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R. v. Bernard

Between
Her Majesty the Queen, and
Joseph Bernard

[1997] O.J. No. 6001

Ontario Court of Justice (Provincial Division)
Burlington, Ontario
Ross J.P.

April 9, 1997.
(5 pp.)

Charge: Highway Traffic Act - Section 130

Counsel:

T. Ofiara, on behalf of the prosecution.
C. Fraser, on behalf of Mr. Bernard.

¶ 1 **ROSS J.P.**:— Mr. Bernard, would you stand, sir. Mr. Bernard, the Highway Traffic Act, the section of which you are charged, sir, states every person is guilty of the offense of driving carelessly who drives a vehicle or a street car on a highway without due care and attention or without reasonable consideration for other persons using the highway.

¶ 2 Then it goes on to the penalty portion of this particular intersection. What we have here today is two vehicles that are proceeding on a roadway at conditions that are less than perfect on that day. There is no question about that. We have a vehicle, a larger type of vehicle that is in the position or the function that day, the driver is to plow. He has a longer than normal vehicle. He is taking his time to make an appropriate turn. He is telling this court that he needs longer room because of his vehicle and that to function as a plow. What he has done that day is he has moved into, from the curb lane to the centre lane, and it is agreed upon, the left lane or the centre lane, but that is not in dispute here today. We know that that vehicle moved from the curb lane to the left lane with his turn signal on to make this turn into the driveway, the private driveway. We have a vehicle, and by his own admission, or the Crown's first witness, the vehicle and if I use Mr. Altorf's words, "a car shot up on right side." Now, he claims, Mr. Altorf, that he was in 75% of the curb lane and we can take it then the balance making up 100%, 25% in the passing lane, or the left lane and he has his signal on. Now an ensuing collision occurred.

¶ 3 Now, we have your evidence, sir, that you claim is possibly the exact opposite as far as where the position on the roadway is. He is in 25% of the curb, or the passing lane, or the left lane, or the centre lane and 25% we can draw from your evidence. We do know that there was an ensuing collision in the curb lane. Now, what is this, what does it come down to? It is a question of your evidence, sir, against Mr. Altorf's. The ambient conditions and we all know what it was like there today, sir. You did not do the correct thing that day, that is quite clear, sir. But for the court to convict you of Careless Driving; it was a bad error in Judgment, sir. Given the road conditions it appears, sir, that you would probably be accelerating; you wanting to get around this vehicle. It would appear, sir, now, when exactly the time of the turn signal light going on, sir, and you making your pass is very critical in this matter. The court feels, sir, that the accident did occur solely in the curb lane. That as a result of the accident, it continued on into the entrance of the driveway.

¶ 4 The court is not prepared to enter a conviction, sir, on poor judgment. It is your evidence against Mr. Altorf's of exactly the position on the roadway, sir, but bad judgment, the court does not feel should be a conviction of Careless Driving on that day and this court is not going to convict you of the offence, sir. It comes down to bad judgment and there is no prior evidence, sir, of you doing anything on the roadway wrong that day and it is momentary, sir. That is the decision of this court. That is the finding of this court. The charge is dismissed.

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