

ONTARIO COURT OF JUSTICE

DATE: 2018 09 18

OWEN SOUND

COURT FILE No.: 1060 999 00 2057192Z 00

IN THE MATTER OF an appeal under subsection 135(1) of the
Provincial Offences Act, R.S.O. 1990, c. P.33, as amended;

B E T W E E N :

HER MAJESTY THE QUEEN
Respondent

— AND —

AMARJIT MULTANI
Appellant

Before Justice J.A. Morneau
Heard on September 11, 2018
Reasons for Judgment released on September 18, 2018

Mr. Middlebro'counsel for the prosecution
Mr. Dyshchenko agent for the defendant Amarjit Multani

On appeal from conviction by Justice of the Peace S. Taylor on January 17, 2018.

Morneau, J.:

[1] At trial the Appellant was found guilty of failing to stop a commercial motor vehicle for examination contrary to section 216.1(2) of the Highway Traffic Act.

[2] The Appellant characterizes this appeal as an error in His Worship's application of the principles in *R. v. W. (D.)*, [1991] 1 SCR 742.

[3] The Respondent argues that this is a strict liability offence and that His Worship's findings were open to be made on the evidence.

Findings at Trial:

[4] A Ministry of Transportation traffic safety officer attempted to stop the Appellant on highway 10. The Appellant was driving a tractor trailer unit and the brake lights were not working on the trailer. It was the middle of the afternoon. The officer was in a fully marked vehicle with roof emergency lights. On 3 occasions over 19.2 kilometers the officer activated the emergency lights and pulled up alongside the tractor trailer unit which meant the officer entered into the oncoming lane of traffic. The officer did not keep the emergency lights on continually as there were times it was unsafe for the 2 vehicles to pull over. The result was that for about half a kilometer at a time – on 3 separate occasions - the emergency lights were activated. The first 2 attempts got no reaction from the Appellant. On the third try the Appellant pulled the tractor trailer over and stopped.

[5] The Appellant testified saying he pulled over as soon as he saw the emergency lights. He agreed he had good mirrors on his truck with a clear view down the sides of the vehicle. He testified that he did not see the officer signal for him to stop until the time he pulled over.

[6] His Worship's reasons include the following extract. [I have not included everything in this extraction]:

Mr. Multani I do not believe is lying about the circumstances at all. I accept his evidence that he did, when he saw the lights, pull over on the third occasion. The question is – why did he not pull over on the first two?....The lights should have been sufficient to get the driver's attention.

On the first two occasions the driver either did not see the lights or did not care. I do not know which. But I do accept his testimony that he not see them, but he should have seen them

Mr. Multani testified that he had good mirrors and they had a clear view to the back and the sides of the truck. I cannot find it reliable that he did not see the flashing lights and the police car on the first two occasions over a period of 19.2 kilometers. ...[my underlining]

I accept Officer McKee's testimony in whole and I find it credible and reliable and I accept the first part of Mr. Multani's testimony but I cannot accept his testimony as being credible and reliable as he did not see, as he said he did not see the officer and he should have been able to.

[7] The Appellant accepts His Worship's finding that the officer tried 3 times to get him to pull over.

Analysis:

[8] This is a strict liability offence. Where the crown establishes beyond a reasonable doubt that the prohibited act occurred – in this case failure to stop when signalled – the Appellant can avoid liability by proving he took all reasonable care. The trier of fact is required to consider what a reasonable person would have done in the circumstances.

[9] In this case His Worship found at the outset that the Appellant was not lying. He accepted the Appellant's evidence that he pulled over when he saw the emergency lights. His Worship's question – *why did he not pull over on the first two attempts* was the proper next question on a strict liability charge.

[10] The standard of proof in a strict liability offence is not completely answered in a *W.D.* analysis. A finding that the Appellant gave truthful evidence that he stopped his rig when he first saw the officer's lights was clearly open to His Worship. His Worship however was required to consider if that answer alone addressed the crown's case – that the Appellant had failed to stop the rig on 2 prior occasions.

[11] His Worship then found that while the Appellant did not see the emergency lights on the first 2 attempts he should have. That finding was open to His Worship to make on the evidence.

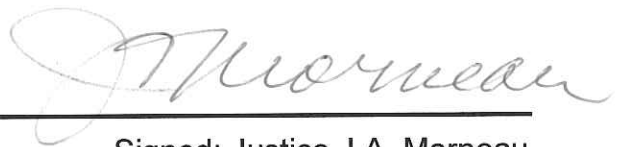
[12] The problem is that His Worship also found that either the Appellant did not see the lights on the first 2 occasions or did not care and that he did not know which was the case. Later still His Worship concluded that the Appellant's evidence on this aspect of the case was not credible or reliable. There is an apparent conflict in these findings.

[13] I cannot reconcile His Worship's comments on the reliability and or credibility of the Appellant's evidence.

[14] The appeal is granted and the conviction is quashed.

[15] In all the circumstances a new trial is ordered.

Released: September 18, 2018



Signed: Justice J.A. Morneau