

R v Steems

OBA/OJEN Competitive Mock Trials

**OFFICIAL CASE SCENARIO
2017**

FINAL EDITION



**Canada,
Province of Ontario,
County of Missinaba**

In the Superior Court of Justice,

HER MAJESTY THE QUEEN

- AGAINST -

KELLY STEEMS

Kelly Steems stands charged:

1. That he/she on or about the 22nd of October, in the year 2016, at or near Hull Street, at the City of Mariposa in the County of Missinaba, did commit an offence of operating a motor vehicle in a manner that is dangerous to the public causing bodily harm to another person, to wit Drew Morrie, contrary to s. 249(3) of the Criminal Code of Canada.
2. That he/she on or about the 22nd day of October, in the year 2016, at or near Hull Street, at the City of Mariposa in the County of Missinaba, did commit an assault using a weapon, to wit a passenger car, on the person of Drew Morrie, contrary to s. 267 of the Criminal Code of Canada.

Dated this 3rd day of November A.D. 2016 at Mariposa, Ontario.



Steve Smith,
Agent for the Attorney-General of Ontario

Form 4
AFFIDAVIT
(Criminal Proceedings Rules, Rule 4)

ONTARIO
SUPERIOR COURT OF JUSTICE
CENTRAL
Region

Court File No. 2016/0923

BETWEEN:

HER MAJESTY THE QUEEN
-and-
KELLY STEEMS

AFFIDAVIT OF DREW MORRIE

I, Drew Morrie, of Mariposa in the County of Missinaba, MAKE OATH AND SAY (or AFFIRM):

1. My name is Drew Morrie. I am a 20-year-old student at the University of Mariposa. I am currently studying kinesiology and hope to become a physiotherapist. I pride myself on my fitness and staying in shape.
2. I work part-time as a food runner for an up-and-coming food delivery service, Super Eats. The service lets people order their food via Super Eats from various restaurants and I pick-up and deliver the food from the restaurant on my bike.
3. I usually work the dinner shift, which is always the most fun, although it's pretty heavy traffic at that time so you have to bike hard to make the deliveries on time, but I like the rush I get zigzagging through traffic.
4. On October 22, 2016, I started my shift at 3:30 p.m. It was slow at first but started to pick up around 6:00 p.m. I got assigned a delivery from Fast Tony's on South Street. This restaurant is located right downtown and is always crowded with a million aggressive cab drivers. And there are no bike lanes on South Street.
5. I parked my bike outside the restaurant quickly to pick up the order. As I was getting back onto my bike on the road, there were a couple of people on the sidewalk beside me trying to hail a cab. Within 10 seconds, a taxi swerved right beside me to pick up the fare. I was startled and thanked my lucky stars that the driver didn't hit me. I doubt the cabbie even saw me.

6. As I got on my bike, I took a good look at the driver. I saw that the name of the cab company was Safe-T Cabs. What a joke. I know at least two of my friends that have been involved in accidents with this company while on their bikes.
7. Anyway, as the passengers were getting in, I knocked on the window of the taxi and flipped the bird to the cabbie. I saw that the cabbie started to get out of the taxi but I sped away on my bike for my delivery.
8. Further down South Street I made a right turn onto Hull Street, which is a smaller street, but it gets busy because it's a good way to bypass the heavy traffic on South Street if you're trying to get out of that part of downtown.
9. Right after I turned onto Hull Street a car came up from behind me and kind of weaved over close to me. I saw that it was a cab. I was basically riding right beside the cab and it was needlessly close to me. I was right at the curb.
10. I was very concerned for my safety so I slammed my palm on the window of the cab. I shouted and gestured to the cabbie to get their attention. Next thing I knew, I was lying on the sidewalk flat on my stomach with my bike underneath me. The taxi had veered toward me and knocked me off my bike onto the ground!
11. I started to brush myself off and heard someone asking me "Are you all right?" I said yes and then started yelling at the cabbie, who'd got out of the car. I think I said something along the lines of "You're going to jail! That is assault!"
12. When I took a closer look at the cabbie, I saw that it was the same one that swerved right in front of me earlier. The cabbie was smiling. I couldn't believe it!
13. I immediately reported the incident to Super Eats and the police were called.
14. The cabbie and I just kind of stood there in a standoff waiting for the cop to come. She came pretty quickly.
15. I'm lucky I wasn't hurt worse. I had some scrapes and bruises, and my knees ached for a few days. I'm lucky I didn't hit my head as well. I wasn't wearing a helmet, because it's seen as "uncool" in the courier community, and plus I'd just have to be constantly taking it off with pick-ups and deliveries.
16. I took four days off work. I honestly think it could've been much worse for me. I also had to make some minor repairs to my bike which I hadn't noticed at first.

Sworn (or Affirmed) before me at the City
of Mariposa in the County of Missinaba,
Ontario on October 27th, 2016



A Commissioner for Taking Oaths
(or as may be)



DREW MORRIE

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(Criminal Proceedings Rules, Rule 4)

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SUPERIOR COURT OF JUSTICE
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HER MAJESTY THE QUEEN
-and-
KELLY STEEMS

AFFIDAVIT OF TAYLOR MARCHAND

I, Taylor Marchand of Elgin in the County of Fox, MAKE OATH AND SAY (or AFFIRM):

1. My name is Taylor Marchand. I'm 21 and live in Elgin. I was visiting my cousin Jamie in Mariposa on October 22, 2016. On that day, Jamie and I were going to hit the town and catch a show.
2. Before the show, we ate at this amazing restaurant called Fast Tony's. Great food but really slow service – ironically! My cousin Jamie is obsessed with this musical called "Pirates", so that's what we were going to see.
3. Jamie wanted to get some autographs after the show and he'd left whatever it was he wanted autographed at home. We were running late as it was, so the plan Jamie formed was that he'd run back to his place while I got in a cab to get to the theatre first and get the tickets at the will call window so we didn't miss the start of the show when he made it back to meet me.
4. My cousin flagged down a cab, told the driver where to take me, and off I went – just along for the ride that is Jamie's "Pirates" obsession.
5. The taxi driver seemed distracted and was talking on one of those odd bluetooth headsets and the music was blaring.
6. The entire ride I was so scared for my life! Traffic was heavy and the driver made some dangerous passes, I thought to try to get ahead, although it didn't do us much good. To distract myself, I was checking Kim K.'s Instagram account on my phone.

7. All of a sudden I heard this bang next to me. I looked up from my phone and saw this biker with a huge backpack riding right beside the car.
8. The taxi driver started muttering – like “crazy biker”, or something, and looked over at the right side of the car.
9. I saw the biker hit on the window again (the front passenger side one this time) and yell something. I couldn't make it out. The driver looked at the biker and all of a sudden the taxi swerved to the right. We came to a sudden stop.
10. I didn't see the biker anymore. I got out and asked if the biker was okay.
11. I could see that the cab was stopped right at the edge of the curb – right in the space where the biker would have been. The biker was getting up slowly and was like a foot or two onto the sidewalk. The biker was pretty upset and yelled at the driver, who was just kind of standing there.
12. I was not getting back in that cab! I just leaned in to grab a quick picture of the driver's name and licence number, which was posted on the back of the driver's seat. The driver's name was Kelly Steems, licence #00756.
13. I gave my name to the cop who arrived and said what I knew, and then came in today to give this statement.

Sworn (or Affirmed) before me at the City
of Mariposa in the County of Missinaba,
Ontario on October 23rd, 2016



A Commissioner for Taking Oaths
(or as may be)



TAYLOR MARCHAND

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(Criminal Proceedings Rules, Rule 4)

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CENTRAL
Region

Court File No. 2016/0923

BETWEEN:

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-and-
KELLY STEEMS

AFFIDAVIT OF KELLY STEEMS

I, Kelly Steems of Mariposa in the County of Missinaba, MAKE OATH AND SAY (or AFFIRM):

1. My name is Kelly Steems. I am 47 years old. I have been driving a taxi in Mariposa for the past 15 years. Currently, I drive with Safe-T Cab Company.
2. I really like Safe-T's approach to the business – they're the first company I've worked for where all of the drivers receive specific hands-on driver training. We even had a session about biker awareness in light of the recent upsurge in cyclists using the roads.
3. On October 22, 2016, I was near the end of my 12-hour shift. I'd been working since 6:30am. I picked up a fare on South Street outside of Fast Tony's. It's always packed there.
4. As I pulled up to the curb, there was one of those food delivery service runners, who just threw their bike down right in front of my car. I couldn't believe it - those bikers are so reckless. And they don't wear helmets!
5. My fare was going to the Princess Charlotte theatre. They told me they were in a rush. We eased back into traffic and started travelling down South Street.
6. South Street was busy as usual. I made a right turn onto Hull Street, which is a good shortcut out of downtown. Hull Street is a short street and I would soon need to make another right turn onto West Street. I wasn't going very fast – about 30 kilometres per hour – and there was another car right in front of me.

7. Before I got to the right turn I checked my rear-view mirror. I realized that a biker was riding right beside me. The bike wasn't there when I had turned before. The biker must have come up fast on the right into my blind spot, which happens all the time.
8. Everything that happened next happened so fast. I heard a loud thud behind me and to the right, I heard my passenger make some startled noises, then all of a sudden there was another, bigger thud just to my right. It was so startling I jumped out of my seat a bit and I felt my car swerve to the right for a second or two. I slammed on the brakes as I regained control of the car.
9. When we came to a rest I realized the biker who had been next to me was gone. I got out of the car and saw the biker was lying face down on the sidewalk. I pulled out my cell phone and called 911.
10. While we were waiting for the police to arrive, the biker got up and started yelling at me, but I couldn't understand why. I wasn't sure if we had both hit a pothole together or something, or if the biker had done something stupid and hit my cab.
11. When the officer arrived so quickly, that cheered me up in spite of the situation. Also, it was pretty awkward standing there, the biker shouting, and I didn't really respond because in our training we learn that if there is an accident you never want to say anything that could admit fault or anything like that. So, you can't say "sorry" even if you're just sorry it happened – that sort of thing.
12. My passenger in the car spoke with the officer a bit briefly and in the commotion they left in another taxi. They never paid me!

Sworn (or Affirmed) before me at the City
of Mariposa in the County of Missinaba,
Ontario on October 22nd, 2016



A Commissioner for Taking Oaths
(or as may be)



KELLY STEEMS

Form 4
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(Criminal Proceedings Rules, Rule 4)

ONTARIO
SUPERIOR COURT OF JUSTICE
CENTRAL
Region

Court File No. 2016/0923

BETWEEN:

HER MAJESTY THE QUEEN
-and-
KELLY STEEMS


AFFIDAVIT OF MACKENZIE FORD

I, Mackenzie Ford, of Mariposa in the County of Missinaba, MAKE OATH AND SAY (or AFFIRM):

1. My name is Mackenzie Ford. I'm 33 years old and I'm the Executive Director of the Missinaba EnviroSociety (MES).
2. MES runs a bunch of programs: river and park cleanups, recycling education, bike safety courses for kids, etc. We're big promoters of bicycling, and we also operate the local car-share program. I hardly ever use it myself, though! I bike most places all year round.
3. On October 22, 2016, around 6pm, I was on my way to a local pub to meet up with some friends and watch the baseball game. I was riding in the back seat of a Super Rides van. Super Rides is like a taxi but you book it with an app.
4. I wasn't biking myself that night because I was planning to drink. You've got to be responsible. Drinking and biking isn't any better than drinking and driving, and it annoys me when fellow cyclists are reckless or flaunt traffic rules. That's not helping the cause of getting more bike lanes, bike-friendly infrastructure, etc.
5. Most Super Rides drivers are so tied to their GPS, so I was happy when mine took the well-known shortcut onto Hull Street. Traffic downtown was heavy as usual for that time.
6. I heard shouting and looked behind me out the rear window of the van. I saw a bike courier – one of those Super Eats couriers – riding right next to a taxi,

- shouting and gesturing. It looked aggressive. I pulled out my phone to document the craziness of this situation.
7. Next thing I know, the biker smacks the window of the cab – hard. Everything happened so fast and I must have got distracted trying to focus on my phone and what was going on at the same time. I was trying to select the video function but I was taking photos instead.
 8. Suddenly my Super Rides driver braked hard and I kind of got shocked backward, dropping my phone and not seeing exactly what happened next, except I did see the cab swerve over toward the curb.
 9. The cab must have hit the bike because the biker was flat onto the sidewalk, the bike underneath, kind of breaking the fall.
 10. I yelled for my driver to stop and got out. I was concerned for the biker but also annoyed about their behaviour. Even if the cab did something stupid earlier, what good does it do to retaliate? The biker could have been badly hurt messing around like that, distracting the driver.
 11. It's too bad I didn't get some photos of the impact between the car and bike, but I did get a few of the biker smacking the cab. I showed them to Officer Gerrard, who showed up really quickly, and I later sent the files to her as well.

Sworn (or Affirmed) before me at the City
of Mariposa in the County of Missinaba,
Ontario on October 22nd, 2016



A Commissioner for Taking Oaths
(or as may be)



MACKENZIE FORD

APPLICABLE CRIMINAL CODE SECTIONS

CRIMINAL CODE (RSC, 1985, c C-46)

Definitions

2 ... “bodily harm” means any hurt or injury to a person that interferes with the health or comfort of the person and that is more than merely transient or trifling in nature.

2 ... “weapon” means any thing used, designed to be used or intended for use

(a) in causing death or injury to any person, or

(b) for the purpose of threatening or intimidating any person

and, without restricting the generality of the foregoing, includes a firearm and, for the purposes of sections 88, 267 and 272, any thing used, designed to be used or intended for use in binding or tying up a person against their will;

Dangerous Operation of Motor Vehicles

249 (1) Every one commits an offence who operates

(a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place;

Punishment

(2) Every one who commits an offence under subsection (1)

(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or

(b) is guilty of an offence punishable on summary conviction.

Dangerous operation causing bodily harm

(3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

Assault with a Weapon

265 (1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

267 Everyone who, in committing an assault,

(a) carries, uses or threatens to use a weapon or an imitation thereof

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

CASE NOTES AND INSTRUCTIONS TO PARTICIPANTS

Crown witnesses:

Drew Morrie, Taylor Marchand

Defence witnesses:

Kelly Steems, Mackenzie Ford

Approved exhibits (deemed to have been disclosed and available to be entered by either side):

1. Agreed Statement of Facts (to entered by consent)
2. Diagram of collision scene (to be entered by consent)
3. Photos taken by Mackenzie Ford (can be introduced as one exhibit).

Notes:

- *Each side can choose (or choose not to) enter whichever exhibits it chooses; neither side is required to introduce an exhibit.*
- *Whichever side enters an exhibit at trial first must lay the foundation for it as outlined in the tournament guide. Exhibits 1 and 2, above, are to be entered “by consent”: for the purpose of the mock trial, all teams are required to consent to the introduction of these exhibits if the other side enters either of them.*
- *No participant may attempt to suggest that the photos are not authentic – it is to be presumed by all that the people in the photos are the witnesses.*
- *Once entered and marked, the other side may subsequently refer to that exhibit.*
- *Exhibits may be entered in any order and will be given a number (e.g. “Exhibit 1”) based on the order in which they are entered (i.e., don’t refer to them at trial by the numbers above).*

Available verdicts:

- Judges may convict on all or some of the charges, including the lesser included offences of:

- Dangerous operation of a motor vehicle (without causing bodily harm), s. 249(1)
- Assault (a.k.a. common or simple assault), s. 266

Court File No. 2016/0923

**ONTARIO
SUPERIOR COURT OF JUSTICE
(CENTRAL REGION)**

BETWEEN:

HER MAJESTY THE QUEEN

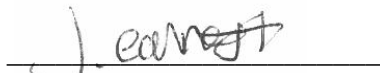
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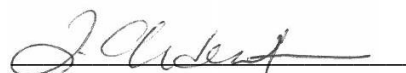
KELLY STEEMS

Accused

AGREED STATEMENT OF FACTS

1. On October 22, 2016, Constable Michele Gerrard of the Mariposa Police Service (MPS) attended the scene at approximately 6:05pm. Constable Gerrard interviewed the accused and witnesses present on the scene. Witnesses were all later asked to write affidavits, or their interviews were transcribed into an affidavit which they signed.
2. Constable Gerrard offered to call an ambulance for the alleged victim, Drew Morrie, who declined this offer.
3. Constable Gerrard produced a diagram of the incident scene, which is an agreed exhibit at trial. The defence consents to the introduction of the diagram at trial without the opportunity to cross-examine Constable Gerrard.


Jonathan Earnest
Crown Counsel


Jennifer Ardent
Defence Counsel

PARKING STRUCTURE



REPORTED LOCATION OF BICYCLE
(MOVED FROM RESTING PLACE BY CYCLIST)



PROBABLE POINT OF IMPACT

GRASS

SIDEWALK

DIRECTION OF TRAVEL
(PROBABLE)

BRICK ROADWAY

WITNESS VEHICLE
2010 DODGE CARAVAN
LIC# BANN-016

TOYOTA COROLLA
LIC# AENC-006
CAB LIC# 35 (M'POSA)

HULL STREET

SOUTH STREET

SIDEWALK

COMMENTS

- NO TIRE MARKINGS - LOW SPEED IMPACT (EST. 36 KPH)
- DIRECTION OF TRAVEL, IMPACT LOCATION EXTRAPOLATED BASED ON EYEWITNESS ACCOUNTS + PHOTO EVIDENCE

Traffic Collision Scene	Time: Approx. 1805 hrs	Drawn by: Const. M. Gerrard #2003
Occ. No. 2016-22450	Location: Hull Street	Investigated by: Const. M. Gerrard #2003
Date: Oct. 22, 2016	Scale: NOT TO SCALE	<i>M. Gerrard</i>



R v Steems (SCJ file no. 2016/0923)

Photo 1 by witness Mackenzie Ford



R v Steems (SCJ file no. 2016/0923)

Photo 2 by witness Mackenzie Ford



R v Steems (SCJ file no. 2016/0923)

Photo 3 by witness Mackenzie Ford