Indexed as:

R. v. Falconer

Between
Her Majesty the Queen, appellant, and
Anna Louise Falconer, respondent

[1978] N.S.J. No. 53

Nova Scotia Supreme Court - Appeal Division
Halifax, Nova Scotia
MacKeigan C.J.N.S., Coffin and Hart JJ.A.

Heard: October 10, 1978.
Oral judgment: October 10, 1978.

Counsel:

David G. Giovannetti, for the appellant, Crown.
The respondent was not represented.

The judgment of the Court was delivered by

¶ 1 **MacKEIGAN C.J.N.S.** (orally):— The appellant has appealed by way of stated case following the respondent's acquittal by His Honour Judge Charles O'Connell, of the Provincial Magistrate's Court at Sydney, on a charge that she, on or about December 20, 1977, being the driver of a motor vehicle on a highway, where the highway is marked with a solid double line, did unlawfully fail to drive the vehicle to the right of the line only, contrary to s. 105(2)(a) of the Motor Vehicle Act.

¶ 2 In his statement of facts the learned magistrate said that the accused's motor vehicle drove to the left of a solid double line and proceeded to pass a taxicab returning to the right of the line prior to reaching an intersection. The magistrate found:

> ... Weather conditions at the time of this incident were clear, the highway was clear of traffic and the double solid line was plainly visible.

¶ 3 He then had to consider the meaning of s. 105(2)(a) and s. 105(3)(c) of the Motor Vehicle Act. Section 105(2)(a) provides :

> 105(2) Notwithstanding subsection (1) and subject to subsection (3), where a highway is divided into lanes for the movement of vehicles in the opposite direction by lines upon the highway,
>
> (a) where the highway is marked with a solid double line, the driver of a vehicle shall drive the vehicle to the right of the line only.

And s. 105(3)(c) provides:

> 105(3) Subsection (2) shall not apply,

> (c) where the lines are not clearly visible or where it is reasonable and prudent to drive to the left of the lines due to weather or other conditions.

¶ 4 The learned magistrate in his decision referred to a decision of His Honour Judge Allan Sullivan in the County Court of District Number Seven entitled R. v. Sonnenberg, November 9, 1977, unreported, dealing with a charge under this section. Judge O'Connell said that:

> ... the County Court Judge has interpreted that section in a very liberal manner. It appears to me that what in effect he is saying is that it is not an offence to drive to the left of a solid double line if you can show that having regard to all the conditions that it was reasonable and prudent to do so.

¶ 5 He went on to say, regarding the case before him:

> ... If you look at all the circumstances in this particular case and considering the time of the day, the traffic, the weather, I am satisfied that the defendant was driving in a reasonable and prudent manner and I find her not guilty.

¶ 6 He obviously had in mind Judge Sullivan's remarks in the Sonnenberg case, namely:

> The legislature has not set hard and fast rules as to when the operator of a motor vehicle can move to the left of a solid line and each case must be judged on its own merits applying the standard of reasonableness and prudence.

¶ 7 We are not satisfied that the learned magistrate erred in law in interpreting and applying s. 105(3)(c).

¶ 8 The question asked by the stated case does not, however, clearly cover the problem in this case. As submitted, it reads:

> Did I err in holding that conditions other than 'weather or other conditions' referred to in Section 105(3)(c) of the Motor Vehicle Act could form the basis for a defence to a charge contrary to Section 105(2)(a) of the Motor Vehicle Act?

¶ 9 I am unable to find that the learned magistrate in fact held that conditions other than the prescribed conditions existed. I think it better if the question stated had been:

> Did I err in holding that the conditions I found to exist were conditions within the meaning of the phrase weather or other conditions' in s. 105(3)(c) of the Motor Vehicle Act and that they properly formed the basis for a defence to the charge under s. 105(2)(a) of the said Act?

¶ 10 I would accordingly, under the powers conferred by s. 768(1) of the Criminal Code, thus rephrase the question in the stated case and answer it in the negative.

¶ 11 The essence of our conclusion in this case is that s. 105(3)(c) must be interpreted as leaving it to the judge or magistrate to determine, once a driver has gone to the left of a double solid line, whether, having regard to all the conditions then existing, it was reasonable and prudent for the driver to have done so. The prosecution case is established by showing that the accused crossed a double solid line contrary to s. 105(2)(a). An accused may, however, be able to show, from the Crown's evidence or his own, that it was "reasonable and prudent to drive to the left of the lines due to weather or other conditions" within the meaning of s. 105(3)(c).

¶ 12 The appeal is dismissed.

MacKEIGAN C.J.N.S.
Concurred in:
COFFIN J.A.
HART J.A.

QL Update: 981103
qp/s/jfb
crim