

ONTARIO COURT OF JUSTICE

B E T W E E N :

Her Majesty The Queen

— AND —

Tatiana Yanitsky

Before Justice of the Peace Kenneth W. Dechert
Heard on April 9, 2009 and September 3, 2009
Reasons for Judgment released on November 27, 2009
Provincial Offences Court – Burlington, Ontario

J. Stewart **for the prosecution**
L. Carter **representative for the defendant, Tatiana Yanitsky**

Statutes, Regulations and Rules cited:

Highway Traffic Act, R.S.O. 1990, c. H.8, as amended, ss. 1(1), 133, 144(1), 144(5) and 144(18).

Cases cited:

Regina v. Hull, [2006] O.J. No. 3177 (Ont. C.A.);
Regina v. Kurtzman, (1991) 66 C.C.C. (3d) 161 (Ont. C.A.);
Regina v. Lifchus, (1997) 118 C.C.C. (3d) 1 (S.C.C.);
Regina v. Starr, [2000] 2 S.C.R. 144 (S.C.C.);
Regina v. (W.(D.)), [1991] 1 S.C.R. 742 (S.C.C.).

K.W. DECHERT, J.P. (orally):

INTRODUCTION

[1] Under Certificate of Offence no. 1260-88078557, Tatiana Yanitsky stands charged

that she on the 31st day of January, 2009 at 10:20 p.m., at Neyagawa Boulevard and Upper Middle Road, in the Town of Oakville, did commit the offence of “red light – proceed before green” contrary to the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended, section 144(18).

[2] On April 9th, 2009, the defendant, Tatiana Yanitsky, entered a plea of not guilty to the said charge in the Burlington Provincial Offences Court, and a trial of the mater then proceeded before me. The prosecution presented its case on April 9th, 2009. At the close of the prosecution’s case, the defendant moved for a directed verdict of an acquittal. After hearing legal submissions pertaining to the defendant’s motion, I denied the motion with oral reasons. The trial of this mater was then adjourned to September 3rd, 2009 for further evidence.

[3] The trial continued on September 3rd, 2009 at which time I received evidence tendered by the defence and final submissions from both the defendant’s representative and the prosecutor. The proceeding was then adjourned to November 27th, 2009 for my judgment.

[4] The prosecution (the City of Burlington) was represented by Ms. J. Stewart. The defendant was represented by her legal representative, Ms. L. Carter.

RELEVANT STATUTORY PROVISIONS

[5] The defendant is charged with the offence of “red light-proceed before green”, contrary to sub-section 144(18) of the *Highway Traffic Act*. That sub-section reads as follows:

Every driver approaching a traffic control signal showing a circular red indication and facing the indication shall stop his or her vehicle and not proceed until a green indication is shown.

[6] The subject offence is alleged to have taken place at the intersection of two highways located in the Town of Oakville. Accordingly, subsection 144(5) of the *Highway Traffic Act* is also relevant to this proceeding. That subsection reads as follows:

A driver who is directed by a traffic control signal erected at an intersection to stop his or her vehicle shall stop,

- (a) at the sign or roadway marking indicating where the stop is to be made;
- (b) if there is no sign or marking, immediately before entering the nearest crosswalk; or
- (c) if there is no sign, marking or crosswalk, immediately before entering the intersection.

[7] The term “intersection” is defined in sub-section 1(1) of the *Highway Traffic Act*, as follows:

...

‘intersection’ means the area embraced within the prolongation or connection of

the lateral curb lines or, if none, then of the lateral boundary lines of two or more highways that join one another at an angle, whether or not one highway crosses the other;

...

[8] The definition of that term is modified by sub-section 144(1) of the *Highway Traffic Act*, for purposes of section 144, as follows:

In this section,

...

‘intersection’ includes any portion of a highway indicated by markings on the surface of the roadway as a crossing place for pedestrians;

...

[9] Section 133 of the *Highway Traffic Act* defines the following terms for purposes of the subject offence and other “rules of the road” provisions contained within Part X of the said Act:

In this Part,

‘indication’ means a signal lens display that is activated by internal illumination;

...

‘traffic control signal’ means that part of a traffic control signal system that consists of one set of no less than three coloured lenses, red, amber and green, mounted on a frame and commonly referred to as a signal head;

‘traffic control signal system’ means all of the signal equipment making up the installation at any location.

THE EVIDENCE

[10] During the trial of this proceeding, the Court received *viva voce* evidence from Sergeant Lina Crawford, tendered on behalf of the prosecution and from the defendant, Tatiana Yanitsky.

(i) The Testimony of Sergeant Lina Crawford

[11] The Court received testimony from Sergeant Crawford on April 9th, 2009. She stated that at that time she was a member of the Halton Regional Police Force and had been a member of the Force for 29 years. She testified with the assistance of her investigative notes as an aid to her memory.

[12] Sergeant Crawford stated that on January 31st, 2009, at approximately 10:20 p.m., she was operating a police vehicle eastbound on Upper Middle Road, in the Town of Oakville. She advised that the “night was clear” and that she was the only vehicle on the road for as far as she could see “east and westbound”.

[13] She testified that as she was travelling eastbound on Upper Middle Road, she could see the “traffic light” at the intersection of Upper Middle Road and Neyagawa Boulevard, “in

the distance”. She noted that the traffic light was “green” for east and westbound traffic on Upper Middle Road.

[14] Sergeant Crawford testified that when she was located approximately 100 yards west of the said intersection, approaching the said traffic light, she “observed a vehicle turn eastbound from the southbound lane of Neyagawa Boulevard”. She noted that the vehicle was not ahead of her until it had made the left turn, noting that the vehicle which had been facing southbound was now travelling in an easterly direction in front of her.

[15] The officer testified that she entered the subject intersection after the vehicle had made the said left-turn manoeuvre. She stated that at that time she looked directly at the traffic light governing southbound traffic on Neyagawa Boulevard, which she observed to be a solid red indication. She determined that the vehicle had made a turn from southbound Neyagawa Boulevard to eastbound Upper Middle Road, in the Town of Oakville, before the traffic light governing southbound traffic on Neyagawa Boulevard had turned green.

[16] Sergeant Crawford testified that after she observed the traffic infraction, she noticed the subject vehicle turn right from eastbound Upper Middle Road to southbound Oxford Avenue. She advised that she then followed the vehicle, activated the roof lights on her police vehicle, and stopped the subject vehicle; an Infiniti motor vehicle, approximately “one mile down the road”. She stated that she never lost sight of the said vehicle from the time that she first made observations of the vehicle until the time that she stopped it.

[17] Sergeant Crawford testified that upon pulling the vehicle over, she approached its driver, who identified herself by means of an Ontario driver’s licence as Tatiana Yanitsky. Sergeant Crawford noted that the driver of the vehicle was the defendant before the Court. She advised that at that time, the defendant showed her a map of the area in which she was travelling at the time.

[18] The officer testified that upon speaking with the defendant she detected the odour of alcohol on her breath. She stated that she then obtained a sample of the defendant’s breath in a roadside alcohol detection device, which sample “produced a warn reading”. She advised that she then seized the defendant’s driver’s licence for a period of twelve hours, and that the vehicle which had been driven by the defendant was, subsequently, towed.

[19] Sergeant Crawford testified that after she issued the defendant a provincial offences notice for the charge of “red light-proceed before green”, she returned to the intersection of Upper Middle Road and Neyagawa Boulevard and determined that the traffic lights at the intersection were in “working order”. The officer described that the traffic control signal for southbound traffic on Neyagawa Boulevard as a “regular traffic light”, but noted that at the time of the subject offence the said light was “traffic sensor operated”.

[20] Sergeant Crawford testified that she first observed the vehicle being driven by the defendant when it turned left “from southbound to eastbound”. When the prosecutor asked the officer if she ever observed the vehicle in a “stationary position”, the officer replied: “at Neyagawa facing the red light southbound”. She went on to state that at the material time

there were no vehicles ahead of the defendant's vehicle and that the defendant's vehicle and the officer's vehicle "were the only two vehicles anywhere close to that intersection".

[21] In answer to the prosecutor's query as to how the officer ascertained that the light for the Yanitsky vehicle was red at the time that it moved into the intersection, Sergeant Crawford testified as follows:

My traffic light had been green for some time. It did not cycle to any other colour. When I approached the intersection at Neyagawa I looked up for the southbound traffic, what the light colour would be, thinking that perhaps it was flashing and not working and found it to be a solid red. ...

[22] The officer advised that at the material time, the subject intersection was "clearly visible", noting that because both the weather and the roads were "clear" she was able to see headlights in the dark at this intersection "from a very far distance". She testified that at the relevant time there were no other headlights approaching her or in the lane with her or anywhere around her. She advised, therefore, that upon her approach to the subject intersection, she was able to clearly see the Yanitsky vehicle "up ahead" and "stationary" at the intersection.

[23] She testified that when the Yanitsky vehicle turned left to go eastbound, she no longer saw headlights, but observed red lights which she deduced were the rear lights of the vehicle. She went on to indicate that the traffic lights facing her at the subject time did not "cycle" prior to the commencement of her pursuit of the Yanitsky vehicle.

[24] During cross-examination, Sergeant Crawford acknowledged the assertion put to her by the defendant's representative that she looked at the traffic lights governing southbound traffic on Neyagawa Boulevard when she went past the subject intersection, and that it was "a solid red". In response to the defendant's representative's question as to the length of time after she saw the defendant's vehicle move that she actually observed the traffic light for southbound traffic to be "a solid red", Sergeant Crawford replied: "fifteen seconds".

[25] Furthermore, during cross-examination, the defendant's representative showed the officer a piece of paper, being a "Google" map, with some highlighting in red pen on top of the black and white print and with an address, 145 Mayla Drive, written on the top of the document. The officer did not recognize the map and was not able to indicate as to whether the map was the same document that the defendant showed to her on the night of the alleged offence. Upon briefly looking at the document, Sergeant Crawford noted that it was a map of the area where the alleged offence took place.

[26] At the conclusion of her testimony, Sergeant Crawford acknowledged that her testimony respecting her return to the intersection of Upper Middle Road and Neyagawa Boulevard to confirm the operability of the traffic control signals was information which was not contained in her investigative notes. She advised, however, that she recalled returning to the subject intersection at about 11:20 or 11:30 p.m. to make observations of the traffic lights, consistent with her "common practice".

[27] In describing her observations of the traffic light governing southbound traffic on Neyagawa Boulevard, the officer noted that the light would be red until southbound traffic arrived at the intersection, when the traffic sensor at the intersection would trigger a change of the light to a green indication.

(ii) The Testimony of the Defendant

[28] The defendant testified in this proceeding on September 3rd, 2009.

[29] During examination-in-chief, the defendant testified that in the evening of January 31st, 2009 she and her husband travelled from their residence (which from the certificate of offence in this matter would appear to be in Toronto, Ontario) to visit friends at 145 Mayla Drive. Based on the totality of the evidence in this proceeding and from my perusal of a map of the Town of Oakville, I am able to take judicial notice of the fact that Mayla Drive is located in the Town of Oakville.

[30] The defendant testified that she had not visited her friends at the said address before and that she was not familiar with the subject residential area. She advised that her husband drove to the said address and that she drove their vehicle home.

[31] The defendant testified that prior to leaving their home that evening she printed a “Google” map of the area of the Town of Oakville where her friends resided. She advised that she and her husband used the map to assist them in locating their friends’ residence. The defendant made reference to the subject map during her testimony for the purpose of refreshing her existing memory of the relevant events.

[32] The defendant testified that the subject “Google” map was the same document that she was making reference to when she was travelling to and from her friends’ residence at the relevant time. She acknowledged that the map contained highlighting showing the route to her friends’ house. She testified that she wished to use the map “to explain the direction and look at the street names”.

[33] During cross-examination, pertaining to the issue of the use of the map as an aid to the defendant’s memory, the defendant stated that she added a marking to the original map, the day following the subject incident. In this regard, the defendant advised that she added the marking to show the “route” which she took when she left her friends’ residence on the subject date. She stated that she had not returned to the area of the subject incident since January 31st, 2009.

[34] During her testimony-in-chief, the defendant stated that she and her husband left their friends’ residence at about 10:00 p.m. on January 31st. She advised that she was driving their motor vehicle at the time.

[35] In describing the route that she took at the time, the defendant testified that she left the said residence on Mayla Drive and then turned right from Mayla on to Oxford Avenue. She advised that she then travelled along Oxford for a period of time of “under five minutes” until she arrived at the intersection of Oxford and Upper Middle Road. She stated that she

then made a right turn on to Upper Middle Road.

[36] The defendant testified that once she made the right-hand turn onto Upper Middle Road, her husband advised her that she had made a wrong turn and that in fact she should have made a left turn on to Upper Middle Road so as to proceed in the opposite direction on the said roadway. The defendant advised that her husband was referring to the said “Google” map as they were attempting to determine the appropriate route out the subject residential area to go to the “highway”.

[37] The defendant testified that once her husband told her that she was proceeding in the wrong direction on Upper Middle Road, she started looking for an opportunity to turn to proceed in the opposite direction (the easterly direction). She stated that she then made a decision “to make a U-turn on the first light”. She advised that the first light she arrived at after turning right off of Oxford Street on to Upper Middle Road, was located at the intersection of Upper Middle Road and Neyagawa Boulevard.

[38] The defendant testified that as she approached the intersection of Upper Middle Road and Neyagawa Boulevard, she was in the left lane of two lanes of traffic travelling in her direction on Upper Middle Road (which I can infer to be the westerly direction). She recalled that at the said location, there were four lanes for traffic on Upper Middle Road; two lanes in each direction.

[39] The defendant testified that while travelling in the left lane of Upper Middle Road toward its intersection with Neyagawa Boulevard and while approaching a green light in her favour, she made a “U-turn” at the intersection so as to travel in the “opposite direction” (the easterly direction) on Upper Middle Road.

[40] In describing her turn manoeuvre, she stated that she had evaluated her situation, decided that there was enough time to make a U-turn and then executed the turn “slowly”. She advised that at the time that she commenced the “U-turn” manoeuvre, there were no cars close to the intersection; however she noticed one car approaching her location from “the opposite side of the lights”. She went on to advise that after she had completed the “U-turn” manoeuvre, she noted that the car that was approaching her location was now travelling behind her in the same direction.

[41] The defendant stated that at the relevant time she was never travelling in a southerly direction on Neyagawa Boulevard. In that regard she stated that she was “just making a U-turn on the intersection with Neyagawa Boulevard”.

[42] The defendant testified that after she made the said “U-turn”, she continued to travel on Upper Middle Road until she reached its intersection with “Oxford Avenue”, at which time she made “another right turn onto Oxford Avenue” travelling in a southerly direction. She stated that while travelling southbound on Oxford Avenue she saw a police car approaching her from her rear, signalling her to stop. She advised that she then parked her vehicle at the curb on “Oxford Street”.

[43] The defendant testified that upon being stopped by the police officer, she engaged

in a conversation with the officer. She stated that she told the officer that she was lost and then showed the officer the “Google” map, being the document that she was making reference to during her testimony.

[44] The defendant concluded her testimony-in-chief by advising that when she executed the “U-turn” at the intersection of Upper Middle Road and Neyagawa Boulevard, the colour of the traffic light facing her was “green, solid green”.

[45] During cross-examination, the defendant testified that at the relevant time there were very few cars on the road, noting that she was driving her vehicle in a residential area. She advised that the first time she noticed the police officer was when the police car was approaching her from behind and signalling her to stop. She noted that the officer stopped her on Oxford Street.

[46] The defendant testified that while she was driving her car, her husband was reading the map in order to advise her as to the appropriate route. She advised, however, that from time to time he would turn on the interior light of the vehicle so that she could look at the map and “see the direction”. At this time, the defendant stated that she had a “complete” and “visual” recollection of the route that she was travelling at the material time, but that she needed to look at the “Google” map during her testimony so as to determine the street names, rather than the street locations.

[47] The defendant stated that from Upper Middle Road she made a “U-turn on the Neyagawa Boulevard”. In describing the turn, the defendant testified that she made the turn “quite slowly and cautiously” from the left lane of Upper Middle Road, having first determined that she had enough time to execute the turn before the one car travelling towards her reached the intersection.

[48] When asked by the prosecutor as to whether in making this “U-turn”, she conducted it in a single movement or by means of a “three-point” turning procedure, the defendant replied that she “might have paused in the middle”, but that she executed the turn by “moving slowly forward” and then continuing “in the other direction straight”. She advised that she did not ever stop her vehicle and reverse in the course of conducting the turn.

[49] In response to the prosecutor’s query as to the distance of the vehicle approaching the intersection at the time of the “U-turn” manoeuvre, the defendant was not able to estimate a distance but responded as follows:

...Definitely I saw with the lights was dark and it was very safe to proceed. I didn’t see the make of the car, I didn’t see the colour. The lights were bright. That’s all I remember seeing. But the distance was safe for me to proceed with the U-turn.

[50] In describing her actions upon approaching the intersection of Upper Middle Road and Neyagawa Boulevard prior to undertaking the “U-turn”, the defendant stated that when she first turned on to Upper Middle Road she entered the right lane but then turned into the left lane just prior to making the “U-turn”. She was not able to recall at what point, relative

to the location of the intersection, she actually executed the lane change.

[51] When asked by the prosecutor how she knew that she was at the intersection of Upper Middle Road and Neyagawa Boulevard when she made the “U-turn”, the defendant stated that the intersection was the “first big intersection” that she encountered from Mayla Drive to Upper Middle Road, where she was able to conduct such a turn. When asked why she would not have turned right at the intersection, from Upper Middle Road onto Neyagawa Boulevard, the defendant replied that she didn’t turn right because she had to proceed in a southerly direction as that was their direction to the highway.

[52] In concluding her testimony through cross-examination, the defendant admitted that on the night in question she did not know the names of the streets she was travelling on, other than the information that she obtained by reading the street signs. She acknowledged that she was able to inform herself as to the names of the streets only after she had “analyzed the map”. Without consulting the map, the defendant surmised that her friends’ residence was located about “ten minutes” away from the intersection of Upper Middle Road and Neyagawa Boulevard.

THE ISSUES

[53] The ultimate issue in this proceeding is whether the prosecution has proven the guilt of the defendant on the subject offence to the standard of proof beyond a reasonable doubt.

[54] The offence of “red light-proceed before green” contrary to sub-section 144(18) of the *Highway Traffic Act*, is an absolute liability offence. This categorization of the offence was established by the Ontario Court of Appeal in its decision in *Regina v. Kurtzman*, (1991) 66 C.C.C. (3d) 161 (Ont. C.A.).

[55] Accordingly, if the prosecution is able to prove that the defendant committed the *actus reus* of the subject offence beyond a reasonable doubt, then the mental element of negligence is automatically imported into the offence and it is not open to the defendant to exculpate herself by showing that she was free of fault.

[56] In this matter the undisputed evidence establishes, beyond a reasonable doubt, that on January 31st, 2009, at approximately 10:20 p.m., the defendant Tatiana Yanitsky was driving a motor vehicle in an easterly direction on Upper Middle Road, east of Neyagawa Boulevard, and in a southerly direction on Oxford Avenue, south of Upper Middle Road, in the Town of Oakville.

[57] Furthermore, the undisputed evidence appears to establish the following elements of the offence, beyond a reasonable doubt:

- (i) that Upper Middle Road and Neyagawa Boulevard are “highways” within the meaning of the *Highway Traffic Act*, which are located in the Town of Oakville;

- (ii) that Upper Middle Road is an east-west highway, which intersects with Neyagawa Boulevard, being a north-south highway;
- (iii) that eastbound and westbound traffic on Upper Middle Road, at its intersection with Neyagawa Boulevard is governed by traffic control signals;
- (iv) that southbound traffic on Neyagawa Boulevard at its intersection with Upper Middle Road is governed by a traffic control signal.

[58] The specific factual issue in this proceeding is whether the defendant, at the material time, drove her vehicle into the intersection of Neyagawa Boulevard and Upper Middle Road in the Town of Oakville, after having stopped for a red traffic control signal indication facing her, but before the said signal had changed to a green indication. This is the *actus reus* of the subject offence.

[59] The burden of proof of the *actus reus* is on the prosecution and never shifts to the defendant. All of the elements of the *actus reus* must be proved by the prosecution beyond a reasonable doubt, in order for the prosecution to be able to sustain a conviction against the defendant on the subject offence.

[60] An assessment of the credibility of the witnesses in this proceeding is an important factor in the determination of the ultimate issue herein.

ANALYSIS

[61] In the course of her testimony in this proceeding, the defendant admitted to the fact that at or about 10:20 p.m. on January 31st, 2009, she drove her motor vehicle within the boundaries of the intersection of Neyagawa Boulevard and Upper Middle Road, while executing a “U-turn” on Upper Middle Road. She stated that in making the turn, she entered the said intersection while facing a traffic control signal showing a circular green indication.

[62] On the other hand, Sergeant Lina Crawford testified that at the material time, she observed the defendant’s motor vehicle in a stationary position in the southbound lane of Neyagawa Boulevard at its intersection with Upper Middle Road. She stated that she then observed the defendant move her motor vehicle into the said intersection and make a left turn from southbound Neyagawa Boulevard to eastbound Upper Middle Road, while facing a traffic control signal which showed a solid red indication.

[63] There is, therefore, conflicting evidence before me pertaining to an essential element of the *actus reus* of the subject offence. Accordingly, this is a case where the issue of the credibility of the witnesses in this proceeding will be a determining factor in respect of my finding pertaining to the defendant’s guilt or non-guilt on the subject charge.

[64] When I embark on an assessment of the credibility of the evidence before me, I must remind myself that the concept of reasonable doubt applies to the assessment. Furthermore, I must instruct myself that the determination of the defendant’s guilt must not be based on a simple credibility contest between the prosecution and defence witnesses. This

proposition of law was established by the Supreme Court of Canada in the case of *Regina v. W.(D.)* [1991] 1 S.C.R. 742 (S.C.C.). In the said decision, Cory J., writing on behalf of the majority of the Court, stated, in paragraphs 26, 27 and 28 of the decision, in part, as follows:

...It is incorrect to instruct a jury in a criminal case that, in order to render a verdict, they must decide whether they believe the defence evidence or the Crown's evidence. Putting this either/or proposition to the jury excludes the third alternative; namely, that the jury, without believing the accused, after considering the accused's evidence in the context of the evidence as a whole, may still have a reasonable doubt as to his guilt.

In a case where credibility is important, the trial judge must instruct the jury that the rule of reasonable doubt applies to that issue. The trial judge should instruct the jury that they need not firmly believe or disbelieve any witness or set of witnesses. Specifically, the trial judge is required to instruct the jury that they must acquit the accused in two situations. First, if they believe the accused. Second, if they do not believe the accused's evidence but still have a reasonable doubt as to his guilt after considering the accused's evidence in the context of the evidence as a whole. ...

Ideally, appropriate instructions on the issue of credibility should be given, not only during the main charge, but on any recharge. A trial judge might well instruct the jury on the question of credibility along these lines:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

...

[65] In its decision in *Regina v. Hull*, [2006] O.J. No. 3177 (Ont. C.A.), the Ontario Court of Appeal made the following comments pertaining to the application of the principles enunciated in *Regina v. W.(D.) supra.* as follows:

W.(D.) and other authorities prohibit triers of fact from treating the standard of proof as a credibility contest. Put another way, they prohibit a trier of fact from concluding that the standard of proof has been met simply because the trier prefers the evidence of the Crown witness to that of defence witnesses. However, such authorities do not prohibit a trier of fact from assessing an accused's testimony in light of the whole evidence including the testimony of the complainant and in doing so comparing the evidence of the witnesses. On the contrary, triers of fact have a positive duty to carry out such an assessment recognizing that one possible outcome is that the trier of fact may be left with a reasonable doubt concerning the guilt of the accused.

[66] In my view, the defendant presented her exculpatory evidence in a clear and unequivocal manner. There were no internal inconsistencies in her testimony and the strength of her account of the relevant circumstances was not significantly diminished through cross-examination.

[67] Furthermore, I am of the view that the reliability of the defendant's evidence pertaining to the route that she travelled after leaving her friends' residence at the time of the alleged offence, is bolstered by the fact that during her testimony she was making reference to a map for purposes of refreshing her memory. It is important to note that the said map contained markings of the route she travelled at the material time, which she added to the document the day following the subject incident when the relevant circumstances were fresh in her memory.

[68] In reviewing the testimony of Sergeant Crawford, I note that she presented her evidence in a clear and responsive manner, with the assistance of her investigative notes to refresh her memory. Her testimony was internally consistent and it was not shaken on cross-examination.

[69] It is noted, however, that Sergeant Crawford's evidence lacked sufficient detail in respect of her observations of the vehicle being driven by the defendant, while it was "stationary" in the southbound lane of Neyagawa Boulevard at Upper Middle Road. In this regard, the officer failed to specify the location of the vehicle relative to the northern boundary of the intersection or any marked stop lines or crosswalks which would define the place where the defendant would have been required to stop her vehicle when facing the red traffic control signal. Furthermore, the strength of the officer's evidence respecting the location of the defendant's vehicle at the moment it began its left turn at the subject intersection is diminished by the fact that her observations were made from a location approximately one hundred yards west of the subject intersection.

[70] In applying the *W.(D.)* principles, while I find the defendant's testimony to be credible, I find that I am unable to firmly believe her exculpatory evidence due primarily to its obvious lack of independence. On the other hand, when I consider the defendant's testimony that she made a "U-turn" at the subject intersection while facing a green traffic control signal, in the context of the totality of the evidence before me, I find myself in a state of reasonable doubt as to the defendant's guilt on the subject charge.

[71] The defendant's evidence that she entered the subject intersection while facing a green traffic control signal in order to make a "U-turn" and that she executed the manoeuvre in a slow and cautious manner is, when compared with the prosecution evidence, sufficiently plausible to raise a reasonable doubt as to the veracity of the theory of the prosecution; that the defendant actually moved her vehicle into the subject intersection while facing a red traffic control signal. The absence of evidence from Sergeant Crawford as to the precise location where the defendant's vehicle was stopped in the southbound lane of Neyagawa Boulevard, relative to any stop lines, crosswalks or the northerly boundary of its intersection with Upper Middle Road, reduces the reliability of the officer's assertion that at the relevant time, the defendant was conducting a left-turn manoeuvre from southbound Neyagawa Boulevard to eastbound Upper Middle Road.

[72] For the reasons stated above when I consider the defendant's testimony in the context of Sergeant Crawford's testimony, I find that I am left in a state of reasonable doubt as to whether the defendant proceeded into the intersection of Neyagawa Boulevard and Upper

Middle Road, while approaching and facing a traffic control signal showing a circular red indication. The prosecution has therefore failed to meet its burden of proving the *actus reus* of the subject offence, beyond a reasonable doubt.

[73] In its decision in *Regina v. Lifchus*, (1997) 118 C.C.C. (3d) 1 (S.C.C.), the Supreme Court of Canada defined the term “reasonable doubt” as “a doubt based on reason and common sense which must be logically based upon the evidence or lack of evidence” and that it is “not a doubt based upon sympathy or prejudice”. In that decision, Cory J. stated, *inter alia*, that “reasonable doubt” does not involve proof to an absolute certainty; that “it is not proof beyond any doubt nor is it an imaginary or frivolous doubt” and “that more is required than proof that the accused is probably guilty”.

[74] Furthermore, in the Supreme Court of Canada decision in *Regina v. Starr*, [2000] 2 S.C.R. 144 (S.C.C.), Iacobucci, J. further refined the definition of the term “reasonable doubt” contained in *Lifchus*, *supra.*, at paragraph 242 of the judgment, as follows:

In my view, an effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than to proof on a balance of probabilities. As stated in *Lifchus*, a trial judge is required to explain that something less than absolute certainty is required, and that something more than probable guilt is required, in order for the jury to convict. Both of these alternative standards are fairly and easily comprehensible. It will be of great assistance for a jury if the trial judge situates the reasonable doubt standard appropriately between these two standards. The additional instructions to the jury set out in *Lifchus* as to the meaning and appropriate manner of determining the existence of reasonable doubt serve to define the space between absolute certainty and proof beyond a reasonable doubt. In this regard, I am in agreement with Twaddle J.A. in the court below, when he said, at p. 177:

If standards of proof were marked on a measure, proof “beyond a reasonable doubt” would lie much closer to “absolute certainty” than to “a balance of probabilities”. Just as a judge has a duty to instruct the jury that absolute certainty is not required, he or she has a duty, in my view, to instruct the jury that the criminal standard is more than a probability. The words he or she uses to convey this idea are of no significance, but the idea itself must be conveyed. ...

[75] I have followed the reasoning set out in *Lifchus*, *supra.* and *Starr*, *supra.*, in finding that the prosecution has failed to prove the subject offence beyond a reasonable doubt.

THE DECISION

[76] As stated above, based on the application of the second prong of the *W.(D.)* principles, I find that I am left in a state of reasonable doubt as to the guilt of the defendant on the offence of “red light-proceed before green”, contrary to subsection 144(18) of the *Highway Traffic Act*.

[77] The defendant is therefore found not guilty of the subject charge and the certificate of offence herein is endorsed to indicate that the charge is dismissed.

Released: November 27, 2009

Signed: “Justice of the Peace Kenneth W. Dechert”