

PROVINCIAL COURT (CRIMINAL DIVISION)

HER MAJESTY THE QUEEN

against

ANDREW HYNES

P R O C E E D I N G S

BEFORE HIS HONOUR JUDGE B.E. MACPHEE,
on July 17, 1990, at BRAMPTON, Ontario

CHARGE: S119(1) H.T.A.

APPEARANCES:

C. Sym, Ms.

S. Parker, Esq.

Counsel for the Crown

Counsel for the accused

Table of Contents (i)

PROVINCIAL COURT (CRIMIANL DIVISION)

T A B L E O F C O N T E N T S

COUNSEL'S SUBMISSIONS	1
CROWN'S SUBMISSIONS	7
REASONS FOR JUDGMENT	9

I.
Tuesday,
July 17, 1990

Submissions, Mr. Parker

MS. SYM: Number 14, Andrew Hynes.

MR. PARKER: Yes, good morning, Your Honour.
My name is Parker, initial S. I appear as
agent on behalf of Mr. Hynes. He's not
present this morning.

MR. HYNES. I'm here.

MR. PARKER: Oh, you are here. I'm sorry.

CLERK OF THE COURT: What number?

MS. SYM: Fourteen.

MR. PARKER: Hynes is present, Your Honour.
My apologies.

THE COURT: Yes, Mr. Parker, I've read the
transcript.

SUBMISSIONS BY MR. PARKER:

Yes. The issue in this particular matter
I would submit with respect, Your Honour,
is not, of course, what Your Honour would have
decided had you been the trier of fact, but
rather it was the Justice of the Peace, in error,
in not accepting an appeal with the Court decision
from this jurisdiction, in particular, concerning
an almost identical matter, which was heard
before His Honour Judge Young as indicated
in the transcript. I do have a copy of that
transcript if Your Honour wishes to peruse
that of the original of the Parrot matter.
The original trial is--

THE COURT: This is a situation where Mr. Hynes
was in a sense playing peek-a-boo in trying
to get out on the roadway; trying to make
what is almost becoming an impossible task in
the District of Peel; that is to make a

left turn.

MR. PARKER: That's correct. I have the original transcript here for the Parrot matter.

THE COURT: Was that his residence he was exiting from?

MR. PARKER: No, that was a driveway to a small shopping plaza, strip plaza, I believe. I'm just looking--I thought I had a copy of His Honour's decision on the Parrot matter. In any event, as Her Worship indicates she's familiar with that decision but doesn't agree with it as indicated in the Hynes matter at page 12, sorry before that. Yes, at page 12, line 18, I quote R. vs. Parrot and Her Worship interrupts at that point. She says she's familiar with the case before Judge Young. She asks and that's acknowledged. She feels that there is absolutely nothing in that case that she has made a mistake in law. I've read the case, and I can't see anything that was wrong with Judge Young's decision. There is no mistake that I feel that I have made in law after reading that case.

THE COURT: Well, I appreciate that she has some difficulty in Parrot. My difficulty is that what does it say.

MR. PARKER: Yes, Your Honour. I beg your pardon, I do have a copy of Judge Young's decision in that particular matter.

THE COURT: What does he--

MR. PARKER: He basically is very brief in that matter wherein he states that--the fact that he

5
10
15
20
25
30

had--Mr. Parrot had crossed two lanes already. He feels he can't see how that complies with the section. Even the prosecutor at the time, Mr. Nevins, had some difficulty with that, but states that it was the only charge applicable at that time. It was a wording of the section as indicated in the transcript, that a person who attempts to leave from a driveway or a private road shall not enter the highway until such time as he's yielded the right of way of all traffic approaching so closely as to constitute an immediate hazard. In both the Parrot case and the matter before Your Honour today we have a situation where the vehicles have crossed slowly, stopping at each lane and across the front of all the traffic that has stopped, or rather in a stopped position partially into a left turn lane at an intersection. At the very beginning of a left turn lane, when traffic--the other vehicle came around from behind other stopped vehicles and collided with the defendant or appellant as it is now, when that vehicle had been stopped for three or four seconds. The argument there is that how could that be constituted to read, or construed to read that that other vehicle was approaching so closely as to constitute an immediate hazard; as against the situational scenario where you have a vehicle leaving a driveway with perhaps its front wheels on the roadway and the rest of the vehicle still on the driveway and the curb lane vehicle collides with it.

There is another matter that subsequently--

THE COURT: There is a position that from that collision that one may be allowed to draw an inference that the danger was immediate then.

MR. PARKER: Well, the situation in the section is--

THE COURT: I know what Mr. Hynes was attempting to do. It's obvious from the transcript, although only his evidence was reproduced. He was simply trying to get out on a busy street and was almost successful.

MR. PARKER: The fact that he'd been stopped several seconds partially into the beginning of the left turn lane, which is acknowledged was not at its full width at that time, and several vehicles stopped behind the vehicles that had stopped to allow Mr. Hynes to leave the driveway; that, in my respectful submission, will be that that other vehicle that eventually did come into collision was not approaching at that time when Mr. Hynes left the driveway. That other--

THE COURT: Isn't the onus upon the person exiting from what is known are part of the rules of safety? Isn't the onus upon that person to ensure that the entire roadway is free from traffic so as to allow him to in a sense create the danger in crossing the roadway and do that safely?

MR. PARKER: It may be from a civil liability point of view be something different. I would submit, Your Honour. However, where it states in the section if one were to leave the section wherein it states--

THE COURT: What you're saying to me is you're saying that Regina and Perrot stands for the

5
proposition that once a person leaves his
driveway and has made it across two lanes of
traffic in safety, and in a sense has come to a
stop, he then enters that last lane, crosses
it and gets into an accident; that the section
is no applicable? With respect, that is not
what Judge Young says in Regina and Parrot.

10
MR. PARKER: That is my proposition and it is my
understanding from Judge Young's decision
that because he has already crossed two lanes,
he doesn't see how that--how the section, therefore,
fits. Now, there is another matter came before
Judge Young, the case of R. vs. Djordjevic. That
15
appeal matter was dealt with on the 15th of June
of this year. Consequently, as well the transcript
has been applied for. It is, of course, not as yet
available. I represented Mr. Djorgjevic at trial
and on the appeal, and I have documents to
indicate that the appeal was allowed by Judge
Young. Now, Judge Young, His Honour Judge Young,
20
did make more detailed comments in his decision;
again the circumstances of the Djordjevic matter
almost identical to the Parrot matter and the
Hynes matter before you this morning. But the
situation has, as I understand it, Your Honour,
25
is that because there was an Appeal Court
decision of turning a conviction of the same charge,
that Her Worship should have been bound by that
decision. Unfortunately, whether she agrees with
it or not is not particularly the issue.
30

5
10
THE COURT: I agree with that the matter in which you're stating in, but if you're telling me that Judge Young has decided in Regina and Parrot that in circumstances like your client finds himself in that a conviction under the section is precluded, I do not see that on the face of that decision. I would need something stronger than that to lead me to the conclusion that Judge Young is of that view. But I will stand the matter down at this time, Mr. Parker, and give it some consideration.

15
20
MR. PARKER: I agree with Your Honour where it may not always preclude a conviction under that particular section. The circumstances, of course, would depend on each particular case. The situation that I'm presenting today and the Parrot matter and the other matter is where traffic has stopped to allow a vehicle to leave a driveway. If, of course, there was no traffic there and the person left the driveway in the hope that an approaching vehicle was far enough away, and there was a collision as a result regardless of the lane, I--

25
THE COURT: The fact that there was traffic there, Mr. Parker, is clearly an indication that people had to stop for your client, isn't it?

30
MR. PARKER: No, because I believe the transcript indicates that the intersection was immediately to the right of the driveway in question. The lights had become--were red and other traffic was already backing up and stopped to the right

5 of the driveway, and other traffic then
approaching would have blocked that driveway,
so they stopped before Mr. Hynes and Mr. Perrot,
the other matter, even left the driveway at all.
THE COURT: Are you sure that Mr. Hynes is now
going right from that driveway as opposed to
left?

10 MR. PARKER: No. What I'm getting at is that
the vehicles that were approaching from the left
of the driveway to cross the driveway to get
to the intersection had already come to a stop
for the red light. And other traffic that was
coming up behind it to stop, had they continued,
15 would have blocked the driveway where Mr. Hynes
was. Consequently, that traffic individually
stopped, creating that gap between their
vehicles and the vehicles in front of them that
were already stopped to allow Mr. Hynes to
leave that driveway. And it is the time factor
involved from leaving the driveway to the point
20 of collision that would be my contention that
traffic, therefore, was not approaching so closely
as to constitute an immediate hazard for Mr.
Hynes leaving that driveway.

25 THE COURT: Anything further, Mr. Parker?

MR. PARKER: Thank you, Your Honour.

THE COURT: Ms. Sym.

SUBMISSIONS BY MS. SYM:

30 It's the Crown's submission that the Justice of
the Peace at page 17 correctly stated the onus

5
10
15
in the section, the onus is on the person coming out of the driveway. With respect, it is the Crown's submission that you have to consider whether or not an immediate hazard is created with respect to traffic in each of the lanes. I ask Your Honour to find that the Justice of the Peace was correct in making the finding that there was an immediate hazard created with respect to the lane and the traffic that Ms. Tanti was occupying at the time, and that she was correct in making the finding that she did.

THE COURT: I'm standing the matter down of Mr. Hynes and deal with it later this morning. Thank you.

MR. PARKER: Thank you, Your Honour.

...OTHER MATTERS DEALT WITH AT THIS TIME

20
THE COURT: Mr. Parker.

MR. PARKER: Yes, Your Honour. Thank you.

THE COURT: Ms. Sym, I don't know whether I asked you for any response on this matter. I think you may have given me one though, did you?

25
30
MS. SYM: I think I said my bit and I'm satisfied with that, Your Honour.

REASONS FOR JUDGMENT

MacPhee, B.E. (Orally):

In the matter of the appeal involving Andrew Hynes, this is an appeal that comes before me whereby Mr. Hynes is represented by Mr. Parker, his agent in this particular situation, and is charged pursuant to S. 119(1) of the Highway Traffic Act which reads as follows:

"Every driver or a streetcar operator entering a highway from a private road or driveway shall yield the right of way to all traffic approaching on a highway so close that to enter would constitute an immediate hazard."

It is particularly important to note that when reviewing the section itself, it is not simply a question of failing to yield the right of way, but it is a prohibition linked with the following:

"...so closely, that to enter would constitute an immediate hazard."

Mr. Parker has referred me to a decision of brother Judge Young in the matter of Regina and Parrot and I have in front of me a decision of the learned Justice of the Peace Fitzhenry who dealt with the matter at trial and the decision of Judge Young; the transcript which would indicate that his decision was perfunctory in that regard. Counsel has also referred me to another

5
10
15
20
25
30

matter which is before the Court dealing with a similar point, the gist of it being that at some point in time the leaving of the driveway has been accomplished so that the infraction itself is simply not the proper infraction to be laid. It might very well be dealt with by the way of another section of the code dealing with improper lane changes, improper turns, and things of that matter. But the essence of what Mr. Parker is suggesting to me is that given the evidence that was accepted by the Justice of the Peace in this particular situation, the offence itself has not been made out because what we had here is what we had in the matter of Regina and Parrot, in that you had an operator of a vehicle exiting from a driveway, proceeding in a left direction, as was the case here in proceeding across two lanes of traffic and ending up in a collision in the third lane. And in that particular sense you do not have the immediacy referred to in S.119 nor do you have the situation where the person is as of that time entering the driveway from a private roadway--entering a highway from a private road or driveway.

In reviewing the decision of Regina and Parrot and the section itself, it is my view, and I don't wish to be trite in saying this, but each case must depend upon its

5 particular facts. And where it can be
demonstrated that the evidence that the Justice
of the Peace relied on, in this particular
situation is as here, we must be careful
concerning whether or not we have the
10 immediacy dictated by S.119(1). In this
particular case it appears from my review
of the evidence of the Justice of the Peace
that the Justice of the Peace caused the
decision to be based on the evidence of
in a sense the defendant himself in proceeding
across the traffic in the fashion that he
15 did. In reviewing the evidence of the defendant,
it is clear that there was a considerable
time frame during which he accomplished
moving from the roadway over to the left-
hand lane. In fact, he moved across two
complete lanes of traffic into the final
20 lane and stopped there for a matter of three
or four seconds. If that is the evidence
upon which the Justice of the Peace concluded
the offence was made out, and it does appear
to be the case, then in my view an error
in law was made. The facts do not support
25 the conviction and in the circumstances
the appeal will be allowed and I am going
to enter a not guilty verdict in this particular
situation.

MR. PARKER: Thank you.

5 THIS IS TO CERTIFY THAT the
foregoing is a true and accurate
transcription of my recordings,
to the best of my skill and ability.

10 
Deidre Aitken,
Court Reporter.

15

20

25

30