

APR 20 1976

Follow Too Closely

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IN THE COUNTY COURT OF THE JUDICIAL DISTRICT OF YORK

BETWEEN :

STEVEN KYLES BOOKMAN

Appellant

- and -

HER MAJESTY THE QUEEN

Respondent

COUNSEL:

D. Harris, Esq.

for the Appellant

L. Feldman, Esq.

for the Respondent

REASONS FOR JUDGMENT

CORNISH, J.

The appellant, a solicitor, was charged under subsection 1 of Section 105 of the Highway Traffic Act R.S.O. 1970 chapter 21 which reads as follows:

Section 105. (1) The driver or operator of a motor vehicle shall not follow another motor vehicle that is in the same lane and is proceeding in the same direction as the motor vehicle of which he is the driver or operator, at a distance less than that required for the safe operation of the motor vehicle. R.S.O. 1970, c. 21, s. 105.

I will not go into the evidence beyond stating that Officer Joseph Krolewski an officer with twenty-two years of experience on the force testified that at 9:40 a.m. on 9th November 1976 the appellant driving a Cadillac automobile

followed him on Kipling Avenue from Princess Margaret Drive to Burnhamthorpe Road at a distance of approximately one car length and that both cars were travelling at about 35 miles per hour. The appellant claims that the distance was more like three car lengths.

I have no fault to find with the officer's testimony as to the distance separating the two cars which probably amounts to 20 to 25 feet. My objection is to offences in the Highway Traffic Act such as unnecessary noise (Section 49(3)) and following too closely Section 105(1) which make the decision as to whether an infraction has occurred to the purely subjective opinion of a police officer.

The Highway Traffic Act contains no definition of what "following too closely" means and there are to my knowledge no decided cases to help a judge in construing these words. If it means that one should keep a distance from the car in front of you that will enable you to avoid a rear end collision even if that car suddenly comes to a stop then there must be a thousand of infractions every day at rush hours on busy traffic arteries in Metropolitan Toronto.

Even if one accepted this dubious interpretation there are no tests, studies, tables or equipment which give a guide of what distance should be kept under given conditions of speed, condition of brakes, driver reaction time, visibility, incline

of highway and whether it is wet or dry.

Under these circumstances the accused motorist has
a difficulty ^{if} not impossible, task to successfully prove that he
was not following too closely. I therefore allowed this appeal.

DATED AT TORONTO, THIS 15 DAY OF MARCH, 1978.

F. J. Cornish
JUDGE F. JOSEPH CORNISH