

Citation: *R. v. Barnfield*, 2015 YKTC 35

Date: 20150331
Docket: 14-06688
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Worship Justice of the Peace Morrison Harvey

REGINA

v.

HEATHER MARINA BARNFIELD

Appearances:
Tracy-Anne McPhee
Heather Barnfield

Counsel for the Territorial Crown
Appearing on her own behalf

REASONS FOR JUDGMENT

[1] MORRISON HARVEY J.P.T.C. (Oral): This is the matter of Heather Barnfield.

There are three charges before the Court contrary to sections 94(1)(a), 94(2) and 95 of the *Motor Vehicles Act*, RSY 2002, c. 153.

[2] In terms of what is not in dispute, in my view, based on the evidence before me, is that the vehicle that was registered to Heather Marina Barnfield, Yukon licence plate number EWL19, a 1989 Toyota Corolla four-door hatchback, the colour on the registration indicates grey, was in the parking lot of Pizza Hut/Tim Hortons on the day in question, October 1, 2014.

[3] On the evidence of Ms. Berken -- and I think Ms. McPhee used a phrase that is really quite accurate, in my view, as to how this all started to transpire -- witnessed something that she thought was "improper." Her evidence was: that she saw the vehicle described hit front-end to front-end with a parked vehicle in that parking lot; that the car moved; and she described the movement as "rocking."

[4] Ms. Berken took notes, submitted as Exhibit 1, at the immediate time of the event. She indicates the licence plate number, a four-door, and she describes it as a "dirty light blue wagon just ran her front end into your front end and took off. She did not think anyone saw the incident." That last statement is conjecture as she would not have known what Ms. Barnfield may have been thinking at the time.

[5] I will just comment on the note and a "light blue wagon." From the pictures that have been filed, some individuals might describe that vehicle as light blue or a greyish-type colour.

[6] Ms. Berken, in my view, would have had no reason to get involved in this matter and take notes, other than she believed she saw something that was improper. She then went into Pizza Hut. Ms. Berken inquired of the few individuals that were there if anyone was the owner of this particular vehicle and passed on that note.

[7] The evidence of Ms. Braybrook was that Ms. Berken came into the restaurant and gave her a note indicating that her vehicle had been in an accident. She went out and looked at the vehicle and the damage was very minimal. I think that her evidence was very forthright in that it was a very small dent; in fact, so inconsequential that she

was not even going to report it. However, her friends convinced her that she had to report it. She then phoned the police.

[8] The police arrived a short time later. Ms. Braybrook's evidence was also that there was no dent prior to her going into the Pizza Hut. When she came out, there was a small dent in her vehicle. She describes it as approximately four to five inches in length. The officer's description of the dent matches that of Ms. Braybrook's.

[9] With respect to the officer's evidence, he entered into an investigation when he arrived at Pizza Hut. His evidence was that he did not locate the vehicle immediately in the vicinity. He put out a be-on-the-lookout alert to all other members in the area.

[10] Later that evening, the officer, doing further investigation, came up with an address of the registered owner of the vehicle. The officer attended at that address and located a vehicle that matched the description and licence plate number provided by the witness, Ms. Berken. He noted some damage to a plug-in on the front of the vehicle. Photographs of the plug-in and licence plate have been entered as Exhibit 2. There was no answer at the door on that evening of October 1 and that was the end of the officer's involvement for that day.

[11] The officer then gave evidence that he located this vehicle on October 22. His evidence was that Ms. Barnfield was sitting in the vehicle at the time. He asked her for identification. On Ms. Barnfield's evidence, there was some discussion as to whether he identified himself as a police officer at the time or not. The officer's evidence states that he did identify himself. He asked Ms. Barnfield for identification. Ultimately, she provided the officer with the documents he requested.

[12] With respect to the arguments before me, Ms. Barnfield would like me to accept the argument: that the dent does not match the size of the plug-in on the car; how could the witness accurately view something from 50 yards away? Again, I would note that Ms. Barnfield never asked Ms. Berken any questions whatsoever on cross-examination, and I have basically her evidence in chief as the evidence before me.

[13] Even if I accept Ms. Barnfield's evidence that the plug-in does not match the size of the dent, there is no evidence before me to say that that was the only thing that caused the dent on the vehicle of Ms. Braybrook. She submits just because someone drives into a parking lot and drives out, does not make them guilty of hitting the vehicle. She also makes an argument that the paint is a discolouration.

[14] Even though there is no evidence before me, even if I accept that, I am left with:

- A vehicle registered to Ms. Barnfield was in the parking lot at Tim Hortons/Pizza Hut;
- There was a witness who clearly gave evidence that she saw Ms. Barnfield's vehicle hit another vehicle, front-end to front-end;
- That witness gave evidence that the car moved, that it rocked;
- The evidence of the owner of the vehicle that there was no dent prior to her entering Pizza Hut;
- That the dent was very minor, in fact, so minor that she did not even have it repaired; and
- I have the evidence of the police officer that gives a description matching the dent.

[15] I am satisfied that Ms. Barnfield's vehicle was involved in an accident, that she did not notify the owner of damage to that property, and that she did fail to report the accident as charged. I find Ms. Barnfield guilty on all three continues.

[SUBMISSIONS RE PENALTY]

[16] THE COURT: With respect to the fines, the Crown has suggested that a \$200 fine be imposed on each count.

[17] With respect to Count 1, fail to remain at the scene of an accident, in my view, is the more serious of the offences and I do impose a \$200 fine with respect to that charge.

[18] With respect to Counts 2 and 3, both failing to report charges, as Ms. McPhee has pointed out in the one section, if it is damage under \$1,000 there is no requirement to report that; it is, however, if the vehicles are attended. With respect to Counts 2 and 3, I impose a \$100 fine on each count.

[19] I am not going to impose surcharges. Normally, Ms. Barnfield, there would be a 15 percent additional charge for all of the counts. Given your circumstances, I will not impose the 15 percent surcharge. The total amount of the fine is \$400.

[20] Given your financial circumstances, I am prepared to give you six months' time to pay. If within six months you cannot pay the fine, you can come before the court and

make an application to extend that time. It is simply attending at the Court Registry and asking that the matter be put on a list and you can request further time to pay.

MORRISON HARVEY J.P.T.C.