

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

RANDY PELLERIN

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)
) **N. Golwalla,**
) **for the Crown**
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) **B. Hillyer,**
) **Counsel for the defendant**
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) **HEARD: Jan. 12,2005, June 8,**
) **2005**
) **Decision rendered Sept.21, 2005**
) **Sentencing submissions Oct. 26,**
) **2005**

JUSTICE OF THE PEACE J.S.WOLOSCHUK:

REASONS FOR SENTENCE

[1] On September 21,2005, I found Randy Pellerin guilty of the offence of drive motor vehicle carelessly, contrary to the Highway Traffic Act section 130.

Careless Driving is defined in Section 130 of the Highway Traffic Act as follows:

(a) *“Every person is guilty of the offence of driving carelessly who drives a vehicle or street car on a highway without due care and attention or without reasonable consideration for other persons using the highway and on conviction is liable to a fine of not less than \$200 and not more than \$1000 or to imprisonment for a term of not more than six months, or to both, and in addition his or her licence or permit may be suspended for a period of not more than two years.”*

[2] The Crown is seeking a custodial sentence of 30 days with a 24-month driving license suspension and probation.

[3] The defence submitted that though this was a serious tragedy, Mr. Pellerin's driving on that date was on the low scale of careless driving and that a fine with some probation would suffice in this matter.

[4] I have considered the submissions of both the Crown and defence counsel.

[5] I have also considered the victim impact statements of Christine Sloan, which was read in court as well as written impact statements by David Squirrell's family, his father Mike Squirrell, his mother and his sister Deborah Calverley.

[6] As well, I read and considered the Presentence Report by Probation and Parole Officer Deborah Richardson dated October 14, 2005 and Exhibit 8, the driving record of the defendant from The Office of the Registrar of Motor Vehicles.

[7] In addition, I have considered the case law provided by counsel, including the decision of: Regina v. Martinez, Ontario Court of Appeal; Regina v. Trigiani, Ontario Superior Court of Justice; Regina v. Damonse, Ontario Court of Justice (Provincial Division) and Regina v. Messercola, Ontario Court of Justice.

[8] I have considered both the offence and the offender Mr. Pellerin, in determining the appropriate sentence in this matter.

[9] Dealing with the offence, the undisputed evidence establishes the following: On May 11th, 2004 just before 8:00 o'clock in the morning, Mr. Randy Pellerin was driving a motor vehicle, a pick up truck, northbound on Appleby Line on the overpass of the Queen Elizabeth Way in the City of Burlington. The road conditions were good, with regular heavy traffic for this time of the day, and the weather and visibility were also good. During this period of time on the same roadway, Mr. David Squirrell was riding his bicycle to work. He was struck by the truck driven by Mr. Randy Pellerin and was fatally injured.

[10] In my decision of September 21, 2005 I stated, "It is clear from all the evidence that Mr. Pellerin collided with Mr. Squirrell and caused his death. His actions prior to the collision cannot be considered reasonable or prudent. Though he has travelled this road on numerous occasions and is very familiar with it, he never the less does not have a look out for bicyclists using Appleby Line legally."

[11] I continued by stating, "The defendant put himself in a position behind a cube van that limited his view to the front of him due to the van's size and the fact it had no windows in the rear. He could not see through it. He however put himself so close to the rear of that vehicle that when he decided to move to the lane to the right so he could make his exit onto the ramp to Hamilton, he was not able to see what was in front of him, to the right.... He failed to see Mr. Squirrell on his bicycle and in so doing he failed to keep a proper look out."

[12] The offender Randy Pellerin is a 27-year-old single male living on his own and employed in his family's drywall business. In fact he was driving the company pick up truck on his way to a job site when this event occurred. The Presentence Report shows a young

man who seems well adjusted, who did well in high school, works in the family business and has a normal social life.

[13] I have considered both the mitigating and aggravating factors in this case.

[14] Randy Pellerin has no criminal record but his driving record is nothing to be proud of. In my review of exhibit 8 it indicates 7 convictions with 5 dealing with speeding. The speeding convictions do not appear to be of the worst type that I come across on a regular basis in this court. They are not very high speeds, as they are in the range of 10, 15 to 24 kilometres over the speed limit. However, also troubling is that after this event he has an additional conviction for speeding in the Hamilton jurisdiction. Considering his age and his total length of driving, he is certainly in my view someone who has not learned his lesson to date. He seems, as the Crown submitted, “to have a heavy foot” while driving.

[15] It appears from the Presentence Report that Mr Pellerin expressed remorse, felt guilty and felt sympathetic towards the family. This is confirmed by defence counsel’s submission that Mr. Pellerin was anxious to express remorse to the family but was told by the investigating officer not to at the time. It is clear from my observations of the defendant during his testimony that he appears to be remorseful and I am prepared to accept that.

[16] No matter what the sentence I impose today, Mr. Squirrell’s family and friends will always be affected by this tragedy, as will Mr. Pellerin and his family. It is clear from the victim statements that the impact of the loss suffered by Mr. Squirrell’s family members and Ms. Sloan is extremely devastating.

[17] It is also important to understand that driving a motor vehicle in Ontario is a privilege, not a right, which when violated with devastating consequences requires a significant consideration in terms of sentence.

[18] The Law in this area allows for a wide range of sentencing options.

[19] Principles set out in R. V. Martinez indicate that a jail sentence of 20 days is appropriate under certain circumstances where a conviction of careless driving involves a fatality. However, this in my view does not mean in every case. It is clear that in R. V. Martinez, that the quality of the defendant’s driving was assessed as well as the consequences of the driver’s actions that caused an accident and a motorist’s death. In this case Mr. Martinez failed to keep a proper look out and went through a stop sign and ran into another motorist and killed him instantly.

[20] In this case the Ontario Court of Appeal found that “his driving conduct clearly fell below that expected of a reasonable driver, that is a driver with due care and attention and with reasonable consideration for others on the highway. In our view, it is clear, but not the worst, case of careless driving.”

[21] Considering my findings in the case at bar, it is clear that Mr. Pellerin’s actions that he was convicted of were also not the worst case of careless driving, and this I considered as to sentencing.

[22] It is important to understand that Mr. Pellerin was found guilty of an offence of careless driving pursuant to section 130 of the highway traffic Act and not any criminal charge. His conduct was not intentional; there was no indication of any involvement of alcohol or drugs or any evidence of excessive speed.

[23] In Regina V. Messercola it states, “clearly an appropriate sentence must be responsive to and balance the principles of general and specific deterrence, protection of the public and your rehabilitation.”

[24] Taking those principles into consideration, the facts of this case, submissions by the Crown and defence counsel, the jurisprudence and the provisions of the Highway Traffic Act I am satisfied that the appropriate sentence in this particular case is the maximum allowable fine of \$1000.00; the suspension of your driving license, forthwith for a period 24 months and probation for 24 months with the following terms: a) during this period you shall not operate a motor vehicle in the Province of Ontario. b) during this period you will complete a course of driving retraining with a defensive driving component and provide proof that you satisfactorily completed it to your probation officer; c) during this period you will complete 120 hours of community service at a rate to be determined by the community service director, this is in lieu of a jail term and your willingness to do anything including performing community service work as reported by the parole officer in the Presentence Report.

Released: November 2, 2005

Signed: “Justice of the Peace Jerry S. Woloschuk”