

Case Name:

R. v. McCoy

**Between
Her Majesty the Queen, Respondent, and
Blake McCoy, Appellant**

[2004] O.J. No. 6224

**Ontario Court of Justice
Burlington, Ontario**

F.L. Forsyth J.

Heard: December 3, 2004.
Oral judgment: December 3, 2004.

(10 paras.)

Charges: S. 144(18) Highway Traffic Act - Red Light.

Counsel:

Mr. D. Fox, for the Crown.

Mr. M. Riddell, for the Appellant.

**PROVINCIAL OFFENCES ACT
APPEAL PROCEEDINGS
REASONS FOR JUDGMENT**

1 F.L. FORSYTH J. (orally):-- The appellant appeals his conviction against red light fail to stop contrary to section 144(18) of the Highway Traffic Act.

2 In the case at bar, there was no evidence that the traffic lights were designed so that when there is a green light northbound there is a red light southbound. There was no specific evidence how these lights were supposed to function on the time and day in question. There was also no reliable evidence that the lights were functioning correctly on the time and date in question.

3 The officer gave evidence that the light he was facing at the intersection, which was northbound Brant Street, was red when the appellant was travelling southbound on Brant Street through the intersection. The appellant gave evidence that the southbound light on Brant Street was green when he went through the intersection. The officer could not and did not see the southbound light on Brant Street that the appellant was facing. The officer inferred that because the light northbound was red; the light the appellant was facing southbound must have been red.

4 In *R. v. Newton*, [1996] O.J. No. 5360 Justice Flaherty stated that a court cannot take judicial notice of the functioning of a machine. I agree.

5 The officer gave evidence that after the appellant was charged roadside he returned to the intersection and observed the lights. His evidence was that they were functioning properly. However there was no evidence as to what properly means. In *R. v. Newton* the evidence led by the Crown was that the lights appeared to be functioning normally. There was no evidence explaining what normal means. I concur with Flaherty J. that it is not something that can be inferred.

6 The officer said it was his usual practice to go back to the intersection and check the lights after charging somebody with failing to stop for a red light. However, as I have already indicated, there was no evidence as to what that check consisted of. I am also concerned about the officer failing to note going back to check the lights on this specific occasion. Evidence is more reliable and confirmatory when an officer keeps notes of important aspects of things they do during the course of an investigation.

7 The functioning of traffic control lights is not self-evident. A reliable inquiry must be made so it is clear that the subject lights were functioning correctly on the time and date in question. Especially when the officer was not facing the same light the defendant was facing at the intersection. If the officer is going to be relying on their usual practice for the specific observations made on the functioning of a traffic control light machine, months and months after the alleged offence date without noting what those observations consisted of, then I cannot be certain that they in fact made those observations.

8 The difficulty here is that in the absence of the officer noting and explaining what he observed when going back to check the traffic control lights in question, support the conclusion that those observations were not, in fact, made at the time of this specific occurrence.

9 My concern is perhaps this is something that over the course of time the officer has come to believe he had done. I am not satisfied that the required evidentiary threshold was reached. The learned Justice of the Peace erred in law by taking judicial notice that when the northbound light the officer was facing was red, that the southbound light the appellant was facing at the same intersection would have to be red.

10 Therefore, under section 138 of the Provincial Offences Act, I find that this appeal must succeed and the conviction will be quashed and an acquittal is entered.

qp/s/qlkxl/qlpxm