Citation: *R. v. Smith,* 2025 YKTC 43

Date: 20250718
Docket: 24-11025
Registry: Dawson City

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REX

v.

STEPHEN WAYNE ALEXANDER SMITH

Appearances:
Keith Cruz (by video) — Counsel for the Crown
Tim Foster (by video) — Counsel for the Defence

This decision was delivered from the Bench in the form of Oral Reasons.
The Reasons have since been edited without changing the substance.

REASONS FOR JUDGMENT

[1] RUDDY T.C.J. (Oral): Stephen Smith has entered not guilty pleas with respect to three *Criminal Code* (the "*Code*") driving offences alleged to have occurred on July 26, 2024. Trial commenced in Dawson City, on June 18 and 19, 2025, by way of a *voir dire* in relation to a *Charter* application filed by Mr. Smith. Evidence on the *voir dire* included two police officers and a civilian named Jennifer Stobbe, all of whom testified on behalf of the Crown. Mr. Smith testified in his own defence.

[2] Upon completion of the evidence, but prior to argument on the *Charter* application, Crown advised they would not be proceeding on two of the three counts. Counsel jointly agreed that the evidence of Ms. Stobbe and Mr. Smith should be admitted on the trial proper in relation to the remaining count of dangerous driving contrary to s. 320.13(1) of the *Code*, the matter that is before me for decision today.

Overview of Evidence

[3] On July 26, 2024, Mr. Smith came to the attention of the police in Dawson when Ms. Stobbe called 911 to report what she described as a pattern of reckless driving endangering other drivers on the road.

[4] Ms. Stobbe was driving from Whitehorse to Dawson on the North Klondike Highway with her two young children in the car. Mr. Smith first came to her attention just North of Stewart Crossing when his truck came up very quickly behind her as she was approaching a construction zone. She tapped her brakes twice to flash her brake lights so he could see she was slowing down.

[5] The construction zone consisted of a loose gravel road with potholes somewhere between five and 10 km long. The road had no lane markings but was wide enough for two-way traffic in narrow lanes, though there was no oncoming traffic during the relevant time period. In front of Ms. Stobbe were four motorcycles driving in a staggered pattern followed by a white SUV. All of these vehicles and Ms. Stobbe were travelling at speeds which varied between 30 and 50 km/h through the construction zone as some sections of the road were much rougher and required slower driving. She says signs indicated the speed limit to be 50 km/h. The site was not active at the time of the

events, meaning there were no workers present, and the heavy equipment vehicles were parked off to the side and not in use.

[6] Ms. Stobbe says that when Mr. Smith's tires first hit gravel, the back end of the truck swerved or fishtailed, such that it appeared the rear tires had lost traction. She says the truck was behind her for approximately 15 minutes and during that time it came up quickly behind her and then backed off well over 15 times. She says the truck made many attempts to pass her and would swerve all the way over to the right shoulder, and, when there was not enough space to pass, it swerved all the way back and touched the left shoulder. On at least two of the attempts, she said the rear-end fishtailed.

[7] Ms. Stobbe says that she maintained her vehicle closer to the center of the road in the construction zone, as she was concerned that if the truck hit her vehicle there was a risk of her going off the road and that if he managed to pass her, the vehicles ahead of her would be at risk.

[8] After the construction zone ended, Ms. Stobbe says the speed limit returned to 90 km/h and she and the vehicles in front of her sped up to between 85 and 90 km/h. Just after passing Moose Creek Lodge, they came to a long straight stretch, at which point Mr. Smith's truck passed her and the white SUV, pulling close in front of the white SUV, causing the driver to hit their brakes. The truck then pulled out again quickly and passed the four motorcycles.

[9] Ms. Stobbe says the truck did not signal at any time when either attempting to or actually passing any of the vehicles.

[10] Once Ms. Stobbe found an area with cell reception, she contacted 911.

[11] Mr. Smith's version of events is not entirely dissimilar to Ms. Stobbe's. He indicated that he was living at the grader station at Stewart Crossing, working for the Yukon Government Highways Department. It was his day off, and he was travelling to Dawson where he also maintains a trailer.

[12] Mr. Smith agrees he came up behind Ms. Stobbe with the intention of passing her more than once. He says she brake checked him twice, by hitting her brakes causing him to hit his brakes. He says he would not have been closer to her than four car lengths and was travelling the speed limit of 50 km/h, though he did speed up to have momentum to pull out and pass. However, when he made attempts to pass Ms. Stobbe, he says she would move over towards the oncoming lane, on or over the center of the road, to block him, so that he felt he could not safely pass. He says he tried to pass her two or three times. He says that had Ms. Stobbe not blocked him, he could have safely passed her. He was not concerned about losing control of his vehicle as he is a professional driver with a class 1 licence and drives that stretch of road both ways on a daily basis as part of his employment.

[13] Mr. Smith agrees he was able to pass Ms. Stobbe on the straight stretch after Moose Creek Lodge, and that he pulled in front of the white SUV, because he says you do not continually drive in the oncoming lane; however, he says he was a safe distance in front of the SUV when he pulled in front of it. He then passed the four motorcycles.

[14] Mr. Smith says that he used his signal as required when attempting to pass and when he actually passed the vehicles in front of him.

[15] It should also be noted that Mr. Smith, an admitted alcoholic, testified to having consumed two or three beer in the two and one-half hours prior to leaving Stewart Crossing, as well as to consuming part of an additional beer while on the road.

Dangerous Driving

The Law

[16] Turning to the law in relation to dangerous driving, the leading case is the Supreme Court of Canada decision in *R. v. Roy*, 2012 SCC 26, in which the relevant principles are summarized at para. 28 as follows:

> … The *actus reus* of the offence is driving in a manner dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle was being operated and the amount of traffic that at the time was or might reasonably have been expected to be at that place (s. 249(1)(*a*) of the *Criminal Code*). The *mens rea* is that the degree of care exercised by the accused was a *marked* departure from the standard of care that a reasonable person would observe in the accused's circumstances (*Beatty*, at para. 43). The care exhibited by the accused is assessed against the standard of care expected of a reasonably prudent driver in the circumstances. The offence will only be made out if the care exhibited by the accused constitutes a *marked* departure from that norm. While the distinction between a mere departure from the standard of care, which would justify civil liability, and a *marked* departure justifying criminal punishment is a matter of degree, the lack of care must be serious enough to merit punishment (para. 48).

[17] It should be recognized that *Roy* was decided with respect to s. 249 of the *Code*. Section 320.13 of the *Code*, while very similar, omits the enumerated list of conditions to be considered included in its predecessor section, namely “the nature, condition and use of the place at which the motor vehicle was being operated and the amount of traffic that at the time was or might reasonably have been expected to be at that place”.

Thus, while these factors can, and likely should, be considered under s. 320.13, it is not statutorily mandated to do so.

[18] What remains the same, is the requirement to consider both the *actus reus* and *mens rea* as defined in *Roy*.

[19] With respect to the *actus reus*, the Court notes that the analysis requires a "meaningful inquiry into the manner of driving" (para. 34), noting that "[a] manner of driving can rightly be qualified as dangerous when it endangers the public.

[20] However, the Court notes that "Driving which, objectively viewed, is simply dangerous, will not on its own support the inference that the accused departed from the standard of care of a reasonable person in the circumstances" (para. 42).

[21] With respect to the *mens rea*, or fault element, the Court offered the following guidance:

> 36 The focus of the *mens rea* analysis is on whether the dangerous manner of driving was the result of a marked departure from the standard of care which a reasonable person would have exercised in the same circumstances (*Beatty*, at para. 48). It is helpful to approach the issue by asking two questions. The first is whether, in light of all the relevant evidence, a reasonable person would have foreseen the risk and taken steps to avoid it if possible. If so, the second question is whether the accused's failure to foresee the risk and take steps to avoid it, if possible, was a *marked departure* from the standard of care expected of a reasonable person in the accused's circumstances.

[22] The Court in Roy stresses the importance of the *mens rea* fault requirement in a dangerous driving case, noting:

> 30 A fundamental point in *Beatty* is that dangerous driving is a serious criminal offence. It is, therefore, critically important to ensure that the fault

> requirement for dangerous driving has been established. Failing to do so unduly extends the reach of the criminal law and wrongly brands as criminals those who are not morally blameworthy. The distinction between a *mere* departure, which may support civil liability, and the *marked* departure required for criminal fault is a matter of degree. The trier of fact must identify how and in what way the departure from the standard goes *markedly* beyond mere carelessness.

[23] It is this requirement to determine where a driving pattern falls on the spectrum between civil or regulatory carelessness and criminal dangerousness that makes dangerous driving law, while straightforward enough on its face, notoriously difficult to apply in any given case.

Analysis

[24] A determination of where the driving falls on the spectrum in this case turns on an assessment of the credibility of the evidence provided by both Ms. Stobbe and Mr. Smith.

[25] While their respective testimony was consistent in many respects, they differed on key points, most notably: the degree of control Mr. Smith appeared to have over his vehicle as indicated by fishtailing or swerving from shoulder to shoulder; the number of attempts to pass and frequency of pulling forward and dropping back; how far Ms. Stobbe moved her vehicle toward the center of the gravel road during those attempts; whether Mr. Smith used his signal at any time when attempting to or actually passing; and how far Mr. Smith was ahead of the white SUV when he moved in front of it upon successfully passing on the straight stretch after Moose Creek Lodge.

[26] Ms. Stobbe's evidence on these points would tend to move the driving pattern higher on the spectrum towards dangerousness, while Mr. Smith's description would tend to move it much further down the spectrum.

[27] In assessing credibility in any case where an accused person calls evidence, I am bound by the test set out by the Supreme Court of Canada decision in *R. v. W.(D.),* [1991] 1 S.C.R. 742: If I believe the accused, I must acquit; even if I do not believe the evidence of the accused, I must nonetheless ask my self whether his evidence raises a reasonable doubt, and if so, I must acquit; even if I do not believe the accused and his evidence does not raise a reasonable doubt, I must ask myself whether, on the basis of the evidence I do accept, I am satisfied, beyond a reasonable doubt, of the guilt of the accused.

[28] The stated intention of the *W.D*. test is to ensure that courts do not approach credibility assessments of conflicting evidence as a "credibility contest" in which one version is preferred to the other, an approach that is more in line with the much lower civil standard of proof on a balance of probabilities. Rather, the focus in a criminal trial must, at all times, remain on the question of whether or not the Crown has met its burden of proving the offences beyond a reasonable doubt.

[29] The British Columbia Court of Appeal, in *R. v. Ay* (1994), 59 B.C.A.C. 161, added an additional refinement to the *W.D.* test, noting that if I do not know whether I believe the evidence of the accused or the complainant or if I am unable to reject the evidence of the accused, I must acquit.

[30] It is important to note that the credibility assessment imports concepts not just of veracity, but also of reliability.

[31] In assessing Mr. Smith's evidence, Crown quite fairly conceded that his evidence was credible, noting that he was forthright and readily made admissions against his own interests. However, Crown argues there is a concern with respect to the reliability of Mr. Smith's evidence on the basis his recollection may have been impaired by alcohol.

[32] While it is highly concerning to me that Mr. Smith admitted to operating a motor vehicle after consuming alcohol and while continuing to consume alcohol, there was evidence before me only of consumption, not of impairment. As the intoxicating effects of alcohol affect people differently depending on a multitude of factors, I am unable to make assumptions about Mr. Smith's degree of impairment, if any. Absent such evidence, there is no basis upon which I can conclude that his memory of events was in fact impaired by alcohol. In my view, there is simply no basis upon which to reject Mr. Smith's evidence.

[33] To be fair, in so concluding, I am not suggesting that I found the evidence of Ms. Stobbe to be incredible. By and large, she was equally forthright in her evidence and appeared to have a strong recollection of events, while conceding what she did not know. However, I did have one concern about her evidence in relation to the question of how far she moved her vehicle toward the center of the gravel road. On cross-examination, she agreed that she tapped her brakes and moved her vehicle over to signal to Mr. Smith that he should not pass, but she insisted that, in moving over, she left enough space for oncoming traffic. Yet, she said in direct examination that

Mr. Smith would try to pass her but would drop back because there was not enough space for him to pass. Logically, if she left enough room for oncoming traffic, there would also have been enough room for Mr. Smith to pass.

[34] Ultimately, however, this is a situation like that identified in the *Ay* case; I have two apparently credible witnesses, and I do not know whose evidence to believe. Indeed, I strongly suspect the truth actually lies somewhere between the two versions. That being said, if I have no basis upon which to reject the evidence of Mr. Smith, he is entitled to that most favourable interpretation of the evidence.

[35] On the basis of his evidence, I am satisfied that he committed more than one regulatory offence, particularly in relation to the consumption of alcohol, but I simply cannot conclude that making two to three attempts to pass Ms. Stobbe, even on a loose gravel road, where other traffic was travelling at relatively slow speeds of between 30 and 50 km/h endangered the public or that it represented a marked departure from the standard of care expected of a reasonable person in the circumstances. Accordingly, I am not satisfied that the evidence establishes, beyond a reasonable doubt, either the *actus reus* or the *mens rea* of dangerous driving, and the charge must be dismissed.

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RUDDY T.C.J.