

Citation: *R. v. Alfred*, 2010 YKTC 94

Date: 20100420
Docket: 09-05093
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

JERRY JOE ALFRED

Appearances:
Judith Hartling
Edward Horembala, Q.C.

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] CAMERON J.P.T.C. (Oral) Mr. Alfred has pled not guilty to one count under s. 163 of the *Motor Vehicles Act*. We have heard the testimony here today from the Crown's chief witness, who was one Elsie Charlie.

[2] Her story, as delivered to the Court, was that on the day in question she was driving up the Two Mile Hill towards the intersection of Hamilton and the Alaska Highway. She was approaching the intersection at a red light. There was traffic ahead of her. She stopped as the second vehicle in line in the right-hand lane. She said there was no traffic in the middle lane. The left-hand lane had a vehicle in it to turn left and had its signal light going. The light turned solid green. The vehicle in front of her

headed across, she headed across. About halfway across she observed a vehicle that had come down Hamilton that was turning left and realized it was not going to stop in time. She said she tried to turn her vehicle left but did get hit, spinning her vehicle around. She had three passengers. All of them went to the hospital for a check-up. She was left with a sore back.

[3] She said it was rainy, a little bit damp, but the visibility was good. She was very adamant that she had a solid green light when the vehicle came down Hamilton and proceeded to turn left. She understood about a flashing green arrow was available at that intersection for left turns. She indicated where she felt things had happened on the map, identifying various areas where her vehicle was, where the accident occurred, the point of impact and the line of travel of Mr. Alfred's vehicle.

[4] There was certainly talk about the signs that indicate the stop line which will activate the light for left-turn signals. She indicates she was travelling at 20 to 30 kilometres per hour, only could recall that Mr. Alfred's vehicle was dark in colour. Her own vehicle, her recollection of what she was driving, was a truck, a Chevy truck, and indicated at one point that they were the only two vehicles present in the intersection or at that time, which was slightly inconsistent to the other information that there were other vehicles that were using the intersection. She identified Mr. Alfred as the driver of the other vehicle. In her view, the lights were operating properly.

[5] She indicated that she saw Mr. Alfred at the scene but did not recognize or see him at the time of the accident specifically. She said she had been stopped for two to three minutes, and then settled on a couple of minutes, at the red light. She said there

was traffic stopped on Hamilton Boulevard facing her at the same time. She then went on to say that when she started to cross, all the oncoming traffic on the other side started to cross as well. She was quizzed about her testimony of turning left to avoid the accident of the vehicle that was approaching her from the left and her explanation was to get the rear end of her vehicle out of the way as she felt that that was where the vehicle was going to get hit. She denied Mr. Horembala's suggestion that she was not stopped behind another vehicle but simply entered the intersection when there was, in fact, a red light and interfered with Mr. Alfred making his left turn.

[6] We then heard from Constable Hughes who is an RCMP junior member. She, at the time, had six months experience and she attended as the motor vehicle accident was called in. She recalled again that it was rainy but the visibility was good. When she attended the scene she observed Mr. Alfred's vehicle. She described it as a blue Bronco. It was parked at the side of the road, where she indicated on Exhibit 1, the map. She basically dealt with Mr. Alfred. She indicated that another police officer dealt with Ms. Charlie. The fire department and the ambulance were on the scene when she got there. She identified Mr. Alfred as the driver of the Bronco. She was unfamiliar with the light sequence at that particular intersection and did not take any time during her approximately 15-minute stay at the scene to, in fact, observe the light sequences. She did take several photos, which were Exhibit 2 in the booklet. She indicated that she had originally laid the ticket under the *Summary Convictions Act*. It was then changed to the s. 163(2) offence that we are dealing with here today that is on a long form Information. She appreciated that Mr. Alfred was cooperative throughout her interrogation of him, that she made minimal notes at the scene.

[7] Defence presented evidence. Mr. Alfred took the stand, made sworn statement. He indicated that on the day in question he was driving down Hamilton about to turn left on the highway to head home to Pelly Crossing. He was in the left-hand lane to make that left-hand turn and approaching the lights, which were red. He stopped at the stop line. He indicated there was no other traffic on Hamilton Boulevard to the right of him. He noticed oncoming traffic coming up Two Mile Hill. There was a white pick-up in the left-hand turning lane signalling to make a left-hand turn. He saw no other traffic in the opposing lanes approaching or facing him. He said he was stopped for about a minute. He then got the flashing green arrow. He started to proceed, started into his turn, and partway into his turn he saw the vehicle approaching through the intersection and said that he observed that vehicle to turn right in an attempt to avoid the accident. At about the time the accident occurred, he had started heavy braking and he observed his arrow turned yellow. He then followed through, finished his turn, and he parked on the right-hand side of the Alaska Highway, exited his vehicle to assess the damage to this vehicle.

[8] Mr. Alfred then started to cross the Alaska Highway to go and see the other vehicle and he met a pedestrian at that point about halfway across. The pedestrian indicated to him that if he had a cell phone he should call 9-1-1. He did have a cell phone, it was in his truck. He returned to his truck, called 9-1-1, and remained in his truck to wait for the police. When the police arrived it was Constable Hughes who approached his window, asked him for his licence and registration, and asked him if he had been drinking. He was then told by the constable to go to the detachment to make a statement and he did that that afternoon. He disagrees entirely with Ms. Charlie's

claim of the events. He indicated he does not suffer from any colour blindness in cross-examination. He indicates that he was stopped at the red light for a short time, that he got his flashing green arrow before he proceeded. There was nobody ahead of him.

[9] He was asked how long the arrow remained green, or the flashing arrow remained green, and he indicated a few seconds and that it turned yellow while he was still in the intersection. He addressed his location in regards to the map, Exhibit 1, where he was when he first saw the Charlie vehicle, clearly about the middle of the intersection just shortly before impact. When asked how fast he was going he indicated not very fast. He estimated perhaps five kilometres or so because he was braking heavily at the time of impact. He did not see any vehicle cross in front of the Charlie vehicle.

[10] We then heard the sworn testimony of Larry Shipman who is an engineering projects officer for the City of Whitehorse. Part of his duties include the monitoring and maintaining of the traffic control devices throughout the city. He is familiar with sequencing on various intersections and, in particular, familiar with the sequencing on this intersection. He then talked about the changes that had happened to that intersection in 2008. It was determined later that those changes, in fact, do not in any way alter the evidence as we heard it, as the changes occurred to a part of the intersection that was really not in use for the incident we're dealing with.

[11] He then referred to the loop protectors and how they operate in regards to triggering the light sequencing. The light sequencing is not changed or altered by time

of day or seasonally. They are the same; it is the same throughout, year round. He made it clear that if given a scenario where you had two vehicles facing each other, one on Hamilton, one on Two Mile Hill in the left turning lanes in each of those configurations seeking to turn left, that the sequencing would be that they would each get a flashing green arrow at the same time to proceed with their turn. All other traffic on Hamilton and all other traffic on the Two Mile Hill would be facing a solid red light until the sequencing for the left turn had finished.

[12] He indicated that in that intersection if there's one vehicle that has triggered the loop protectors for a left-hand turn, that the sequencing is that you get a green flashing arrow for six seconds followed by three seconds of yellow, and then there's a two second delay between the end of the yellow and the time that the red light, the solid red lights would turn green for the other traffic. He admitted that it was a large intersection but he could not specify as to whether it was exceptionally large or any such thing. He also indicated that the flashing green arrow would be visible to the other traffic which would be directly facing a solid red light prior to the timing running out on the flashing green arrow but they would also be able to see the flashing green arrow for the vehicles that are travelling in their direction but wishing to turn left.

[13] We have two quite differing stories from Mr. Alfred and Ms. Charlie. It would appear to me that the fact that we've not seen or heard any evidence that the lights, or the sequencing thereof, at the time or on the day in question were faulty, we have to assume that they were operating in the manner that was described to us by Mr. Shipman. And if that is the case, it does bring me some concern in regards to Ms. Charlie's evidence because if they were operating the way Ms. Charlie described the

scene, then she should not have been able to proceed on a solid green at the same time as what we now know as the white pick-up was going to be turning left. The loop protectors for him would have triggered the flashing green, which would have allowed him to proceed first. But, as I understood her evidence, she got the solid green, they all got the solid green, and they all started to proceed, including that vehicle, at the same time. To me, that would mean that she was mistaken in her evidence as to what was happening at the lights. And with that mistaken view, it would be, I think, folly for the Court to find anything more than a reasonable doubt now exists in regards to whether or not Mr. Alfred was not proceeding exactly as his evidence determined. As such, I am acquitting Mr. Alfred of the charge.

CAMERON J.P.T.C.