

Citation: *R. v. Hingley*, 2008 YKTC 4

Date: 20071106
Docket: T.C. 07-05114
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Worship Justice of the Peace Cameron

REGINA

v.

SUSANNE ELISE HINGLEY

Appearances:
Lee Kirkpatrick
Susanne Hingley

Counsel for the Territorial Crown
Appearing on her own behalf

REASONS FOR JUDGMENT

[1] CAMERON J.P.T.C. (Oral): Ms. Hingley pled not guilty to one count under s. 166. The testimony heard today was the affirmed testimony of Mr. Rudd. It indicates that on the day in question, August 12th, in the early evening hours, he was riding his motorcycle on 6th Avenue, approaching the intersection of Black and 6th. There was a grey car approaching him on 6th Avenue, and he observed a blue truck coming off of Black Street onto 6th Avenue that connected and collided with the grey car.

[2] His indication was that he observed the blue truck moving fairly quickly, and when he first saw it, he could see it passing the stop sign. The impact was such that he veered his motorcycle to the right-hand side of the road in the direction he was going.

He stopped; he went back and spoke to Ms. Hingley, who was the driver of the blue truck. He also checked and spoke with the occupants of the grey vehicle. He gave a statement to the police a couple of days later. His estimate of the damage to the grey car was that it was relatively minor damage. Looking at some photos of the intersection, he picked out one that most closely resembled what he could see. Again, he asserted that he first observed the truck as it was passing the stop sign.

[3] Crown's second witness gave sworn testimony, Carla Boss. She indicates that she was driving with her grandmother on 6th Avenue. Her grandmother was in the right-hand back seat of the car. She got hit by this blue truck at the intersection of Black and 6th. She indicated her grandmother first alerted her to the concern of the blue truck, and that she does not know if she actively swerved into the other lane. She just knows that she wound up being moved or pushed over into the other lane. Her first clear indication of the blue truck, in her own vision, was when it hit her.

[4] She observed Ms. Hingley, who was clearly upset at the time of the accident. She called the RCMP. She displayed some photos of the damage to her vehicle. The photos are still on her digital camera. However, Ms. Hingley agrees that they depicted the damage. The damage shows damage to the right rear passenger door and the front of the wheel well, right rear wheel well. Estimates were \$2,800 to \$3,500. Again, in cross-examination, she confirmed that she did not in fact see the truck until the actual accident.

[5] Ms. Hingley indicates that she was driving her vehicle on Black Street, that she stopped prior to the stop sign; approximately five to six feet from the stop sign. Then

her intention was to cross 6th Avenue and she started to accelerate from that point on to cross 6th Avenue. She fully accepts that she did not see the grey vehicle and that she is fully at fault. Her main contention is that she did actually stop. There is no stop line present at that intersection, by her testimony.

[6] I think the evidence supports that Ms. Hingley may very well have stopped her vehicle prior to the stop sign, because the evidence that we have from Mr. Rudd is that his observations were the vehicle moving past the stop sign. Clearly, in the photos that we see, he would not have seen if the vehicle had stopped prior to the stop sign, say six feet as suggested. He would not see that vehicle; there is a high fence in the way. However, he would see the vehicle once it passed the fence, and then would observe it moving past the stop sign.

[7] The photos of the damage to Ms. Hingley's vehicle, in my view, would be consistent with her accelerating her vehicle, not in a stunting manner, but certainly accelerating, in order to go straight across 6th Avenue, and getting enough motion out of her vehicle in that distance that she claims would be probably in the range of 25 feet, perhaps as much as 30 feet from the intersection, getting enough speed up that she, in hitting Ms. Boss' vehicle where she did, and with the shape of her vehicle and the weight of her vehicle, she would be able to do the damage she did with the minor damage to her own, as shown in the photos.

[8] In the photos it shows some scraping on the bumper, it shows the plastic licence plate holder having some damage to it, but it does not show a creasing of the bumper, it does not show a cracking of the grill, it does not show any other damage to indicate

excessive speed. In my view, it indicates perhaps the same or legitimate speed by Ms. Hingley. I am content to make the finding that Ms. Hingley stopped where she said she did.

[9] However, Ms. Hingley, that does not necessarily get you out of the woods because here is what the *Motor Vehicles Act* R.S.Y. 2002, c. 153 actually says about stop signs. It says:

A driver about to enter on a highway from a highway that is marked by a "stop" sign shall bring their vehicle to a stop

- a) before entering on the intersecting roadway and at a point no further than three metres from the intersecting roadway;

[10] Now, these photos, in my view, would put the stop sign, in all likelihood, right at the three metres. I would be very surprised if that stop sign is more than three metres from the intersection. However, it is not much less, if at all. That would mean that stopping behind the stop sign requires by law that you then move forward and stop at least at the stop sign again before entering the roadway. Failure to do so would be in fact failing to stop at the stop sign, because the stop at the stop sign requires that you be no more than three meters from the intersection.

[11] In my view, the evidence that has been tendered is consistent with you stopping where you say you stopped. However, that would be beyond the three metre limitation; therefore, would have required that you make a further stop once you would have been in the visible range of Mr. Rudd in order for you to have complied with the requirement to stop at the stop sign. Simply stopping somewhere along the way is not sufficient. There is a requirement that it be within certain parameters and if you are outside those

parameters, then, consequently, the offence is made out. In my view, the evidence that has been tendered here today would, in fact, be consistent with the fact that, technically, you failed to stop at the stop sign. You stopped before it, but you did not stop at it. As such, I have to find you guilty of the offence.

[12] If I can just make one further example. If, for example, you had a vehicle ahead of you, that, in this picture, was stopped, say, in this area and you were stopped behind; behind the fence and behind that vehicle, when that vehicle sees it is clear to go and goes, you must make a further stop even if it is still clear to go. That has been consistently borne out in other case law. So just so you understand that it is a technicality. However, it is a very technical offence. Failing to stop at a stop sign is an offence that either happen or did not happen. In this case, in my view, the evidence supports that you did not stop where you were required to stop. As such, I would find you guilty.

[13] Were you seeking anything outside of the suggested fine amount?

[14] MS. KIRKPATRICK: No. Ms. Hingley has an unrelated record. The only other observation I would make is that at the time of this incident it would appear that her driver's licence was under suspension, but she remedied that the following day. So given Your Worship's findings with respect to the case, the fine amount would be sufficient.

[15] THE COURT: The fine amount as suggested on the ticket, in my view, is in the right range. It is a \$125 fine and \$18 surcharge, a total of \$143. Ms. Hingley, how long would you need to pay that?

[16] THE ACCUSED: Two or three weeks.

[17] THE COURT: Two or three weeks?

[18] THE ACCUSED: Mm-hmm.

[19] THE COURT: I will give you a month.

[20] THE ACCUSED: Sure.

[21] THE COURT: You should also be advised that you can appeal this decision if you wish. You must launch that appeal within 30 days of today's date.

CAMERON J.P.T.C.