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Indexed as:

R. v. Robbins (B.C. Co. Ct.)

Between
Regina, Respondent, and
Dennis Robbins, Appellant

[1990] B.C.J. No. 367
DRS 92-00455
Prince George Registry No. 16168

Also reported at:
22 M.V.R. (2d) 201

British Columbia County Court
Prince George, British Columbia
Perry Co. Ct. J.

Heard: July 14, 1989
Judgment: January 25, 1990

Motor vehicles — Offences — Following another vehicle too closely — Proof — Contrary evidence — Appeal.

Accused appeal from conviction. The appellant's trailer was involved in a rear-end collision with the complainant's car. The evidence showed that the complainant stopped abruptly when she misread the signal from the flagman who was waving her to "slow down". In spite of several statements by the complainant that she "stopped", the trial judge made a finding that she was hit from the rear while slowing down, and that this could have only happened because the accused was following too closely.

HELD: Appeal allowed. The findings of the trial judge were not supported by the evidence.

STATUTES, REGULATIONS AND RULES CITED:

Motor Vehicle Act, R.S.B.C. 1979, c. 288, s. 164(1).

Counsel for the Respondent: E. Bayliff.
Counsel for the Appellant: Lorne Dunn.

PERRY CO. CT. J.:— Dennis Robbins appeals against his conviction in Provincial Court on 11th January 1989, on the charge that on or about the 20th day of May, 1988, he was following another vehicle too closely, contrary to section 164(1) of the Motor Vehicle Act, R.S.B.C. 1979, C. 288."

That section reads thus:

> 164(1) A driver of a vehicle shall not cause or permit the vehicle to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the amount and nature of traffic on and the condition of the highway.

The charge arose following an accident which occurred on Provincial Highway 97 close to 12 o'clock noon on 20th May, 1988, near Stone Creek which is about 25 kilometres south of Prince George at a point on the highway just north of a B.C. Rail overpass on a good, dry black topped road having one lane north and one land south divided by a yellow centre line. It was a bright sunny day.

Donna Steeves was alone driving a dark green 1980 Pontiac passenger car northbound. Her male companion was travelling ahead of her driving a motorhome. He was in a line of three large Winnebago motorhomes. The appellant, Dennis Robbins, who gave evidence at the trial, was also travelling in a northerly direction behind the Steeves vehicle. He was driving a short-box Chevrolet silver-coloured truck pulling a heavy trailer which was occupied by 14 bird dogs. He is a bird dog trainer and was en route to attend a dog show in Prince George the next day. He was formerly a member of the Royal Canadian Mounted Police for about 20 years.

At the time in question a mobile sweeper was being operated underneath the overpass removing sand from the corners where there were concrete abutments. Dennis Trudeau was an employee of the Department of Highways on duty as a flagman in charge of traffic control. He was using a flag paddle with the word "stop" on one side and "slow" on the other side. He also had with him a Department of Highways pickup truck bearing large warning signs and a flashing yellow light warning of traffic hazard ahead. At the relevant time in this case the truck was parked on the right hand side of the road north of the overpass and was involved with southbound traffic.

Trudeau was standing in the southbound lane on the shoulder of the road at a position in front of the pickup truck. He testified that at points along the highway south of the underpass three signs had been set up by him. They were facing the northbound traffic. The precise distance south of the underpass of these signs was not disclosed in evidence. These signs read respectively "Men and Equipment Working", "Be Prepared to Stop" and "Flag Man". He said: "We try to put them further enough back from the job site so the traffic coming will have enough time to brake or slow down". He said that the first sign was "set out" at a point about three to four hydro poles south of the site and that the second and third signs were one hydro pole apart. He did not specify the distance between hydro poles. It was not made clear whether these signs were on the road on the poles, or some other place. Ms. Steeves testified that signs were "up" and that she saw them as she was approaching the underpass. She said that the words on the signs were "slow" and "Men at Work". The significance of the evidence concerning these signs is that the appellant Robbins testified that he did not see any signs on his approach to the Stone Creek overpass.

R.C.M.P. Constable James Marsh was one of the three witnesses called by the Crown. He took a series of photographs of the scene. He took photographs numbered 1, 2, and 3, in exhibit 1 while standing at a point purportedly showing the view of a northbound driver approaching the area of the underpass by way of a right hand curve. He did not dispute the suggestion put to him on cross-examination that photo No. 1, which depicts the road and banks on each side of the road at the most southerly distance from the underpass, was "quite a distance" from the underpass. There are no hydro poles or signs to be seen on any of these three photographs.

Constable Marsh testified that he does not recall the exact distance in question and did not pace it off. He took no measurements of any kind.

The trial judge found. as a fact, however, that the signs were posted. There was evidence to support this finding.

In his reasons for judgment he said: "Well, suffice it to say I'm finding as a fact that the road signs were there, as indicated by Miss Steeves and Mr. Trudeau, three signs placed some distance prior to this corner which has been variously described as a blind corner and/or dangerous corner . . . as one approached the corner from the south, one was therefore put on guard that for any reason there could be an obstruction or a flag person. The work may have been going on on the other side of the overpass, that is, the danger may have been on the other side of the overpass, in which case the flag person would have been in the northbound lane, all of which is unknown to somebody approaching this corner. All that one knows is that there is some road construction or some work being done and you have to be able to stop."

The evidence of Ms. Steeves was to the following effect. She saw the three signs, which I have described, as she approached the underpass travelling north. She slowed down. She then drove through the underpass, travelling slowly. She saw that her boyfriend had driven on through in his winnebago. He had not stopped. At about the same time she saw the flagman (Trudeau) standing in the southbound lane. He had the traffic from the north going southbound stopped. There was a line of traffic waiting in that lane. She says that the flagman facing her flipped his paddle, turning it from "Slow" to "Stop" whereupon she stopped. She is not sure whether she slammed on her brakes. She saw no equipment working. She had not at any time prior to stopping seen the Robbins vehicle behind her. She had not paid any attention to traffic following behind her and did not know that the Robbins vehicle was following behind her until she heard the screech of brakes. She then looked in her rear view mirror and saw the trailer coming at her. It was the Robbins trailer that struck the right rear end of her car not the Robbins truck. Robbins had taken evasive action by turning his truck to the right to avoid a rear end collision, and his truck went across the road into the ditch and turned over. His truck did not rear-end the Steeves car.

She estimated the damage to her Pontiac car at $4,000. She was not injured. It was put to her on cross-examination that after the accident she had a conversation with Robbins to the effect that she was sorry that she had to stop quickly because the flagman had turned his sign abruptly. She agreed she told him she was sorry, Robbins' version is that she said to him: "I'm sorry, I'm sorry. He just flipped the sign to "stop" and I didn't have a chance to do anything else."

It is clear on the evidence of Trudeau that Ms. Steeves made a mistake in respect of Trudeau's sign. The sign on his paddle facing her did not read "stop" but "slow". He had not walked into the northbound lane to stop that traffic. He was on the shoulder of the road to her left and motioned her through by rotating his hand and with the sign reading "slow" facing her. He says that at the time he motioned her through, hers was the only car there. When she was slowing down, Trudeau did not see the Robbins vehicle. This passage appears in the transcript at p. 18 line 17.

Q. So he must've been a considerable distance behind her?

A. Yeah, he probably was. ...

Trudeau saw that the Robbins vehicle had laid down skidmarks. They are clearly visible on the photographs. There was debris on the road. Cst. March talked to Robbins, Steeves, and Trudeau at the scene, and saw the skid marks. He used none of this information to take any measurements. He said that he presumed that the skid marks were made by one of the vehicles but they could have been there prior to the accident. There was, of course, ample evidence that the skid marks had been made by the Robbins vehicle.

The judge appears to have been under the impression that the Steeves car did not stop or that it was uncertain whether she did stop of not. In his reasons, he said: "She said that she came to almost a stop, or in any event slowed down considerably. Her vehicle was there, there's no question about that, and whether it was moving or stopped at the time of impact is a little uncertain. Mr. Trudeau said it was moving slowly. Miss Steeves says she thinks she was stopped."

This finding is contrary to the evidence. My examination of the transcript shows, according to my count, that Ms. Steeves made the affirmative statement "I stopped", or agreed with counsel that she stopped, on eleven different times in the course of giving her evidence.

The evidence of the appellant may be summarized as follows. He slowed down as he approached the overpass. He saw the large Winnebago motor homes go through it. He was not expecting any stopping on the road beneath the overpass. He had been following the green Pontiac for some time. He lost sight of it as it went under the overpass. He entered the overpass. It was very sunny and as he emerged a shadow created by the overpass affected his visibility, so he did not have a plain view as he emerged until his eyes adjusted to the light. Such a shadow can be seen on the photographs. He was travelling at about 40 to 45 miles per hour as he came round the right hand curve.

Upon emerging, he first saw the highway department truck parked facing south on the southbound shoulder. He then saw the flagman, who was giving him the highball sign - a "hurry up" sign. The flagman was standing just opposite the truck in the southbound lane. He saw that the traffic he had been following was continuing to move. The green Pontiac was following the three motorhomes. He noticed no change in the Pontiacs speed at that stage nor did he notice any brake lights. He was continuing to watch the flag man, considering himself to be under the flagman's direction. The flagman was continuing to hurry him forward. So he put his foot on the accelerator and continued northbound as he was watching the flagman. His distance from the flagman did not enable him to read the sign on the paddle. He was governing himself by Trudeau's hand signals and interpreting these to mean that Trudeau wanted to clear the northbound traffic from the area. As he put his foot on the accelerator he could see that the gap between the Pontiac and the motorhomes was widening. In that same second he realized that the Pontiac had decided to stop and so he applied his brakes as rapidly as he could.

At page 31 - 32 of the transcript this appears:

> Q. And that's when you applied your brakes?
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> A. I applied my brakes as rapidly as I could and I knew instantly because of how -- you know, how short a distance it was, that there would not be time for me to stop as so I also tried to steer the vehicle to the shoulder of the road.
>
> Q. And did you do that successfully?
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> A. I did that successfully. And I had trouble with one brake. There was a rear wheel grabbed on me and locked up on me and I had to let the brakes go a little bit and I steered it around and stopped the truck short of the car on the shoulder of the road facing south, and the trailer went on by me and I heard a clicking sound as the trailer hit the car.

When he braked this brought his truck to a complete stop. It ended up in the ditch because the momentum of the trailer rolled his truck over into the ditch. It ended upside down in the ditch and at about this point the trailer disconnected from the truck, and it was his trailer that struck Ms. Steeves' car. He said that the span of time that elapsed from the time he accelerated from a slow speed, responding to the flagman instructing him to increase his speed, seeing the car in front of him and braking, was approximately two seconds.

Counsel for the appellant, Mr. Dunn, submits the verdict cannot be supported by the evidence on the principal ground that there was no evidence that the appellant was following too closely. The evidence of Ms. Steeves was that she had not been paying any attention to the traffic behind her and did not know the distance between the Robbins vehicle and her car. Trudeau's evidence was that when he first saw the Steeves car slowing down he did not see the Robbins vehicle and he agreed that at that stage the Robbins vehicle must have been a considerable distance behind the Steeves vehicle. Robbins had been following her for some time prior to the accident. There is no evidence that he was following her too closely as both vehicles proceeded northbound along the highway. He lost sight of her car as he entered the underpass. This indicates that he was not too close to her vehicle at that stage.

Counsel for the respondent Crown, Ms. Bayliff says that he drove his truck at a speed which was beyond his ability to stop it in time to avoid a collision. Robbins testified that when he saw a gap between the Steeves car and the vehicles ahead, he realized that the car ahead of him had decided to stop. Because of his speed he was unable to stop in time and it was his speed that caused him to get so close to the car ahead that he could not stop quickly enough, so he veered out of his lane of travel and into the ditch.

It appears that the trial judge subscribed to this view of the matter. He said: "He came up and hit from behind. Couldn't stop his vehicle when he realized there was another vehicle there and when he did finally realize it was there, it was too late. Well, in my view that's following too closely."

I think this amounts to saying that although the appellant applied his brakes, his speed was such that it brought his truck so close to the car ahead that he had to veer off the road to avoid a rear-end collision between the truck and the car.

In my respectful view, this overlooks the evidence of Ms. Steeves that she stopped. The appellant's evidence, in effect, was that she stopped, and it was then that he realized there would not be time enough for him to stop in order to avoid hitting her car.

Counsel were not able to refer me to any reported B.C. cases wherein s. 164(1) fell to be construed, and I have found none.

I think that the words "follow another vehicle more closely than is reasonable and prudent," import the concept of distance between two moving vehicles. It seems to me that if the vehicle ahead suddenly stops that creates an emergency situation which is not contemplated by the enactment.

The essence of the offence is following too closely. The section instructs the trier of fact to determine whether the driver behind was following more closely than is reasonable and prudent having due regard for the speed of the vehicles and the amount and nature of the traffic and on the condition of the highway. The phrase "speed of the vehicles" indicates to me that the section contemplates that both vehicles are moving.

The appellant may well have been civilly negligent in driving faster than was reasonable and prudent. But as Bence, P.M. (Sask. Magistrate's Court) pointed out in Regina v. Walsh (1960) 130 C.C.C. 201 at p. 202, rear-end collisions occur for various reasons, often failure to keep a proper lookout, or too high speed, or faulty brakes, anyone of which could create civil liability. But this is a quasi-criminal charge and the court must find that the defendant was following more closely than was reasonable and prudent.

In my opinion the evidence failed to support that precise allegation. The appeal is allowed.

PERRY CO. CT. J.

/DRS