, 2011 to May 31, 2011 The Crown maintains a minor delay in preparation of disclosure was not unreasonable in this case.

The Crown picked up a form which indicates that the disclosure was picked up on the 9th day of June 2011 and was signed by Mr. Shawn Cassista. The Crown provided Mr. Cassista all the necessary disclosure to make a full answer and defence to the charge.

On the 30th day of August 2011 and November 25, 2011 Mr. Cassista requested further disclosure as to definitions of natural and artificial person.

The Crown was ordered by Her Worship Estaq Syme to provide the definition. The Crown provided a more than sufficient definition by November 23, 2011. At trial Mr. Cassista first objects to The Crown referring to his "Schedule A" (Transcript July 19, 2012 Page 8 Lines 14 to 22)

Mr. Cassista later admits that he was not satisfied with the answer provided. (Transcript July 19, 2012 Page 9 Lines 1 to 5) However, the Crown was satisfied with the answer provided and maintains these definitions do not enable Mr. Cassista from full answer and defence to the charge.

The Crown takes offence to Mr. Cassista motions and requesting for definitions of a person and the antics that transpired through the duration of this case. (All transcripts provided)

Mr. Cassista has indicated on a number of occasions that the Crown has lied to the court, however has not shown how this took place. Which all transcripts provided by the Appellant will indicate the opposite of that statement.

On 19th July 2012 Mr. Cassista attempted to submit a Timeline Sheet of the events surround this matter. Her worship McLeod referred to the information before her and put her findings of the information on record. Her Worship did not error in referring to the information which also provides timeline history. (Transcript July 19, 2012 Page 3 Lines 26-32, Pages 4 Lines 1-32)

The Respondent position Mr. Cassista has not conducted himself accordingly. The court can take notice that he did not respond to his name when it was called. He indicated he wished to be addressed by Shawn of the Cassista family. The Respondent submits it is a lack of respect to the court and its function.

The Respondent submits that Mr. Cassista plead not guilty to these charges on the 19th day of July 2012. With the transcripts that are available to the Crown, even the timeline given in the Appellant's factum that all the delay attributed in this case falls at the feet of Mr. Cassista. The Respondent gave all that is required with respects to disclosure for the defendant to make full answer and defence. Mr. Cassista filled motions that are not prudent to the charges as he is a person and he was charged accordingly.

The Respondent maintains there is no Charter Rights and Freedoms violation. Even if Mr. Cassista felt his rights were violated, he still pleads not guilty to the charge of No Insurance. He could have presented evidence in contrary of the Crown's case he decided to call no defence.

The Respondent submits the charge of No Insurance is a reverse onus charge and Mr. Cassista has yet to bring any evidence to show the Pontiac Montana in question had valid insurance on the 17th day May 2010.

PART FOUR – ORDER SOUGHT

1. The Crown asks this Honourable Court to uphold the conviction against the Appellant.

Dated 25th April, 2013



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