

Citation: *R. v. Perreault*, 2015 YKTC 33

Date: 20151002
Docket: 15-04083
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Schmidt

REGINA

v.

ROBERT EDWARD PERREAULT

Appearances:
Lenore Morris
Amy Steele

Counsel for the Crown
Counsel for the Defence

REASONS FOR JUDGMENT

[1] On February 20, 2015 Mr. Perreault, the accused, was driving from the junction of the Hot Spring Road south along the Klondike Highway. He travelled a distance of two kilometers when he lost control of his vehicle on black ice coming down a hill with a 90° curve onto a narrow bridge. On the bridge he managed to get his vehicle back onto his side of the road to avoid hitting an oncoming vehicle driven by Ms. Blackburn. His tire hit the curb of the bridge and propelled him back to the oncoming lane where he struck the vehicle being driven by Mr. O’Riordan.

[2] Both vehicles were badly damaged and written off. Mr. O’Riordan suffered serious injuries from which he recovered. His partner was injured as well and recovered. A three-week old child in the O’Riordan vehicle was not injured.

[3] The Crown has charged Mr. Perreault with dangerous driving pursuant to s. 186 of the *Motor Vehicle Act*.

[4] The relevant section is as follows:

186 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.

[5] On February 20, 2015 the roads were free of snow and bare. The road had not been sanded. The weather was cool. The other drivers on the road who gave evidence said they were driving under the speed limit in case there was black ice in spots. Mr. Perreault was also driving under the speed limit by 10 – 15 kph, at 75-80 kph according to the physical evidence of the stuck speedometer and the evidence of Ms. Blackburn and Mr. Cline. Mr. O’Riordan was driving about 20 kph under the speed limit, at 70 kph as he was towing a trailer loaded with hay. He was following Ms. Blackburn who testified that she was driving 50 – 70 kph. It is likely that she was doing 70 kph as Mr. O’Riordan was directly behind her doing 70 kph. Mr. Cline, the passenger in Ms. Blackburn’s vehicle, estimated the Perreault vehicle at about 70 kph. Ms. Blackburn did not put a speed on the vehicle, but said of Mr. Perreault’s vehicle that it was not an excessive speed situation.

[6] The road proved to be icy as both Ms. Blackburn and Cst. Melanson slipped on the road when they got out of their vehicles. They appeared to have been caught off guard by the actual condition of the road.

[7] When the time the police took pictures of the accident scene the vehicles had not yet been moved. The pictures show that by then, presumably a short time later, any ice on the bridge had melted and there were now puddles of water. No evidence was given of the air temperature, but it appears that the temperature, at least shortly after the accident, was above freezing. At the time of the accident there were patches of ice as described by the witnesses who slipped when they got out of their cars and by Mr. Perreault who, too late, saw the patch of ice that caused him to fishtail.

[8] The Court finds that there is no evidence that Mr. Perreault was speeding or that he was driving at a speed greater than anyone else who has testified. They testified that they were travelling at a speed which took into account the road conditions, in particular, 20 kph under the speed limit. Mr. Perreault was driving between 10 – 20 kph under. The highest estimate of his speed came from his own evidence where he said he was going a little under 80 kph.

[9] Mr. Blackburn and Mr. O’Riordan going North had adjusted their speed to account for the road conditions.

[10] Mr. Perreault going South had also similarly adjusted his speed.

[11] Was it reasonable to drive South at a similar speed given that there was a curve and a downward hill when driving south and approaching the bridge? The witnesses

were not consistent in describing the roadway. Some agreed with the Crown when asked if it was a steep hill and sharp curve and some did not. They did agree that from whatever direction, the bridge was narrow, but sufficient for two semi-trucks to pass, although the drivers would have to pay attention.

[12] There is a cautionary sign on the curve of the hill that has a symbol for slippery with a 0° beside it. That was a caution that was already being heeded by all drivers who gave evidence whether subject to the sign or not. One of the drivers going north observed glare ice. No similar observations were made on the short section of highway driven by Mr. Perreault.

[13] There is no reason to believe that an even slower speed by Mr. Perreault would have prevented his truck from slipping on the black ice.

[14] The Crown led evidence from a clerk from the store 2 km north of the accident scene. She is familiar with Mr. Perreault as he has lived on the property of the store for many years. She doesn't like him and makes it known.

[15] She says he skidded when he came into the parking lot of the store and again when he left.

[16] He came in for coffee with a friend and she gave him the usual icy treatment. She says other people in the store talked about the icy conditions and implied that he should have heard that. She says he always drives fast. She did not see him drive on the highway. To give credibility to her speculations could lead to a dangerous miscarriage of justice.

[17] The Court finds that Mr. Perreault's driving on this occasion and in these conditions was consistent with the driving expected of a reasonable driver, and in fact, with the other drivers using the road at that time. There is nothing to draw the conclusion that he was driving without care and attention or without reasonable consideration for other persons using the Highway.

[18] The charge under the *Motor Vehicle Act* is therefore dismissed.

SCHMIDT T.C.J.