

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

NATALIA FOURMAN

Before Justice of the Peace George A. Griffith

Heard on May 18, 2010

Reasons for Judgment released on June 22, 2011

K. Miller for the Prosecution
R. Tatangelo ... Agent for the Defen-
dant

JUSTICE OF THE PEACE GRIFFITH:

[1] The defendant, Natalia Fourman is charged with the offence that, on 6th January, 2011 at Dean Avenue and Normandy Street, in the City of Oshawa, in the Regional Municipality of Durham:

... Disobey stop sign – Fail to stop, contrary to s. 136 (1) (a) of the Highway Traffic Act.

[2] Overview:

Dean Avenue runs east-west, and Normandy runs in a horseshoe to the south from Dean Avenue where they intersect. There are town houses and small apartment complexes in the nearby area. There is a school nearby. The Durham Regional Police Officers do an annual back-to-school blitz on traffic enforcement, in that area, where there are stop signs. There have been complaints about motorists not obeying the stop signs.

[3] Prosecution Evidence:

Officer James Gillam of the Durham Regional Police Services issued the Part 1 Certificate of Offence and he gave testimony in the matter, as follows. On January 6th 2011, he was participating in the “in the zone” traffic enforcement blitz, and he positioned himself in a parking lot just south of Dean Avenue. He was on the western portion of the horseshoe, on the south-west corner of the intersection, and he was facing north-east. The location is a three-way intersection because of the horse-shoe shape of Normandy. The stop lines are placed prior to the sidewalk on the south and west portion of the road. The particular stop sign on which he focussed is located at the private entrance/driveway of a small apartment building.

[4] Officer Gillam stated that he is fairly familiar with the area and he stayed in his position for four mornings, observing traffic, stopping vehicles and issuing tickets. He issued 25 tickets during that week, at that location. He states that he had an unobstructed view and he could see as far as about 60 metres past the stop sign.

[5] At about 8.29 am on January 6th, 2011 he observed that a blue motor vehicle that was travelling west-bound on Dean Avenue had approached the stop sign and it did not come. However, it travelled through the stop line and its wheels did not stop turning.

[6] It was a cold day, with snow on the ground. However, he remembered checking the sign that the defendant would have seen that morning. He could see that sign from a distance, and plainly from where he was positioned in the parking lot of a community hall. He was about 20 metres from the actual stop sign where the offence was committed.

[7] The Officer followed the blue van and initiated a traffic stop. He sought and received a valid Ontario photo driver's licence from the driver of that blue van. He was satisfied with the identity of the driver, whom he pointed to in Court, and he issued the Provincial Offence ticket under s. 136(1)(a).

[8] DEFENDANT'S EVIDENCE: Natalia Fourman, the defendant, testified that she has lived in the area for three years and that she is very familiar with the area, the intersection and the stop signs. Every morning, she drops off her daughter at a nearby French Immersion school at Wilson. She had seen the police vehicle for four days in that location, doing enforcement. New signs were put up at the intersection because of the many accidents in that area, and because of the school area.

[9] She testified that on the morning of January 6, 2011 the road was covered with snow. There was also black ice in some part, also. There was high temperature the day before and the temperature had dropped. She knew the location of the stop sign and the stop lines, although the stop lines were covered by the snow. Therefore, she stopped completely where she was supposed to stop on the way to dropping off her daughter at school, and on the way back. At 8.29 am that day, there were many cars going east-bound and west-bound. When she travelled east-bound to her daughter's school, she had seen the officers. She was returning west-bound from the school, and had stopped at the stop sign at Dean Avenue, before being pulled over.

[10] The defendant stated that she had come to a complete stop at Dean, and she was surprised when the officer pulled her over near to the entrance of Ritson Road and the 401 Highway, which was about one kilometre from the stop sign at Dean Avenue. She testified that she knew that she had come to a complete stop because of her driver training which taught her to feel the stop, when the car comes to a complete stop, and that was the case on that day.

[11] The defendant states, also, that the Officer was not in a position to see that she had made a complete stop. She stated that, contrary to the Officer's testimony about having an unobstructed view, it was her observation that the officer was parked down the hill, while she made her stop at the proper area at the crest of the hill at Dean Avenue. She stated that other Officers are better positioned, and that, on that day, Officer Gillam was not in a good position to see that she had made a complete stop where she was supposed to stop. The officer could not see the stop sign, which was at the highest point on Dean Avenue, a little before the intersection at Normandy and Dean Avenue. And, he could not see the stop lines as they were covered in snow. She stated that Dean Avenue is not a straight Avenue, and that it is arched. Therefore, the stop line and sign are visible when one gets higher on the hill, and not where Officer Gillam was positioned.

[12] Defendant's Submissions:

Mr. Tatangelo sought an acquittal on grounds that, firstly, the officer's notes given as disclosure were inadequate and insufficient. Secondly, he argues, an application of the principle of the caselaw in *R. v. W(D)* would render an acquittal.

[13] In the matter of the Officer's notes, entered as Exhibit #1, the defendant's agent pointed out that the totality of the disclosure material provided to the defence was a copy of the Part 1 Certificate of Offence, attached to the under-mentioned notation, which purports to be the Officer's notes:

DEAN NORMANDY

IN THE "ZONE"

W/B ROLL THRU SIGN

BLUE VAN

RESIDENT OF AREA

ISSUED PON

[14] Relying on the case law in Court's decisions submitted for review by the Court, such as in *R.v. Fisher*; and *R.v. Odgers*, Mr Tatangelo has argued that those notes of the Officer were sparse and inadequate, and that they were not sufficient to allow the defence to mount a proper defence in the trial. He pointed out that there was nothing in the notes such as where the stop signs were located at the intersection of Dean Avenue and Normandy Street. He has argued that no weight should be attributed to the Officer's viva voce evidence, as that evidence is not given with corroborating adequate notes.

[15] Mr Tatangelo referred the Court's decision in paragraph 16 of *Odgers* which speaks of the "inherent duty placed on officers to prepare complete and accurate notes." He submits that the officer's memory was not as clear and concise as the defendant's; that his details were sketchy, compared to the defendant, such as his testimony about where he was positioned, at the bottom of the hill. He noted that the Officer actually conceded in

his testimony that the defendant would know the area better than he would. During cross-examination, Mr Tatangelo had questioned the Officer about the lack of details in his notes about his location, and his position of the day of the alleged offence by Natalia Fourman; about the need for notes to refresh his memory; and about whether much of what he gave in oral testimony was a repeat of just his usual practice, as opposed to what happened that day, details of which are not contained in the notes of Exhibit #1.

[16] Mr. Tatangelo submitted that, given the concise, unequivocal, unwavering, and clear evidence of the defendant, compared to the Officer's testimony, the principle in *R.v. W(D)* should be applied and that the defendant should be acquitted.

[17] Prosecutor's Submissions: The Prosecutor has argued that the Officer is a trained Officer of many years, and that he knows how to conduct traffic enforcement. She submitted that the Officer was at the location of the intersection to observe traffic enforcement and that he had a clear and unobstructed view of what happened on that day- that the defendant was driving on the road on that day and that she had not come to a complete stop at Dean Avenue and Normandy Street.

[18] On the issue of the Officer's notes (Exhibit #1, the Prosecutor has argued that all of the elements of the offence are contained in the disclosure package, that is, what is contained in the front and back pages of the Offence Certificate, in addition to the attached

six lines which begin with "DEAN NORMANDY". The Prosecutor argues that there is no issue of serious inadequacies in the Officer's notes, and that *Odgers* is distinguishable in that it deals with issues such as breath samples, while the case at bar is a stop sign charge. In addition, on the issue of the Officer's notes, the Prosecutor has referred the Court to the decision in *R. v. Thom*, as a counter argument.

[19] Further, the Prosecutor conceded that *R. v. W(D)* must be considered, given that there are two conflicting versions as presented by the defendant and Officer Gillam. However, she argues, the prosecution has established the guilt of the defendant Natalia Fourman beyond a reasonable doubt on the charge as laid, and that she should be convicted.

[20] COURT'S DECISION: On the issue of the officer's notes, the Court is of the opinion that the defence arguments are valid, based on the principles of the case law as cited by Mr. Tatangelo in *Fisher* and *Odgers*. I find that the cryptic lines which form part of Exhibit #1 are insufficient and inadequate. With respect to the case law, in particular, in paragraph 16 of *Odgers*, it is stated, in part:

'... no longer are the notes of an officer a simple aide-memoire generated for the sole purpose of that officer to assist in refreshing his/her memory... It cannot be said that the adequacy of an officer's notes is of little consequence. Accordingly the courts have recognized that there is an inherent duty placed on officers, to prepare complete and accurate notes. In the normal course of disclosure, officers' notes invariably find their way into the hands of defence counsel, who will of course rely on them... It can be of particular concern in instances when events or observations of obvious relevance and importance, are omitted or not adequately documented in the notebooks of officers... when serious inadequacies are demonstrated, the credibility of police officers can in fact be discounted...'."

[21] The Court notes that this same issue of the insufficiency or inadequacy of officers' notes is addressed In *R. v. Karunakaran* [2008] O.J. No.3468; 2008ONCJ 397. In that decision, the Honourable Judge concluded that the Officer's notes were too sparse, and, therefore, they were inadequate. He went on to say in paragraph 25 that, "while an offi-

cer's notes cannot be expected to record every minute detail, they must contain a complete an accurate record of the significant events in the investigation so as to enable the Crown to fulfill its constitutional obligation to make full disclosure. . .”

[22] DECISION: On the issue of the officer's notes, also, it is my opinion that the Court's reasoning in *Thom* does not overturn the reasoning in *Karunakara, or Odgers*. Two different issues are ruled on by Justice Armstrong, in my opinion. In *Karunakaran, and Odgers*, the Court rules on the sufficiency of an Officer's notes that normally become part of the disclosure provided to defence Counsel. If those notes that defence receives before trial do not contain relevant information and an accurate record of significant events that is only presented by an officer on the trial day, the defence would have been left at a disadvantage as to how to prepare a full answer or a defence. As well, the Crown would not have fulfilled its constitutional obligation to make full disclosure. In *Thom*, Justice Armstrong is dealing with an officer's use a photocopy of a photocopy of his notes for the purposes of refreshing his memory at the trial. It is presumed that at that stage of the trial the officer has provided to the Crown, and by extension to the defence all of the notes that contain the relevant information, and an accurate record of significant events of his investigation. In my view, *Thom* deals only with the issue of the officer's use of those mandatory existing notes, (whether original or a photocopy), to refresh his/her memory at trial. The notes must first exist, before the test of “Past recollection recorded” or “present memory refreshed” is addressed.

[23] The Court is also of the opinion that, based on the evidence adduced, a reasonable doubt has been raised, and the Defendant must be acquitted. As pointed out by the Prosecutor the Court was presented with two contrasting versions of what happened on January

10, 2011 when Natalia Fourman was issued the Offence Certificate. It is accepted that officer Gillam is a trained officer and that he was positioned near the location of Dean Avenue and Normandy Street for stop sign enforcement. He presented his testimony in a straightforward manner. However, the defendant has also presented a consistent and reliable version of what happened that day. The Court has heard the undisputed testimony, namely, that the officer was in a position where he was looking slightly uphill from the parking lot of a community hall on a day when there was snow on the ground. The stop lines were not visible, and the road arched some distance away from the officer's position. These are undisputed facts.

[24] In addition, the defendant testifies that she came to a complete stop at the crest of that part of Dean Avenue, as her driver training taught her. Notwithstanding the snow conditions, she knew where the sign and stop line were located, as she has lived in the area, and she travelled that route regularly while taking her daughter to school. She had seen the officers as they were in position for traffic enforcement while going to the school. She believed that Officer Gillam was not in a position where he could have seen that she made a complete stop.

[25] In all of the circumstances, and, taking into consideration the principle of the case-law in *R. v. W(D)*, as cited above, the Court is left with a reasonable doubt as to the guilt of the defendant. The Prosecutor has not established the guilt of Natalia Fourman beyond a reasonable doubt, and the case is dismissed.

George Griffith