
CANADA / JUDGMENT

R. v. Griffith

2017 BCSC 1551

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 1551 R. v. Griffith

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Griffith,

2017 BCSC 1551

Date: 20170317

Docket: X077993

Registry: New Westminster

Regina

v.

Christopher Lennox Edgar Griffith

Before: The Honourable Mr. Justice Williams

Oral Reasons for Judgment

Counsel for the Crown:

C.P. Pike

Counsel for the Accused:

J.J. Allingham

Place and Date of Trial/Hearing:

New Westminster, B.C.

January 16 - 19, 2017

Place and Date of Judgment:

Vancouver, B.C.

March 17, 2017

- [1] THE COURT: I am about to deliver my reasons for judgment in this matter. This is an oral judgment. I will reserve the right to make minor editorial corrections as required, in the event a transcript is requested. I will not change the substance of the judgment in any way.
- [2] The defendant, Christopher Lennox Edgar Griffith is before this Court charged with two offences:
- Count 1, that on or about the 17th day of August, 2013, at or near Surrey, British Columbia, he did, by criminal negligence, in the operation of a motor vehicle, cause the death of Robert Paterson, contrary to s. 220(b) of the Criminal Code;
 - Count 2 is that Mr. Griffith, on that same date and at that same place, having the care, charge, or control of a vehicle that was involved in an accident with another person, Robert Paterson, resulting in the death of that person, and knowing that bodily harm was caused to that person, was reckless as to whether the death of that person resulted from the bodily harm and did, with intent to escape civil or criminal liability, fail to stop his vehicle and give his name and address and offer assistance, contrary to s. 252(1.3)(b) of the Criminal Code.
- [3] The trial took place between January 16 and 19, 2017.
- [4] In the course of trial, the Crown called a total of seven witnesses; three of those were police officers and four were civilians. In addition, the Crown relies upon the contents of an agreed statement of facts which was entered as Exhibit 1 at trial.
- [5] The defendant testified in his own defence. He called no other evidence.
- [6] I will start with a general description of the events that give rise to these charges.
- [7] In the early morning hours of August 17, 2013, a vehicle owned and operated by the defendant was stopped in a parking lot which was adjacent to the Canadian Legion facility located at the corner of 135A Street and 106 Avenue in Surrey. At that time, the defendant was in the driver's seat of his vehicle. There was a second person in the cab of the truck, Ms. Horsfield.
- [8] Evidently there was some type of confrontation between the occupants of the truck and persons outside the vehicle. The defendant says that the persons outside the vehicle were threatening to do serious harm to him, to his vehicle, and to his passenger. He says he took what he believed to be reasonable measures to frighten them away, but they were not deterred. His testimony is that they advanced upon the vehicle and that they were brandishing weapons. Mr. Griffith says that he was afraid for his life and, after revving the truck's engine with a view to frightening them away, he ultimately felt he had no alternative

but to drive away. He did so by moving the truck forward in a sudden and fast fashion. As he did so, he turned the truck to the left, travelling across an adjacent vacant lot, then crossing over the sidewalk and finally driving northbound on 135A Street to extricate himself from this predicament.

- [9] In the course of driving his truck across the vacant lot, Mr. Griffith struck and killed an individual who was present there, Mr. Paterson.
- [10] Initially, Mr. Griffith drove the truck to a location approximately six blocks away. He parked it on the side of the street and essentially abandoned it there. He and his companion caught a cab back into the general vicinity of the area where the earlier event had occurred. Approximately one hour and 40 minutes after the collision, police officers became aware of Mr. Griffith's involvement and he was taken into custody.

The events

- [11] It will be helpful to have a more detailed description of the area where these events occurred. According to the evidence, 135A Street between 106th Avenue and 107th Avenue is a notorious area of Surrey where homeless people and drug users hang out. Evidently, it is also known as a prostitution stroll. It is apparently referred to in the community as "the strip". In this immediate area, 135A Street is in a one-way configuration. Traffic is permitted only to travel from north to south.
- [12] The area where the events occurred is in the southern third of that block. For that segment, on the western side of the street, there are four separate elements which have some relevance to the matter at bar:
- 1) On the southernmost section, on the corner, there is a Canadian Legion which includes a large asphalt-paved parking lot.
 - 2) To the north of the Legion and its parking lot there are two vacant lots adjacent to each other. There is no clearly-marked boundary between them and to an observer they might look like one large and empty lot. I note that there seems to be a concrete driveway which runs from 135A Street onto these lots and that, according to my understanding, is at approximately the point where the two lots abut. There is some grass growing on the site and at least one larger tree and one or two low bushes. The terrain in the lots is uneven. They are not smooth or well graded. The adjacent sidewalk which runs along 135A Street is at a somewhat different elevation than the lots and there is a pronounced drop-off between them. There is also a grass boulevard that runs between the street and the sidewalk.
 - 3) Next to the two lots there is a business establishment which is an automotive machine shop. It has a parking area in front of it.

- 4) North of the machine shop is a building housing the "Front Room". That is an establishment which, as I understand, provides community services to street people. It is set back somewhat from 135A Street.
- [13] The victim, Robert Paterson, was, at the time of the event, 50 years of age. He was what is colloquially called a homeless person. He was at the time in a common law relationship with Lucinda Fieghen, who was a witness at trial.
- [14] On the evening of August 16, 2013, Mr. Paterson and Ms. Fieghen were planning on spending the night in an area in front of the machine shop. Arrangements had apparently been made for them to stay there. Evidently there was some informal agreement with the owner that they would look out for the property to see that there was no harm done to it. Sometime after midnight, both of them were present there, along with their friend, Mr. Stahlbrand. Ms. Fieghen was planning to leave in a short while to go to the Front Room, where she was planning to have a shower.
- [15] Ms. Fieghen said that the parties heard some loud sounds coming from an area to the south. She described it as the noise of people shouting and a vehicle engine revving loudly. Mr. Paterson decided to go and investigate what was happening. He walked in a southerly direction into the area of the vacant lots.
- [16] Ms. Fieghen's testimony is that she then heard someone scream. She saw a truck bounce across the vacant lot area. She said it was moving quite quickly, that it was loud, and seemed like the driver had lost control. As she watched, she saw Mr. Paterson with his back to the truck and she saw the truck strike him. She said that he bounced up and that he then went under the vehicle. She testified that it sounded as though the driver "floored it", and that, as the truck crossed the sidewalk, there was the sound of burning rubber and the rear end seemed to be "drifting".
- [17] Another civilian witness called by the prosecution was Mr. Belian. He is a Surrey resident who was, shortly before the event, driving home from an evening in Vancouver. The route he chose took him up 135A Street past the area of the strip. He testified that as he was making his way along there, he was not travelling quickly and was in fact looking with interest at the activity going on there. He said that there were a good number of people in the area generally. He recalls them being not all in one cluster, but spread out, and he did not recall persons being on the actual roadway.
- [18] His recollection is that just before or near the Legion, his attention was drawn to his right to vehicle headlights and the sound of loud voices. He looked and saw persons in front of a truck. He described the truck's engine as revving up and said that at points it lurched or moved forward. He said that there were persons in the area in front of the truck and at some point the driver floored it. He saw the truck move away quickly and saw a person struck. He described the truck kicking up grass as it moved through the lot and said that it fishtailed as it left and entered the roadway travelling southbound. His recollection is that the Legion parking lot was largely vacant at the time.

- [19] Another civilian witness called by the Crown was Mr. Stahlbrand. He is a person who lives on the street and was, at the time, staying with the deceased and Ms. Fieghen in the area in front of the machine shop. He said that it was just sometime after midnight and that he was getting ready to turn in for the day when he heard a commotion. The witness described seeing a truck in the Legion parking lot. He said that the lights were on, the truck's engine was revving, and that it was moving forward. He saw persons around the vehicle. As I understand, the initial motions of the vehicle that he saw were in the nature of moving forward a short distance and then stopping. However, he described that the truck then moved forward, but this time remained in motion: it kept going. He described that the vehicle was bouncing as it moved across the lot and toward the sidewalk, and he saw it strike Mr. Paterson. He said that Mr. Paterson flew up, then went down, and the truck ran over him.
- [20] His recollection of events just prior to that occurring is that there were at least two persons somewhere in front of the truck. He described one of them as having had a two-by-four, that is a board, and another had something that he described as a bat or like a bat. It was not his recollection that those persons were advancing on the truck.
- [21] After the truck began to move forward quickly as it did, he said those persons ran into the crowd. He said that it was quite dark in the field and he testified that the vacant lots are at a lower elevation than the sidewalk.
- [22] The final civilian witness called by the Crown was Ms. Horsfield. She was, at the relevant time, frequenting the area of the strip. Her testimony is that she was caught up in the grip of a serious crack addiction and was supporting herself as a sex-trade worker. She described being at the general area of the strip shortly before the event. She had just consumed some crack cocaine. She was picked up by a man in a truck, the defendant. She described there being some conversation between them with respect to a sexual act and an agreement was made. The two of them, that is the witness and the defendant, left in the truck. They travelled a short distance away where a sex act occurred. At the conclusion of that, she asked the defendant to drive her back to where they had initially met and he did so. She stated that she wanted to get back there in order to purchase more drugs.
- [23] Ms. Horsfield described that they pulled into the Legion parking lot area and that the two of them were in the truck. There was some conversation or communication between Ms. Horsfield and a woman who was on the sidewalk. That woman was evidently in the company of at least one other man or possibly two persons. Ms. Horsfield knew those people to be drug dealers.
- [24] While Ms. Horsfield's recollection of the event was not clear, precise, or detailed, she testified that one of the males had a long pipe in his hands and that he had a white dog with him. She said that at one point the defendant got out of the truck and then returned. When he got back into the vehicle, he had a bat with him.

- [25] Her evidence is that there was some type of altercation or conflict between the defendant and the persons outside the truck. By that, I understand her to mean verbal. There was no suggestion that there was any physical engagement between the defendant and the persons outside the vehicle.
- [26] Ms. Horsfield recalls that one of the persons outside the truck, a man she referred to as Danny, was in front of the truck and that the defendant stepped on the gas, making a wide turn. She said that the truck bumped over something on the left side, whether it was the deceased or the curb, she testified that she was not certain. She said the speed of the truck was fast and at some point the tires were screeching. The vehicle left the area and a short while later pulled over and parked. She and the defendant got out of the truck. A cab was called and attended. The two of them got in and then travelled back to the general area. They stopped and were let off at a Safeway store, where Ms. Horsfield had arranged to meet her drug dealer.
- [27] Her testimony of the details of the events and any conversation that might have occurred between the defendant and her immediately before the truck struck Mr. Paterson is less than clear. This witness does not claim to have a clear memory of the events; given her drug use and the time that has passed, that is not surprising. Accordingly, I must approach her evidence with an significant measure of caution.
- [28] Specifically, where there are differences between what she remembers and the testimony of the defendant, I will prefer and accept Mr. Griffith's description.
- [29] As regards the events immediately before Mr. Paterson was struck, Ms. Horsfield seems generally to agree that these persons who were outside the truck may have borne some grudge toward her. She advises that she did owe them money and that she told the defendant that. The general thrust of her evidence was that it was a scary situation and she may well have told the defendant that these people were dangerous and that they should get away from there; that is, herself and Mr. Griffith.
- [30] There were three police officers called to testify at trial. The first was Cpl. Tiwana, a collision investigator who had a role in the investigation at the scene and who was also involved in the preparation of the report. In addition, Cst. Banks was called. This officer was one of the first to arrive at the scene after the event and was subsequently involved in an interview of the witness, Ms. Horsfield. Finally, Cpl. Shumann testified. He was on patrol in the general area in the early morning hours and was the first officer to have dealings with the defendant. He initially detained him and then subsequently effected an arrest.
- [31] The exhibits include a number of photographs of the scene and maps of the area. They also include a quite detailed and Comprehensive Collision Reconstruction Technical Report that was prepared by a branch of the RCMP with an expertise in the examination of scenes such as this and the analysis of the evidence. I note that the defendant did not make any objection to the report or its reception at trial.

- [32] The examination of the scene resulted in the police finding two items of interest. One was an axe handle located near a clump of trees in the general crime scene area. The other was a portion of a board, a 2 x 4.
- [33] As indicated, the defendant also testified at trial. He explained that he was 31 years of age at the time of the event. He is an electrician by trade. At the time, he was preparing to leave the province to take up work elsewhere. He owned the truck in question, but had only bought it quite recently. His testimony is that he did not have a driver's licence at the time, but was expecting that he would be getting it back in a couple of weeks.
- [34] Mr. Griffith's testimony is that on the evening of August the 16th, he and a friend, Curt Alyward, went out to socialize. They went to a bar on King George Highway in Surrey in order to have food and drink. His evidence is that they were there from approximately 7:00 p.m. until midnight. They went in Mr. Griffith's vehicle. He said his friend drove. Mr. Griffith testified that he had approximately five beers over the course of the evening.
- [35] At the end of the evening in the bar, the two men left. Their plan, he said, was to go to the home of another friend, but on the way they made a stop. Mr. Griffith's testimony is that his friend, with whom he had been out for the evening, Mr. Alyward, wanted to buy some drugs and so he stopped the vehicle in the vicinity of the strip. Mr. Griffith said that his friend got out of the vehicle, evidently to arrange to buy drugs, and that he, that is Mr. Griffith, was left alone in the truck. He said that he then struck up a conversation with a female who was in the area, there was discussion as to him paying her for a sex act, and agreement was reached. Mr. Griffith testified that he slid over to the driver's seat and drove off with her for the liaison. That was Ms. Horsfield.
- [36] That occurred and in fairly short order he returned to the area where he had picked her up, stopping in the Legion parking lot. He parked the truck in the northeast area of the parking lot, not far from where it adjoins the vacant lot next door. The vehicle was positioned facing basically north, but angled somewhat to the east, that is to the right.
- [37] Mr. Griffith's evidence is that while they were stopped, Ms. Horsfield pointed some people out. A group of them were in front of the truck. She specifically identified one of them as Danny and, in the defendant's opinion, she seemed to know him. He also got the sense that Ms. Horsfield did not want to get out of the truck. Mr. Griffith said that these persons outside the vehicle then yelled or shouted in the direction of the truck. He said that at that point, he got out the driver's side door and explained to the persons they were just waiting and that there were no problems. As he did so, he went to the back of the truck and grabbed a bat from the rear canopy area and brought it with him when he got back into the vehicle.
- [38] Mr. Griffith said that he noticed that one of the persons outside the truck had something in his hand. He described it as like a pipe, a weapon, and that the person was looking in the direction of the truck. He said there was another person out there as well, also with some type of weapon, and that person, too, was looking at the vehicle.

- [39] Mr. Griffith's testimony is that at that point, he realized that, in his words, the scene had changed and this did not seem a good place to be. He stated that he was feeling unsure and uneasy. He described that he had a conversation with Ms. Horsfield asking about these persons, believing that it was a good idea to leave. He said he started the truck. By this point, there were more people around. He said he was concentrating on the weapon as they approached. He said the people were about 15 to 18 feet away and moving toward the vehicle.
- [40] Mr. Griffith said that as these people moved toward the truck, he felt threatened. He revved the engine to make sure those persons knew the vehicle was not simply parked. He saw that the persons were blocking the road or driveway that led from the Legion parking lot to 135A Street, which was to his right. He said that he did not know what was behind the truck and that he was new to the vehicle. By this time, he said that they were holding the weapons and the weapons were being held in the air in a menacing way. His evidence is that he looked to the right as a way out of the lot, but felt threatened. He said he felt these people did not care and that they were going to "get us". He said he was afraid for his life.
- [41] He testified that Ms. Horsfield told him that, "We have got to get out of here," and that these persons were going to kill them.
- [42] Mr. Griffith said that at that point, he panicked. He was afraid and had to get out of that area. He described that he put the truck in motion to move forward. As he moved forward, he saw the persons who had been the focus of his concern scatter to the right. He said that he saw he had a clear path and he made a left turn into the grass, and then a right turn over the sidewalk and onto 135A Street. His testimony is that was, in his view, the only option he had to get out of there. He said that when he took the left turn, he saw that he had a clear shot to get out.
- [43] The defendant's testimony is that the lighting in that area was dark, it was not well lit in the field, that is, in the vacant lots. He said there was no lighting. After having made his escape, he left and drove down the street and went to a place where he felt safe. He pulled over and parked. At that point, Mr. Griffith and Ms. Horsfield got out of the truck. The defendant gave Ms. Horsfield his telephone in order that she could call a cab. As well, at some point after they stopped the truck, Mr. Griffith said that he phoned his friend Curt.
- [44] He agreed that he did not contact the police, nor did he make any effort to attend at the police station. He said that he did not call 911 to get assistance.
- [45] Once the cab arrived, they boarded and went to a Safeway store which was near King George Highway. A short while later, a police officer attended in that area. Mr. Griffith was subsequently arrested by an officer.

[46] The events and how they occurred are, for the most part, actually not in any serious dispute. Based upon the evidence adduced at trial, including the agreed statement of facts and the collision reconstruction technical report which was prepared by the police and filed as an exhibit, I find the following:

- 1) At approximately 12:30 a.m., Mr. Griffith was in his truck together with Ms. Horsfield. They were parked in the northeast portion of the Canadian Legion parking lot, facing in a north-north easterly direction.
- 2) There were a number of people in the general vicinity, that is outside the truck. Included among those were two persons, a male named Danny and a woman named Suzy. I cannot say with certainty that there were no other persons with them, as well, but at least those two persons were there.
- 3) Some sort of disagreement was brewing between those two persons and the occupants of the truck or, most logically, my conclusion is that those persons had some animosity toward Ms. Horsfield.
- 4) Those two persons, or maybe three, outside the truck were making some motions indicating their annoyance or displeasure. As well, for the purpose of this analysis, I will accept that at least one of those persons had some type of stick or pipe that approximated a weapon.
- 5) At some point, Mr. Griffith was aware of the animosity and the friction in the situation, and made some effort to defuse it. In the course of doing so, he stepped outside his truck and he went to the rear, where he retrieved a bat which he then took inside the truck with him.
- 6) The air of confrontation that the persons outside the truck were exhibiting to the occupants of the vehicle continued. There was clearly a threatening aura about those persons.
- 7) Mr. Griffith became increasingly concerned with the situation and perceived that these persons represented a significant threat to him and to the woman in the vehicle.
- 8) In order to discourage the persons from approaching the vehicle, Mr. Griffith revved the engine and on at least two occasions made short lurch movements with the vehicle, moving forward in a way that he thought would hopefully dissuade these persons from coming further or acting out more aggressively.
- 9) When those measures did not have that effect, Mr. Griffith made a decision to drive his way out of the problem. He knew that there was an exit on 135A Street off to his right, but the persons who were constituting the threat were in that general area.
- 10) Mr. Griffith put the vehicle in motion and moved forward quite aggressively. As he did so, the persons with whom he had been concerned moved in an easterly direction off to Mr. Griffith's right, toward the area of the driveway between the parking lot and the street.

- 11) To avoid hitting those persons as they moved to his right, Mr. Griffith turned the truck somewhat to the left. As he moved forward, he accelerated and the truck's speed was substantial.
- 12) As the truck moved forward, it came in contact with the deceased, Mr. Paterson, specifically the point of contact was on the front of the truck, slightly to the right, but to the left of centre, that is to the driver's side of centre.
- 13) In the course of the collision with Mr. Paterson, upon first impact, he initially went up and then came down. As he did so, the truck drove over him. The police examination of the undercarriage of the truck, together with the findings of the post-mortem examination of Mr. Paterson, satisfies me that his body was substantially impacted by the undercarriage of the truck. Extensive and, in fact, fatal injuries were inflicted.
- 14) In the vehicle's course of travel, it moved in a generally northerly direction through the vacant lots and over the sidewalk, then entering onto 135A Street.
- 15) As the truck left, Mr. Paterson's body came to rest on the concrete driveway between the sidewalk and 135A Street.
- 16) The injuries that Mr. Paterson sustained and his death were caused by being struck and run over by the defendant's truck.
- 17) I am unable to specifically relate the axe handle and the 2 x 4 board found at the scene to the events that occurred. They may or may not have had some relevance, but for the purpose of my analysis, I do not believe they are important. I have accepted that there were persons menacing the defendant. As for Mr. Paterson, I find no basis to conclude that he had involved himself in the confrontation at the truck in any meaningful way, and it is my conclusion that he was essentially a bystander. He was there because he had gone to see what the problem was and for no other reason.

The issues

[47] In this case, there are two principal issues to be determined:

- 1) Did the circumstances and manner of driving by Mr. Griffith constitute the offence of criminal negligence causing death or the included offence of dangerous driving causing death?
- 2) Has the Crown proven, beyond a reasonable doubt, that the circumstances under which Mr. Griffith drove away from the scene constitute the offence of failing to stop at the scene of an accident?

[48] The prosecution says that each of the charged offences has been proven.

- [49] Mr. Griffith says that the charges have not been proven. With respect to the driving that resulted in Mr. Paterson being struck and fatally injured, he says that the issue is substantially informed by the circumstances in which he found himself, that he acted out of a necessity to protect himself and Ms. Horsfield from imminent serious harm, and he invokes the defences of both necessity and self-defence.
- [50] Mr. Griffith submits that his conduct was such that he tried to avoid persons who were present by turning his vehicle to the left, to an area which he says was clear. The defendant says this is a positive action that he took to avoid a collision in very limited space, driving a large truck in a very emotionally-charged situation. He says he did what he could to avoid striking the people that were attempting to harm him. He says that while the consequences were tragic, the path he steered demonstrates that he took action to avoid the people in front of him and was action that would be expected of a reasonably prudent driver in those circumstances.
- [51] Mr. Griffith says it is important to realize that he reasonably believed that he was in imminent danger, that he was scared for his life, and that having tried to warn his perceived attackers by revving the engine of the truck and lurching it forward, in the intensity of the moment and with little time to devise a strategy, his decision to drive forward as he did was the only reasonable solution.
- [52] As regards the allegation of hit and run, it is the position of the defendant that, again, the circumstances in which he drove from the scene were highly unusual, in that to remain in the face of the threats and hostility of those present would have been a dangerous and therefore unreasonable course of conduct. In effect, he contends that the reason he left as he did was not to avoid responsibility for his role in the events, but rather that it was necessary for his self-preservation and that of Ms. Horsfield.

Analysis

- [53] The relevant Criminal Code, R.S.C., 1985, c. C-46 provisions are as follows:

Criminal negligence

219 (1) Everyone is criminally negligent who

- (a) In doing anything, or
- (b) In omitting to do anything that it is his duty to do,

shows wanton or reckless disregard for the lives or safety of other persons.

220. Every person who by criminal negligence causes death to another person is guilty of an indictable offence

Failure to stop at scene of accident

252 (1) Every person commits an offence who has the care, charge or control of a vehicle, vessel or aircraft that is involved in an accident with

- (a) another person,
- (b) a vehicle, vessel or aircraft, or
- (c) in the case of a vehicle, cattle in the charge of another person,

and with intent to escape civil or criminal liability fails to stop the vehicle, vessel or, if possible, the aircraft, give his or her name and address and, where any person has been injured or appears to require assistance, offer assistance.

Offence involving bodily harm or death

(1.3) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable to imprisonment for life if

- (a) the person knows that another person involved in the accident is dead; or
- (b) the person knows that bodily harm has been caused to another person involved in the accident and is reckless as to whether the death of the other person results from that bodily harm, and the death of that other person so results.

Evidence

- (2) In proceedings under subsection (1), evidence that an accused failed to stop his vehicle, vessel or, where possible, his aircraft, as the case may be, offer assistance where any person has been injured or appears to require assistance and give his name and address is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability.

Mr. Griffith's submissions included reasonably extensive reference to the included offence of dangerous driving. Accordingly, the relevant Code provisions should be noted:

Conviction for dangerous driving where manslaughter charged

662(5) For greater certainty, where a count charges an offence under section 220, 221 or 236 arising out of the operation of a motor vehicle or the navigation or operation of a vessel or aircraft, and the evidence does not prove such offence but does prove an offence under section 249 or subsection 249.1(3), the accused may be convicted of an offence under section 249 or subsection 249.1(3), as the case may be.

Dangerous operation of motor vehicles, vessels and aircraft

249 (1) Every one commits an offence who operates

- (a) a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place;
- (b) a vessel or any water skis, surf-board, water sled or other towed object on or over any of the internal waters of Canada or the territorial sea of Canada, in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of those waters or sea and the use that at the time is or might reasonably be expected to be made of those waters or sea;
- (c) an aircraft in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of that aircraft or the place or air space in or through which the aircraft is operated; or
- (d) railway equipment in a manner that is dangerous to the public, having regard to all the circumstances, including the nature and condition of the equipment or the place in or through which the equipment is operated.

Dangerous operation causing death

- (4) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.
- [54] The actus reus of criminal negligence is conduct which shows a wanton and reckless disregard for the safety of others. That has been described in the context of a driving scenario as heedless, without regard for the consequences. In order to establish the requisite mens rea in this case, the Crown must prove that the conduct constituted a marked and substantial departure from the conduct of a reasonably prudent driver in circumstances where the accused either recognized and consciously took an obvious and serious risk to the life or bodily integrity of another, or alternatively gave no thought to that risk.
- [55] The actus reus of dangerous driving is operating a motor vehicle in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition, and use of the place at which the motor vehicle is being operated and the amount of traffic that at the time is or might reasonably be expected to be at that place.
- [56] For mens rea, the court must examine 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.

- [57] In *R. v. Roy*, 2012 SCC 26, the Supreme Court of Canada expressed its view that 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.
- [58] Both of these offences are negligence based. They allow for exculpatory defences where a reasonable person in the position of the accused would not have been aware of the risk or, alternatively, would not have been able to avoid creating the danger.
- [59] The courts have made clear that for either of these offences, a trial court is obliged to make a meaningful inquiry into the manner of driving. Particularly, the inquiry must focus upon the risks created by the manner of driving. The consequences, such as an accident, are less relevant, although not entirely so. The actual consequences may inform part of the assessment of risk.
- [60] As indicated, Mr. Griffith raises two defences. Although they are similar in the sense that they concern actions taken in aid of self-preservation, they are conceptually different. I propose to discuss them now, as they are relevant in the context of determining whether the charges have been proven.
- [61] For each of these defences, both necessity and self-defence, where an accused raises them and there is an air of reality to them, the onus then lies upon the Crown to satisfy the court beyond a reasonable doubt that the circumstances are such that the defendant cannot claim the benefit of the defence. That is, in order to reject the defence and to give it no effect, the court must be satisfied to that standard that the defence is not applicable on the facts. If there is a doubt on that issue, the accused is entitled to the benefit of the defence.
- [62] The defence of necessity is a common law defence. Essentially, it is available in certain circumstances where a defendant argues that he had no alternative but to commit the offence at issue.
- [63] There are three criteria that must be met satisfied in order for a defendant to secure the benefit of the defence:
- a) it must be shown that the defendant or another was in a situation of imminent danger or peril; and
 - b) it must be shown that there was no legal alternative to what the defendant did;

That is, a defendant must, at the time of the act, honestly believe on reasonable grounds that he faces a situation of imminent peril that leaves no reasonable legal alternative open to him.

Additionally, there is a third element that must be found:

- c) there must be a proportionality between the harm inflicted and the harm avoided (R. v. Perka, [1984] 2 S.C.R. 232 at para. 31)

[64] Generally, the defence of necessity will be one of the limited application.

[65] The defence of self-defence or defence of another is statutorily provided by the Criminal Code.

Defence -- use or threat of force

- (1) A person is not guilty of an offence if
- (a) they believe on reasonable grounds that force is being used against them or another person or that a threat of force is being made against them or another person;
 - (b) the act that constitutes the offence is committed for the purpose of defending or protecting themselves or the other person from that use or threat of force; and
 - (c) the act committed is reasonable in the circumstances.

Factors

- (2) In determining whether the act committed is reasonable in the circumstances, the court shall consider the relevant circumstances of the person, the other parties and the act, including, but not limited to, the following factors:
- (a) the nature of the force or threat;
 - (b) the extent to which the use of force was imminent and whether there were other means available to respond to the potential use of force;
 - (c) the person's role in the incident;
 - (d) whether any party to the incident used or threatened to use a weapon;
 - (e) the size, age, gender and physical capabilities of the parties to the incident;
 - (f) the nature, duration and history of any relationship between the parties to the incident, including any prior use or threat of force and the nature of that force or threat;
 - (f.1) any history of interaction or communication between the parties to the incident;
 - (g) the nature and proportionality of the person's response to the use or threat of force; and
 - (h) whether the act committed was in response to a use or threat of force that the person knew was lawful.
- [66] In the facts at bar, leaving aside for a moment the defences raised by Mr. Griffith, I am satisfied, beyond a reasonable doubt, that the manner in which he drove his truck on this occasion was plainly and clearly a marked and substantial departure from the conduct of a reasonable driver. To drive his vehicle forward as he did, aggressively and without any real

idea of where he was going or what hazards might lurk there, given the limited light present in the circumstances, and without looking or taking care to know where he was going, there was a very real risk that he would encounter persons. He must be taken to have known that there were other persons in the area. That is a sensible conclusion based on his obvious knowledge of what was occurring. It is also a conclusion that arises reasonably from an examination of the evidence at trial.

- [67] To have driven forward with the speed and force he did substantially enhanced the risk of his conduct. He had no idea what he might encounter. As I have noted, it was reasonable in the circumstances to expect that there might well be other persons in the area he traversed. His path of travel took him across the sidewalk, also an area where reasonable prudence and common sense would dictate there might be persons present. He did so at a speed which greatly reduced any ability he might have to perceive dangers and to react accordingly.
- [68] The manner in which he drove was manifestly and egregiously reckless.
- [69] While such matters are not to be assessed by the outcome, but rather by the conduct, the great risk he ran is demonstrated by the fact that his vehicle struck and ran down a man who was present in that lot. The speed and aggressive nature of the driving in the circumstances significantly aggravated the risk he took.
- [70] With those findings made, I turn now to examine the defences which have been raised: self-defence and necessity. I will consider each in the context of the criminal negligence issue.
- [71] Dealing first with the defence of necessity, I will accept that there is an air of reality to the defence as raised, and thus the Court is obliged to consider it. As noted, in that circumstance, in order for the Crown to secure a conviction, it is necessary that this Court be satisfied beyond a reasonable doubt that each of the elements in issue is not met. I would also note that the three criteria which I earlier described respecting the defence of necessity are conjunctive. That is, if any of those three criteria are disproven beyond a reasonable doubt, the defence will not succeed.
- [72] For the purpose of this discussion, I will accept that Mr. Griffith was of the view that the persons he has described as being outside the vehicle and threatening him constituted a significant danger to him. That is, although the case is by no means compelling, I will proceed on the premise that the defendant faced a situation of imminent peril.
- [73] Whether the second criterion has been met, that is that there was no legal alternative to what he did, is dubious. In my view, there were a number of alternative courses of action available to him. Those would have included honking his horn and flashing his lights and calling 911 in order to summon police help.

- [74] He and Ms. Horsfield were at that point secure inside his vehicle. In addition, Mr. Griffith had a weapon, a bat, at his disposal. Accordingly, the notion of the need to take the action he did seems less compelling.
- [75] Finally, I would observe that it was open to him to back his truck up into the Legion parking lot. The evidence is that he had been outside his truck to obtain a bat from the rear compartment, and it is reasonable to conclude that he had some general idea about what risk there was to backing the truck up.
- [76] Finally, to begin driving at a moderate and careful speed while honking the horn would be another sensible alternative available to him. Certainly once he was past the persons who were threatening him; that is, once they had scattered off to his right as he said they did, there was no need to continue to travel at any significant rate of speed. Prudence and common sense dictate that if he was going to drive away from the scene, he would do so with an appropriate amount of caution, watching where he was going and moving at a careful speed, vigilant for others that were there.
- [77] All of that said, where the defence must, in my view, fail is with respect to the notion of proportionality. Accepting that Mr. Griffith and Ms. Horsfield were at risk of being physically assaulted and that there was some risk that harm might be done to his vehicle, the course of conduct that he chose, to drive quite blindly, aggressively, and seemingly without any reasonable heed to the consequences, was so reckless that it cannot be characterized as anything other than starkly disproportionate to the harm sought to be avoided.
- [78] In the circumstances, I am simply unable to accept that there is any doubt respecting this aspect of the test. Accordingly, the defence of necessity cannot be successfully invoked.
- [79] The same difficulty presents itself as regards the defence of self-defence. A key component of the provision is reasonableness. The act committed must be reasonable in the circumstances. To my mind, that is simply another formulation of the proposition that the force used must be proportionate.
- [80] Conceptually, it seems to me that the notion of self-defence is less appropriate to the facts at hand. In effect, Mr. Griffith says that he drove his truck away as he did in order to avoid the risk he faced. He says that the harm he inflicted upon Mr. Paterson was an accidental dimension of that. More specifically, he does not say that the harm inflicted upon Mr. Paterson was a consequence of him, that is Mr. Griffith, electing to use force to defend himself in the circumstances.
- [81] Nevertheless, I will consider his invocation of the defence, notwithstanding that distinction. I note that one of the cases upon which the defendant relies, *R. v. Kravshar*, [2005] A.J. No. 1539, a 2005 decision of the Alberta Provincial Court, involved an individual charged with dangerous driving. In acquitting the defendant, the court accepted the accused's evidence that he was being assaulted at the time and that the other relevant conditions of then s. 34(1) of the Criminal Code were met. Self-defence was found.

- [82] The case contains a thorough discussion of both self-defence and necessity.
- [83] In my view, the defence of self-defence cannot be successfully invoked by Mr. Griffith. That is because of the disproportionate relationship between the harm with which he was threatened and the action that he took in response. The disproportionate relationship between the two renders his action unreasonable in the extreme.
- [84] A point which is well established in the jurisprudence of self-defence is that while force used in self-defence cannot be disproportionate to the threat of assault being met, the assessment will be a fair, large, and tolerant one. The expression sometimes used is that a person acting to defend himself is not expected to weigh to a nicety the exact measure of the force he uses.
- [85] However, it is also clear that there must be practical policy limits to measures that can be taken in self-defence. Those most certainly include the proposition that force which is so recklessly applied in self-defence as to be excessive will be unnecessary, and will preclude the party using that force from the benefit of the defence. I refer here to a decision of the British Columbia Court of Appeal, *R. v. Kandola*, (1993), 80 C.C.C. (3d) 481.
- [86] In the facts at hand, it is my very staunch view that the recklessness with which Mr. Griffith acted has that effect. It disentitles him from having the benefit of the justification of self-defence.
- [87] To be clear, I am satisfied beyond a reasonable doubt that neither the defence of necessity nor the defence of self-defence are operative in these circumstances.
- [88] With respect to the hit and run, there are two aspects of the matter to consider. Firstly, Mr. Griffith says that he was not aware that he had struck anyone. Secondly, he says that given the hostility of the situation, it was unreasonable to expect him to stay at the scene, to make further inquiries, or to provide his particulars to persons there.
- [89] Dealing with the first of these points, I am unable to accept that Mr. Griffith did not know that his vehicle had struck someone. My conclusion in that regard is informed by his testimony at trial, and specifically when he was being cross-examined quite closely and persistently by Crown counsel regarding this issue and with reference to statements that Mr. Griffith had made to police investigators in interviews after the event.
- [90] In his exchange with the officers, I find that the defendant admitted that he saw a person, I believe that to be Mr. Paterson, but it was too late. In conjunction with that admission, Mr. Griffith, using a box and three cups, did a sort of re-enactment showing how the truck struck that person.

- [91] Based upon his statement to the police and his in-court testimony, I am satisfied that the defendant knew that he had struck someone with his vehicle. I make that conclusion appreciating the standard to be applied in respect of proof of a matter where an accused makes a denial of a proposition, as articulated in *R. v. W.(D.)*, [1991] 1 S.C.R. 742. To be clear, notwithstanding the denial that the defendant advances, I make that finding to the standard of proof beyond a reasonable doubt.
- [92] Although not determinative, my view of the matter is supported by my assessment of the evidence of Ms. Horsfield.
- [93] The second position raised by the defendant with regard to the hit-and-run charge is that it would have been unreasonable and dangerous for him to have remained at the scene and provided his particulars. As his counsel expressed the point, having just escaped a group threatening his and Ms. Horsfield's life, no person in their right mind would return and give their name, address, or offer their assistance.
- [94] In my view, there is some merit to the position taken by the defence. However, I am not convinced that it is a complete answer to the charge.
- [95] The effect of s. 252 of the Criminal Code is to impose upon a driver who has been involved in an accident, as set out in subsection (1), an obligation to stop his vehicle, give his name and address, and where any person has been injured or appears to require assistance, offer assistance.
- [96] The circumstances at hand are tempered by the concerns that underpin the necessity defence to which I earlier made reference.
- [97] In my view, there may be a convergence of the obligation to stop and the recognition that there may be circumstances where to do that immediately or forthwith would be practically impossible. In such a situation, the obligation will be temporarily suspended, but it cannot be that it is thus relieved. Rather, as a practical matter, it will be incumbent upon a driver in such a circumstance to comply with his responsibility as soon as reasonably practicable. The actual circumstances will determine when that will be.
- [98] In the matter at hand, I will accept that the situation at the scene was, in Mr. Griffith's mind, such that it would have been unreasonable to stop. Accordingly, I would not be prepared to find liability for the offence immediately upon his having left the scene. However, it is my view that the obligation continued and he was obliged to fulfil the requirements as soon as he reasonably could.
- [99] In this case, the evidence discloses that after leaving the scene and parking his vehicle, he took a number of other steps, none of which involved any effort to meet his obligation. He arranged for a taxi to be called. He placed a telephone call to his friend. He travelled by taxi back to a location near the scene, but certainly not to the scene. Once there, he took no direct measures to do any of the steps that would have gone to fulfil his obligation. When he was arrested, he was on the street some distance from the collision scene. There is no basis

to conclude that he was making his way in a timely fashion to return to the scene or otherwise fulfil his obligation.

[100] As I have noted, he was taken into custody by the police one hour and 40 minutes after the collision.

[101] In all the circumstances, I conclude that the chaotic situation at the scene which would constitute a temporary basis for him to be absolved of his responsibility had passed and that a substantial amount of time had subsequently passed, such that it is reasonable to conclude that he did not meet his obligation.

[102] As regards the matter of intent, notwithstanding the brief and temporary allowance which I find can be made in the circumstances, it is my view that subsection (2), the presumption provision, is applicable.

[103] Accordingly, I find that the Crown has proven the charge of failing to stop at the scene of the accident.

[104] In the result, it is my conclusion that the Crown has proven both Count 1 and Count 2.

"J. Williams, J."

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