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R. v. Ladouceur

Between
Her Majesty the Queen, and
Michael Ladouceur

[1994] O.J. No. 4135

Ontario Court of Justice (Provincial Division)
Welland, Ontario
Cowan J.P.

Oral judgment: December 23, 1994.
(14 pp.)

Charge: S. 130 Highway Traffic Act - Careless Driving

Counsel:

L. Scaringi, for the Crown.
P. Barr, for the accused.

¶ 1 **COWAN J.P.** (orally):— Michael Ladouceur, the charge of Careless Driving with which you are facing, this is the way I see the situation. I am prepared to make it a finding of fact that on December 11th, 1993 at approximately one fifteen in the morning a motor vehicle collision occurred at the intersection of Niagara Street and Woodlawn Road in Welland. Niagara Street runs in a northerly/southerly direction and Woodlawn Road runs east and west. The intersection is controlled by traffic signals which were working in proper sequence at the time of the collision.

¶ 2 I am prepared to make it a finding of fact that the traffic light for Niagara Street north and southbound was green at the time of the accident and at the time of the impact. The two vehicles involved in the motor collision and their respective drivers were Jason Pew who was operating a Chrysler Daytona and the accused before the court, Michael Ladouceur who was operating a Ford Taurus, gray in colour.

¶ 3 Mr. Ladouceur was travelling southbound in the centre lane of Niagara Street as he entered the intersection on the green light and had the right of way. He was the sole occupant of his vehicle. I am prepared to make it a finding of fact that he was speeding well above the 50 kilometre per hour limit and he has admitted in his own testimony that he was going at least between 70 and 80 kilometres per hour. The drag sled testing conducted by P.C. Code indicates a minimum speed of approximately 92 kilometres, per hour.

¶ 4 I am prepared to make it a finding of fact that the traffic was light to medium light on the date of the accident as per the testimony of Officer Code and the other officers who attended the scene. It is obvious it was the early hours of the morning and the traffic was much lighter than during the working day.

¶ 5 The Pew vehicle was attempting to negotiate a lefthand turn from the northbound Niagara Street left turn lane to proceed westbound on Woodlawn Road. Now Mr. Ladouceur testified that he recalls the Pew vehicle turning left directly in front of him when he was about three and a half car lengths away in the centre southbound lane of Niagara Street. The weather was extremely windy and cold and the roads were dry and light snow was scattered on the asphalt.

¶ 6 The area at this intersection is well lit and both roads were paved asphalt and there was no ice at the intersection at the time of the collision observed by the investigating officer. The other driver, Jason Pew, did not testify before this court and we only have the evidence of Michael Ladouceur and his version of what happened. His version as being one of the drivers involved is as follows. He testified he was southbound an Niagara Street in the right-hand lane going home. He was in the right-hand lane southbound as he passed the Canadian Tire on Niagara Street when he observed two cars ahead. At the Woodlawn Cemetery gates Mr. Ladouceur says the vehicle ahead signalled a right turn to go westbound onto Woodlawn Road. Mr. Ladouceur then says he signalled left and moved into the centre lane southbound behind a vehicle in the centre lane. As he approached the intersection, the Pew vehicle which had been stopped in the northbound left turn lane at Niagara Street waiting to turn left, turned across Ladouceur's path and a collision occurred in the southwest quadrant of the intersection of Niagara and Woodlawn. Mr. Ladouceur says he saw a car ahead of him go through the intersection southbound. This other vehicle was also observed by a Mr. Cayuga who testified as an independent witness who was stopped in his vehicle in the left turn lane northbound on Niagara Street, behind the Pew vehicle waiting to turn left. In his own statement Mr. Ladouceur gave to P.C. Code he admitted he was hurrying home. He has admitted that he was exceeding the speed limit.

¶ 7 In reviewing the evidence given by the witnesses I have assessed them as follows:

¶ 8 Various police officers testified that they attended at the scene. P.C. Code was assigned to the follow-up investigation on the night of the accident. He is a proficient traffic investigator who took detailed measurements and performed a test called the drag sled test on the night of the accident. He testified that the roads were dry, that it was cold and light snow was scattered on the asphalt and that the intersection was well lit by the artificial lighting of street lamps in the area. The drag sled test, which P.C. Code is qualified to perform, assists in determining the friction coefficient from skid marks left on the road surface. Subsequently, the minimum speed of a motor vehicle at the time of the skids can be figured or estimated from the measurements and from doing the test. The area of the intersection at Niagara and Woodlawn is 50 kilometre per hour speed limit. The estimated minimum speed of Ladouceur's vehicle as estimated by P.C. Code conducting a test at the scene after the accident was approximately 92 kilometres. Now P.C. Code's observations of the skid marks indicated to him that the four wheels of the Ladouceur vehicle were locked up on the impact and that the impact occurred in the southwest quadrant of the intersection in the southbound lanes in which Mr. Ladouceur was travelling and had the right of way. In cross-examination officer Code testified that there are some factors which affect the drag sled test results. And although his testimony indicated that they affect it somewhat minimally, those factors are to be considered.

1) The road surface consistencies, grit or debris on the road,
2) The steadiness of the pulling action of the actual tester and
3) The temperatures at-the time of the test being conducted.

¶ 9 Officer Code did testify that he felt that any one of these factors would only vary the result minimally, however, there are four factors to be determined. Officer Code also testified that the skids left at the scene by the Taurus indicated a locking up of all four wheels, as I've indicated, in a sudden braking situation at high speeds and not consistent with braking and attempting to turn away to avoid a collision as Mr. Ladouceur testified as to his response to the Pew vehicle turning in front of him. There were 57.6 metres of skids to the rear of the Ladouceur vehicle to the rear of the Taurus. And P.C. Code also noted in his testimony that alcohol was not a factor of Ladouceur's driving conduct.

¶ 10 Robert LaFleur who was the only passenger not killed in the Daytona testified that Jason Pew had been drinking as had all occupants of the Pew vehicle. That there was beer in the Pew vehicle, a broken case of Molson Canadian (12) was found in the vehicle. Mr. LaFleur testified that he doesn't really remember the light at the Woodlawn intersection or if they even stopped. He was sitting behind the driver in the back seat of the vehicle. He remembers a left turn but he can't remember how far they were into the intersection before the crash. He admits he was not paying close attention and he doesn't remember the Daytona's speed. Mr. LaFleur's evidence was given in a very sketchy manner and not really very helpful to this court. His admitted lack of observations of the situation is completely consistent with the evidence of the independent witness, Jason Cayuga who testified that two guys were jostling around in the back of the Daytona as it was stopped, waiting for

the red light to change to turn left. LaFleur remembers lights, a scream by Dean Emerson and then nothing. He subsequently woke up on the south side of Woodlawn on the southwest curb. So as far as assessing the value of his evidence, I think as far as his evidence is concerned it really isn't very helpful to this court as to what happened.

¶ 11 Jason Cayuga was the independent witness situated in his vehicle five feet behind the Daytona driven by Jason Pew in the left turn lane on northbound Niagara Street. I thought his testimony was forthrightly given. He says he originally observed the Daytona earlier ahead of him northbound on Niagara Street, going over the speed limit, approximately 80 kilometres per hour in a 50 zone. He indicated in his testimony that that did not alarm him at the time. While the Daytona was stopped he observed two guys horseplaying in the back seat. Cayuga testified that he was not concerned at the speed of the Daytona earlier and he observed the light turn green for north/south traffic on Niagara Street. He says the Daytona paused as another vehicle southbound went through the light first. Then the Daytona moved into the intersection and moved very slowly to turn left across the southbound Niagara Street lanes to go west on Woodlawn. Cayuga estimates that the Daytona was advancing two seconds before impact. Then he observed the lights of a southbound vehicle which seemed to be advancing very quickly. He testified that the Daytona was halfway into its turn when it was hit by the Taurus. The Taurus hit the Daytona broadside on the passenger's side of the vehicle and the Taurus proceeded along through the intersection after the impact. Mr. Cayuga testified that he observed the Daytona to turn without hesitation, to go west after the first vehicle went through the intersection ahead of Ladouceur. He testified he doesn't think Pew ever saw the Ladouceur vehicle. Cayuga, as far as I'm concerned, was a good witness. He had a good view of the actions of the Daytona driven by Mr. Pew in the intersection. I thought he gave his evidence very soberly and without embellishments and I believe his estimate of two seconds before impact. to be fairly accurate. I thought his credibility was good and he was a forthright independent witness.

¶ 12 Now James Walton was another independent witness who testified that he was southbound on Niagara Street in the centre lane intending to change lanes, to the right-hand lane to make a turn westbound onto Woodlawn. He testified that as he was changing lanes he saw a vehicle come up very fast on his rear. He nevertheless changed lanes to the right turn lane and proceeded to turn right. As he is focusing his attention on the right turn he hears the collision occur. Under rigorous cross-examination he admitted he could not be sure that the fast moving headlights behind him belonged to the Ladouceur vehicle involved in the collision.

¶ 13 He could not be sure as to the distance behind him of the headlights and admitted he couldn't really give the distance of the close vehicle to his rear. He testified that he was fearful of being rear ended but I think this conclusion was based on a quick glance in the rear view mirror and a split second in time. He testified he heard the collision as a fast moving vehicle passed him. He looked over his shoulder after hearing the crash and viewed a terrible scene of a man being shot through the back window of the Daytona, and later the man hitting the south curb on Woodlawn. He doesn't believe another vehicle could have passed through the intersection prior to the Ladouceur vehicle, but obviously he was concentrating on his right turn and the presence of another vehicle was confirmed by Mr. Cayuga who was paying attention to the actual scene of the accident.

¶ 14 I accept the evidence of Mr. Cayuga over that of Mr. Walton as to the presence of another vehicle southbound proceeding through the intersection. Ladouceur testified that he pulled out to pass the vehicle turning right as another vehicle proceeded southbound through the intersection ahead of him. I make it a finding of fact that the Walton vehicle was already in the right lane signalling his turn when Ladouceur pulled into the centre lane to pass him. Mr. Walton cannot say for certain that the lights close on his rear as he changed lanes were those of the Ladouceur vehicle. His conclusions didn't stand up under cross-examination and I believe his fearfulness was based more on a split second observation in the rear view mirror and hindsight after a traumatic experience.

¶ 15 Randall Bartok testified as a crown witness that he was southbound on Niagara Street after exiting from the Casa Hotel, after last call, into the closest lane, the cent re lane. He was doing about 50 kilometres per hour because he didn't want to attract attention himself, in his own testimony, and when he observed one car come up behind him just before Quaker Road. He estimates the vehicle was speeding approximately double his speed and described the vehicle as being a midsize dark car. He testified that he moved over to the right lane from the

centre lane and the dark car passed him. At Woodlawn and Niagara Street, later on, which is some distance later, he came upon the accident scene after it had occurred.

¶ 16 In assessing his evidence I have determined that he did not positively identify the vehicle or the driver moving fast on his rear as being the Ladouceur vehicle. There are many driveways, side streets, that entered onto Niagara Street between Quaker Road and Woodlawn and he admitted in his own testimony he did not keep the vehicle in constant view and didn't actually see the accident occur. His testimony was that a dark midsized vehicle passed him at a high rate of speed earlier and then he came upon the accident scene. The only similarity is the dark midsized vehicle and the court cannot conclude from this that they were one and the same vehicles. As far as I am concerned his evidence is not really helpful as to the occurrence at the accident scene.

¶ 17 Constable Reesor, a Niagara Regional Police officer, testified he was northbound on Niagara street when he observed a southbound vehicle on Niagara Street. This vehicle was described as a midsized vehicle, speeding and passing other cars. However, under cross-examination Reesor admits that he only observed the vehicle pass two other vehicles. And the testimony of Mr. Bartok indicates light traffic, that there were not many vehicles on the highway at the time. Officer Reesor then indicates that he made a U-turn to stop the vehicle but lost sight of it. He subsequently stopped a 4 x 4 for speeding on Niagara Street at the Pizza Hut and warned another female driver to slow down. He then testified that he went to the intersection of Woodlawn and Niagara and found the accident scene involving a red vehicle and a midsized gray vehicle. But under cross-examination Officer Reesor admitted that he had been approached regarding the accident while he was in the Canadian Tire lot stopped where he had parked after stopping the 4 x 4 and after earlier seeing a speeding midsized vehicle. In assessing his evidence I am not at all convinced that the vehicle Reesor saw speeding in the opposite direction on Niagara Street was the same vehicle as the Ladouceur vehicle involved in the fatal collision.

¶ 18 My assessment of all of the witnesses is that no one saw the accident except for Cayuga who says another southbound vehicle entered the intersection prior to Ladouceur and the Taurus definitely was speeding. The Daytona just crossed the path of the Ladouceur vehicle.

¶ 19 The issue here is, is speed alone sufficient for conviction under Careless Driving. Mr. Ladouceur has admitted he was speeding, at least 80 kilometres per hour. And if we were to accept P.C. Code's testing results in their entirety the minimum speed that he has estimated would be approximately 92 kilometres per hour. The testimony of Cayuga, the only eyewitness, is that it took about two seconds from the time the Daytona moved across the southbound lanes from the left turn lane and that the Pew vehicle was already halfway into its turn when the impact occurred. The Daytona entered the lane occupied by Mr. Ladouceur. The evidence of P.C. Code was that there were 57.6 metres of skids observed to the rear wheels of the Taurus indicating a braking reaction by Mr. Ladouceur and a locking up of the wheels.

¶ 20 I believe that even if Mr. Ladouceur had been travelling at the speed limit of 50 kilometres per hour the car would have travelled 90 feet in two seconds. As Mr. Ladouceur indicates, that it was three and a half car lengths when the Pew vehicle turned in front of him that's only an estimate as well. But it is confirmed with the testimony of Mr. Cayuga that it was a very short time, about two seconds before the impact occurred. At least one second of reaction time is required to even make a reaction to a sudden movement of a vehicle and as far as I am concerned, I think the speed of the Ladouceur vehicle is a factor, but I quite frankly do not feel that the crown has satisfied me beyond a reasonable doubt that Mr. Ladouceur was guilty of Careless Driving. I am mindful of a decision, Regina v. Horban, which was a 1959 Alberta District Court case in which a person had been turning left and failed to comply with a yield sign, a yield right of way sign, and another driver had been speeding and had the through way and the court at that point determined that the driver, although he was exceeding the speed limit, it was not held to effect the duty of the driver to yield - who had the obligation to yield. The fact of speed alone is not sufficient itself to convict a person of Careless Driving. I think Mr. Ladouceur's speeding doesn't satisfy me beyond a reasonable doubt that he was driving carelessly. His reaction time to an unexpected sudden movement by another driver by braking was not unusual.

¶ 21 The results of the accident are devastating and they are tragic to all the parties involved. Mr. Ladouceur has to live with the results as do the other persons who were involved in the accident. But in light of all the circumstances, I don't think that Mr. Ladouceur's reaction to a vehicle moving across his path as he was entering

an intersection on a green light that had been green for some time in the through lane and already 'committed to that action. I think his braking was the action of an average driver in like circumstances and the fact that he was speeding does not preclude the other driver from the absolute responsibility to yield. I think the circumstances are devastating and as I have indicated, speed alone as far. as I am concerned in this situation is not sufficient to find him guilty of Careless Driving.

¶ 22 Therefore, I am dismissing the charge, Mr. Ladouceur, and you are free to go.

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