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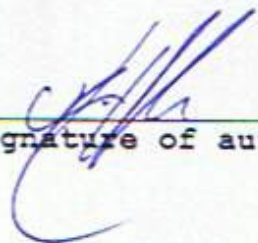
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ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

v.

SHAWN CASSISTA

PROCEEDINGS AT APPEAL

BEFORE THE HONOURABLE JUSTICE B.W. DUNCAN
on May 10th, 2013 at BRAMPTON, Ontario

COURT OF APPEAL FOR ONTARIO
FILED / DÉPOSÉ
SEP 09 2013
REGISTRAR / GREFFIER
COUR D'APPEL DE L'ONTARIO

APPEARANCES:

P. John
S. Cassista

Provincial Prosecutor
Appearing in Person

(i)
Table of Contents

ONTARIO COURT OF JUSTICE

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

WITNESS:

Exam.
in-Ch.

Cr-
exam.

Re-
exam.

E X H I B I T S

EXHIBIT NUMBER

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Transcript Ordered: April 8, 2013

Transcript Completed: August 24, 2013

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FRIDAY, MAY 10, 2013

MS. JOHN: Mr. Cassista.

MR. CASSISTA: Hi, I'm Shawn Cassista.

THE COURT: Yeah, what do you got there?

MR. CASSISTA: I was going to ask for permission to record this hearing for the purpose of making notes.

THE COURT: No.

MR. CASSISTA: No.

THE COURT: No, we have - we have an official court reporter here, and if you want a transcript of what occurred, you can order it.

MR. CASSISTA: Yeah, I know that, but they usually take quite a bit of time to get the transcripts...

THE COURT: Yes.

MR. CASSISTA: ...and I'd like to act on this as soon as possible. Are you still denying me?

THE COURT: Yes.

MR. CASSISTA: In that case, I'd like to just mention the Courts of Justice Act Section 136.2...

THE COURT: Right.

MR. CASSISTA: ...where it actually gives exceptions for the purpose of taking notes.

THE COURT: Yes.

MR. CASSISTA: Its law, I'm just....

THE COURT: No, you can - you can't do it.

MR. CASSISTA: Sorry?

THE COURT: It's at the Court's discretion, and I'm not going to allow it, so you can it turn it off. Turn it off and put it away.

MR. CASSISTA: All right, okay, that's fine.

THE COURT: Okay.

THE COURT: Now, Mr. Cassista, is that how you pronounce it, Cassista?

MR. CASSISTA: Cassista, that's right.

THE COURT: Yes, okay. I've looked at the material here, you're - you're appeal is based on a claim that you weren't tried within a reasonable time, correct?

MR. CASSISTA: It's an 11(b) Charter. I was originally trying to bring that motion....

THE COURT: 11(b) Charter is...

MR. CASSISTA: Yeah.

THE COURT: ...a trial within reasonable time.

MR. CASSISTA: But that was not allowed to be heard, I was denied the right to be heard.

THE COURT: Okay.

MR. CASSISTA: I was also denied the right to bring forward a motion, and I was also denied the right to respond to allegations that certain court dates were my faults in regards to delays in the trial - the court process.

THE COURT: Okay.

MR. CASSISTA: And....

THE COURT: Well, tell me about that.

MR. CASSISTA: Well....

THE COURT: Because the way I see this, you were embarked on a course here that - that just caused one delay after another.

MR. CASSISTA: I was not....

THE COURT: And the delay, this is a very simple matter. This is a very simple matter, you - did you have insurance, or didn't you? I noticed at the

trial, you didn't - you didn't challenge the police officer's evidence about the stopping and the no insurance. You didn't present any evidence that you were insured. Why all the hullabaloo here in this case?

MR. CASSISTA: I pleaded not guilty.

THE COURT: Yeah.

MR. CASSISTA: And I was going to make....

THE COURT: And the Crown eventually proved its case against you after you stopped bringing motions and applications for disclosure, and asking them to define natural persons and the rest of that stuff, right?

MR. CASSISTA: I do....

THE COURT: And your case was heard eventually by the trial judge, yet you presented no evidence, you presented no argument.

MR. CASSISTA: Did you thoroughly read this document here?

THE COURT: I've read the - what is that?

MR. CASSISTA: It's my factum and authorities document.

THE COURT: Okay.

MR. CASSISTA: It is very thorough in explaining the law.

THE COURT: Yes.

MR. CASSISTA: I bring up the fundamental principles in regards to the court process, and regards to, you know, a fair hearing.

THE COURT: Right. Well, we don't....

MR. CASSISTA: It's very well documented. You know,

I put a lot of time into this.

THE COURT: Okay, that's fine.

MR. CASSISTA: I would appreciate it if....

THE COURT: All right, but tell me what the merit of it is. It's fine to do an academic treatise on the - on the law and the justice system, but tell me how any of this applies to your simple case. Do you know?

MR. CASSISTA: Well, my simple case is....

THE COURT: Your simple case is that you were charged with no insurance and the prosecutor proved that case against you, after you - after months of your - of your various motions and things.

MR. CASSISTA: With all due respect, sir, I was bringing forward a motion that stated that I was not going to - that I was not tried in a reasonable amount of time.

THE COURT: Mm-hmm.

MR. CASSISTA: Okay.

THE COURT: Yeah, but it was manifestly without...

MR. CASSISTA: It was not, sir, it was clearly....

THE COURT: Pardon me?

MR. CASSISTA: It was clearly....

THE COURT: Without merit, is what it is clearly..

MR. CASSISTA: No, it was clearly the fault of the Crown.

THE COURT: Oh really?

MR. CASSISTA: Yes, absolutely.

THE COURT: Yeah, why is that?

MR. CASSISTA: I can bring my - if you look over this document here, there's court case law that

supports my argument, as far as the, you know, the onus of the Crown providing disclosure, and they made no attempt to do it.

THE COURT: Disclosure? Disclosure....

MR. CASSISTA: Yes, I did not get the original disclosure until after one year.

THE COURT: Disclosure, come on. What are you talking about? What do you need disclosure about? If you got the ticket, you were the one driving. You got the ticket, so you know you were driving....

MR. CASSISTA: But, sir, sir....

THE COURT: Listen to me. You were driving. There's no - you know, you don't need anybody to tell you that, and it was your onus to prove you had insurance. There's nothing for the Crown to disclose, yet you want to - you want disclosure - stuff about natural persons and all - all that kind of....

MR. CASSISTA: That's not accurate.

THE COURT: Yeah, well what disclosure were you waiting for, disclosure of what?

MR. CASSISTA: The entire disclosure document.

THE COURT: What?

MR. CASSISTA: Where is the disclosure here?

THE COURT: What disclosure would you possible need in a case like this?

MR. CASSISTA: I'm entitled to full disclosure in regards to what the witness....

THE COURT: Yeah, but what disclosure were you....

MR. CASSISTA: The police officer's statement, the notes.

THE COURT: Yeah.

MR. CASSISTA: I did not get that until after one year.

THE COURT: Yeah.

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X MR. CASSISTA: I mean, the whole idea of me - I'm not even - I'm not even clear - this isn't even the argument, the argument is - is that I didn't have a fair trial. I did not, was not allowed to bring forward two motions.

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THE COURT: Yes.

MR. CASSISTA: And I was not allowed to respond to the allegations regarding the dates. The transcript shows that, I've been in - I went into great detail in preparing this document accurately, it's all there. And I've also brought in - in response to the - the Crown's document, I don't know, have you read that? Have you read the Crown's response to - their factum to my....

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THE COURT: I have.

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MR. CASSISTA: Well, I've just gotten....

THE COURT: I have.

MR. CASSISTA: I got this two weeks ago.

THE COURT: Okay.

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MR. CASSISTA: And this is response, and I have created, you know, my closing arguments in regards to that response, which I would like to submit to the Court.

THE COURT: I'm sorry, sir, say that again?

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MR. CASSISTA: I would like to submit this document...

THE COURT: What is that?

MR. CASSISTA: ...with regards to - it's my closing arguments, I mean other than reading the whole in the court....

5 THE COURT: That's the argument you want to present here, is that what you want? Is that what you're saying?

MR. CASSISTA: So this is closing arguments in regards to response to their argument in - which is in response to my - my notice of appeal and my, my factum of authorities.

10 THE COURT: Yeah, so the closing argument today, you want to present? The argument you....

MR. CASSISTA: Well, if you'd - have you not seen their response?

15 THE COURT: I have.

MR. CASSISTA: You've seen their response and I'm responding to theirs with my closing arguments.

THE COURT: Okay, what else do you want to say?

MR. CASSISTA: Well, I would just like you to thoroughly read over the documents, because I - I am confident that you will make the right decision here, as this was not a fair trial at all. The whole legal process leading up to the trial, where I was denied the right to bring motions, okay? If I - if I challenge the law, that is my right to do so.

25 THE COURT: If you what?

MR. CASSISTA: If I am challenging the law itself....

THE COURT: What law would you - what law are you challenging?

30 MR. CASSISTA: The Compulsory Automobile Insurance

Act, if I am doing so.

THE COURT: Oh were you?

MR. CASSISTA: Well, I'm just saying if I am....

THE COURT: But were you?

MR. CASSISTA: It doesn't matter; I didn't get a chance to bring forward my motions. There was one motion on July 9th, I believe it was, where I was challenging the Acts because it was not in - not in harmony with the fundamental principles of law. It was supposed to be heard upon the trial date and, you know, that's what it was scheduled to be on the 9th, to be scheduled - scheduled to be heard on the 19th, and I was denied that right. I didn't even - I wasn't even allowed to address that. There's three things here that I have not been able to address and there's actually more. There's been absolutely no mercy on the Court's part to, you know, take the time to listen to what I have to say.

THE COURT: Well, you have a lot....

MR. CASSISTA: And that's not fair.

THE COURT: You have a lot to say...

MR. CASSISTA: Yes, well, I do.

THE COURT: ...and I'm not surprised if the Court, you know, ran out of patience with you, you know?

MR. CASSISTA: Well, with all due respect, sir, the purpose of the Court is to determine the facts....

THE COURT: But not to listen to everybody who wants to go on and on about the things that have no merit. The Court is not obliged to sit there and listen to that.

MR. CASSISTA: The fundamental principle of law....

THE COURT: Pardon me?

MR. CASSISTA: The fundamental principles of law are merit. I'm making arguments based on the fundamental principles of law. I'm trying to bring in a Charter motion, I mean, yeah, I was trying to bring a 11(b) Charter.

THE COURT: What was the Charter motion, that you weren't tried within reasonable time?

MR. CASSISTA: Yes, it took 19 months to set that trial date up, and it's because I did not get the disclosure documents until one year, and I make my case thoroughly in this document here, and I would like for the Court to take...

THE COURT: Right.

MR. CASSISTA: ...the time to really thoroughly go through this document and case law that I provided, as well as the fundamental principles of law that support my argument.

THE COURT: All right, have you got some written document that you want to present?

MR. CASSISTA: Yes, I do.

THE COURT: Okay, give it to me. Have you seen that?

MS. JOHN: No, do you have an extra copy?

MR. CASSISTA: Well, I do, I just only have two.

MS. JOHN: Okay, give His Honour, I - I will need a copy.

MR. CASSISTA: Okay, well they're closing arguments anyway. Bring it forward right up here now?

THE COURT: Give it to the Clerk.

MS. JOHN: I'll just glance through.

THE COURT: Go ahead; what else do you have to say?

MR. CASSISTA: Well, my closing arguments pretty much sum everything up. Basically, all I wanted to make clear is that I am asserting my rights and using the courts to determine the facts in law.

THE COURT: All right.

MR. CASSISTA: And I - I brought forward, or I was trying to bring forward some pretty viable arguments, as far as the Compulsory Automobile Insurance Act and I was unable to, and I was....

THE COURT: And what is your point about that Act?

MR. CASSISTA: Well, it's actually - I was going to prepare a long....

THE COURT: In a nutshell, what's your point about the Act, because...

MR. CASSISTA: Well, I....

THE COURT: ...it's somehow unconstitutional to require people to have insurance?

MR. CASSISTA: Well, I'm being forced into a private contract, and force is the opposite of freedom.

THE COURT: How would you suggest it be done?

MR. CASSISTA: I'm just saying, I've been driving for - travelling for 30 years all over the place....

THE COURT: How would you suggest that we ensure that people are insured?

MR. CASSISTA: Well, I'm just - I'm not talking about the general public here, I'm just talking about myself here....

THE COURT: Well, you can't have separate laws for everybody, so....

MR. CASSISTA: I'm simply exercising my natural

rights, and if people want to consent to that, that is up to them, and it really....

5 THE COURT: Laws are not imposed on the basis of consent, sir.

MR. CASSISTA: Sure they are.

THE COURT: No, they are not.

MR. CASSISTA: There's a fundamental principle of law that states consent makes the law.

10 THE COURT: Yeah.

MR. CASSISTA: And nothing is so opposed to a consent as force and fear.

15 THE COURT: Laws are imposed upon people, okay? By a democratic process in our country, and not so democratic in other countries. It's not a matter of consent. I don't like paying taxes, I don't like a lot of the laws, but it's a social contract that we enter into by being a member of this society and that you're governed by what our legislators tell us and decide should be the law, and that's the way it goes. It's not a matter of you consenting to be insured.

20 MR. CASSISTA: Well, with all due respect, sir, I don't vote.

25 THE COURT: You what?

MR. CASSISTA: I don't vote and these laws that are being passed are infringing on my rights and they are unconstitutional in my opinion.

THE COURT: Well, this is - it's just manifest nonsense.

30 MR. CASSISTA: It's not manifest nonsense.

THE COURT: It....

MR. CASSISTA: Either way, I did not get a chance to bring forward these arguments so they could really be looked at and I am here today to say that a fair trial....

THE COURT: I've got your written argument, thank you very much. Do you want to say something?

MS. JOHN: No, I'm relying on the facts, Your Honour.

THE COURT: Yeah, okay. Well, I'll take this, I haven't had much time to read it today, so I'll take it under advisement and I'll give you a decision in due course.

MS. JOHN: Okay, thank you, Your Honour.

THE COURT: This is your address here, Truscott Drive?

MR. CASSISTA: Yes - or what, are we going to set another date to come in or?

MS. JOHN: No, no.

THE COURT: No, I'm going to give a decision.

MS. JOHN: It will be mailed to you.

THE COURT: I'll read your material, I'll read your argument, and I'll give you a decision.

MR. CASSISTA: All right.

...WHEREUPON THE MATTER IS CONCLUDED