

Ontario Court of Justice

Her Majesty The Queen

Against

Naitram Seetaram

Reasons for Judgment

Before the Honourable Justice S. C. Maclean
At Oshawa, Ontario, on July 7, 2011

Appearances:

A. Midwood
M. Rombis

Counsel for the Crown
Counsel for the Accused

Reasons for Judgment

THE COURT: Mr. Seetaram, I am finding you not guilty. I am going to briefly go through the evidence here. The crown certainly had a case to present to the court and I am not critical at all of the charge being laid. There was certainly evidence of poor driving on the day in question as well as some symptoms of alcohol consumption.

I have a reasonable doubt that the level of impairment described here is sufficient to be proof beyond a reasonable doubt, even on the Stellato test where slight impairment is sufficient. I just do not think there is a clear enough case where I am satisfied beyond a reasonable doubt. I suspect there was certainly some impairment, but I do not now that it arises to the level that is required by the criminal standard. Obviously, the benefit of any reasonable doubt goes to Mr. Seetaram, and that is where I have ended up here, is basically with a reasonable doubt, not that I think there was no impairment. If I were to suspect there was alcohol to a point that could cause impairment, I would say I have a light level of suspicion, but it does not go beyond that.

So very quickly- Officer Harris on July 4th, 2010, was working on uniformed patrol and he saw Mr. Seetaram's vehicle on the 401 in the area of Whites Road and Liverpool. Then he saw the vehicle being unstable in its lane. Officer Harris was a bit contradictory on what he was seeing. It seemed at one point in cross-examination that he was describing the vehicle weaving back and forth between lanes two and three, then at another point he seemed to say the vehicle held its position, straddling the line between- about a meter on the right tires- a meter over the lane between the second and third lane, but I am satisfied that the vehicle was not being driven properly.

Mr. Seetaram, I just want to make it clear to you, you know that the law now is, you cannot speak on a cell phone without Bluetooth headsets or things like that. The officer pulled up beside you and he saw that you were talking on your cell phone

with your right hand while steering with your left, and of course that is illegal now. So do not ever do that again, ever. Obviously, the observations were over a half a kilometer. Five hundred meters on a long distance and for half a kilometer you were in the wrong lane, like, you have not picked your lane or stuck to your lane. The thing I have some concern about here is whether- and I consider there was constant speed of 110- so 10 kilometers over the limit. Not an excessive speeding, but still speeding. So we have you maintaining a certain speed and crossing the line and maintain that position, no weaving back and forth for a long distance.

It may be consistent with being on the cell phone or it may be a combination of fatigue, cell phone use and alcohol. You admitted to the police on your video in your interview that you were very tired, you only had three hours of sleep, went to bed at 3:00 a.m. You were on a combination of medications- you were on sleeping medication, you were on medication for diabetes and you were on some stress medication. We do not know what that medication is- there is nothing wrong with being on any of them, but you agree that with your stress medication, you were not supposed to combine alcohol with it, and you admitted that you had had something to drink in the morning. That you had been out late the night before, so you were really tired. You have mentioned a few times how tired you were to the officer. Anyone who is really tired even without all of these other factors should never get behind the wheel of a car and especially not on a high speed, 400- series highway, like the 401.

So you were being very selfish getting into your car that day and doing where you thought you needed to go. People do it all the time, they think, oh, I have to go somewhere, what does it matter? But what matters is, you could end up hitting someone on a high speed highway in this condition while you are being in the wrong lane and talking on a cell phone. So it is a terrible, terrible combination of factors here. So I want to make sure that my finding you not guilty does not send you the wrong message, because you did a lot of things wrong here. Driving when you are too tired, combining alcohol with medication when you are not supposed to and

talking on a cell phone- all at a speed of over the legal limit. You created a hazard on the road and I am happy that the officer stopped you before anything happened to you or anybody else.

The officer made observations after he stopped you- first of all you pulled off, quite appropriately responded to the officer, signaled, no problem with that or with parking. It was a moderate traffic, you were not interfering with any other vehicles and when the officer pulled you over, he noted an odour of alcohol on your breath which we know, you admit you were drinking. An odour of alcohol does not mean you are impaired, that means you had something to drink.

You co-operated fully with the police all throughout, including the breath test, you tried your very best to give a good sample and samples were not obtained that were suitable, because of some interference- probably some medication you were on. We do not know what- that is not before me in evidence here. The officer's grounds for believing you were impaired was of course the driving, the fumbling and talking on the phone, and he said unsteadiness on your feet.

With respect to the fumbling, he asked you to produce your documents- your licence, ownership and insurance, which you did quite readily. But he said you were fumbling with it, all while holding a cell phone in the same hand. Frankly, I do not know how you would produce something with a cell phone in your hand, without having it be awkward. So I am prepared to give you the benefit of the doubt that maybe the fumbling was due to that, it may have been due to alcohol too, I do not know. That is the point, I am not sure.

I do not look at pieces of evidence in isolation, I look at the totality of whether there is proof beyond a reasonable doubt here, but that particular symptom is possibly explained by the cell phone in your hand. I agree with Mr. Midwood, why would you not just put the phone down. You know, an officer is pulled you over, it is more important than whatever phone call you are trying to make, frankly. The officer says

as you get out of the vehicle, you assisted yourself by holding onto the door and you seemed to have problems placing your feet- he described it at different points in his evidence as sort of like shuffling of your feet, as trying to have difficulty locating it. I would assume, to Mr. Midwood's surprise, when he asked you how you walk today compared to that, he said, you lean to the left and you have a problem walking normally. I do not know what that means, but that was, I am guessing, an unexpected answer from the officer (and the officer in his honesty and fairness came through again there). I do not know for sure that Mr. Midwood was not expecting that, but as a crown I would not normally expect that response. The point is though, there is some indication from that officer that he thinks that you have an abnormal gait when you walk normally based on what he saw here today. I can say from watching you on the videotape that I did not see anything abnormal about your balance at all and you did not perform the physical tests at the police station with the breath technician, which is your right. You have the right to do no tests, I am sure duty counsel gave you advice for that and you were quite appropriately within your rights not to do that.

I have to say I watched closely on the video- when you enter the room, there is no notice of any problems moving or balance issues. You are standing there and there is swaying side to side, but I took it more as you are just shifting your weight, like a person would, who is normally doing it when they are waiting- standing up and waiting, would shift weight. I have seen videos where people are swaying- like swaying back and forth, what people do when they are impaired. This is more a shifting of your weight, so the officer may describe that as swaying. I actually did see that and it was not what I would consider swaying by impairment, at least not in my opinion. I then saw that you were seated and there was no swaying at all, you are seated quite still and without any difficulty, no balance issues when you are seated. You are seated for a lot of the time we see you on the video, so obviously we would not be able to see your balance much there, but you are very still, very calm and very co-operative. Other than dropping the mouthpiece, which I do not know whether that would be a sign of impairment at all or fatigue- it could be a number of things. It

does not really matter, because I am finding you not guilty, but I did not that you dropped the mouthpiece and the officer quickly replaced it for you.

Apart from that I did not see anything else with fine motor skills. Constable Stever, the breath technician, had said he noted some difficulty with fine motor skills. I am not sure what he had you doing that would require fine motor skills but the officer also fairly conceded it could equally be due to somebody being really tired, which we know you were, from what you told the officer. So we do have the officer at the scene, indicating that you seem to have some difficulty with your balance as you walked back to the cruiser and I do accept Mr. Midwood's evidence, someone could have physical symptoms and then back at the station they may not be present any more, but it does cause me to have some concern about the fact that there is just nothing evident- the officer brought you back within minutes to the police station and there is nothing evident that I see consistent with the lack of balance or coordination. I am not suggesting Officer Harris is being dishonest, because I believe he has been very fair here, but whatever he saw of your difficulty getting out of the car or perhaps moving to the cruiser, I am not satisfied that it was anything beyond minimal that would lead me to find with all of the other evidence that there is sufficient evidence of impairment.

Then we also have the other officer at the scene saying, no slurring of the speech at all, he dealt with you throughout. The officer who was here today said he did observe that there was slurring. I did not. I heard you speaking, I noted an accent. I actually made a note to myself before the officer was asked- accent, no slurring. So it may be just his interpretation of your accent and how you pronounce your words, but I was not with you the same length of time in terms of me watching you on the video as the officer was, but I did not note any particular words what you would have any difficulty with. You appeared to understand fully everything that was being said to you by both officers, at the roadside and the officer at the station.

There was no issue with you comprehending anything or answering inappropriately in any way that did not seem responsive to the question. You always responded, in fact you were quite thoughtful about some of your responses- when you were asked about your medical history by Officer Stever at the station, you are saying this does not seem right (and you meant) that I should have to tell you about these personal issues. So he respected that he understood, but then he became concerned for your medical health because of your readings- something to do with the interference of the machine and he quite appropriately was looking into it and they called an ambulance and the police treated you very, very well in this case- took care of your needs, were concerned about your health when they saw the results, and did everything right in my view.

Apart from what I have described in terms of the fumbling and being unsteady on your feet and the odour of alcohol, there really were no other symptoms. Nothing was noted about the eyes by the arresting officer and yet the officer at the station noted glassiness to your eyes and he fairly conceded that could be due to a number of issues and I am not sure what might explain it here, I do not have any evidence. I am not going to speculate, but that again alone is not enough even in combination with other things here. It would not satisfy me beyond a reasonable doubt of impairment.

All of these things can be very subjective and we have officers who are well trained, very experienced to deal with a number of people and they are allowed to give their opinion. When there is a difference of opinion between two officers, it causes the court to have a little bit of concern, there was another things I had concern about Officer Harris' evidence, if that he did not note the difficulty getting out the car and that was something he said he remembered. I honestly think he was trying to tell us the truth here, so I do not want you to misinterpret what I am saying, but the case law tells me that when an officer does not note something significant like that I am supposed to place less weight on it. The reason being, because he is investigating an

impaired situation, you would expect he would note something- like a person getting out of the car and having difficulty.

While I believe he is trying to be honest here I have to place less weight on that, because if it was significant as he said I just wonder why he did not note it. There may have been something he noted about how you got out of the car, so again I am not suggesting he is trying to mislead the court, but it causes me to have some concern about the strength of that observation or how significant the issue was, if he did not even make a note if it. Then of course we have as I have already mentioned the evidence at the station where there is no evidence of any of that kind of a problem taking place. Sorry, I am just going through my notes. I did not print them out yet, so I am just looking at my computer. There is no difficulty with you getting out of the cruiser or being taken into the station, although the officer did have his arm on you. Then he was fair to say, well, I was holding him because of the arrest, not because he needed to be held up. Also it was interesting that Officer Stever did not make any note about whether you are fit or impaired by consumption of alcohol and he did not note anything about the effects of alcohol- none, slight, obvious or extreme.

I do know in other cases- and I do not know that I should take judicial notice of this, but I just know from years and years of court, that officers will tick the boxes, even if co-ordination tests are not done. This officer said he did not make a note of it, because he felt those are really observations that are better connected to watching someone perform those tests and actually that is a very logical approach to it. So maybe this officer's practice is that he does not note it when he does not have the person performing those tests. The only thing is again, he made no note of any opinion if impairment and again, I am not suggesting he is being dishonest, but I again attach less weight to it. When he does not note anywhere that he believes your ability to operate a motor vehicle was impaired by alcohol, because that is one of the reasons he is there to observe you, in addition to administering the breath test.

Again, it is just not a matter of thinking he is dishonest, just a matter of me attaching less weight to it. And even if the officer in his experience had the opinion, I still have a legal standard that I need to meet and it is not enough for just an officer to think that. I have said here, I find you not guilty, because I have a reasonable doubt that the level of impairment you were showing was sufficient to meet the criminal standard. But again, in the strongest of language, if I could put you on an order today to say you are not allowed to have any cell phone in your car- I would, I would, I am telling you that. That is now the law, so you cannot have a phone. – And that is why there is a new law that you cannot, so I think the cell phone may be as equally a contributing factor to your bad driving here as any fatigue or alcohol. But please, do not get in your car when you are in this condition- whether it is for medical reasons, fatigue or whatever. And do not be talking on the cell phone or texting or doing any of that either, because you know- you seem like a nice gentleman, you obviously have a family, you were coming from a family celebration, just imagine what would happen to the family reunion if it was like, guess who died today on the 401? It happens a lot and I have had many cases where people have died or have been seriously injured, so you do not want that and you do not want to hurt anybody else I am sure. So, please, just think about all of that when you leave here today, okay? So thank you very much, Mr. Rombis and Mr. Midwood.

MR ROMBIS: Thank you, Your Honour.

MR MIDWOOD: Thank you, Your Honour

THE COURT: And you are certainly free to go, Sir, at this time.