Citation: *R. v. Melew*, 2024 YKTC 35

Date: 20240906
Docket: 24-04134
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Myers

REX

v.

YONIS MELEW

Appearances:
David McWhinnie — Counsel for the Territorial Crown
Yonis Melew — Appearing on his own behalf

REASONS FOR JUDGMENT AND REASONS FOR SENTENCE

[1] MYERS T.C.J. (Oral): Yonis Melew stands charged that on or about January 12, 2024, he drove carelessly, or careless driving, or without due care and attention, in Whitehorse, Yukon.

[2] Section 186 of the Yukon *Motor Vehicles Act*, RSY 2002, c. 153, just to refresh everybody's memory, states:

> Every person who drives a vehicle on a highway
>
> (a) without due care and attention; or
>
> (b) without reasonable consideration for persons using the highway, is guilty of the offence of driving carelessly.

[3] There are two ways to prove what is, in fact, referred to as careless driving.

[4] Before I commence, Mr. Melew, I noted — and I have to address it — that you had some reservations and stated that you thought it strange or unfair that the Crown had sent Mr. McWhinnie to do the prosecution, being a senior prosecutor. All I can say to you, sir, is that in his conduct of the prosecution, he extended every accommodation and consideration he could to you, in fairness. He reopened his case when he was not compelled to do so. He called a witness which you felt was important to cross-examine. I do not know if a junior prosecutor would have known how to do that or if they would have felt they had the authority or confidence to do that. You have been treated exceptionally well by an individual you thought, perhaps, was being brought in to unfairly treat you. You were not treated unfairly. You were treated very fairly. I point that out to you.

[5] This Court accepts the following as facts.

[6] There are two witnesses, both deputy sheriffs, who attended at your home location to serve documents on the date in question. I accept they stop their vehicle, a white van, as it is referred to, approximately 20 to 50 feet away from your vehicle. This Court accepts and finds that they were waiting for Mr. Melew's arrival for approximately two to three minutes. They then see him, the accused, approach his vehicle, whereupon they drive up to your vehicle.

[7] There are differences, Mr. Melew, or inconsistencies that you point out. I will address those inconsistencies and where any inconsistency tends to favour you, it will be the one the Court accepts. The Court will not accept a discrepancy if the two

witnesses said different things and one favours you and the other one does not favour you. This Court will take the one that favours you.

[8] For instance, Deputy Sheriff Wadey said that the sheriff's vehicle stops beside your vehicle and that the front of their vehicle is at the midway point of the driver's door. Deputy Sheriff Stewart says that her sheriff's vehicle was bumper-to-bumper or almost parallel. It is probably beneficial to you that Deputy Sheriff Wadey's position be accepted because if the vehicle is further behind yours, that makes it safer for you to undertake an action. So the Court will accept that and the Court accepts that that vehicle, the sheriff's vehicle, the front bumper was at the midway point at your door.

[9] Secondly, there is a discrepancy between the two deputy sheriffs as to how close your vehicles are. Deputy Sheriff Wadey says that the sheriff's vehicle is two feet away from your vehicle. Deputy Sheriff Stewart says that the sheriff's vehicle is between three to four feet away from your vehicle. It is beneficial that the distance be greater than narrower, and the Court accepts that the distance is between three to four feet.

[10] Deputy Sheriff Wadey says that your vehicle is approximately one to one and one-half vehicle lengths behind a parked car. Deputy Sheriff Stewart says that your vehicle is five to 10 feet behind a vehicle parked in front. It is beneficial to you and the defence to have a greater distance, and the Court accepts that the distance between you, or a vehicle, and the vehicle that was parked on the street in front of you was between one to one and one-half vehicle lengths difference.

[11] Those are the important distinctions. The Court has considered all to the benefit of you.

[12] The Court accepts the following facts from the evidence that was before the Court.

[13] Mr. Melew, the Court finds that you did not want to be served the documents. Mr. Melew expressed, in his questioning, he does not need to cooperate in the process of being served court documents, and you are correct. You do not need to participate.

[14] Mr. Melew felt he was being, in your words, sir, "ambushed" by the sheriffs in this process. You commented, questioned, and felt that you could have been served those documents in other ways or in a different fashion. Mr. Melew believes that he is being targeted by the authorities because of his race. Mr. Melew believes that Sheriff Hyde, for lack of a better term, "had it out for him" and put pressure or forced his deputy sheriffs to lay these charges with the police.

[15] This Court rejects that Sheriff Hyde did anything of the sort. The Court finds, through the emails that were tendered, that the sheriff left the decision as to if and if so what charges should be laid to the police, as the process should be. While he expressed his belief of what took place and what charges he felt what legislation had been breached, he clearly left it up to the police and said so.

[16] The Court rejects that the deputy sheriffs were pressured to charge the accused, Mr. Melew. There was no evidence of that whatsoever. There was no evidence whatsoever of racism adduced by Mr. Melew, the accused. It certainly was alleged, but there was no evidence to support it. None of the witnesses recall meeting Mr. Melew before the event and only Sheriff Hyde recalls meeting him after the event. There is no

history of animus, bad feelings, that was ever established or any evidence against the two deputy sheriffs or the sheriff. There were only allegations.

[17] This Court accepts and finds that Mr. Melew was unhappy upon believing, as he stated, that he was being “targeted or ambushed”, his words. The Court finds that Deputy Sheriff Wadey got out of the vehicle, showed or attempted to show, the documents and stated the documents were to be served to Mr. Melew. Mr. Melew did not pay attention to her. When she attempted to put the documents on the windshield, the accused accelerated his vehicle with the deputy sheriff leaning over his right driver side in front of his windshield. This was when Deputy Sheriff Wadey was in a space of three to four feet between her, the sheriff’s van, and Mr. Melew’s vehicle. The Court finds this forced her to push off his vehicle with one hand and steady herself on the sheriff’s vehicle with the other. This three- to four-foot space shrunk, or decreased, to approximately two feet as the accused’s vehicle came across the front of the sheriff’s vehicle in a direction best described by this Court as an 11:25 direction. The accused’s vehicle headed to the 11.

[18] In *R. v. Callihoo*, 2007 BCPC 391 and *R. v. Iverson*, 2006 BCPC 138, referring to the offence of careless driving, or driving without due care and attention, states:

> 2 Driving without due care and attention is a strict liability offence. The Crown must establish a manner of driving which, in all of the circumstances, departs from the accustomed, sober behaviour of a reasonable person. … [*Iverson*]

[19] Accelerating in an aggressive manner in an extremely confined area which became more constricted and caused the deputy sheriff to react to avoid a potential

injury or worse is driving without reasonable consideration for persons using the highway and I find you, sir, guilty of the offence of careless driving.

[DISCUSSIONS]

[20] Sir, I appreciate all you have said. I appreciate that you truly believe that these people treated you differently because of who you are. I appreciate you believe that. There was no evidence before this Court; no evidence whatsoever of that. Again, you have indicated that you felt the acting chief prosecutor was unfair. I told you before and I will tell you again, he extended every fairness to you.

[21] I will impose simply, sir, a penalty of $250 and the victim surcharge and I will extend the time to pay for three months to November 29, 2024.

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MYERS T.C.J.