Information No. N/A

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

v.

LEO-PAUL RICHER

R E A S O N S F O R J U D G M E N T

BEFORE JUSTICE OF THE PEACE OLESEN-SCHINKE
on January 21, 2025, at SUDBURY, Ontario

APPEARANCES:

Y. Zhang	Counsel for the Crown
M. Scott	Counsel for Leo-Paul Richer

ONTARIO COURT OF JUSTICE

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

LEGEND

[sic] Indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) Indicates preceding word has been spelled phonetically.

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TUESDAY, JANUARY 21, 2025

THE COURT: Good morning.

J. SCOTT: Morning, Your Worship.

THE COURT: Okay. So, good morning, Counsel. I know we're here for a decision at nine, and then we'll move into regular court docket. So I'm in a position to provide the decision, unless there's anything, any housekeeping items or anything in respect to the matter, from either counsel. No? Okay.

R E A S O N S F O R J U D G M E N T

OLESEN-SCHINKE, J.P. (Orally):

Leo-Paul Richer, herein referred to as the defendant, is before the court in relation to a five-count *Provincial Offences Act* Information with charges stemming from the 28th of August 2024 within the City of Greater Sudbury, Northeast Region. Count 3 of the Information was withdrawn at the request of the prosecution, so the court is only considering counts 1, 2, 4, 5 here today. As per the agreed statement of facts, the date, location, identity of the defendant are not in question.

Further, it is agreed that the defendant was driving a yellow Matrix Nexa travelling in lane number two on the Kingsway Avenue; that it is a highway as defined under the *Highway Traffic Act*, herein referred to as the *Act*; that at the time

of the incident a slow-moving vehicle sign was attached to the rear of the vehicle; that the defendant was a suspended driver for medical purposes under suspension number 2-4-1-6-5-5-3, which was valid and deemed served by the Provincial Suspension Control Centre; that the mobility scooter was not insured under a contract of automobile insurance as per the C*ompulsory Automobile Insurance Act*, herein referred to as the *CAIA*; and that the defendant was the owner of the mobility scooter and that there was not a validated permit for the mobility scooter.

Finally, as per Tab-2 via the defence-submitted books of authority, a two-page description of the mobility scooter was submitted as part of the agreed statement of facts indicating that the Matrix Nexa is an enclosed mobility scooter powered by electricity with certain qualifications, such as a top speed of 30 kilometres per hour, a brake and accelerator pedals, climate control, power windows, windshield wipers, LED lights, fog lights, high and low beam options, a sunroof, a 72 volt lead acid battery with a 60 kilometre range per charge, speakers, the ability to move forward and in reverse, parking brake, two seats, two seatbelts, 12-inch tubeless tires, dimension of 99 inches long, 43 inches wide, and 51 inches tall, with mirrors.

What is contested by the parties is whether the

Matrix Nexa is a motor vehicle as defined under the *Act* and subject to regulatory law.

The Crown position is as follows. The Matrix Nexa does not fall under the category of a wheelchair as defined by the *Act* in part due to its form, size, and accommodations, including having a back seat with seatbelt, that because it is fully enclosed it would prevent it from being defined as a wheelchair; that is too large for traditional places designed to accommodate wheelchairs, such as access ramps and elevators; that other provinces, such as Manitoba, Quebec, Saskatchewan, British Columbia, have considered the same question and have excluded the Matrix Nexa for the purpose of a mobility aid on the highways; that due to the size of the Matrix Nexa it poses a safety hazard on roadways, it is too slow and too large to allow for safe traffic flow; that the Matrix Nexa does not warrant an exclusion from public transportation enforcement; that this was not the intent of legislature when considering regulatory matters; and it is not in the public interest.

The defence's position is as follows. The Matrix Nexa is an enclosed mobility scooter as defined by the Ministry of Health and the Assistive Devices Program for persons with disabilities; that the defendant is reliant on the Ontario Disability Support Program, or ODSP, and received funding, specifically governmental funding, to

purchase the Matrix Nexa as a mobility device to help ensure his accessibility to attend medical appointments, to engage in day-to-day activities, and to ensure his mobility rights; that the *Act* in its current iteration does not cover or include enclosed mobility scooters within their definition; that the law and regulations are outdated and have not incorporated or considered advancements with technologies; that the Ministry of Transportation Ontario, or the MTO, cannot register the Matrix Nexa; that other jurisdictions, such as Mississauga, have acknowledged the MTO have not regulated mobility devices and that they do not currently require registration, licence plate, a driver's licence, or vehicle insurance; that there are no federal safety standards in place to certify the enclosed mobility scooter; that Ebike Canada denotes no driver's licence, registration, or insurance is required to operate the Matrix Nexa; that the Ontario Human Rights Commission provides for the underlining principles of dignity, independence, integration, and equal opportunity; that Justice of the Peace Guitard of the Ontario Court of Justice on October 1st 2024 in the City of Greater Sudbury made a ruling under section 217(4) of the *Act* that the Matrix Nexa was an assistive device, not a motor vehicle as defined under the *Act*.

This endorsement was qualified to a jurisdiction pertaining to the release of the scooter from

impound only.

The defence further provided a position that should the court find that the Matrix Nexa is a motor vehicle as defined under the *Act*, that the court find the defendant not guilty by way of a defence of due diligence as established in *R. v. Sue Ste. Marie* (ph).

To which the Crown's position asserts the defence of due diligence is not available to the defendant because no mistake of facts exists in relation to this case.

In respect to the law when considering the relevant legislation, under section 1(1) of the *Highway Traffic Act*, a motor vehicle is defined as:

> [1(1)] [Including] an automobile, a motorcycle, a motor assisted bicycle unless otherwise indicated in this *Act*, and any other vehicle propelled or driven otherwise than by muscular power, but does not include a street car or other motor vehicle running only upon rails, a power-assisted bicycle, a motorized snow vehicle, a traction engine, a farm tractor, a self-propelled implement of husbandry or a road-building machine;

> [A] "vehicle" includes a motor vehicle, trailer, traction engine, farm tractor, road-building machine, bicycle and any vehicle drawn, propelled or driven by any kind of power, including muscular power, but does not include a motorized snow vehicle or a street car;

Further, the *Act* specifies:

> [1(1)] [A] "wheelchair" means a chair mounted on wheels driven by muscular or any other kind of power that is designed for and used by a person whose mobility is limited by one or more conditions or functional impairments.

Section 1(1) of the *CAIA* defines a motor vehicle as: "Motor vehicle, meaning the same meaning as in the *Highway Traffic Act* and includes trailers and accessories and equipment of a motor vehicle."

When considering the City of Greater Sudbury by-laws, the Crown did not proffer any City of Greater Sudbury by-law as it relates to the governance of mobility devices within their jurisdiction.

In relation to the analysis, the court is

mindful that sufficient reasons are not compelled, the court is not compelled to answer every argument raised or cite every case noted, and a central element of the offence for each count before the court is that the defendant was operating a motor vehicle on a highway.

To plainly summarize the legal arguments before the court, the defendant does not deny being in his Matrix Nexa on the date in question on a highway as defined under the *Act*, that he had neither a driver's licence, registration, or insurance for his Matrix Nexa, and that it was not available for him to do so as the Matrix Nexa is not defined as a motor vehicle under the *Act* or the *CAIA* as contended under the *Act*.

Whether or not the defence's due diligence applies flows from what must first be determined. Is the Matrix Nexa a motor vehicle? Once that determination is made, only then can the court consider other questions to be answered.

If it is determined a Matrix Nexa is not a motor vehicle as defined under the *Act* and the *CAIA*, then the Crown has not proven beyond a reasonable doubt all elements of the offence, and the court is left with doubt and there must be finding of not guilty, and the consideration of any possible defence is mute.

If it is determined that the Matrix Nexa is a motor vehicle as defined under the *Act* and the *CAIA*, then the court must further consider the defence raised on a balance of probabilities by the defendant as it relates to the matter at hand.

In coming to my decision today, the court appreciates the regulatory intent of the *Highway Traffic Act* and other statutes as they relate to governing the safe operation of highways within the province. This cannot be overstated.

Legislature enacts regulatory legislation with the primary function of regulating the activities of individual and corporate entities within the province as these individuals and corporate entities engage in activities that directly impact all members of the community. Driving is one such activity that directly impacts members of the community as it relates to safety on the roadways.

The court has considered that provinces have grappled with the same question before this very court. It is legislated within the *Highway Traffic Act* of Manitoba and the *Traffic Safety Act* of Saskatchewan that the Matrix Nexa does not meet the definition of a motorized mobility aid.

The Province of Quebec has implemented an order to amend their *Highway Safety Code* with an updated definition of a motorized mobility aid, and that the Matrix Nexa does not meet the definitional specifications of such.

The British Columbia *Motor Vehicle Act* has a definition of a motorized wheelchair, and that this definition excludes the Matrix Nexa.

There must be some weight given to existing provincial legislation from other jurisdictions from within Canada.

The court has further considered that the governing legislation of Ontario by way of the *Act* and the *CAIA* is expressly silent as it relates to the inclusion or exclusion of a mobility device such as the Matrix Nexa.

The Matrix Nexa cannot be registered through the Ministry of Transportation of Ontario; its operator cannot be provided insurance for it; that the Matrix Nexa was paid for through government funding via ODSP for the defendant so that he might exercise his mobility rights; that it is specifically designed for individuals with mobility issues to facilitate their equal engagement in the community as compared to individuals in the absence of mobility issues.

The court is mindful that within *Grummett v. The Federation of Insurance Company of Canada* from 1999, the court considered when attempting to determine if a vehicle is an automobile for the purpose of insurance requirements, it is appropriate to consider the function and purpose of that vehicle.

For example, in this case law, a race car is not considered an automobile for the purpose of insurance requirements because it goes around a track; it is not on highways. That is not its function.

The court must consider as to the function then, of the Matrix Nexa. What is the purpose in its most basic form? To answer this question of functionality, the court must accept the defendant's evidence as it relates to his mobility's needs; that he operates a Matrix Nexa in the capacity of it being an assistive device; that the Assistive Devices Program funded through the Ministry of Health of Ontario helped cover the cost in conjunction with the Ontario Disability Support Program of the Matrix Nexa.

In submissions, defence counsel spoke to the defendant's mobility issues, that he has a disability lasting more than six months requiring an assistive device, which is one of the criteria for funding of the Assistive

Devices Program as per Tab-3 of the defendant's book of authorities.

Though not binding, this court does give some weight to the Ministry of Health classifying the Matrix Nexa of an assistive device as per their funding model, that the Ministry of Children, Community and Social Services, which oversees ODSP, has also provided funding for the Matrix Nexa as an assistive device.

Further, the court has considered on October 1st, 2024, the ruling of the Ontario Court of Justice by His Worship Guitard, that the Matrix Nexa was not a motor vehicle as defined under the *Act* for the purpose of section 217(4). This section references how a police officer is able to detain a motor vehicle with which the offence was committed until the final disposition of any prosecution under the *Act* or the *Criminal Code*.

In contemplating the ruling of His Worship Guitard, that the Matrix Nexa was not a motor vehicle as defined under the *Act*, but rather an assistive device, a reasonable inference can be made that its function and use is not commensurate with the function and use of a motor vehicle. Referring back to the definition of wheelchair as per the *Act*:

> [1(1)] A chair mounted on wheels

> driven by muscular or any other kind of power that is designed for and used by a person whose mobility is limited by one or more conditions or functional impairments.

And that the function for which the defendant is utilizing the Matrix Nexa, the previous ruling of the OCJ in relation to the device, that the Ministry of Health, MCCSS, recognized the Matrix Nexa as an assistive device; that the MTO does not provide the ability to register the device, nor does it require permitting for such; that the *CAIA* has the same regulatory definitions as the *Act*, the court finds that the Matrix Nexa does not meet the definition of motor vehicle under the *Act*, nor the *CAIA*, that it is better defined by the definition of a wheelchair under the *Act*; that on the totality of information before the court, the Crown has not proven beyond a reasonable doubt that the Matrix Nexa is a motor vehicle as defined under the *Act* and the *CAIA*.

As such, there will be a finding of not guilty as it relates to all counts before the court. So that is the decision of the court. So, Mr. Richer, what that means, in relation to the information before the court you have been found not guilty on counts 1, 2, 4, and 5.

M. SCOTT: Thank you, Your Worship.

THE COURT: Anything further, Counsel, on that matter?

M. SCOTT: Pardon me?

THE COURT: Anything further, Counsel?

M. SCOTT: Just that there's some other matters involving Mr. Richer for other dates on the 9:30 docket, Your Worship. I understand my friend withdraw those charges.

THE COURT: It is your understanding that your friend is going to withdraw those charges?

M. SCOTT: Yes.

THE COURT: Okay. I can address those. Let me just make the endorsement here. And what line on the docket? Do you have the docket, Mr. Scott?

M. SCOTT: I do, Your Worship.

Y. ZHANG: Yeah, Your Worship, it's 9:30 at line 119.

THE COURT: Okay. Thank you. Okay. So I have remaining here a five-count Information before the court, and it is the Crown's request to have those withdrawn?

Y. ZHANG: Yes, Your Worship.

THE COURT: Okay.

M. SCOTT: Could I, could I just address the dates on those, please? Are those the July and October dates?

THE COURT: These are the 15th day of July 2024...

M. SCOTT: Okay.

THE COURT: ...for all five counts.

M. SCOTT: Is there another Information before the court with five other counts dated October?

THE COURT: We can check. Madam Clerk, might there be?

M. SCOTT: There should be. It's cut off on the docket there.

THE COURT: No, what I see on the docket, Mr. Scott; actually, there is 6. I do see on the docket October 6, 2024. Do we have that Information before the court, Madam Clerk?

M. SCOTT: That's what I'm looking for, Your Worship.

THE COURT: It is Line 125.

M. SCOTT: Yeah. It just looks like it's cut off there.

THE COURT: Okay. Excellent. Thank you. So I do have that before the court. When I look at this Information, it is a one-count Information before the court, an offence date of October 6, 2024. And what is being asked in relation to this matter?

Y. ZHANG: Yes. The Crown is ready to withdraw the case.

THE COURT: Okay. So then that matter has been withdrawn at the request of the prosecution. And are those the only matters in relation...

M. SCOTT: For nine o'clock, yes.

THE COURT: ...for this defendant? Okay. Excellent. Thank you. And I do thank you to both counsel for their thoughtful submissions as it relates to this matter before the court, and Mr. Richer for his patience as this matter moved through the court.

M. SCOTT: Thank you, Your Worship.

THE COURT: Thank you.

...WHEREUPON THESE PROCEEDINGS WERE CONCLUDED

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