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# R. v. Pyszko

Between
Adam K. Pyszko, appellant, and
Her Majesty the Queen, respondent

[1998] O.J. No. 1218
Case No. 97-5568

**Ontario Court of Justice (Provincial Division)**
**Ottawa, Ontario**
**Fontana Prov. J.**

March 17, 1998.
(5 pp.)

*Motor vehicles — Regulation of vehicles and traffic — Careless driving — Evidence and proof — What constitutes.*

This was an appeal from conviction for careless driving. The appellant, Pyszko, drove off the side of the road and his vehicle struck a tree. A passenger in the vehicle was killed. The incident occurred on a straight road with no obstructions. The weather was clear and the road surface was dry.

**HELD:** The appeal was dismissed. Pyszko drove his vehicle without due care and attention. The circumstances surrounding the accident indicated that Pyszko drove in a careless manner. The trial judge made proper inferences in convicting Pyszko.

**Statutes, Regulations and Rules Cited:**

Ontario Highway Traffic Act, s. 130.

**Counsel:**

No counsel mentioned.

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¶ 1 **FONTANA J.** (endorsement):— The Appellant Pyszko is charged with Careless Driving under the Ontario Highway Traffic Act, s. 130. That is to say, as the Crown has argued, that he drove his motor vehicle "without due care and attention", to use the wording of the section.

¶ 2 The occurrence giving rise to the charge involved a single motor vehicle. The Crown's case stands upon an agreed Statement of Fact which may be set out as follows:

(Paraphrase)

> The date was the 4th of October 1997. The time was 1:40 A.M. The road was a two-lane county road, being County Road #10. The Appellant was driving a 1989 Toyota motor vehicle eastbound on County Road #10. The vehicle left the travelled portion of the highway and passed over a rise or knoll which caused it to become airborne. The vehicle then struck a tree, spun around and came to rest on its side against the front of a house. There was substantial damage.
> The unfortunate result was that the passenger, Mr. B. Dragan, lost his life.
> At the location where the Appellant's vehicle left the road, the road is straight, well paved, without irregularity or obstruction. Visibility in terms of sight-distance is good. The weather was good and clear. The road surface was bare and dry.

¶ 3 The defence elected to call no evidence at the trial.

¶ 4 There is no evidence of speed, no evidence of any braking or avoidance manoeuvre, no evidence of mechanical malfunction, no evidence of the condition of the Appellant himself at the time of the accident.

¶ 5 The only facts before me are those agreed upon between the Crown and the Appellant.

¶ 6 Therefore the issue before the court is whether or not the facts agreed upon can, in and of themselves, support a conviction under s. 130?

¶ 7 The question is a difficult one largely because of the unique phrasing of s. 130. It has given rise to considerable appellate discussion.

¶ 8 The test of s. 130 is framed in very broad and general terms -- "without due care and attention". Unlike other Highway Traffic Act offenses it is the lack of specificity as to how the offense is committed, which causes the problem.

¶ 9 There is a rather strong inclination, understandable in these cases, to view the mishap itself and its unfortunate consequence, as constituting the act of carelessness. But that is not the case. The gravamen of the offence is the operating of the motor vehicle "without due care and attention", not the consequence of driving without due care and attention.

¶ 10 In a given case, the mishap itself might indeed be evidence that an individual was driving without due care and attention. But equally, and theoretically, an individual could be guilty of driving without due care and attention even though no mishap resulted from the driving. It is rare but not unheard of, that a charge of careless driving, i.e. driving without due care and attention -- is laid where there has been no mishap in consequence thereof.

¶ 11 The Crown argues here that in the absence of any exculpatory or explanatory evidence by the defence, that the charge is made out simply upon the facts as agreed. The Crown in effect says, that by necessary inference from the facts, the Appellant was driving without due care and attention.

¶ 12 The Appellant argues, conversely, that in the absence of any Crown evidence to indicate how or why the mishap occurred, that there is therefore no evidence of malfeasance on the part of the Appellant, nor that he drove "without due care and attention". The Appellant, arguing traditional criminal law principles, asserts

that no inference can be drawn, as suggested by the Crown, that the Appellant was driving "without due care and attention".

¶ 13 For an answer we must look to the jurisprudence, more particularly, the two Ontario Court of Appeal decisions R. v. Beauchamp [1953] O.R. 422, and R. v. McIver (1965), 45 C.R. 401.

¶ 14 I am of the view that Beauchamp is modified by McIver which is later in time. McIver, in my view has the effect of shifting the onus to the accused to demonstrate that the act was done without negligence or fault. I believe this matter falls four-square within the principles set out in McIver. There is, here, evidence from which the trial judge could draw the inference of guilt (which he has done), and no evidence presented by the defendant to support any other finding.

¶ 15 The appeal is dismissed.

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