

Citation: *R. v. Biondelli*, 2005 YKTC 56

Date: 20050729  
Docket: T.C. 04-04675A  
Registry: Whitehorse

**IN THE TERRITORIAL COURT OF YUKON**

Before: His Honour Judge Overend

REGINA

v.

MARTIN BIONDELLI

Appearances:  
Lee Kirkpatrick  
Andre Roothman

Counsel for Crown  
Counsel for Defence

**REASONS FOR SENTENCING**

[1] OVEREND T.C.J. (Oral): Mr. Biondelli has plead guilty to Counts 1 and 6 in the Information before the Court. Count 1 charges him that on or about the 23<sup>rd</sup> of January 2004, at or near Whitehorse, Yukon Territory, he did unlawfully commit an offence in that he did operate a motor vehicle on a highway without reasonable consideration for persons using the highway and did thereby did commit the offence of careless driving. Count number 6 charges him that on or about the 23<sup>rd</sup> of January 2004, at or near Whitehorse, Yukon Territory, did unlawfully commit an offence in that he did operate a motor vehicle towing a trailer when the trailer was not equipped with adequate brakes and did thereby did commit an offence contrary to the *Motor Vehicles Act* equipment regulations.

[2] I want just say at the outset that I appreciate the careful submissions of counsel. They have been very helpful. I wish that I had more time to devote to my reasons but I am constrained by the time available and my reasons are as follows:

[3] On the 23<sup>rd</sup> of January 2004, in mid afternoon, Mr. Biondelli was heading toward Whitehorse from Haines Junction operating a Blazer motor vehicle and towing a trailer carrying a Pathfinder motor vehicle. At the same time, Dereen Hildebrand was proceeding in the opposite direction in her Dodge van. There was a collision between the vehicle operated by Ms. Hildebrand and the Pathfinder being towed by the defendant. Ms. Hildebrand died from injuries received by her in that collision.

[4] At the time of the collision, her vehicle was within its proper lane for vehicles proceeding out of Whitehorse, in an area of the highway known as Rabbit's Foot Canyon. The accident was caused as a result of the trailer and Pathfinder crossing the centre of the highway into the lane occupied by the Hildebrand vehicle. While the trailer was mechanically sound, it was unroadworthy at the time of the collision as the brake system with which it was equipped was not connected to the towing vehicle and it was therefore inoperative. The brakes, therefore, were incapable of adequately controlling the safe movement of the towing unit.

[5] The evidence of Corporal Thalsofer satisfies me that, despite the icy conditions of the roadway, had the brakes of the trailer been properly connected to the towing vehicle, it is much less likely that the trailer would have jackknifed and crossed into the opposing lane. I have difficulty accepting the Corporal's evidence that given the icy conditions prevailing, the application of trailer brakes, had they been properly connected

to the Blazer, would necessarily have insured that there would have been no accident. In coming to that conclusion I am mindful of the fact that other vehicles, including a fire truck, skidded on the road surface at that location on that day.

[6] I also accept as representing the facts the officer's opinion, set out at page 8 of Exhibit 4, that the probable cause for the loss of control of the defendant's vehicle was in part the icy road conditions.

[7] In addition to inadequate brakes on the trailer, the defendant admits that he lacked reasonable consideration for other users of the highway by towing a trailer and load that far exceeded what a prudent operator would have towed behind the Blazer motor vehicle. Respective weights and ratings are as follows: The trailer was rated for 1590 kilograms and was carrying a vehicle, namely the Pathfinder, the weight of which was 1840 kilograms. The Blazer's gross vehicle weighting was 2132 kilograms, as set out in the owner's manual. The gross vehicle weight of the vehicle and trailer combination at the time of the accident was 3770 kilograms.

[8] Mr. Biondelli is a mechanic by occupation and has experience operating a tow truck. It is clear to me that he was completely careless as to his responsibilities when he embarked on his journey from Haines Junction to Whitehorse. He should have known or had taken steps to find out respective weights and ratings for the vehicles in question before he started his trip. Setting off as he did, irrespective of the road conditions, was to show no consideration for other users of the highway.

[9] The penalty provisions provided in the legislation and regulations are as follows: Count number 1, a \$1,000 fine plus three months of imprisonment. Count number 6, a

\$500 fine or six months imprisonment. In both cases the defendant is liable to a three month suspension of his driving privileges.

[10] The Crown seeks terms of imprisonment and a licence suspension for each of these convictions, pointing out that there are aggravating circumstances which put this case in the "worst offence group." While acknowledging that Mr. Biondelli clearly cannot be categorized as a worst offender, the Crown says that the fact that he was himself a mechanic and that he was driving a vehicle that was itself unroadworthy are factors to be considered, along with the death of Ms. Hildebrand, which puts the case into the worst offence category.

[11] I accept the evidence of Mr. Anderson that the brakes on the Blazer were so much out of alignment that it was necessary to depress the brake pedal three times in order to have any braking ability and that this would have been obvious to anyone driving the vehicle.

[12] The Crown has chosen to proceed with a charge of careless driving. Often there is no very distinct dividing line between what the facts in any particular case may suggest as careless driving rather than dangerous driving. Dangerous driving requires a marked departure from the standard of care that a reasonable person would exercise in the defendant's situation. In this case, some may consider the actions of Mr. Biondelli to be a marked departure from the norm. Much of the Crown's submission tended to suggest that and there is contained in such submission a danger that I sentence Mr. Biondelli for dangerous driving when he is only charged with a non-criminal, Territorial offence.

[13] In saying the above, I do not fault Crown Counsel for bringing aggravating factors to my attention. It is, however, important that the sentence reflect the seriousness of the offence charged and that aggravating factors not cause me to treat the offence as other than that as laid in the Information.

[14] This was a devastating accident. The Crown concedes that it has even been devastating for Mr. Biondelli. He has suffered to the extent that he has required significant counselling and his body language in court tells me that he still suffers the effects of the devastating accident. I have no doubt that he is remorseful but it has been much more devastating for the Hildebrand family. There has been a loss of wife for Mr. Hildebrand and a mother for the children. In the victim impact statement there are references to a loss to the community. Those references are inappropriate for a victim impact statement but it is clear from the balance of the statement how significant and terrible the loss is to the family.

[15] Nothing that I do today can repair or mitigate that loss. I have few options, all of which must be exercised within a narrow sentencing range. The ultimate purpose of sentencing is to protect the public. That objective is said to be achieved by specific deterrence of the offender, general deterrence of persons who might be like-minded, and rehabilitation of the offender. Clearly, Mr. Biondelli does not need to be specifically deterred. This tragedy has so adversely affected him and the offence is so out of character that he is unlikely to offend again.

[16] While general deterrence is to be considered, it is much less important in offences of this nature than it is for *Criminal Code* or *mens rea* offences. In offences

involving careless driving, mention is frequently made of momentary inattention as the basis for the charge. It is unlikely that a sentence which emphasizes general deterrence will, at some future date, direct the attention of drivers to the task at hand to the point where it could be said that they will no longer momentarily lose focus because of the sentence that this court imposes.

[17] The Parliament of Canada, in s. 718.2 of the *Criminal Code*, has, among other things, legislated that:

- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders....

[18] While I know of no comparable legislation in the Yukon, s. 7 of the *Summary Convictions Act*, R.S.Y. 2002, c. 210, in this Territory makes applicable to this case the above provisions of the *Criminal Code*. Even absent that provision, it would be anomalous for this Court not to proceed on that basis with respect to regulatory and other strict liability offences when required to do so for far more serious offences under the *Criminal Code*.

[19] I have considered a number of cases provided to me by counsel. Cases of this kind are, however, largely fact driven. Based on the evidence I have heard, the pre-sentence report prepared concerning Mr. Biondelli, the case law, and the submissions of counsel, I have decided that a sentence of imprisonment is not appropriate.

[20] Mr. Biondelli, would you stand, please? Mr. Biondelli, on Count number 1, I am imposing a fine of \$1,000. On Count number 2, I am suspending the passing of sentence and placing you on probation of six months. The terms of probation are as follows:

1. You will report forthwith to a probation officer in Whitehorse and be under the supervision and direction of a probation officer and report thereafter at the times and in the manner directed by the probation officer.
2. You will take such assessment and counselling as may be directed of you by the probation officer from time to time and complete any program of counselling to the satisfaction of the probation officer.
3. You will not operate a motor vehicle at any time except for the purposes of your employment and only within a radius of three kilometres of your business premises in Haines Junction and only between the hours of 8:00 a.m. and 6:00 p.m.

[21] Do you understand the terms of the probation order?

[22] THE ACCUSED: Yes, I guess.

[23] THE COURT: Well, I don't want you to guess. Is there anything you do not understand?

[24] MR. ROOTHMAN: Perhaps if Your Honour can just repeat that again, slowly?

[25] THE COURT: All right. You are not to operate a motor vehicle at any time except for the purposes of your employment, your business.

[26] THE ACCUSED: Yes.

[27] THE COURT: And only within a radius of three kilometres of your business premises and only during the hours between 8:00 a.m. and 6:00 p.m.

[28] THE ACCUSED: Yes.

[29] THE COURT: Do you understand?

[30] THE ACCUSED: Yes.

[31] THE COURT: All right. Do you need time to pay the fine?

[32] THE ACCUSED: Yes.

[33] THE COURT: How much time, sir?

[34] MR. ROOTHMAN: Your Honour, I would ask for as much possible leniency in that respect, given the fact that the legal process, well, has been time consuming and money consuming.

[35] THE COURT: Yes.

[36] MR. ROOTHMAN: Given that fact, that my client be granted two or three months to pay.

[37] THE COURT: I am happy to do that. I will give you three months.

[38] MR. ROOTHMAN: Thank you, Your Honour.

[39] THE COURT: Mr. Biondelli, I am giving you until the 31<sup>st</sup> of October to pay the fine.

[40] THE ACCUSED: Yes.

[41] THE COURT: All right. The probation order will be ready for your signature shortly. You are required to return to sign it; the Clerk of the Court will explain it to you at the time of the signing. Again, if he needs the interpreter for that, we can do that some other time, if that is necessary.

[42] MR. ROOTHMAN: Yes, Your Honour, I will, once we are in receipt of the document itself, to go over it with my client and explain it to him to the extent that is necessary; if I can get somebody to do clarification.

[43] THE COURT: I think it will be fairly straightforward and the clerk will be explaining it to him as well.

[44] MR. ROOTHMAN: There is just one issue that I want to do at this stage, given the fact that it's going to be (indiscernible) before he gets the order itself. The reporting forthwith to the probation officer, I don't know what time they close; if Monday would be suitable in that respect?

[45] THE COURT: If they are closed today, obviously, forthwith is the first available time. Are they not available until 4:30 -- where are they? Are they in this building?

[46] THE CLERK: They are not in this building. They are in the building kitty-corner to the street. I can't speak to the hours.

[47] MR. ROTHMAN: Some departments stop working at 4:00, and some at 4:30.

[48] THE COURT: Perhaps what I will do is; he is to report not later than Monday, August 1<sup>st</sup>, at 4:00 p.m. to a probation officer.

[49] THE CLERK: The outstanding charges, Your Honour?

[50] MS. KIRKPATRICK: Counts 2 through 5 are stayed by the Crown.

[51] THE COURT: Thank you.

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OVEREND T.C.J.