Case Name:

R. v. Slawter

Between
Her Majesty the Queen, and
Jerry Slawter

[2008] O.J. No. 3706

No. 999-83422186

Ontario Court of Justice
Milton, Ontario

A.D. Cooper J.

Heard: August 1, 2008.
Oral judgment: August 1, 2008.

(11 paras.)

Charges: Careless Driving.

Counsel:

M. Hurley: Prosecutor.

M. Riddell: Counsel for the Appellant.

REASONS FOR JUDGMENT

1 A.D. COOPER J. (orally):-- All right, I am giving my ruling now. I accept the evidence the evidence of Officer Okuloski, but I do note that the Justice of the Peace accepted certain key evidence of the appellant. The Justice of the Peace made a finding of fact that the appellant was two car lengths behind Officer Okuloski and Officer Okuloski had actually testified it was one. So there are certain parts of Officer Okuloski's evidence that the Justice of the Peace seemed to reject and

instead accepted the evidence of the appellant. At all times the appellant was going below the speed limit. He was going 85 approximately in a 100-mile -- Kilometre per hour zone and that does not seem to be disputed. Officer Okuloski was going 95 he said by his own evidence.

2 The defendant, according to Officer Okuloski, had his high beam on, on Officer Okuloski for 10 seconds. The Justice of the Peace seemed to reject that and found that, that he only had it on Officer Okuloski for 1 second. I do have trouble without an analysis by the Justice of the Peace why he accepted certain parts of Officer Okuloski's evidence and then rejected others and accepted part of the defendant's and then did not accept other aspects of it. It is not clear to me in his analysis how he, how he came to those conclusions.

3 The Justice of the Peace found that the high beam was on for one second -- and we are dealing with an 18-wheeler, 72 feet long driven by the appellant. The Justice of the Peace at no time found the defendant ought not to have been in the middle lane.

4 The law of careless driving as just set out by the appellant's representative, Mr. Riddell, in this argument, and I accept the law of R. v. Beauchamp, [1952] O.J. No. 495, a decision of the Ontario Court of Appeal, and according from that decision:

> The offence of careless driving is of a quasi-criminal nature. It is something which goes beyond error of judgement, and the standard of care and skill to be applied has been long established and is not that of perfection.

5 Also a decision of the Ontario Court of Appeal, R. v. Wilson, [1970] O.J. No. 1658 where Chief Justice Gale -- that is G-A-L-E said:

> Mere inadvertent negligence, whether the slightest type or not, will not necessarily sustain a conviction for careless driving.

6 And also a decision of Justice Killeen, K-I-L-L-E-E-N of the Superior Court of Justice in Namink -- R. v. Namink, N-A-M-I-N-K, [1979] O.J. No. 317:

> That it is trite to say that this is a quasi-criminal charge, and that to make out a charge under this section the evidence must bespeak conduct deserving of punishment in the way of a conviction under the section or our Highway Traffic Act. Mere momentary inattention, or a simple kind of error in judgment, does not bespeak the kind of conduct over which the net of this section is cast.

7 And I accept that as the law and I am bound by that law. Then it is a matter of applying the facts of this case to the law to the facts of this case. And what we have is driving here on the part of the appellant that is somewhat aggressive but he said that the only reason he went in the middle lane this did not seem to be rejected by the Justice of the Peace -- was when cars were entering or vehicles were entering the highway he would then move over into the middle lane but then he

would have to get back again because his, his exit on Appleby Line was coming up and he was not -- some cars would not let him in and that is why he flashed the high beam on and was trying to get back in again.

8 And it was somewhat aggressive, but the question is whether it is careless driving. What is particularly important, I think I have mentioned this in my remarks already, is the lane change where Officer Okuloski said he was in the middle he himself was in the middle lane. The appellant had moved back into the curb lane and at one point the truck driven by the appellant moved partially into Officer Okuloski's lane in the middle causing Officer Okuloski to go to the passing lane.

9 There was very little evidence of this in the evidence of the appellant at trial, and almost no cross-examination on this. The Justice of the Peace did not really deal with why that might have happened on the night in question.

10 And I accept what Mr. Hurley says that there is an onus on a truck driver -- the -- driving big vehicles like this to adjust your driving to the bad weather and the conditions in question. But Officer Okuloski at page 28 of his evidence pointed out the lane markings were not easy to see that night overall because of the rain. If I thought that the appellant did this out of vindictiveness towards Officer Okuloski for not letting him in when he wanted to so he could make -- so he could get to his exit, there be no question in my opinion this would be careless driving.

11 But on all the evidence here, even given that there is this onus on a truck driver to be very careful and adjust your driving to the weather conditions, I think that lane change could have easily been because he was driving a big truck like that in these conditions. He is driving within the speed limit. It may have been momentary inattention but certainly does not amount to careless driving in my view. And I think that due diligence has been made out and I allow the appeal and I quash the conviction. And I say that with all due respect to Officer Okuloski and the learned Justice of the Peace. Thank you.

qp/s/qlkxl/qlmxb