

SUPREME COURT OF YUKON

Citation: *R. v. White*, 2009 YKSC 26

Date: 20090331
S.C. No. 08-AP006
Registry: Whitehorse

Between:

REGINA

Appellant

And

JESSE RAY THOMAS WHITE

Respondent

Before: Mr. Justice R.S. Veale

Appearances:

Judith Hartling
Jessie White

Counsel for the Crown
On his own behalf

REASONS FOR JUDGMENT

INTRODUCTION

[1] Mr. White has been charged with stunting contrary to s. 188 of the *Motor Vehicles Act*, R.S.Y. 2003, c. 153, which states:

Stunts

188 No person, whether as a pedestrian or driver and whether or not with the use or aid of any animal, vehicle, or other thing, shall perform or engage in any stunt or other activity on a highway that is likely to distract, startle, or interfere with other users of the highway.

[2] The Justice of the Peace acquitted Mr. White and the Crown appeals on the ground that the Justice of the Peace erred in law by wrongly interpreting the words and effect of “other activity” as used in s. 188 of the *Motor Vehicles Act*.

TRIAL JUDGMENT

[3] The Justice of the Peace heard the evidence of the RCMP constable and Mr. White.

[4] She found that the constable had pulled another vehicle over and was gathering information from the driver. The constable was out of his vehicle and standing by the vehicle he was investigating on Ogilvie Street. The constable heard a loud noise made by Mr. White’s vehicle. The noise distracted him from what he was doing. The constable waved Mr. White over and Mr. White drove into the old Canadian Tire parking lot, where he was ticketed for “engaging in stunting on Highway.”

[5] Mr. White explained that a vehicle was travelling slowly on Ogilvie Street and he accelerated around the vehicle. His engine revved high and because he has aftermarket headers and exhausts on his truck, it made a louder noise. The aftermarket headers and exhausts are legal but they do make more noise.

[6] The Justice of the Peace did not find any erratic driving or excessive speed and decided the following at para. 4:

So the question in my mind, counsel, is the excessive. Is the noise constituted as stunting activity. In my view, it does not. I can think of numerous things that are on the highway: someone blowing their horn, loud music coming down the road, the bass stuff, that might be distracting, but is it an activity that constitutes a stunting activity on the highway? In my view, Mr. White was driving around the corner, accelerating, not in a careless manner where his tires were squealing and creating an activity that was stunting. I find him not guilty of the charge.

THE LAW

[7] In *Regina v. Tremblay*, [1975] 3 W.W.R. 589 (Alta. C.A.), the Alberta Court of Appeal reviewed a stunting conviction. In that case, the constable was working a radar operation for southbound traffic, when he noticed a camper truck proceeding northbound flashing his headlights and taillights four or five times to warn oncoming vehicle's of the constable's presence.

[8] The Court of Appeal did not find this activity to be stunting. However, the court also considered whether the acts constituted "other activities on a highway that is likely to distract, startle or interfere with other users of the highway". The Alberta Court of Appeal found that "other activity" need not be limited to things of a similar character or of the general nature of stunts (para. 12).

[9] Applying that broad definition of other activity, the court acquitted the accused as there was no evidence that these actions interfered with or startled anybody on the highway.

[10] In *R. v. Burton*, [1984] 36 Sask. R. 153, the court convicted a driver for conduct described as "the excessive speeding up of his engine to a very high pitch and driving at a speed not called for, on a street in the parking lot of the Comprehensive High School in Swift Current, Saskatchewan. I have no doubt his activities were calculated to draw attention to himself" (para. 4). The judge concluded that the increase of the speed of his engine would startle other users of the highway.

DECISION

[11] In the case at bar, the Justice of the Peace concluded that the particular noise in the evidence before her did not constitute stunting. The essence of her decision is that

loud noise made by a driver who is not driving in a careless manner cannot amount to stunting.

[12] There is no doubt that there is a particular section of the *Motor Vehicles Act* dealing with the issue of noise:

Unnecessary noise

189 No person shall create or cause the emission of any loud and unnecessary noise from a motor vehicle, any part thereof, or anything or substance that the motor vehicle or a part thereof comes into contact with.

[13] But Mr. White was not charged under this section.

[14] The precise issue for this Court is whether there should be a conviction or a new trial ordered.

[15] The fact that the ticket issued to Mr. White described the offence under s. 188 as “Engage in stunting on Highway” conforms with the requirement of s. 10 of the *Summary Convictions Act*, R.S.Y. 2002, c. 210, which states:

10(2) The person who issues a ticket shall, on the ticket,

...

(b) describe the offence that the person to whom the ticket is issued is alleged to have committed; and

...

(3) The description of an offence on a ticket by the person who issued the ticket shall be deemed to be sufficient for all purposes if the offence is described

(a) by using a general word or expression;

(b) by referring to a provision of an enactment;

(c) by marking or identifying a word or expression printed on the ticket; or

(d) by using any word, expression, or symbol authorized by the regulations for the description of the offence.

[16] I set these requirements out to indicate that the constable is not required to set out the entire s. 188 of the *Motor Vehicles Act*. The trial judge is required to consider all the words that may be included in the offence. Crown counsel made submissions directly on the point that the driving of Mr. White in these circumstances amounted to “other activity”.

[17] In my view, “or other activity on a highway that is likely to distract, startle, or interfere with other users of the highway” could conceivably include the facts in this case. Unfortunately, there is nothing in the judgment of the Justice of the Peace to indicate that she considered this aspect of s. 188 of the *Motor Vehicles Act*. The focus of her judgment is whether the excessive noise constituted a stunting activity. I am in agreement with the conclusion that the activity in question did not constitute stunting.

[18] The appeal is allowed to the extent that I remit the case back to the Justice of the Peace who heard the evidence to decide whether Mr. White engaged in “other activity on a highway that is likely to distract, startle, or interfere with other users of the highway.”

[19] It is not necessary to hear new evidence. The transcript of the evidence may be used to permit the parties to make submissions on the question to be decided.

VEALE J.