

Indexed as:

R. v. Newton

Between

Her Majesty the Queen, respondent, and
Robert Newton, appellant

[1996] O.J. No. 5360

Ontario Court of Justice (Provincial Division)
Brampton, Ontario
Flaherty Prov. J.

Oral judgment: August 30, 1996.
(13 paras.)

Charge: Red light fail to stop

Counsel:

P. Armstrong-Renwick, for the respondent.
R. Steinmiller, agent for the appellant.

¶ 1 **FLAHERTY PROV. J.** (orally):— I think the same problem exists here. A court can not take judicial notice of the functioning of a machine.

¶ 2 There is no direct evidence as to what colour the light facing the defendant was at the time he entered the intersection.

¶ 3 There is evidence that the light for westbound traffic was green and had been green for some time, in fact, may Well have been turning amber when the defendant's motor vehicle must have entered the intersection.

¶ 4 There is evidence that at the time the defendant's motor vehicle entered the intersection northbound the light facing southbound traffic at that intersection was green.

¶ 5 There is evidence that earlier and later the same day, or the previous day, one of the witnesses had been through that intersection, including going north; the same way the defendant was on this occasion, and the lights appeared to be functioning normally, but there is no evidence as to what normal means. All anybody would have had to say is that when there is a green light westbound there is automatically a red light northbound so that traffic would have to stop and that that is the way the lights are designed to work, but nobody said that. In my view it is not something that can be inferred.

¶ 6 I do not think the conviction was proper. The threshold is hot difficult to cross. All somebody has to say is that those lights are designed so that when westbound traffic has a green light

northbound traffic has a red light and is supposed to stop. From that, and the other evidence you can infer that that was the situation at this time, but the threshold was never reached.

¶ 7 So I guess this appeal will have to be allowed and the charge dismissed as well.

¶ 8 MR. ARMSTRONG-RENEWICK: If I may ask for clarification on the court's ruling, Your Honour?

¶ 9 THE COURT: Yes.

¶ 10 MR. ARMSTRONG-RENEWICK: Is it that if there is evidence at another time on the same day that that is the case, that westbound green and at the same time you would have northbound red, is that going to be sufficient to draw an inference as to what happened on the occasion in question? or is the court making the ruling that you can never draw an inference as to the functioning of traffic lights without -- basically, to prove the case the Crown needs direct evidence as to the colour of light when the defendant went through.

¶ 11 THE COURT: No. I would not go that far. I agree with you that if there is some evidence that the lights there were functioning normally and that the normal function is that when there is a green light westbound there is a red light northbound, then one can assume that that was what was going on at the time, particularly having regard to the extra evidence about traffic being stopped southbound, here. Nobody said how these lights are supposed to function.

¶ 12 MR. ARMSTRONG-RENEWICK: Thank you, Your Honour. Thank you, Mr. Steinmiller.

¶ 13 MR. STEINMILLER: Thank you.

QL Update: 20000905
qp/s/np/qlala