

Citation: *R. v. Winfield*, 2008 YKTC 30

Date: 20080305
Docket: T.C. 07-05632
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

PATRICIA ANA WINFIELD

Appearances:
Stephanie Schorr
Zeb Brown

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] LILLES T.C.J. (Oral): We are dealing then with the matter of Patricia Winfield. Patricia Winfield is charged with the offence of careless driving, contrary to s. 186 of the *Motor Vehicles Act*, R.S.Y. 2002, c. 153. Section 186 reads as follows:

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.

The evidence

[2] Mr. James Ambrose was the principal witness for the Crown. A farmer who lives in Carmacks, he was returning home on September 22, 2007 from Alberta, hauling a

26-foot stock trailer loaded with several horses. Approximately 12 miles north of Braeburn on the North Klondike Highway, he became aware of being overtaken by a red pickup truck travelling at a high rate of speed. He noticed the vehicle some distance behind him and kept a check on it in his rear view mirror. As the red pickup truck was starting to pass him on a straight stretch of road, he observed another vehicle coming from the other direction travelling south. The red pickup truck passed as the southbound vehicle passed so that all three vehicles were abreast momentarily. In order to avoid a collision, Mr. Ambrose applied the brakes and pulled over to the side of the paved portion of the highway as far as he could. Had the stock trailer wheels moved onto the soft shoulder, there was a real risk that it would tip and roll, perhaps taking his truck with it. He said that the southbound vehicle also slowed down and pulled over, allowing the red pickup truck to squeeze between them. He estimated that only centimetres separated his vehicle from the red pickup truck when it passed him.

[3] Mr. Ambrose was an exceptional witness. He was very careful and precise in his answers. He knew he was travelling at 90 kilometres an hour as his vehicle was set on cruise control. He estimated the speed of the red truck to be between 135 and 150 kilometres per hour as it overtook and passed him and then disappeared. The day was sunny and the visibility was clear. The passing occurred on a straight stretch of road where the dotted centre line indicated that passing was legal. The red truck was a late 90's Sonoma pickup, which he described. He recognized it as a Sonoma pickup because he also owns one. He advised that the incident occurred at "1840 hours."

[4] When the red truck passed him he observed and memorized its licence plate number and about five minutes later, when he stopped the vehicle, he wrote it down. He accurately recalled the licence number in his evidence as a Yukon plate EHP 82.

[5] Mr. Ambrose unloaded his horses at his farm and then returned to Carmacks, where he proceeded to drive around town looking for the red Sonoma pickup that had passed him. Ironically, he located it in his own neighbourhood three doors down from his own house. He reported the incident to the police and provided a written statement.

[6] Patricia Winfield is the registered owner of the red Sonoma pickup truck. An instructor at Yukon College, she moved to Carmacks earlier in September. She acknowledged that she was driving on the North Klondike Highway on September 22, 2007, and also recalls passing a truck hauling a stock trailer.

[7] Her version of the incident, however, differed markedly from that recounted by Mr. Ambrose. She testified that she had been shopping in Whitehorse and was on her way home, which was located in Carmacks. She said she was not in a hurry to get back home. Ms. Winfield stated that she encountered a truck hauling a stock trailer around Braeburn and followed it for approximately 20 minutes. She said that the stock trailer was travelling at a speed of 80 kilometres an hour. Initially, she thought that the trailer was being hauled by a friend of hers from Dawson and that she was really upset that the truck hauling the trailer did not have extended mirrors and seemed not to have running lights. Ms. Winfield said that when she realized that it was not her friend's vehicle she decided to pass the trailer. She provided a photograph of the highway where the passing occurred, being a location 37 kilometres past Braeburn.

[8] When she was three-quarters of the way past the truck and stock trailer, a car came around a curve in the road. She observed that car slowing and pulling over to the side so she decided to complete the pass and then she re-entered her own lane. She said her normal speed was the speed limit, 90 kilometres an hour, that she passed the stock trailer at 100 kilometres an hour, but that she was travelling faster when she completed the pass. She said she had completed the pass and returned to the northbound lane before the southbound vehicle passed. At no time were the three vehicles abreast, as described by Mr. Ambrose. When the pass was completed, she continued on to Carmacks travelling her normal speed, 90 kilometres an hour. It was evident that Ms. Winfield was describing Mr. Ambrose's vehicle and stock trailer.

The law

[9] In order to make out the offence of careless driving defined in s. 186 of the *Motor Vehicles Act* the driving must be of such a nature that it amounts to a breach of one's duty to the public and is deserving of punishment. See *R. v. Beauchamp*, [1953] 16 C.R. 270, 278, Ontario Court of Appeal. A driver is not held to a standard of perfection and a mere error in judgment or a momentary lapse in judgment may not result in a conviction. In *Beauchamp*, the Ontario Court of Appeal adopted the following statement:

But the law does insist upon a reasonable amount of skill in the handling of the vehicle which is a potential source of danger to other users of the road. ... The question always is 'What would an ordinary, prudent person, in the position of the plaintiff, have done in relation to the event complained of?'

[10] *R. v. Cooke*, [2002] 6 W.W.R. 742, Manitoba Provincial Court, provides the following guidance:

Careless driving, which deals with inadvertent negligence, contains an absolute prohibition and is directed to the regulation of traffic. The offence is committed by the absence of thought, care and attention. The standard is a constantly shifting one, depending on the road, visibility, weather and traffic conditions that exist or may reasonably be expected, and any other conditions that ordinary drivers would take into consideration.

The Crown is obliged to produce sufficient evidence of pertinent facts to enable the Court adequately to assess the conduct of the accused against the objective standard of what the reasonably prudent driver would have done in the situation disclosed by the evidence. Improper driving may be manifested by recklessness on the part of the driver, for speed incompatible with public safety, or any other disregard of the public.

[11] Careless driving is a regulatory offence and is governed by the principles of strict liability established in *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299, at page 1325:

The doing of the prohibited act *prima facie* imports the offence, leaving it open to the accused to avoid liability by proving he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts, which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event.

Findings of fact

[12] The evidence of Mr. Ambrose and Ms. Winfield differ in all significant details.

The only common element is that Ms. Winfield passed Mr. Ambrose on the North Klondike Highway on the September 22, 2007. In all other respects their evidence was different.

[13] I have no hesitation in accepting the version of the event as described by Mr. Ambrose. First of all, Ms. Winfield was not known to Mr. Ambrose, so there is no suggestion of bias or improper motive. He provided significant detail of what occurred before and after the incident. He was also very precise in his evidence, choosing his words carefully so as not to convey an erroneous message. For example, he reported the time of the incident as "18:40 hours". His speed was 90 kilometres an hour as set by his cruise control. The licence plate number was accurately memorized as EHP 82. At the same time, he was careful to identify the location of the incident as approximately 12 miles north of Braeburn, and that the red truck was travelling between 135 and 150 kilometres an hour.

[14] Mr. Ambrose was not shaken in cross-examination. In fact, on several occasions the opposite occurred and his credibility was enhanced. Mr. Ambrose's actions taken to locate the offending vehicle and to report it to the police are consistent with the occurrence of a serious incident as described by him. If the event had occurred as described by Ms. Winfield, it would not have merited the follow-up action that Mr. Ambrose took.

[15] Ms. Winfield's evidence that Mr. Ambrose was travelling at 80 kilometres an hour and that she followed his vehicle for 20 minutes at that speed is not believable in the circumstances. Her explanation that she thought that the stock trailer belonged to a friend in Dawson, that she was upset because her friend did not have extended mirrors or running lights, did not make any sense to me. Why did she continue to follow it for 20 minutes? What was she going to do about her concerns if her friend was driving that vehicle? She said that she realized after 20 minutes of following the stock trailer that it

did not belong to her friend and then decided to pass it. Twenty minutes is a long time to be travelling at 80 kilometres on the North Klondike Highway on a clear day with excellent road conditions. I note that her view of the back of the stock trailer would be the same throughout that time period, yet somehow she determined that the trailer did not belong to her friend. She did not explain what changed her mind.

[16] I received the written communication from counsel indicating that I could consider the following information:

The defendant received information from Robin Walsh, the Director of Transportation Engineering, that two lane highways are not designed to allow three vehicles to pass abreast.

[17] I do not find this information particularly helpful, for either the Crown or Ms. Winfield. It speaks to design, not actual construction. It does not provide actual information as to the width of the North Klondike Highway where Ms. Winfield passed Mr. Ambrose. In any event, the evidence received during the trial did not preclude the southbound vehicle being off the paved road on the shoulder when Ms. Winfield passed Mr. Ambrose. Finally, even if I accept that two lane highways are not designed to allow three vehicles to pass abreast, it surely means, to allow three vehicles to pass safely abreast, with a proper spacing between them, not the few centimetres testified to by Mr. Ambrose.

[18] Ms. Winfield would have me believe that Mr. Ambrose either made up his version of events or was mistaken in his observations. He had no reason to make up the story as he had never met Ms. Winfield before. The differences between his version and that

of Ms. Winfield are so substantial that they cannot be explained by mistaken observations.

Conclusion

[19] Having accepted Mr. Ambrose's version of the event, it remains to be determined whether Ms. Winfield's actions constituted careless driving, as defined by s. 186 of the *Motor Vehicles Act*. I consider the following factors relevant to my determination. Ms. Winfield was travelling at a minimum of 135 kilometres per hour when she passed Mr. Ambrose. As the visibility was good and the road was straight, she should have seen the vehicle coming towards her in the southbound lane before she started the pass, or very shortly thereafter. I am prepared to make the assumptions most favourable to her, namely, that the southbound car was travelling fast and that she misjudged its speed and the time required to pass Mr. Ambrose's truck and stock trailer safely. During the pass, it should have become apparent to her that she was not going to make it past the Ambrose vehicle. Nevertheless, as both Mr. Ambrose and the southbound vehicle had pulled over slightly, to the side of the pavement, she decided to continue her pass between the two vehicles. When she passed the Ambrose vehicle, her vehicle was very, very close to it. Mr. Ambrose said that she was a matter of centimetres away from his vehicle.

[20] The shoulders of the highway were not paved. There was a real danger that both the trailer and Mr. Ambrose's truck would have rolled had the tires of the trailer moved to the soft shoulder. Had that occurred, a significant loss of property and probably serious injury to Mr. Ambrose would have resulted. The space between the Ambrose and southbound vehicle was very small. Had she made contact with the

Ambrose vehicle, she could have forced it off the pavement onto the soft shoulder with disastrous consequences.

[21] In my opinion, an ordinarily prudent person would not have attempted to pass the Ambrose vehicle in the circumstances described. In all likelihood, the high speed that she was travelling at contributed to her misjudging the speed of the oncoming vehicle. During the passing manoeuvre, it would have become evident to a reasonably prudent person that the pass could not be completed safely. A prudent person would have applied the brakes terminating the pass and returned to the northbound lane behind the Ambrose stock trailer.

[22] The actions taken by Ms. Winfield clearly endangered the other users of the road. Her driving was without due care and attention and without reasonable consideration for persons using the highway. It is implicit in my findings that Ms. Winfield cannot, on these facts, rely on the defence of due diligence. I find Ms. Winfield guilty of the offence of careless driving.

[23] Are counsel in a position to disposition at this time?

[24] MR. BROWN: Yes, I think so, sir.

[25] MS. SCHORR: And, Your Honour, I can advise that Ms. Winfield -- are we proceeding with sentencing?

[26] THE COURT: Yes.

[27] MS. SCHORR: Yes, okay. I can advise that Ms. Winfield doesn't have a previous Yukon record for motor vehicle infractions, so she comes with a clean record. And so, in light of that, and in light of the fact that there wasn't serious injury or mishap, we're just seeking the prescribed fine of \$200 plus \$30 surcharge.

[28] THE COURT: Any further comments?

[29] MR. BROWN: No, sir, I agree that would be appropriate in these circumstances.

[30] THE COURT: The fine in this case will be \$200. There will be a \$30 victim fine surcharge. Time to pay, did she speak to you about that?

[31] MR. BROWN: She hasn't, but one month would be fine.

[32] THE COURT: One month, so ordered. Thank you.

LILLES T.C.J.