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R. v. Rubino

Between
Her Majesty the Queen, and
Pietro Rubino

[1995] O.J. No. 478
DRS 95-12478

Ontario Court of Justice (Provincial Division)
Toronto, Ontario
Vaillancourt Prov. J.

Heard: October 20, 1994, and January 27, 1995.
Judgment: January 27, 1995.
(5 pp.)

Motor vehicles — Regulation of vehicles and traffic — Careless driving — What constitutes.

This was the trial an accused was charged with careless driving. The accused manoeuvred his vehicle on to a centre lane used by drivers to execute left hand turns. The driver of an oncoming vehicle, on noticing that the accused was attempting to make a left hand turn against traffic, brought his vehicle to a complete stop and signalled the accused to complete his turn. After ensuring that the road was clear, the accused proceeded to execute his turn but was hit on the rear passenger side by a truck coming from the opposite direction. This collision, which resulted in the death of a rear passenger in the accused's vehicle, happened in spite of the truck driver's best efforts to brake. All of the evidence indicated that the accused drove and executed the left hand turn in a cautious and prudent manner.

HELD: The accused was acquitted. The accused's manner of driving did not display any of the obvious indicators of inappropriate driving. There was no inattention on his part. He exercised as much care and attention to his driving as the circumstances allowed him.

Statutes, Regulations and Rules Cited:

Highway Traffic Act, R.S.O. 1990, c. H.8, s. 130.

Counsel:

M. Gillezeau and M. MacKinnon, for the Crown.
J.M. Grossman, for the accused.

¶ 1 **VAILLANCOURT PROV. J.**:— The accused stands charged that on the 13 day of September 1993 at the Municipality of Metropolitan Toronto in the Toronto Region he did commit the offence of careless driving to wit: westbound Finch Ave. W., North York at 3:41 p.m. contrary to the Highway Traffic Act, section 130.

¶ 2 The offence is alleged to have occurred on September 13, 1993. The investigating officer conferred with the Crown's office near the end of September and it was decided that a charge would be laid. However, the actual information was not sworn until January 5, 1994.

The Facts

¶ 3 At the material time of the offence, a transport tractor trailer was proceeding in an easterly direction in the curb lane of Finch Ave. West. Mr. Rubino was moving in a westerly direction in the centre lane of westbound traffic. The accused had four of his friends in his vehicle and he was driving them home after school. All of the passengers gave evidence that Mr. Rubino was operating his Ford Tempo in a prudent and cautious manner. As he was driving along, Mr. Rubino manoeuvred his car into the centre lane of Finch Ave. West. This lane is used by drivers to execute left hand turns.

¶ 4 Mr. Cristovao had been going eastward in the passing lane for easterly traffic. He was driving a Ford Bronco. When he noticed that Mr. Rubino was attempting to make a left hand turn against traffic, he brought his vehicle to a complete stop and signalled the accused to complete his turn.

¶ 5 Mr. Rubino proceeded to move his car into the blocked lane and to check if there were any vehicles approaching in the curb lane. He indicated that he could see approximately three car lengths along the roadway and the lane appeared to be clear. Mr. Cristovao indicated that Mr. Rubino's view may have been blocked by his Bronco because it is higher off the ground.

¶ 6 Mr. Rubino's car executed his turn and he had almost cleared the eastbound curb lane when the transport truck hit him on the rear passenger side. This collision happened in spite of the truck driver's best efforts to brake.

¶ 7 The result of the collision was the death of one of the rear passengers.

¶ 8 All of the occupants in the Rubino vehicle described the left hand turn as being executed in a cautious manner. Having regard to all the evidence, I concur with this opinion.

¶ 9 Mr. Grossman noted that all the witnesses called in this case presented a common thread as they gave their evidence. There were inconsistencies between the various witnesses when they gave their evidence but there wasn't any major departure from basic scenario described that would suggest that this event was anything but an unfortunate accident.

¶ 10 The evidence would also support the conclusion that Mr. Rubino had exhibited prudent and responsible driving throughout the course of this drive before the collision.

The Law

¶ 11 Section 130 of The Highway Traffic Act R.S.O. 1990, c. H.8 reads as follows:

> "Every person is guilty of the offence of driving carelessly who drives a vehicle or street car on a highway without due care and attention or without reasonable consideration for other persons using the highway and on conviction is liable ..."

¶ 12 In R. v. Wilson 1971 Vol. 1 O.R. 349 (Ont. C.A.), it was noted that:

> "Mere inadvertent negligence of the slightest type or not will not necessarily sustain a conviction for careless driving contrary to [then s. 60] of the Highway Traffic, R.S.O. 1960, c. 172. The Crown must prove beyond a reasonable doubt that the accused either drove his vehicle on a highway without due care and attention or that he operated it without reasonable consideration for other persons using the highway. One of these ingredients must be proved to support a conviction under that section."

¶ 13 The mere fact of an accident, in the absence of excessive speed or risk taking, is not sufficient to support a conviction for careless driving where the effective cause of the accident is mere momentary inattention. See: R. v. William Namink (1980) 4 W.C.B. 13 (Sept. 24, 1979, Ont. Co. Ct., Killeen, Co. Ct. J.). I do not find that the driving in the present case displayed any of the obvious indicators of inappropriate

driving. Furthermore, there was not any inattention on Mr. Rubino's part. He exercised as much care and attention to his driving as the circumstances allowed him.

¶ 14 I find that the case of R. v. Paul Guardhouse (1981-1982) 6 W.C.B. 6 (Dec. 30, 1980, Ont. Co. Ct., Morrissey Co. Ct. J.) similar to our fact situation. In Guardhouse, the accused had been operating his tractor-trailer in a construction zone for three days and unbeknownst to him, the traffic had been rerouted from that which had existed in the previous days. The accused was motioned to proceed by a police officer directing traffic but, mistaking the direction of the officer, ended up driving his vehicle in the lane of oncoming traffic for two hundred feet. None of the motorists in the oncoming lane were endangered although one of the police officers directing traffic was forced to move out of the way. In the circumstances, as the accused had been waved on by the first officer, he mistakenly believed that he was being invited to follow the same route he had followed earlier and the Crown accordingly failed to prove that the accused's conduct was careless.

¶ 15 Mr. Rubino relied on the direction from Mr. Cristovao to complete his turn. It should also be noted that the accused did not proceed without checking as best he could the traffic flow in the inside lane.

¶ 16 In R. v. Beauchamp 106 C.C.C. 6, the Ontario Court of Appeal discussed the degree of care to be exercised by operators of motor vehicles. Mr. Justice MacKay writing for the Court at page 12 noted that:

> "... It is, I think, correctly stated in Mazengarb, Negligence on the Highway, 2nd ed. pp, 176-7, as follows:
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> > The law does not require of any driver that he should exhibit perfect nerve and presence of mind, enabling him to do the best thing possible. It does not expect men to be more than ordinary men. Drivers of vehicles cannot be required to regulate their driving as if in constant fear that other drivers who are under observation, and apparently acting reasonably and properly, may possibly act at a critical moment in disregard of the safety of themselves and other users of the road.
> >
> > But the law does insist upon a reasonable amount of skill in the handling of a 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?'"

¶ 17 Mr. Justice Mackay further writes at page 13:

> "... It must be born in mind that the test, where an accident has occurred, is not whether, if the accused had used greater care or skill, the accident would not have happened. It is whether it is proved beyond reasonable doubt that the accused, in light of existing circumstances of which he was aware or which a driver exercising ordinary care should have been aware, failed to use the care and attention or to give to other persons using the highway the consideration that a driver of ordinary care would have used or given in the circumstances. The use of the term due care, which means care owing in the circumstances, makes it quite clear that, while the legal standard of care remains the same in the sense that it is what the average careful man would have done in like circumstances, the factual standard is a constantly shifting one, depending on road, visibility, weather conditions, traffic conditions that exist or may reasonably be expected, and any other conditions that ordinary prudent drivers would take into consideration. It is a question of fact, depending on the circumstances in each case."

¶ 18 Finally, at page 14, the following passage is of note:

> "There is a further important element that must also be considered namely, -- that the conduct must be of such a nature that it can be considered a breach of duty to the public and deserving of punishment. This further step must be taken even if it is found that the conduct of the accused falls below the standard set out in the preceding paragraphs."

¶ 19 Mr. Rubino was a youthful and relatively inexperienced driver who showed a prudent and cautious approach to his driving. The tragic results of September 13, 1994 will remain with the accused for his lifetime. Having reviewed the facts of this case and the law, I am not satisfied that the Crown has proven the case beyond a reasonable doubt and accordingly the criminal charge against the accused will be dismissed.

VAILLANCOURT PROV. J.

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