

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN,

Respondent

— AND —

WILLIAM EREDDIA

Appellant

Before Justice David A. Fairgrieve
Heard on August 24, 2006
Reasons for Judgment released on August 25, 2006

Patrick McMahon agent for the City of Toronto
Mark A. Klaiman counsel for the appellant

FAIRGRIEVE J.:

[1] The legal issue that arises in this appeal under the *Provincial Offences Act* is simply whether the facts as found by the justice of the peace at trial come within the legal definition of the offence of careless driving, contrary to s. 130 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended.

[2] The facts were essentially not in dispute. When Mr. Ereddia testified at trial, he confirmed the evidence given by the two Crown witnesses, Trevor Brewer, the driver of the garbage truck which had its driver's side mirror broken when the mirror on the passenger side of the appellant's truck came into contact with it, and P.C. Lazenby, a police officer who happened to be parked nearby completing a report concerning another accident that had involved a different garbage truck striking a parked car. The additional facts which emerged from the appellant's evidence were not challenged by the Crown and, understandably, appear to have been accepted by the justice of the peace.

[3] The charge stemmed from an accident that occurred when the mirror on the passenger side of the vehicle driven by the appellant, a heavily loaded Mack construction truck, came into contact with the mirror on the driver's side of a garbage truck, when the appellant attempted to pass the garbage truck which was parked on the side of the road compacting garbage. The location of the accident was Humphrey Gate, a street with no

markings separating its two lanes, in a new residential subdivision in the area of Eglinton Avenue East and Don Mills Road in Toronto. According to the officer's evidence, the roadway was 8.6 metres wide. Mr. Ereddia estimated that the garbage truck was a little less than eight feet wide and that his own truck was about eight feet wide, with side mirrors protruding another 18 inches on both sides. He also acknowledged that there was a parked car on the other side of the road opposite where the garbage truck was stopped. The appellant testified that he waited behind the garbage truck for 10 or 12 minutes, but when it did not move, he decided that he would try to "squeeze by" it, believing that he had enough room to pass between it and the parked car. He proceeded to drive very slowly, at a speed he estimated to be 2 miles per hour, guided by his son because he was aware that he did not have much clearance, until the edge of his right hand mirror came into contact with the left mirror of the garbage truck. The contact caused the latter mirror to crack.

[4] Mr. Ereddia further testified that he then stopped his truck and brought the cracked mirror to the attention of Mr. Brewer, the garbage truck driver. He offered to replace the mirror that he admitted he had broken, but Mr. Brewer told him that he could not do that because it was City property, and that he had to notify his supervisor. While waiting for the supervisor to arrive, the appellant went to P.C. Lazenby's location and told her that he had broken the mirror. She told him to wait in his truck, while she apparently continued working on her earlier accident report. When the City of Toronto supervisor arrived and Mr. Ereddia again admitted that he had broken the mirror on the garbage truck and said he wanted to pay for it, the supervisor conveyed to him that he had expected something more serious and told him not to worry about it. About a half hour later, the officer directed the appellant to park on the side of the road. After a further delay of about 15 minutes, P.C. Lazenby issued him with a notice of offence charging him with careless driving, explaining that she could not find "anything else in the book" that she could charge him with. In cross-examination, Mr. Ereddia agreed that the two mirrors had come into contact because it turned out that the space between the garbage truck and the parked car was not wide enough for him to drive through. He admitted that he had misjudged the distance.

[5] In his reasons for convicting the appellant of careless driving, the justice of the peace stated that Mr. Ereddia failed to exercise "due care" when he misjudged whether he had room to pass the garbage truck. He went on to state, "... what other charge could fit this? Careless driving is the only offence, [the] only section [that] could fit, because you misjudged". The justice of the peace made the further observation that the appellant's explanation, rather than providing a defence, amounted basically to a guilty plea admitting the offence.

[6] The offence of "driving carelessly", created by s. 130 of the *Highway Traffic Act*, is defined as driving on a highway "without due care and attention or without reasonable consideration for other persons using the highway". The law has been clear for decades that in order to make out the offence under s.130, 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 at p. 278 (Ont. C.A.). A driver is not held to a standard of perfection, and a mere error of judgment is not necessarily sufficient to establish the offence: see *R. v. Wilson* (1971), 1 C.C.C. (2d) 466 (Ont. C.A.). Careless driving, generally speaking,

requires proof of a departure from the standard of care that a reasonably prudent driver would have exercised in the circumstances, and normally involves, I would think, conduct that includes other less serious *Highway Traffic Act* infractions.

[7] Mr. Klaiman, counsel for the appellant, also referred in his factum to the pertinent judgment of Killeen Co. Ct. J. in *R. v. Namink*, [1979] O.J. No. 317 (QL), where, at para. 10, the learned County Court judge stated as follows:

It is trite to say that this is a quasi-criminal charge, and that to make out a charge under this section the evidence must bespeak conduct deserving punishment in the way of a conviction under this section of our *Highway Traffic Act*. Mere momentary inattention, or a simple kind of error of judgment, does not bespeak the kind of conduct over which the net of this section is cast.”

[8] It also seems to me to be relevant that the Legislature has prescribed a minimum fine for the offence of careless driving, as well as the loss of six demerit points upon conviction for the offence (Ont. Reg. 339/94, s. 18 (2)). While sentencing considerations certainly do not affect the determination of guilt or innocence of an offence charged, the prescribed punishment can, I think, sometimes assist in identifying the kind of conduct intended by the statute to constitute the offence. In the case of careless driving, the minimum penalties provide a further indication, in my view, that even the most minor instance within the range of conduct covered by the section was intended by the Legislature to entail at least some degree of seriousness. I think it is fair to say that, in general, careless driving is meant to cover conduct that is more serious than many other minor traffic infractions that carry no such minimum penalty or that result in the loss of fewer or no demerit points. To constitute careless driving, I think, the conduct in question should not only be deserving of punishment in some abstract, moralistic sense, but should also not be so trivial that the minimum penalty prescribed by the statute would be entirely disproportionate to its gravity.

[9] I am satisfied that the justice of the peace at trial implicitly misdirected himself as to the statutory requirements of s. 130. It is apparent that he regarded what he described as the “misjudgment” of the appellant that caused the two mirrors to come into contact with each other as sufficient to characterize the appellant’s conduct as careless driving. The miscalculation by the appellant of whether there was sufficient space to “squeeze by” the garbage truck, which turned out to be too narrow by perhaps a couple of inches, hardly justified a finding of careless driving. In my view, a simple error of judgment of the kind made by Mr. Ereddia was not capable in law of establishing the a departure from the standard of care of a prudent driver that was sufficiently serious to merit punishment or to constitute the offence. Without implying that anyone should have been charged with any violation as a result of the trivial circumstances that led up to the accident, it strikes me that the effective blocking of the roadway by the driver of the garbage truck for a prolonged period while garbage was being compacted, when he presumably could have parked in a different location just as easily, probably was the most reprehensible and inconsiderate of any conduct disclosed by the evidence.

[10] In any event, the suggestion initially made by the police officer to the appellant at the scene, and then later expressly adopted, rather oddly, by the justice of the peace in his

reasons, that careless driving was the appropriate charge because there appeared to be no other section of the statute that the appellant had violated, certainly did not warrant the finding made at trial. It is obviously not the case that every collision, no matter how minor, must result in a finding that there was a *Highway Traffic Act* infraction, much less that careless driving should be regarded as a “default” violation when no other offence can be identified. In my view, the justice of the peace failed to apply the authoritative rulings, binding upon him, which define the minimum essential elements of the offence.

[11] The appeal is allowed, the conviction set aside, and an acquittal entered. The fine paid by Mr. Ereddia will be refunded to him.

Released: August 25, 2006

Signed: “Justice David A. Fairgrieve”