

ONTARIO COURT OF JUSTICE
IN THE MATTER OF THE PROVINCIAL OFFENCES ACT R.S.O. 1990

HER MAJESTY THE QUEEN

v.

NELSON SOARES

* * * * *

P R O C E E D I N G S A T T R I A L

BEFORE HIS WORSHIP JUSTICE OF THE PEACE R. WHITTAKER
on November 25th, 2003
at Old City Hall, TORONTO, Ontario

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CHARGES:

Careless Driving
Highway Traffic Act
Section 130

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Appearances:

P. McMahon

Municipal Prosecutor

T. Brown

Agent for the Defendant

ONTARIO COURT OF JUSTICE
T A B L E O F C O N T E N T S

	<u>Exam.</u> <u>in-Ch.</u>	<u>Cr-</u> <u>exam.</u>	<u>Re-</u> <u>exam.</u>
<u>WITNESSES:</u>			
CASSIDY, Sean	3	11	
5	*****		

10			26
REASONS FOR JUDGMENT			

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Transcript Ordered: December 5, 2003			
Transcript Completed: January 21, 2004			
Transcript Party Notified: <u>JAN 30 2004</u>			
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Arraignment
S. Cassidy - in-Ch.

November 25th, 2003

MR. McMAHON: Nelson Soares, line ten.

MR. BROWN: Thank you. Good morning, Your Worship.

THE COURT: Good morning.

MR. BROWN: My name is Todd Brown -- B-R-O-W-N --
the first initial "T." agent for Mr. Soares, who's
not before the Court, but I appear with
instructions, Your Worship. I'm ready to proceed.
Mr. Soares is aware of my status as agent and not
counsel.

THE COURT: Thank you.

MR. McMAHON: If I could have the charge read,
please.

CLERK OF THE COURT: Nelson Soares stands charged
on the 31st day of the 12th month, the year 2002, at
1:20 p.m., at eastbound Dupont Street at Ossington
Avenue, Toronto, did commit the offence of careless
driving, contrary to the *Highway Traffic Act*,
section 130.

To this charge, Mr. Brown, on behalf of the
defendant, how do you plead, guilty or not guilty?

MR. BROWN: Not guilty, Your Worship.

THE COURT: Thank you.

MR. McMAHON: Thank you. I'll call the
investigating officer, please.

SEAN CASSIDY: SWORN.

EXAMINATION IN-CHIEF BY MR. McMAHON:

Q. Good morning, Officer Cassidy.

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A. Good morning.

Q. Sir, on the 31st of December of 2002, by whom were you employed?

A. Toronto Police Service.

Q. In what capacity?

A. Police constable.

Q. Did you make notes relating to the matter before the Court?

A. Yes, I did.

Q. Do you have those notes with you here today, sir?

A. Yes, I do.

Q. When did you make them?

A. At the time and shortly after my investigation.

Q. Since then, have there been any changes to the notes?

A. None whatsoever.

MR. McMAHON: At this time, Your Worship, I'm seeking your leave to have the officer be able to refer to his notes to assist him in giving evidence this morning.

THE COURT: Is there any objection, Mr. Brown?

MR. BROWN: No, Your Worship. I understand that those are the notes that were disclosed.

Accordingly, I am not opposed.

THE COURT: Thank you. Proceed, officer.

THE WITNESS: Thank you, Your Worship.

MR. McMAHON: Q. Just tell us what you know of the matter before the Court, sir.

A. On the 31st of December in the year 2002, at approximately 1:20 p.m., I was operating a uniformed police

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5 vehicle, scout car number 1403, westbound on Dupont Street in the City of Toronto. My vehicle was in the lane closest to the centre of the roadway. I observed a white Acura bearing Ontario
10 licence marker AMBB 820. I was drawn -- my attention was drawn to this vehicle as it was travelling at a high rate of speed. I estimated the speed to be approximately 80 to 85 kilometres per hour. I also noticed as the vehicle passed me that the front windshield was cracked and the vehicle appeared to be in poor
15 condition.

The roads that day were wet. The weather conditions were overcast and cold. Dupont Street is a two-way undivided highway. It has four lanes, two lanes going westbound and two lanes going eastbound with markings on the roadway. The
20 road conditions that day, I noted, were good, level and in good repair.

As the vehicle passed me, I began to conduct a U-turn of my vehicle in order to follow the vehicle as it was travelling at the high rate of speed, and my intention at that
25 point was to stop the vehicle and investigate it for the offence of speeding. As I conducted my U-turn, I maintained a visual on the vehicle and I observed the vehicle swerve into the oncoming westbound lane closest to the centre of the roadway. As the vehicle swerved into the oncoming lane, there was a large truck that was coming westbound in that same lane. I observed the
30 truck had to suddenly brake in order to avoid having a head-on collision with the vehicle in question. At that point, I observed the Acura suddenly swerve back into the eastbound lane and continue eastbound on Dupont Street.

30 This area of Dupont Street as you approach Ossington Street -- there is a fork in the roadway. I've made an illustration in my notebook to indicate that. The fork in

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the roadway as you're proceeding eastbound on Dupont Street, you can continue eastbound on Dupont Street where you come to a controlled intersection at Ossington Street; or if you wanted to go northbound on Ossington Street, you would have to cross over two westbound lanes of traffic to the fork in the roadway. There's an actual island in the middle of the fork in the roadway, at which point you would approach a stop sign at the intersection of Ossington Street and you could continue northbound.

I observed this Acura vehicle, after coming back into the eastbound lane, make that turn to the forked area. I observed it, the vehicle....

Q. Is that to the left or the right?

A. It would have been to the left, so it would be making a left-hand turn. The vehicle did this in a rather aggressive manner, squealing the tires, making no effort to stop or yield for any of the oncoming westbound traffic.

At that point, I observed the two westbound lanes of traffic, both vehicles, both lead vehicles had to suddenly brake to avoid, again, having a collision with the Acura.

MR. BROWN: I have an objection, Your Worship.

THE COURT: Yes?

MR. BROWN: It seems that Officer Cassidy is giving evidence that, to put it bluntly, is all new to me. I don't note that any of this was disclosed. I hope that the notes that he's referring to are the ones that were disclosed. We've just heard of two vehicles approaching along Dupont. This is clearly germane to the offences before the Court. It's rather important information. It's the first I've ever heard of it, Your Worship, and I thought that

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I had had complete disclosure. I don't know what Mr. McMahon's comments are on it, but I thought what I had was clear, Your Worship.

5 **MR. MCMAHON:** If I could approach the officer, and perhaps he could point out to me in his notes? Do you have any objection, Mr. Brown, of me approaching the officer?

10 **MR. BROWN:** No, I do not. No, no. Certainly, it will be helpful in resolving the....

15 **THE WITNESS:** I have -- I've made notes on the back of the ticket that I issued the defendant. I also made notes in my memo book for that date. In my notes, I've indicated here where the truck approaching has to brake; the vehicle turns, continues northbound -- or, sorry -- turns to northbound Ossington, high rate of speed and the tires are squealing. And in my other notes here, I have indicated that it makes a lane change into oncoming westbound traffic on Dupont Street.

20 **MR. MCMAHON:** And if I could just consult with Mr. Brown to see the material he has?

25 **MR. BROWN:** Certainly. All right. Your Worship, under the circumstances, I think that I have a better understanding of how the officer's memoranda is being used.

MR. MCMAHON: In the disclosure, just for the benefit of the Court, it's described as "oncoming traffic."

30 **MR. BROWN:** I'm content, Your Worship.

THE COURT: All right. Proceed, officer.

THE WITNESS: Thank you, Your Worship. After

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5 observing the vehicle make the turn onto northbound
Ossington Avenue, I initiated a traffic stop. At
that point, I approached the driver and made a
demand that he produce his driver's licence,
ownership and proof of insurance. At that point,
the driver identified himself as Nelson Soares with
an address in Toronto with a valid Ontario Class G
driver's licence. He also provided the other
10 documentation I requested.

15 During my conversation with Mr. Soares, I noted
that there appeared to be a strong odour of
marijuana coming from his vehicle, and I further
noted that his eyes appeared very bloodshot and he
was exhibiting characteristics of somebody who
would be under the influence of marijuana.

MR. McMAHON: Q. What are those characteristics?

20 A. Characteristics would be he's -- his face
appeared very, very flushed; his eyes were bloodshot. When I
was asking him for his documentation, he appeared to have a
difficult time concentrating on what I was asking him for. He
was fumbling around, looking for his documents. I had a
conversation with him about that, and I asked him if he had been
25 using any marijuana that day, and he admitted to me that....

MR. BROWN: Objection. The defendant's admissions
have no place in these proceeding without at least
the benefit of a *voir dire*.

30 **MR. McMAHON:** Yes. We're not seeking to enter that
into evidence.

Q. Just continue further with your evidence, sir.

A. Okay. Following my investigation, I

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investigated the defendant for some other criminal matters, and subsequently I laid the charge that's before the Court today.

Q. What city did this occur?

A. This occurred in the City of Toronto.

Q. You indicated that when you first observed the defendant, that he was operating this vehicle at 80 to 85 kilometres per hour?

A. I estimated the speed to be approximately 80 to 85 kilometres an hour.

Q. And this is on Dupont. Are you able to tell the Court what the posted speed limit is on Dupont?

A. Yes. Dupont Street is an unposted 50 kilometre an hour zone.

Q. You indicated that this is a two-way roadway, it's undivided and there are markings on the roadway. What are the markings on the road?

A. The markings on the road are -- there's two eastbound lanes and two westbound lanes. Dividing those two lanes, there is a white -- I'm not sure of the correct term -- white markings, divided markings, I guess, would be the correct term.

Q. Okay. Originally in your evidence, you told us that it was undivided. Now, you're telling us that the lanes are divided.

A. Undivided by any structure.

Q. No median.

A. No, there's no median; no structure. There is a two yellow lines indicating the centre of the roadway, and then there's white broken lines separating the two lanes, eastbound and westbound.

Q. Over what distance did you make your

5 observations? You indicated that when you first made your observations, you were on Dupont, that you made a U-turn and made further observations. Eventually, the defendant proceeded northbound on Ossington. What distance did you make your observations over?

A. I would estimate that the distance between me first observing the vehicle and the time of the vehicle stop was approximately 500 metres.

10 **MR. BROWN:** I didn't hear that.

THE COURT: Five hundred metres.

15 **MR. McMAHON:** Q. You indicated that what drew your attention to the vehicle was the fact that (a) it was travelling at a high rate of speed and, (b) the vehicle itself was not in very good condition. At the point where he made his first manoeuvre into oncoming traffic on Dupont, what was his rate of speed at that time?

A. The rate of speed was approximately the same rate of speed as when I first observed him.

20 Q. And further on Dupont when he traversed back into the oncoming lanes of traffic once again towards that Y-division, what was the rate of speed at that time?

25 A. That rate of speed was lower. I would estimate that rate of speed at being approximately 30 to 40 kilometres an hour, so he did slow his vehicle and then made the turn across the westbound lanes.

Q. You indicated when he made the turn across the westbound lanes of traffic at that time that his tires were squealing.

30 A. Yes.

Q. What caused those tires to squeal?

A. I believe the tires squealed as a result of the

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rate of speed that he made the sudden turn.

5 Q. Now, at that point, you indicated that there were two vehicles approaching in an oncoming fashion and both of those vehicles had to brake. What was the position of those vehicles? There's two lanes obviously, so....

10 A. The two vehicles were approaching. One was in the lane closest to the centre of the roadway. The other one was in the outside lane. The vehicles were driving at approximately the same rate of speed side-by-side. And when the defendant's vehicle turned in front of them, they both had to brake suddenly. I noticed that as I noticed both of the vehicles, the front hood of the vehicles went down, you know, down motion, indicating that the vehicle brakes were being
15 applied.

Q. Now, there were two individuals in the car when you stopped it. Who was the driver?

A. The driver was Mr. Nelson Soares.

20 **MR. McMAHON:** Thank you. Those are my questions.

THE WITNESS: Thank you.

THE COURT: Do you have any questions of the officer, Mr. Brown?

MR. BROWN: Yes, I do, Your Worship.

25 **CROSS-EXAMINATION BY MR. BROWN:**

Q. Officer Cassidy, is it in your notes anywhere that the estimate of this vehicle's speed as being 80 to 85 kilometres an hour?

30 A. No. I noted in my notes the vehicle was at a higher rate of speed. "HRS" was the abbreviation I used for "high rate of speed" in my notes.

Q. So you made no notation of the 80 to 85 estimate. You recall that that was an estimate that you had made at that time?

5 A. I recall the vehicle travelling at approximately that speed. I can't give an exact speed of the vehicle.

Q. Right. Did you make any notation as to the rate of speed that you offered in your evidence earlier when the Soares vehicle had slowed down? I think you said it was 30 to
10 45 kilometres per hour.

A. No. I just noted that it made the turn and the tires were squealing.

Q. Right. In your notes, you would agree with me, that you described a truck as being affected by the defendant's vehicle; is that correct?
15

A. Correct.

Q. And you've made reference to oncoming traffic.

A. Correct.

Q. Earlier, you made reference to two vehicles. Those two vehicles that were affected, does that include the truck?
20

A. No. The truck was affected by the first manoeuvre into the lane, the oncoming lane; and the oncoming traffic I refer to in my notes were the vehicles that were
25 oncoming when the actual turn was made.

Q. I understand. Now, when you had made the observations, the initial observation of the defendant's vehicle leaving the lane, you were behind the vehicle, travelling in the same direction as the vehicle; is that correct?
30

A. Actually, I was in the process of conducting a U-turn.

Q. So you hadn't actually completed the U-turn at that point?

5 A. No. I was coming around, faced -- about to face eastbound.

Q. Right. And how far were you from the vehicle at that point?

A. Approximately 50 metres.

10 Q. Just so we're clear, at the time that this observation was made, your vehicle would have been facing probably southbound; is that correct? Your vehicle would have been facing south?

A. My vehicle would have been facing southbound, going into a west -- or about to go westbound...

15 Q. All right.

A. ...or eastbound. Sorry.

Q. Now, you noted that the vehicles approaching had to brake...

A. Yes.

20 Q. ...is that correct? Did you have your emergency equipment activated on your police car at that time...

A. Not at that time.

Q. ...when you made the U-turn?

A. Not at that time, no.

25 Q. Would you be able to tell the Court if you were in the line of sight of those vehicles?

A. Of the oncoming vehicles?

Q. Yes.

30 A. I'm sorry. I don't understand. Would they be able to see me, you mean?

Q. Yes. I appreciate that that would be difficult to answer. Can you tell the Court any reason why they wouldn't

be able to see you?

A. Only that the defendant's vehicle would have been in front of me.

5 Q. You had indicated that the reason you had actually made the initial U-turn was because it was your view that the vehicle may have been speeding?

A. Correct.

10 Q. Did you have any speed-measuring equipment in your vehicle?

A. No.

Q. I think you had indicated that your intentions, after making a U-turn were to stop the vehicle for speeding.

15 A. My intention was to, at that point, was to follow the vehicle, perhaps pace the vehicle to see exactly what the speed rate was; and at that point, I would have initiated a traffic stop to investigate him for speeding. But at the time of my initial observation of the vehicle, as I indicated, I did not have any speed-measuring devices in my vehicle and I would have had to form more grounds to initiate a traffic stop.

20 Q. Right. Now, if you could assist me? When one is travelling eastbound on Dupont at this location, when you would be approaching Ossington, there are traffic lights at that intersection; is that correct?

25 A. Correct.

Q. Now, I'm going to suggest to you that eastbound vehicles would be provided with two lanes that proceed eastbound on Dupont and that those two lanes that are eastbound actually stop at the automatic traffic control signal at Ossington; is that correct?

30 A. Correct.

Q. A driver who was utilizing those lanes to his

left, he would see an island; is that correct?

A. Yes.

Q. Is there a triangular island there?

5 A. There is a small triangular island that separates the Y in the road from the actual roadway and the small roadway that leads up to northbound Ossington.

Q. You've described this rather unconventional intersection as a Y.

10 A. Yes.

Q. If you're travelling eastbound, you would be travelling up the stem of the Y; is that correct?

A. Well, you could travel eastbound either way. You could continue on, on Dupont Street and continue eastbound. It actually curves somewhat.

15 Q. Curves to the south; is that correct?

A. Slightly; or you could take the Y in the roadway and still be travelling eastbound but more in a northeasterly type direction.

20 Q. I'm going to suggest to you that to travel, to take the left-most path that leads to the left branch of the Y as you're going eastbound is almost a straight line, and it's actually Dupont that curves slightly to the right and to the south. Would that be accurate?

25 A. I would -- well, I would say both of the roadways curve. The roadway that goes up curves somewhat to the north and Dupont Street curves somewhat to the south, and...

Q. Right.

A. ...in the middle, there's the island.

30 Q. Right. Drivers who are taking the path that the Soares vehicle took, they would be met with a T-intersection at Ossington; is that correct?

A. Well, correct, yes. There is a stop sign that controls the vehicles entering Ossington.

5 Q. Right. Now, the only purpose for taking that route would be to turn left, which is north, on Ossington; is that correct?

A. Correct.

10 Q. It would be redundant to go to your left and turn right at the stop sign, wouldn't it, because you could easily do that at the lights?

A. Correct. You mean if you wanted to go southbound?

Q. Yes.

15 A. If someone were to be going southbound on Ossington, they would most likely take the roadway to the traffic controlled intersection and turn south from there, right.

20 Q. So making the leftward motion to take this route that eventually would lead one north, it's not anything close to a 90-degree left turn, is it?

A. No.

Q. In fact, you would have to turn your vehicle just slightly to the left to attend at the location where the stop sign is; isn't that correct?

25 A. No. You would have to turn your vehicle probably not 90 degrees, but you would have to turn your vehicle enough to cross the two westbound lanes.

30 Q. Right. As a driver would typically cross the westbound lanes, could you estimate for the Court the angle that they might be at to the flow of traffic? They're not going to be 90 degrees meeting westbound traffic, are they?

A. No, it would not be 90 degrees.

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Q. It's going to be an angle...

A. It would be less of an angle than that.

5 Q. ...substantially greater or less, I suppose it would be, depending on how you look at it, but....

A. It would be less of an angle than 90 degrees; yes.

10 Q. Yes. So, in fact, you would actually have to travel for at least a small portion. You would have to travel eastbound in the westbound lanes to get to that intersection.

15 A. No, not really; no, because as you approach that area, there's actually a break in the yellow middle -- the line in the middle of the road, the yellow line. There's actually a break there, indicating to drivers that that is the area to make that turn to that fork in the road.

Q. What were your concerns with regards to the Soares vehicle in relation to the break in the yellow line?

A. My concerns, meaning?

20 Q. You -- The conduct of the driver of this vehicle seemed to raise some concerns with respect to how he negotiated this leftward motion that would eventually take him to northbound Ossington. What were your concerns with that?

25 A. My concerns were that normally a vehicle making that, making that turn motion to go to that left lane, or the lane that leads up to the other side of the fork, normally a vehicle would slow down, yield to the westbound traffic and, in most cases, in moderate or heavy traffic, would actually come to a stop, wait for a break in the traffic, and then proceed through the two westbound lanes to the -- to the roadway up to the stop sign.

30 Q. Right. I'm going to suggest -- I'm sorry. Were you finished?

A. And the -- Mr. Soares' vehicle did not do that. It made a sudden motion, having no real regard for the oncoming traffic, squealing tires, and that raised some concerns for me.

5 Q. So the tires were actually squealing when he was making this leftward motion as opposed to the actual turn on Ossington?

A. Yes. His tires did not squeal onto Ossington.

Q. I see.

10 A. His tires squealed as he made the motion across the other lanes.

Q. You were behind the vehicle at this point.

A. Correct.

15 Q. Wasn't it your evidence earlier that the vehicle had actually slowed down before negotiating this movement and that it was travelling 30 to 45 kilometres per hour at the time?

20 A. My evidence was that it was not travelling at the same rate of speed when I first observed it. It did slow somewhat. However, I -- it was my opinion that the rate of speed of the vehicle was still excessive for the turning motion that it was attempting to make.

25 Q. That was your opinion. What was the estimate of the speed? Was I wrong in noting that your estimate earlier was 30 to 45 kilometres per hour?

A. That was my estimate, yes.

30 Q. Now, the initial movement that the Soares vehicle made, it was your evidence that it affected other users of the roadway and that the Soares vehicle had actually moved back to the right into what would be its appropriate lane, which was the eastbound lane of Dupont.

A. Correct.

Q. You would agree with me then that the Soares vehicle yielded to the oncoming traffic? Isn't that what the vehicle appeared to do?

5 A. On the first manoeuvre, the Soares vehicle turned into the lane; then I assume, upon realizing there was an oncoming vehicle, he came back into the eastbound lane.

Q. Well, how fast were these oncoming vehicles travelling?

10 A. Those vehicles were travelling at approximately the speed limit, which was 50 kilometres an hour.

Q. Right. There's a stop sign that controls the intersection, as you've already discussed, of eastbound Dupont and where one would typically drive if they want to go northbound on Ossington.

15 A. Yes.

Q. The Soares vehicle stopped at that stop sign, didn't it?

A. Yes.

20 Q. The Soares vehicle indicated its intention to turn left with a signal; isn't that correct?

A. Yes.

Q. And then proceeded northbound?

A. Correct.

25 Q. Which is where you stopped the vehicle, under the tracks?

A. Correct.

Q. Which is a bridge?

A. Yes.

30 Q. I'm going to suggest to you, Officer Cassidy, that there's a distinct possibility that as you were making your U-turn to follow the Soares vehicle, the drivers approaching

would have been observing a fully marked police car make a U-turn in the middle of the road without its emergency equipment activated and that there's no reason why that couldn't have been a deciding factor in those vehicles' braking. Would you agree or disagree with that statement?

A. I would....

THE COURT: I'm not going to allow that question. That's supposition. And no one knows at this date whether that could happen or not, Mr. Brown. That's purely speculative.

MR. BROWN: I understand, Your Worship.

Q. Now, it was your evidence that the vehicle was travelling probably 30 to 45 kilometres per hour when it negotiated the leftward, I won't call it a "turn", but motion to proceed to go northbound on Ossington. And I think it was also your evidence that at this period of time, the defendant's vehicle's tires were squealing. Is that correct?

A. The defendant's vehicle's tires were squealing as it was in the process of making the turn.

Q. Right.

MR. McMAHON: Sorry. I just want to be clear. Which turn?

THE WITNESS: The -- the second turn. Not the first one.

MR. BROWN: Q. Right. Could we describe this turn as the turn that would bring the vehicle onto the left branch of the Y that eventually touches Ossington, that that's when the vehicle's tires were squealing?

A. Yes.

Q. This is also when the vehicle's tires -- the vehicle was travelling 30 to 45 kilometres per hour; is that

correct?

A. Thirty to 40 kilometres an hour, yes.

5 Q. And he wasn't making a 90-degree left turn; he was making a leftward motion that is somewhat less than 90 degrees.

A. Somewhat less, yes.

Q. Yes. And, Officer Cassidy, the roads were wet.

10 A. Yes.

Q. So through all of this, it's your evidence that the vehicle's tires were squealing; is that your evidence?

A. Yes.

Q. You know Mr. Soares, don't you?

15 A. I've had previous conversations with him, yes.

Q. Yes. He's known, actually, in 14 Division; is that your understanding as a police officer?

A. He is known by the police, yes.

20 Q. Yes. You made notations that the vehicle was in a state of disrepair.

A. Yes.

Q. Did you look at the tires?

A. No.

Q. What does marijuana smell like?

25 **THE COURT:** That is not the charge before the Court. I am disallowing all that. Go on, Mr. Brown.

MR. BROWN: I'm actually finished, Your Worship. Thank you very much. Thank you, Officer Cassidy.

30 **THE COURT:** Thank you.

MR. MCMAHON: Thank you, officer.

THE COURT: Do you have any evidence you wish to

bring today, Mr. Brown?

MR. BROWN: I assume that's the case for the prosecution.

MR. McMAHON: Yes, that is the case.

THE COURT: No more witnesses.

MR. BROWN: I'm going to ask you to consider at this time an application for a directed verdict, Your Worship; a motion for non-suit better describes it. If you're prepared to entertain my submissions at this time?

THE COURT: Certainly.

MR. BROWN: The evidence of the investigating officer, although it doesn't describe perfect driving conduct, I make that concession -- in fact, it probably describes improper driving -- I don't think that it comes anywhere close to the threshold that is applicable in these types of circumstances. The obligation on the prosecution is to demonstrate to you that the driving conduct of the Soares vehicle in this case is deserving of punishment in a criminal way, that it's a breach of the driver's duty to the public, and that the duty falls so far short of the standard of reasonable care that it warrants penal sanctions. That's a very high threshold. There's another appropriate threshold that the Court ought to be mindful of, Your Worship: that this is a strict liability offence; it's a rarity of strict liability offences in that the defendant only need to raise a reasonable doubt as to whether or not he was driving with all due care and attention, as opposed to a number of other

strict liability offences where there's a positive onus on the accused person to demonstrate his defence on a balance of probabilities.

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Taking all of those things into consideration, the Court ought to look at the evidence as lead in its totality after the cross-examination. You will note that the impugned conduct includes an allegation of a high rate of speed. The officer's candid admission that it was only an estimate, taking him at his estimate, he's probably 30 kilometres per hour over the speed limit. The officer's evidence was that the Soares vehicle slowed to negotiate a rather slight left turn. It's probably not a turn; it's a motion. That it began to negotiate the motion, there were vehicles approaching. The Soares vehicle had already slowed down to 30 to 45 kilometres per hour. At that time, it swerved back into its appropriate lane of travel, in fact yielding, and the officer agreed, yielding to the oncoming traffic. Not a perfect scenario, Your Worship, but again far from the threshold that's going to make out a case for careless driving.

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The officer's evidence was that the Soares vehicle approached the traffic control at Ossington, it was a stop sign, that he stopped completely, that he activated his left-turn signal, that he proceeded northbound after having yielded to the northbound traffic or southbound traffic; and under all of the

5 circumstances, what you're left with is a vehicle
travelling along, to some degree didn't display
perfect driving conduct. There's no accident;
there are no injuries; there were no almost
accidents. And, in closing, I think that the Court
ought to be mindful of the fact that the
investigating officer, in his candour, is giving
10 evidence of a situation that took place back in
December of 2002. He was using notes to refresh
his memory. Upon refreshing his memory, his
evidence, Your Worship, was that a vehicle making a
leftward motion, not a left turn, in the rain at 35
to 40 kilometres per hour had squealing tires.
15 None of us are experts in this area of science, I
suppose; but if the Crown attempted to lead for you
an inference of aggressive driving by virtue of the
fact that there were squealing tires, I'm
suggesting to you that that evidence ought to be
20 rejected in its entirety. It just doesn't stand to
reason.

25 For those reasons, it's my submission that the
evidence, as led, does not call for a defence at
this stage, and it quite simply made out -- the
Crown has successfully made out a case for perhaps
one or two minor driving infractions, but has
fallen far short of the threshold, or the burden of
proof, for a careless driving conviction. Those
30 are my submission on the application for non-suit.
Thank you.

THE COURT: Thank you. Mr. McMahon?

5 **MR. McMAHON:** The Court heard that this particular vehicle operated by Mr. Soares was in an obvious state of dis-despair -- disrepair, rather, that the condition of the vehicle was such that it had a cracked windshield. When the vehicle was first observed, what drew the officer's attention to the vehicle was the fact that it was travelling at a high rate of speed, 80 to 85 kilometres per hour. We've heard from the officer that this is an unposted 50. We heard that the vehicle traversed over the centre line and proceeded into the lane for oncoming traffic. As a result of these actions, we know that a large truck had to avoid the vehicle and he took evasive action to avoid a head-on collision by braking.

10 The defendant Mr. Soares then travels back into the designated lane for him, approaches this Y-island, and using the words of Mr. Brown, proceeds in a leftward motion. In doing so, two vehicles had to brake to avoid a collision. We heard that the officer described these vehicles in a fashion that the hood dipped, indicating having braking. In fact, the wording that the officer used is that he made this leftward motion in an aggressive manner. In fact, the tires squealing is consistent with that. The rate of speed described was between 30 and 40 kilometres per hour.

15 The totality of the evidence supports a *prima facie* case. There's certainly ample, ample evidence to

support a *prima facie* case for the offence of careless driving. Thank you.

THE COURT: Thank you.

R U L I N G

Whittaker, J.P.[Orally]:

In regards to Mr. Brown's motion of non-suit, I must agree with Mr. Brown that Mr. Soares on the date and time in question did not show exemplary driving methods or skills, or lack of skills. He was obviously -- the officer stated under oath that he could not pace him enough, as he did not have any radar or laser equipment on his vehicle to pace him or track him electronically. He had to pace him. He did not have the time to do that. He may or may not have been speeding on the date and time in question. We will never know that. But regarding the charge that the officer did choose to charge him with, it was careless driving, the Crown has not made out their case; therefore, I am agreeing with the non-suit and staying the charge. Thank you.

MR. McMAHON: Thank you very much.

MR. BROWN: Good morning, Your Worship. Thank you.
