Citation: ***R. v. Morrison*** Date: 20020904
2002 YKCA 15 Docket: YU471

COURT OF APPEAL FOR YUKON TERRITORY

BETWEEN:

HER MAJESTY THE QUEEN

RESPONDENT

AND:

ADAM K. MORRISON

APPELLANT

Before: The Honourable Chief Justice Finch
The Honourable Mr. Justice Donald
The Honourable Mr. Justice Low

M. W. Cozens — Counsel for the Appellant

Z. Brown — Counsel for the Respondent

Place and Date of Hearing: Whitehorse, Yukon Territory
June 11, 2002

Place and Date of Judgment: Vancouver, British Columbia
September 4, 2002

Written Reasons by:
The Honourable Mr. Justice Low

Concurred in by:
The Honourable Chief Justice Finch
The Honourable Mr. Justice Donald

Reasons for Judgment of the Honourable Mr. Justice Low:

[1] After hearing submissions on behalf of the appellant in this summary conviction appeal we refused leave to appeal with these reasons to follow.

[2] The appellant was convicted by Judge Fitzgerald of the Territorial Court of Yukon of the offence of careless driving under s. 179 of the ***Motor Vehicles Act***, R.S.Y. 1986, c. 118. Mr. Justice Veale of the Supreme Court of the Yukon Territory dismissed an appeal of the conviction and the appellant sought leave to appeal further to this court. In the Supreme Court the appellant argued that the guilty verdict was unreasonable on the evidence. In this court, he sought to argue that the trial judge erred in failing to consider whether the appellant's manner of driving was deserving of punishment or blameworthy after finding that the appellant's manner of driving failed to meet the standard of care of an ordinary prudent driver in the situation. The appellant no longer disputes the finding that his driving was below the standard of care.

[3] Section 179 of the statute reads:

> 179. Every person who drives a vehicle on a highway
>
> (a) without due care and attention, or

(b) without reasonable consideration for persons using the highway,

is guilty of the offence of driving carelessly.

[4] In downtown Whitehorse on 15 October 1999 the appellant was driving a vehicle north in the outside of two northbound lanes on 2nd Avenue when he struck an intoxicated pedestrian wearing dark clothing who was crossing the road mid-block from west to east. The pedestrian had crossed three lanes of traffic before the impact. The trial judge found the following significant facts:

(1) the collision occurred at night in an area that was not well lit;

(2) there are several drinking establishments in the area and drivers should anticipate unexpected pedestrians;

(3) at the time of the collision, the area was busy with pedestrians;

(4) it was snowing or sleeting;

(5) other vehicles were coming to a stop but the appellant continued on; and

(6) the appellant was driving at or near the speed limit.

[5] The trial judge concluded that the driving circumstances "should have caused [the appellant] to adjust his speed and his lookout for other people, including pedestrians who may be illegally crossing the streets, not at a crosswalk …". He further found that in the circumstances driving at or near the speed limit did not meet the reasonable standard of care required by the section creating the offence of careless driving.

[6] As I have already noted, the appellant does not dispute these findings and conclusions. However, relying on ***R. v. Beauchamp***, [1953] O.R. 422 (C.A.) 422, the appellant says that the trial judge was required by law also to determine whether the breach of the standard of care was blameworthy. In that decision, F. G. MacKay, J.A. said:

> To support a charge under s.29(1) of the ***Highway Traffic Act***, the evidence must be such as to prove beyond reasonable doubt that the accused drove in the manner prohibited by the subsection, namely, without due care and attention or without reasonable consideration for others. …

Further in the decision, he said:

> There is a further important element that must also be considered, namely, that the conduct must be of such a nature that it can be considered a breach of duty to the public and deserving of punishment. This further step must be taken even if it is found

> that the conduct of the accused falls below the standard set out in the preceding paragraphs.

[7] In ***R. v. Jacobsen***, [1965] 1 C.C.C. 99 (BCCA), the court expressly disagreed with the ***Beauchamp*** decision based substantially upon a discussion of the intervening decision of the Supreme Court of Canada in ***O'Grady v. Sparling***, [1960] S.C.R. 804 that dealt with the constitutionality of the careless driving section then found in highway traffic legislation in Manitoba.

[8] In ***R. v. McIver***, [1965] 2. O.R. 475, the Ontario Court of Appeal again considered what the prosecution must prove to make out the offence of careless driving. The final sentence of the headnote concisely summarizes the decision: "… with respect to the offence of careless driving, the Crown need only prove that the accused committed the prohibited act and unless he can show that such act was done without negligence or fault on his part he will be convicted." MacKay, J. A. writing for four of the five judges who sat on the appeal referred to ***O'Grady v. Sparling*** but not to ***Beauchamp***. The court held that the offence was one of strict liability. The Supreme Court of Canada dismissed a further appeal on other grounds.

[9] It appears that the ***Beauchamp*** decision had a relatively short life and was no longer good law as a result of the decision in ***O'Grady v. Sparling*** as applied in both ***Jacobsen*** and ***McIvor***.

[10] In the leading case of ***R. v. Sault Ste. Marie***, (1978) 85 D.L.R. (3d) 161 (SCC), Dickson, J. (as he then was) referred with apparent approval to the ***McIver*** decision and recognized three categories of offences – *mens rea* offences, strict liability offences and absolute liability offences. As to strict liability offences, he said (p. 181):

> Offences in which there is no necessity for the prosecution to prove the existence of *mens rea*; the doing of the prohibited act *prima facie* imports the offence, leaving it open to the accused to avoid liability by proving that he took all reasonable care. This involves consideration of what a reasonable man would have done in the circumstances. The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event. These offences may properly be called offences of strict liability. Mr. Justice Estey so referred to them in Hickey's case.

[11] A strict liability offence does not require proof of an additional element of blameworthiness or higher degree of culpability as the appellant argues. All that is required is proof that the person charged with the strict liability

offence did the prohibited act and thereby breached the standard of conduct required by the section of the enactment that creates the offence.

[12] Because the sole ground of appeal raised by the appellant is contrary to settled law, leave to appeal was denied.

"The Honourable Mr. Justice Low"

I AGREE:

"The Honourable Chief Justice Finch"

I AGREE:

"The Honourable Mr. Justice Donald"