

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Lindsay*, 2006 YKSC 47

Date: 20060804
Docket: S.C. No. 05-AP007
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND:

RICHARD JOSEPH LINDSAY

Before: Mr. Justice L.F. Gower

Appearances:
Kimberly Sova
Richard Lindsay

For the Crown
Appearing on his own behalf

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): This is an appeal by Mr. Lindsay from a conviction for failing to stop at a stop sign, contrary to s. 166 of the *Motor Vehicles Act*, R.S.Y. 2002, c. 153, on August 15, 2005, in Mayo, Yukon. That matter proceeded to trial in Whitehorse on November 29, 2005, before Justice of the Peace Cameron. Mr. Lindsay was self-represented at that time.

[2] An Agreed Statement of Facts was tendered on this appeal, instead of a transcript, as the cost of a transcript would have been prohibitive to Mr. Lindsay. It states that Mr. Lindsay was travelling west on Laurier Street in Mayo, towards the

intersection of 3rd Avenue. Justice of the Peace Cameron found as a fact that there was a stop sign at the intersection of Laurier Street and 3rd Avenue, controlling Mr. Lindsay's entry into that intersection. Mr. Lindsay did not see a stop sign and did not stop at that intersection.

[3] A second vehicle, operated by Tristan Clark, was travelling north on 3rd Avenue at the same time and approaching the same intersection. Mr. Clark was not able to avoid the Lindsay vehicle and a collision occurred between the two vehicles. Mr. Lindsay admitted at the scene of the accident that he had not stopped for a stop sign controlling his entry into the intersection. He further stated that he had not seen a stop sign.

[4] At the trial, the Crown called Stephanie Sidney as a witness for the prosecution. She testified as to the facts which I have just related, which are found in paragraphs 1 through 7 of the Agreed Statement of Facts. She also produced a photograph, which was entered as Exhibit 1 at the trial. Mr. Lindsay did not object to that photograph. The Crown also called as witnesses Mr. Tristan Clark and Corporal Lagimodiere, the investigating RCMP officer. Both of those witnesses also testified to the facts which I have just relayed and which are found in paragraphs 1 though 7 of the Agreed Statement of Facts.

[5] Mr. Lindsay did not cross-examine any of the Crown witnesses. He testified on his own behalf in defence of the charge. He testified that there was not a stop sign controlling his entry into the intersection of Laurier and 3rd Avenue, or, in the alternative, that the stop sign was not properly placed at the side of the road. Again, he

testified that he did not see a stop sign. During his testimony he introduced two photographs of the intersection, which became Exhibits 4 and 5. I have had a chance to look at all of the photographs by agreement of the parties, and pursuant to my authority under s. 683 of the *Criminal Code*.

[6] Exhibit 4 shows the intersection of Laurier and 3rd Avenue, and from the perspective there, Mr. Lindsay would have been travelling in the direction of the photographer. It also shows the north direction and on the northeast side of that intersection is the back side of a stop sign. That appears to be, and I take it that it is, the same stop sign which is seen in Exhibit 1, tendered through the Crown witness, Stephanie Sidney. At first glance it appears as though the two photographs are depicting different intersections, but on closer inspection, it seems as though it is simply a result of the differing perspectives of the photographers in the two photographs. I say that because there is no doubt that there was a stop sign at the northeast corner of that intersection. That is exhibited in Mr. Lindsay's own photograph.

[7] But the issue as stated in the Agreed Statement of Facts, in the alternative, is that the stop sign was not properly placed in a position at that intersection where it could easily be seen by Mr. Lindsay. That was the issue which he stressed on the hearing of this appeal.

[8] For the record, it is clear from the photographs that there are two lanes on Laurier as Mr. Lindsay was travelling west on Laurier. The middle lane shows directional arrows going forward and to the left, indicating that traffic could travel both straight ahead and make a left-hand turn. Then there is a broken line, which turns into

a solid line, and a right directional arrow indicating a turning lane, which would result in the traffic turning northward onto 3rd Avenue. The stop sign at the northeast corner of the intersection is approximately a meter to a meter and a half off the edge of the roadway alongside the turning lane.

[9] Mr. Lindsay's argument is that that stop sign could only have been applicable to the traffic in the turning lane and not to the traffic in the left-hand west-bound lane going either straightforward or turning left on 3rd Avenue. However, it is not clear to me, based on the fact that we do not have a transcript, whether that argument was raised at trial, and there is no evidence before me to indicate that the stop sign was somehow improperly placed or in violation of the regulations under the *Motor Vehicles Act* or under any municipal bylaw of the town of Mayo.

[10] In that regard, I note from s. 269 of *the Motor Vehicles Act*:

In a prosecution for contravening this *Act*, ...the existence of a traffic control device is *prima facie* proof that the device was properly designed and erected by the proper authority without other or further proof thereof.

Prima facie means apparent proof or proof on the surface, essentially. I do not know whether that was argued before the trial judge, but it is a matter of law.

[11] Further, section 166(a) of the *Motor Vehicles Act* says:

A driver about to enter on any highway from a highway that is marked by a "stop" sign shall bring their vehicle to a stop before entering on the intersecting roadway....

[12] Exhibits 1 and 5 clearly indicate that there was a stop sign at that intersection.

That was also testified to by three Crown witnesses, Stephanie Sidney, Tristan Clark and Corporal Lagimodiere. The only question that Mr. Lindsay raises on this appeal is

whether that stop sign was somehow improperly placed. But, as I have said, the provision in s. 269 is proof that it was, unless Mr. Lindsay argues or presents evidence that it was not, and he has not done so at the trial or on this appeal.

[13] Therefore, I dismiss the first ground of appeal, that the photographs prove there is no stop sign at the northeast side of the intersection of Laurier Street and 3rd Avenue.

[14] The second ground of appeal is that the photograph which became Exhibit 1 was not disclosed to Mr. Lindsay in a timely fashion. He raises a breach of his rights to make full answer and defence, pursuant to ss. 7 and 11(d) of the *Canadian Charter of Rights and Freedoms*, and asks that the appropriate and just remedy is to set aside the conviction in order of stay of proceedings on the charge.

[15] There is no dispute that the Crown prosecutor did not know of the existence of the photograph until the actual day of the trial, when it was produced by the witness, Stephanie Sidney. At that time, the photograph was shown by the prosecutor to Mr. Lindsay, and he was either asked by the prosecutor or by the Court whether he had any objection to the photograph. He made no objection.

[16] Mr. Lindsay claims today, in this hearing, that he did not recognize the intersection in Exhibit 1 as it is significantly different, or appears to be, from the perspectives shown in his own photographs, which became Exhibits 4 and 5. However, if he did not recognize the intersection or had a problem with the photograph, the onus was on him to point that out to the trial judge. He could have done so at the time that the photograph was tendered as an exhibit, through cross-examining Ms. Sidney or the

other Crown witnesses, or in his own testimony. It appears from the Agreed Statement of Facts that he did not do any of those things.

[17] In *R. v. Dixon*, a decision of the Supreme Court of Canada, [1998] 1 S.C.R. 244, the issue of disclosure of evidence was dealt with by Cory J. for the Court. In particular, the case dealt with the issue of when non-disclosure of evidence is raised on an appeal as opposed to at the trial. At paragraph 33, Cory J. said as follows:

"Where non-disclosure is raised on an appeal from a conviction, an accused must, as a threshold matter, establish a violation of the right to disclosure. Further, the accused bears the additional burden of demonstrating on a balance of probabilities that the right to make full answer and defence was impaired as a result of the failure to disclose."

[18] At paragraph 36, he continues:

"Thus, in order to determine whether the right to make full answer and defence was impaired, it is necessary to undertake a two-step analysis based on these considerations. First, in order to assess the reliability of the result, the undisclosed information must be examined to determine the impact it might have had on the decision to convict.

...

Even if the undisclosed information does not itself affect the reliability of the result at trial, the effect of the non-disclosure on the overall fairness of the trial process must be considered at the second stage of analysis."

[19] Finally, at paragraph 35, Cory J. noted that even if the accused establishes impairment of the right to make full answer and defence as a result of the Crown's failure to disclose, he is only entitled to the remedy of a stay of proceedings under s. 24(1) of the *Charter* if he can demonstrate "irreparable prejudice."

[20] On these facts, I do not find that the late disclosure of the photograph (Exhibit 1) affected the reliability of the result reached by Justice of the Peace Cameron. While

initially there appears to be some confusion about whether that photograph is depicting the same intersection, on further close inspection of the photograph and putting it in the context of the in-person evidence of three Crown witnesses, as well as Mr. Lindsay's own photograph (Exhibit 4), it is clear that both photographs show the same stop sign at the same intersection and it is simply a question of the differing perspective.

[21] I also find that the introduction of Exhibit 1 did not affect the overall fairness of the trial because Mr. Lindsay had an opportunity to either object to the admissibility of the photograph, seek an adjournment of the trial, ask questions of the Crown witnesses, or testify on his own behalf about the reliability or the impact of that photograph. As I said earlier, he did none of those things.

[22] Therefore, I am not able to find that his right to make full answer and defence was impaired. Further, even if it was, there was no irreparable prejudice to him, as his own photograph (Exhibit 5) depicts the existence of the very stop sign which is in question. Therefore, I dismiss the second ground of appeal.

[23] The third ground of appeal, essentially, is that Justice of the Peace Cameron was inconsistent in his reasons when he purported to accept the evidence of the appellant, and that this acceptance was inconsistent with having failed to find that there was a reasonable doubt about the appellant's guilt. That ground is easily disposed of. What Justice of the Peace Cameron said about Mr. Lindsay's evidence is as follows:

"The fact that he did not see it [it being the stop sign], the Court is not disputing. I believe it is probably true, Mr. Lindsay, that you failed to see the stop sign. I think that is probably true and I mean that happens; that happens to people."

Earlier, just before that, Justice of the Peace Cameron said as follows.

"The evidence that has been tendered in the form of photographs, one photograph from the Crown and three photographs from Mr. Lindsay on the intersection, showing the intersection from different angles, indicates quite clearly to the Court that there is, in fact, a stop sign and that the stop sign would have applied to Mr. Lindsay driving his vehicle in the direction and in the lane that he was driving in."

There is no inconsistency in those two statements. It is clear and it appears to be common ground that there was a stop sign at the intersection. All Justice of the Peace Cameron was saying with respect to Mr. Lindsay's evidence is that Mr. Lindsay did not see it, and that is not a defence to the charge.

[24] I have some sympathy with Mr. Lindsay's submission in this appeal that the stop sign may, in fact, have been somewhat out of his line of sight. It appears to have been significantly off to the right-hand side of the laneway that he was travelling in, at least the width of the right turning lane. It also appears from Exhibit 5 that there may have been some trees and bushes on the north side of Laurier, which would have been to Mr. Lindsay's right as he was travelling west on Laurier, and which may have partially and temporarily obscured his ability to see the stop sign. But, as he approached the intersection, it appears from Exhibit 1 that the stop sign would have been visible. In any event, that is not a defence to the charge. Section 269 of the *Motor Vehicles Act* presumes that the stop sign was "properly designed and erected," unless Mr. Lindsay provides evidence to the contrary, which he did not do.

[25] For all these reasons the appeal is dismissed. Thank you.

GOWER J.