
CANADA / JUDGMENT

R. v. Therrien

2012 BCSC 1598

COURT

Supreme Court of British Columbia

DECIDED

27 September 2012

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2012 BCSC 1598 R. v. Therrien

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Therrien,

2012 BCSC 1598

Date: 20120927

Docket: 30386-2

Registry: Fort St. John

Regina

v.

Norman Fernand Therrien

Before: The Honourable Madam Justice Watchuk

Oral Reasons for Judgment

Counsel for the Crown:

P. Swartz

Counsel for the Accused:

C. Banks

Place and Dates of Trial:

Fort St. John, B.C.

September 17, 18, 19 and 20, 2012

Place and Date of Judgment:

Fort St. John, B.C.

September 27, 2012

INTRODUCTION

- [1] The charges faced by the Accused, Norman Fernand Therrien are one count of Dangerous Driving Causing Death and one count of Dangerous Driving Causing Bodily Harm contrary to ss. 249(3) and 249(4) of the Criminal Code, R.S.C.1985, c. C-46.
- [2] Mr. Ross Patterson Gibb died and his wife, Billie Gibb, was seriously injured when the truck-tractor and trailer ("the truck" and "the trailer") driven by Mr. Therrien on October 2, 2008 collided with the Pontiac Vibe driven by Mr. Gibb in which Mrs. Gibb was a passenger.
- [3] The collision occurred at dark on a curve on Rose Prairie Road ("the Road"), which is north of Fort St. John, B.C. The Road slopes downhill and to the right toward the Montney Coulees (the "Coulees"). Mr. Therrien, who was driving south, lost control of the truck and trailer. It then crossed the centre line. The truck jack-knifed as he attempted to steer it back into the correct lane. The left outer rim of the rear axle of the truck collided with the front of the northbound vehicle driven by Mr. Gibb. He died at the scene.
- [4] The Gibbs' vehicle was propelled backwards. It then collided with a pick-up truck, driven by Shayne Davis, which had pulled off the Road in order to avoid the collision.

FACTS

- [5] Counsel filed Admissions of Facts pursuant to s. 655 of the Criminal Code. They state as follows:
 - (a) On October 2, 2008, Norman Fernand Therrien (the "Accused") was the driver of a 2006 Peterbilt truck-tractor ("Vehicle 1") while hauling a trailer ("Vehicle 2") loaded with a Caterpillar 320-C [32 ton] excavator, southbound approaching a curve (the "Curve") on an asphalt highway known as the Rose Prairie Road near the City of Fort St. John, in the Province of British Columbia.
 - (b) At approximately 7:40 p.m., ("Time of Collision") Vehicle 1 / 2 collided at the Curve with a 2005 Pontiac Vibe automobile ("Vehicle 3") driven northbound by Ross Patterson Gibb ("the Deceased").
 - (c) At the Time of Collision, Billie Gibb, wife of the Deceased, was in the front passenger seat of Vehicle 3.
 - (d) At the Time of Collision, Shayne Davis was the driver of a 2007 Dodge pick-up truck ("Vehicle 4") northbound on the Rose Prairie Road behind Vehicle 3.
 - (e) The collision between Vehicles 1 / 2 and Vehicle 3 caused Vehicle 3 to collide with Vehicle 4.

- (f) The collision between Vehicles 1 / 2 and Vehicle 3 caused the death of Ross Gibb and bodily harm to Billie Gibb.
- (g) On October 2, 2008 Mike Zakus was (and since then has remained) an expert in the field of Motor Vehicle Inspections duly qualified to provide the opinions about the mechanical condition of Vehicles 1 / 2, 3 and 4 that he expressed in his Post-Crash Vehicle Inspection Reports numbered, respectively, 09 08 10 02 927 C, 09 08 10 02 927 A and 09 08 10 02 927 B, each of which form a part of Technical Collision Investigation Report 2008 - 15 ASW prepared by Andrew Walker and tendered at the trial in this matter.
- (h) The optional equipment installed in Vehicle 3 included an automatic light-sensitive sensor for the headlights.
- (i) On October 2, 2008, between approximately 8:06 p.m. and 9:29 p.m., the Accused provided a voluntary statement about the collision to RCMP Cst. Cunningham.
- (j) On October 2, 2008, the speed limit for vehicles travelling southbound on Rose Prairie Road leading up to the intersection of Cox Road and Rose Prairie Road was 90 km/h.
- (k) On or about October 2, 2008 Acting Carrier Safety Inspector Harpreet Aulakh examined the daily log books kept by the Accused as required by MVAR 26/58 and was unable to determine:
 - (a) Whether the Accused was on Cycle 1 or Cycle 2 at the Time of Collision; or
 - (b) The total amount of off-duty time taken by the Accused between September 28, 2008 and the Time of Collision.
- [6] The Vehicle Inspection Reports from Mr. Zakus noted no mechanical defects in the truck and the Pontiac vehicle. The headlights of the Pontiac were not turned on manually, but the automatic light sensor was operative. The headlights of the truck were on. The engine brake switch of the truck was in the on position.
- [7] Rose Prairie Road leaves Fort St. John heading north through the Coulees. It is a paved road on which heavy trucks are permitted. It has one lane in each direction, and has a total of two lanes with gravel shoulders at the collision site which was on the north side of the Coulees, about 15 minutes north of Fort St. John. A double yellow line separated the lanes. Travelling south towards the Coulees, as was Mr. Therrien, a 2% downhill grade starts before the location of the collision. At the collision site, the downhill grade is 5.7%. Further down the hill, the grade increases to 10%. The Road was dry on the evening of October 2nd although it later began to rain.

- [8] Crown called five witnesses at the trial. No witnesses were called by the defence. The Crown witnesses were: RCMP Cst. Josh Smith who was the first responder at the scene of the collision; Mr. Cameron Fines, a long-time resident of the area and a former truck driver; Mr. Andrew Walker, the now retired RCMP collision reconstructionist who prepared a report regarding the collision; and Mr. Shayne Davis, the driver of the pick-up truck with which the Pontiac Vibe collided after the initial collision with the truck and trailer.
- [9] Many of the facts are not in dispute. Where an issue arises from the facts, I will set out the evidence and later discuss it further.

The Evidence of Cameron Fines

- [10] Mr. Cameron Fines was born and raised on a farm on Cox Avenue which intersects with the Road a short distance (approximately 200 metres) north of the collision scene. He farmed there with his father for most of his life until he moved to New Zealand earlier this year. He also drove a truck and trailer for the farm for about seven years prior to his move. Many times his trailer has been loaded with an excavator.
- [11] Mr. Fines' evidence included evidence in the nature of lay opinion evidence. He testified regarding the geography of the area and gave his opinion of the roads in the area. His testimony included a description of the practices of truck drivers including himself, and some of the reasons for those practices.
- [12] Mr. Fines testified that when he loaded a large excavator on his trailer, his insurance would cover him only if he personally loaded the trailer. He did not know if all insurance policies had the same provision.
- [13] When loading his trailer, he relied on the airbags on the trailer to determine if the load was in the proper place on the trailer. He did this in order to comply with the weight limits for each set of axles. Airbags are a closed system of suspension which allows the weight on each axle to be determined and balanced without a weigh scale. They were not mandatory when Mr. Fines was driving his truck from 2004 to 2011.
- [14] He also gave evidence regarding his observations of the events of October 2nd. Mr. Fines was on Cox Avenue near the intersection with the Road at the time of the collision. He observed rotating lights on top of a white truck. He then saw the truck in a skid moving away from him and saw it come to a stop. From the position and speed of the truck he thought that something was wrong.
- [15] When he arrived at the collision he assisted Mr. Davis, who was on the phone with 911, to describe the location.

- [16] Mr. Fines described the Road approaching the collision scene. About a mile back from the curve, north, there is a gentle downhill. At about one-half mile, there is a gradual downhill towards the corner. If he was driving a truck down the hill with a 32 ton excavator loaded on his trailer, and passed the "slow" sign, he would take his foot off the accelerator and start slowing with a combination of the engine brake and lower gears.
- [17] A truck's engine brake is the braking system on the engine and is often referred to as a "jake brake". It is operated by a switch on the dash and a switch behind the gas pedal. The engine brake is turned on if the dashboard switch is on and the foot is off the gas. "Jaking" is the common description of a truck using an engine brake.
- [18] If Mr. Fines saw signs indicating "Slow" then a 10% grade in an area which was unfamiliar, he would reduce his speed to 50 km/h or less. Through that particular curve with an excavator loaded on a trailer, he would use a speed of 30 to 35 km/h.
- [19] In cross examination Mr. Fines agreed that the area of the Coulees has a disproportionately high number of accidents compared to other areas. He agreed absolutely that the stretch of road from the collision site to the other side of the Coulees was dangerous and said that it had dangerous hills. He also agreed that the signage, as it existed in 2008, was inadequate to warn drivers of the dangers.
- [20] With regard to the manner of loading a trailer, he agreed that each driver loads differently and that there is no universal way. Similarly, no two drivers handle curves and hills the same way. The most important signs for a driver coming to a hill with a load on a trailer are the speed limit and the per-cent grade signs.

The Collision Reconstruction Report and the Expert Witness

- [21] A Collision Reconstruction Investigation Report ("the Report"), was written by then Corporal Walker of the RCMP, Peace Region Traffic Services. Corporal Walker has since retired, but attended at the trial to give evidence as an expert witness.
- [22] Corporal Walker attended at the scene shortly after the collision on October 2nd and, because it was dark at that time, again the next morning, October 3rd, to complete his investigation.
- [23] The synopsis of the collision from his report describes the collision in a similar manner as, and was likely the basis for, the description in the Admissions of Facts.

On the 2nd of October 2008, at approximately 19:42 hours, the driver of a 2006 Peterbilt conventional truck tractor, hereafter referred to as "Vehicle 1", was proceeding southbound pulling a low-bed trailer loaded with an excavator, hereafter referred to as "Vehicle 2", on the Rose Prairie Road north of Fort St. John. The road in front of Vehicle 1 curved to the right and descended down a hill. The driver of Vehicle 1 lost control while proceeding around the curve, and entered the northbound lane. The driver of a 2005 Pontiac Vibe, hereafter referred to as "Vehicle 3", was proceeding northbound up and around the curve. The driver of a 2007 Dodge

pickup, hereafter referred to as "Vehicle 4", was following Vehicle 3 up the hill. Vehicle 1 and Vehicle 2 collided with Vehicle 3 in the curve. Vehicle 3 was redirected due to the collision and then collided with Vehicle 4. The driver of Vehicle 3 was killed and the passenger in Vehicle 3 was seriously injured.

[24] The Report describes the signage which then existed in the southbound lane of the Road approaching the collision scene. There were three advisory signs.

The first was a yellow slow sign; the second was a yellow sign indicating a 10% downhill grade, and the third was a yellow sign advising curving road for three kilometres ... Just west of the collision scene in the north ditch was a large advisory warning sign indicating a speed of 50 kilometres. It is interesting to note that after the collision, the signs have been changed and more signs have been added. Specifically the large warning 50 kilometre sign has now been moved further north on the Rose Prairie Road and the entrance to the curve has a new yellow checkerboard, diamond shaped warning sign. Also four new yellow curve marker signs were added around the collision scene area. An old checkerboard warning sign was observed lying face down in the ditch in the same area as the new posted one.

[25] Corporal Walker concludes as follows:

It is my opinion that the collisions were caused when the driver of Vehicle 1 [the truck] lost control of the vehicle while negotiating a clockwise curve (curve to the right) and crossed the centre line.

1. There were no mechanical defects observed that would have been a factor in these collisions.
2. ...
3. The driver axles on Vehicle 1 were overweight by 2,740 kilograms and the steering axle was overweight by 440 kilograms.
4. The speed of Vehicle 1 could not be determined.

[26] With regard to the weights of the truck over the axles (conclusion #3), I note that the truck had six axles in three groups: the steering axle on the front of the truck; two drive axles at the back of the truck; and three trailer axles at the back of the trailer. The drive and trailer axles had double wheels on each side, or "dualies".

[27] The trailer was hooked to the truck with a fifth wheel plate over the drive axles, thus making the truck and trailer combination an articulated unit which could "bend" between the truck and the trailer.

[28] The truck and trailer, loaded with the excavator, were weighed after the collision at the Fort St. John Provincial Scale. The steering axle, drive axles and trailer axles were weighed separately as is the usual procedure. The steering axle was 440 kilograms over the maximum legal weight of 5,500 kilograms. The drive axles were 2,740 kilograms over the maximum

legal weight of 17,000 kilograms, and the trailer axles were 3,520 kilograms over the maximum legal weight of 24,000 kilograms. The total weight of the truck and trailer was 340 kilograms under the maximum legal weight of 46,500 kilograms. The total weight was legal.

- [29] The conclusion of Corporal Walker is that the excavator was loaded too far forward on the trailer. Had the excavator been loaded further back on the trailer, the weight would have been more evenly and legally distributed among all three sets of axles.
- [30] However, Corporal Walker testified unequivocally that, in his opinion, the placement of the excavator on the trailer was not a contributing factor to the collision. The cause of the collision was weight shift which caused the trailer to begin to tip, taking the truck with it, not load shift. In other words, the excavator did not move from its secured location on the back of the trailer. The weight shift is from side to side, and would not be affected by the location of the excavator forward or backward on the trailer.
- [31] The penultimate conclusion of Corporal Walker is contained in his analysis of a question posed to him which was to determine the speed of Vehicle 1, the truck and trailer driven by Mr. Therrien. As the engine control module from the truck had been turned off, there was no record of the speed of the truck. There was not another mechanical or arithmetic manner by which speed could be determined as the truck stayed upright, although it jack-knifed.
- [32] Corporal Walker's conclusion is: "It's obvious that the driver of Vehicle 1 could have maintained control of the vehicle and stayed in the southbound lane if it had entered the curve at a reduced speed."
- [33] The loss of control, in his opinion, occurred as the truck attempted to make the right curve at a wide angle due to speed. The trailer started to tilt towards the left side due to a transfer of weight to that side, resulting in more weight on the outside of the trailer. The momentum of the trailer continued forward after the driver steered the truck to the right to prevent tipping and move back into the correct lane. As the unit is articulated, the truck and trailer jack-knifed with the trailer continuing to travel forward and the truck attempting to turn right. The point of collision was between the left outer wheel of the rear drive axle of the truck with the front of the Pontiac vehicle. The truck and trailer were in the wrong lane.
- [34] The report of or information from the safety inspector, Mr. Aulakh, would not affect the analysis performed by Corporal. Walker.

The Statement of Mr. Therrien

- [35] A transcript of the taped statement of Mr. Therrien was filed as an exhibit by the Crown by consent. Voluntariness was admitted. The statement was taken at 8:06 p.m. on the night of the collision, while Mr. Therrien was sitting in the RCMP vehicle of Constable Cunningham.

- [36] From the statement, it is accepted that Mr. Therrien's route that day started in Valleyview, Alberta and went to Grande Prairie, Alberta, where he picked up a highboy Trailer and went to a job in Tangent, Alberta. He then picked up the trailer with the excavator and was heading to Fort St. John to the Petro station. He had been driving about an hour and fifteen minutes continuously since he loaded the excavator at an oil pipeline north of the Road.
- [37] Mr. Therrien had been driving trucks off and on since 1974. He was unfamiliar with the Rose Prairie Road area as he did not usually haul there. The speed limit on the Road down the hill to and past the scene of the collision was 90 km/h.
- [38] Mr. Therrien saw the traffic signs as he approached the hill. He stated: "I knew I was coming down onto a hill cause the sign says there was a grade so and I know in this, this part of the country when they say there's a hill, there's a hill."
- [39] Mr. Therrien was not tired. He had not consumed any alcohol, and the only drugs he had taken were prescription drugs for diabetes and blood pressure. He stated that his speed was about 85 km/h and he was not in a hurry.
- [40] The intersection of Cox Avenue is north of the scene of the collision. That is where one of the police vehicles was parked after the collision in order to re-direct traffic. That police vehicle had its flashing lights activated at the time the statement was taken.
- [41] Mr. Therrien says at one point in his statement that as he started to come around the corner, since it was downhill and he had seen the signs, he was "jaking and...stepped on the brake". He states that when he got to about where "them flashing lights" were, "all hell broke loose". He further stated that his "back end kicked out from underneath [him] and [he] went south going sideways". He was going about 85 km/h, just starting to slow down, when he came into the corner.
- [42] Later in his statement, Mr. Therrien says about the location of starting to jake and brake:
- CST. CUNNINGHAM: when when you came into the corner here
- THERRIEN: I was about 85 I was starting to slow down.
- CST. CUNNINGHAM: just starting to sl....
- THERRIEN: then about where them flashing lights were I started jaking and stepping on the brake up there around the corner
- CST. CUNNINGHAM: okay the the four way flashing lights right there
- THERRIEN: yeah
- CST. CUNNINGHAM: okay

THERRIEN: no not where the van is up there the last set

- [43] He initially says that he did not see the Pontiac vehicle until after the collision, when he walked up the hill. Later he says that he saw the approaching headlights. Although "I never paid attention", is his comment about the vehicle initially, he later says that "he was coming toward me and I know you know I seen him", "but you know I'm not really paying attention." He thought that the Pontiac had crossed the centre line.
- [44] The areas of contention with regard to Mr. Therrien's statement are the degree to which he was paying attention and whether or not he was not in a hurry as he said or in a hurry as a result of being behind schedule. There is also an issue about his location at the time he first began to jake and brake.

The Road Signs

- [45] The three road signs which were passed by Mr. Therrien before the collision were a "Slow" sign, a "10% downhill grade" sign, and a "curving road" sign.
- [46] The Slow and 10% downhill grade signs are before the Cox Avenue intersection, and the curving road sign is a short distance after Cox Avenue and approximately 140 metres before the curve, by the scale drawing in the Report. The distances of the other signs are not known.
- [47] The B.C. Ministry of Transportation and Highways Manual of Standard Traffic Signs and Pavement Markings, (Victoria: Ministry of Transportation and Highways, 2000) (the "Manual") was marked as an exhibit in the trial. It states in the introductory sections that signs provide information and warn of hazards that may not be evident.
- [48] The Slow sign is described as only being "warranted where the advisory or safe speed at which a hazard may be negotiated is at least 30 km/h lower than the posted speed limit..." The percentage downhill grade sign is called a Steep Hill Sign and is said to "warn motorist[s], especially commercial vehicle operators, of a steep downgrade ahead that may require the use of a lower gear." The Winding Road sign "should be used if there is a series of five or more curves", to "warn the motorist of the severity and direction of a change in roadway alignment."
- [49] There was a diamond shaped Sunburst Advisory Speed sign indicating 50 km/h, found in the ditch just past the collision site. The Manual states that it "warns of a potentially hazardous roadway section ahead" and is "only warranted at locations where there is a documented accident history..." That missing sign has since been replaced and moved further north before the curve on the southbound lane.

POSITIONS OF CROWN AND DEFENCE

- [50] Crown counsel submits that speed was a cause of the collision. It also submits that the location of the excavator caused Mr. Therrien to have less control over the truck than he would have had if the excavator had been loaded further back.
- [51] Crown submits that driving this load in this manner, in these conditions, was not reasonable. It submits that the evidence of Mr. Fines regarding loading an excavator and slowing for signs should establish the standard of care. Mr. Therrien, in his state of mind, averted to the risk and carried on a course of conduct that was more than a momentary lapse. It was a marked departure, because he passed three signs and had 130 metres to slow down before he lost control. Although he was jaking and braking, he did not gear down.
- [52] On behalf of Mr. Therrien, it is submitted that although he was driving at an unreasonable speed in the circumstances, there is no proof of the requisite mental state for dangerous driving contrary to s. 249. He could not reasonably foresee the state of the road and he took steps by jaking and braking. The mens rea element is therefore not met.

THE LAW

- [53] Section 249 of the Criminal Code regarding dangerous operation of a motor vehicle, often referred to as dangerous driving, states:

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;

...

- (2) Every one who commits an offence under subsection (1)
 - (a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
 - (b) is guilty of an offence punishable on summary conviction.
- (3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.
- (4) Everyone 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 leading case on dangerous driving, *R. v. Roy*, 2012 SCC 26, was decided recently in June 2012. It sets out the two components of dangerous driving, prohibited conduct and required degree of fault. Mr. Justice Cromwell, on behalf of the Court, defines those components, and explains the development of the law from the previous Supreme Court of Canada decision in *R. v. Beatty*, 2008 SCC 5. He states:

1. Dangerous driving causing death is a serious criminal offence punishable by up to 14 years in prison. Like all criminal offences, it consists of two components: prohibited conduct -- operating a motor vehicle in a dangerous manner resulting in death -- and a required degree of fault -- a marked departure from the standard of care that a reasonable person would observe in all the circumstances. The fault component is critical, as it ensures that criminal punishment is only imposed on those deserving the stigma of a criminal conviction. While a mere departure from the standard of care justifies imposing civil liability, only a marked departure justifies the fault requirement for this serious criminal offence.

.....

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.

.....

34. In considering whether the *actus reus* has been established, the question is whether the driving, viewed objectively, was dangerous to the public in all of the circumstances. The focus of this inquiry must be on the risks created by the accused's manner of driving, not the consequences, such as an accident in which he or she was involved...
35. To summarize, the focus of the analysis in relation to the *actus reus* of the offence is the manner of operation of the motor vehicle. The trier of fact must not simply leap from the consequences of the driving to a conclusion about dangerousness. There must be a meaningful inquiry into the manner of driving.
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 of 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.

37. Simple carelessness, to which even the most prudent drivers may occasionally succumb, is generally not criminal.

.....

42. Driving which, objectively viewed, is simply dangerous, will not on its own support the inference that the accused departed markedly from the standard of care of a reasonable person in the circumstances [citations omitted]. In other words, proof of the actus reus of the offence, without more, does not support a reasonable inference that the required fault element was present. Only driving that constitutes a marked departure from the norm may reasonably support that inference.

[Underlining Added]

- [55] The cases submitted by Counsel which were decided since Roy (R. v. Kerr, 2012 BCSC 1311; R. v. Garnham, 2012 MBQB 231; R.v. Adams, 2012 PECA 15) are most useful to the case at hand.

DISCUSSION AND ANALYSIS

- [56] Firstly, with regard to Mr. Therrien's statement, he did not testify, but his version of events was introduced into evidence by the Crown by consent. The statement was not a sworn or warned statement. On page 8, Mr. Therrien is detained for dangerous driving causing death and given an opportunity to call a lawyer, which he does later.
- [57] The statement is evidence and must be considered as part of the totality of the evidence. However, taking into account the circumstances of the taking of the statement and the nature and content of the statement, it cannot be viewed in the same way as sworn evidence at trial subject to cross-examination.
- [58] Mr. Therrien gave the statement in a police vehicle starting 24 minutes after the collision. Cst. Cunningham fairly acknowledged to Mr. Therrien that he was still in a state of shock. The questioning of Mr. Therrien was understandably interrupted by investigation of the accident scene and by another unrelated police matter. Mr. Therrien was concerned about retrieving his prescription medication and coat, and about informing his employer. Inconsistencies in the statement are understandable, and perhaps inevitable in such circumstances.
- [59] On the statement as a whole, I conclude that Mr. Therrien's speed was slightly more than 85 km/h when he saw the first Slow sign. After seeing that sign and the 10% downhill grade, at about Cox Avenue, he began to jake, to use the engine brake, and to brake. As he entered the curve, he was beginning to slow down and was at 85 km/h as a result of jaking and braking. There is no clear evidence of the distance between the signs and the collision site.

- [60] The location of the commencement of jaking and braking is determinable by the police lights at Cox Avenue. Cox Avenue is shortly after the first two signs. I accept that Mr. Therrien knew that those signs, particularly the downhill grade signs, were to be taken seriously. He jaked and braked then as a result of that knowledge. He did not change gears.
- [61] The statement as a whole indicates that Mr. Therrien noticed the Pontiac's lights approaching, but did not see the collision with that vehicle. He was aware of oncoming traffic generally, but not paying specific attention to each vehicle. He did not know that he had crossed the centre line and hit the Pontiac. Although he was behind schedule, I accept his statement that he was not in a hurry. I cannot find that he was speeding to make up time.
- [62] I now turn to the issue of the actus reus: the actions of Mr. Therrien. The question is whether the driving, viewed objectively, was dangerous to the public in all the circumstances. Mr. Therrien's truck was in good mechanical order. His flashing "wide load" lights were operating. He was not tired.
- [63] The manner of driving of Mr. Therrien was however dangerous to the public. For that location, the speed at which Mr. Therrien entered the curve, 85 km/h, although less than the posted limit of 90 km/h was excessive with that truck, trailer and excavator on an unfamiliar road, with a curve and upcoming 10% downhill grade. The actus reus requirement is therefore met.
- [64] With respect to the mens rea, I refer again to Roy at paras. 40 and 41:
40. ...The underlying premise for finding fault based on objectively dangerous conduct that constitutes a marked departure from the norm is that a reasonable person in the position of the accused would have been aware of the risk posed by the manner of driving and would not have undertaken the activity: Beatty, at para. 37.
41. In other words, the question is whether the manner of driving which is a marked departure from the norm viewed in all of the circumstances, supports the inference that the driving was the result of a marked departure from the standard of care that a reasonable person in the same circumstances would have exhibited.
- [65] A reasonable person in the position of Mr. Therrien would not have been aware of the degree of risk posed by his manner of driving.
- [66] The evidence of Mr. Fines was very helpful the Court. It does not, however, establish that Mr. Therrien did not meet the standard of care of a reasonable person.
- [67] With regard to Mr. Fines' evidence about airbag usage, although airbags would have been helpful to Mr. Therrien in placing the load, they were not required. Further, the location of the load did not contribute to the cause of the loss of control which led directly to the collision. The cause was speed. I accept Corporal Walker's evidence in its entirety.

[68] While I accept Mr. Fines' testimony that he would have slowed more for a curve in an unknown area with the load that was being hauled by Mr. Therrien, I note that Mr. Fines has specific knowledge of this curve on Rose Prairie Road. Every truck driver's methods are unique, and failure to do exactly as Mr. Fines would does not signify a marked departure from the standard of care. That Mr. Therrien did not change gears to slow but braked is not determinative of his falling below the standard of care. His intention was to reduce his speed and he took actions to realize that intention. He misjudged the combination of the downhill slope and the curve and did not slow significantly to prevent the weight shift. The error in judgment was momentary. He did not avert to the risk - on the contrary, he attempted to prevent it by jaking and braking. There is no evidence to support a finding that he was aware of the risk and chose to run that risk.

[69] As in Kerr, "[t]his was a single momentary error of judgment with tragic consequences" (para. 34). It was not a marked departure from the standard of care of a reasonable person. The element of mens rea is not proven.

[70] I find you, Mr. Therrien, not guilty of both counts of dangerous driving charged.

"The Honourable Madam Justice Watchuk"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/12/15/2012BCSC1598.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-therrien-2012>

Prepared on 28 October 2026 · Esheria