

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN,

Respondent

- and -

BUD MICHAEL REYNOLDS,

Appellant

Appeal from Conviction Imposed by J. B. Cummings, Justice of the Peace
Appeal Heard at Fort Simpson, N. W. T., February 24, 1977
Judgment of the Court Filed March 4, 1977
Appeal Allowed, Conviction Quashed

Reasons for Judgment by:

The Honourable Mr. Justice C. F. Tallis

Counsel on the Hearing:

Mr. R. S. Kimmerly, for the Appellant

Mr. Ed. J. Brogden, for the Crown, Respondent

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REASONS FOR JUDGMENT OF THE HONOURABLE
MR. JUSTICE C. F. TALLIS

The Appellant was charged on an information sworn on August 7th, 1976 that he did on or about "the 20th day of July A.D. 1976, at or near Fort Simpson in the Northwest Territories; Unlawfully permit the operation of a motor vehicle that was in such a dangerous or unsafe operating condition as to endanger the driver or any occupant thereof or any person on the highway, contrary to Section 93(1) of the Vehicles Ordinance." He appeared in Court on October 6th, 1976 in Fort Simpson and after a trial he was found guilty.

The Appellant was fined \$50.00 and ordered to pay costs of \$4.50 making a total of \$54.50.

The Appellant launched an appeal from his conviction and sentence and the matter was heard by me at Fort Simpson.

At the hearing of this appeal the facts were not in dispute and the only evidence placed before the Court was a Statement of Admitted Facts which was conveniently summarized in written form by Counsel. The admitted facts are set forth as follows:

"1. On the 20th day of July, A.D. 1976, at about 2.00 o'clock in the afternoon Wayne Francis McLaughlin operated a vehicle, being a Yamaha motorcycle, serial #21002 on the streets of the Village of Fort Simpson in the Northwest Territories.

2. The vehicle, above referred to, is owned by Bud Michael Reynolds.

3. The vehicle, above referred to, at the time referred to, had no licence plate attached to it.

4. The vehicle above referred to, at the time referred to, had:

- (a) no signal lights,
- (b) no headlight,
- (c) no brakelight,
- (d) no horn,
- (e) no speedometer,
- (f) no taillight.

5. Bud Michael Reynolds had been previously warned by the Royal Canadian Mounted Police in Fort Simpson, on at least two occasions, that:

- (a) having no licence plate was an offence and the bike should not be driven on the streets until such plate was obtained,
- (b) the bike was in unsafe condition for travel on a public highway due to the lack of lights above referred to.

- "6. Two or three weeks prior to the accident in 1976, Bud Michael Reynolds had applied to the Vehicle Licence Office in Fort Simpson for a replacement licence plate (the existing licence plate apparently having vibrated loose from the bike previously and was lost). He spoke with a Daniel Linkert and was given a form to mail to Yellowknife for a replacement plate.
7. Approximately the 1st of July, A.D. 1976, Corporal D. Huget stopped Reynolds, while driving the motorcycle, and advised him that it could not be driven without a licence plate or a headlight. At the request of Reynolds, Corporal Huget permitted Reynolds to drive the motorcycle to a nearby service station where it was to remain until roadworthy. No charges resulted.
8. At two o'clock in the afternoon on the 20th day of July, A.D., 1976, the R.C.M.P. were called to a motor vehicle accident on Mackenzie Drive in front of the Hudson Bay Company Store in Fort Simpson. The vehicle involved was a Yamaha Enduro 400 motorcycle owned by Bud Michael Reynolds and operated by Wayne McLaughlin. These charges resulted from the investigation of this accident.
9. Neither liability for the accident nor any aspect of responsibility for this accident is admitted or alleged in this proceeding. The accident involved a collision between a nine-year old child who entered the roadway from a point near parked vehicles, and the above named motorcycle driven by Wayne McLaughlin at the time.
10. McLaughlin and Reynolds live in the same house and Mr. Reynolds was away just before and at the time of the accident and he left the keys on top of the refrigerator.
11. Reynolds spoke to Daniel Linkert two weeks before the accident, and mailed an application to Yellowknife and received a reply from J. D. McLean, Registrar of Motor Vehicles, dated July 30th, A.D., 1976, with duplicate Certificate of Registration but with no licence plates.

"12. Reynolds did believe that on July 1st, 1976 he was applying for a new plate but got a new licence instead.

12. All of the aforementioned is respectfully submitted jointly as a Statement of Facts by Ed. J. Brogden, Counsel for Her Majesty the Queen and Roger Kimmerly, Counsel for the Appellant, Bud Michael Reynolds."

The section of the *Vehicles Ordinance* in issue in this case provides as follows:

" 93. (1) No person shall operate or permit the operation on a highway of a vehicle that is in such a dangerous or unsafe operating condition as to endanger the driver or any occupant thereof, or any person on the highway."

The Appellant in this particular case was charged on the footing that he had permitted the operation of his motor vehicle in a manner which contravened the provision of the Ordinance. In this particular case learned Counsel for the Appellant submitted that *mens rea* was an essential or constituent element of the offence charged against the Appellant and further argued that on the admitted facts there was no evidence of *mens rea*.

After carefully considering this matter I am of the opinion that the term "permit" as used in Section 93(1) of the *Vehicles Ordinance* involves *mens rea* as a constituent element.

In this connection I refer specifically to the judgment of Culliton, C.J.S. in *Regina v. Board of Long Lake School Unit No. 30 of Saskatchewan*, 18 C.C.C. (2d) 58, parti-

cularly at pages 62 to 63 where he says as follows:

" The principles to be followed in determining whether an offence created by statute or Regulation is one of strict liability or one requiring *mens rea* were reviewed by the Supreme Court of Canada in *R. v. Pierce Fisheries Ltd.*, [1970] 5 C.C.C. 193, 12 D.L.R. (3d) 591, [1971] S.C.R. 5 (see particularly the judgment of Ritchie, J.), and by this Court in *R. v. Standard Meats Ltd.* (1973) 13 C.C.C. (2d) 194, 12 C.P.R. (2d) 137, [1973] 6 W.W.R. 350. In my opinion the enactment of the Regulation was intended to create a new offence under the Act. Much may be said in support of the argument that it did create an offence of strict liability in respect to a driver who had not passed a driver's examination as prescribed in the Regulations. However, I am not required to answer that question. In so far as the school board is concerned, the Regulation reads:

'... no school board *shall cause or allow* a person to drive a school bus unless he has passed a driver's examination as prescribed in the regulations ...'

(Italics are mine.) Such language, in my view, does not give rise to the implication that it was intended to impute absolute liability to the school board; that in order to sustain a conviction, proof of some mental element was necessary. Therefore, the offence created by the Regulation, in so far as the School Unit is concerned, is one requiring *mens rea*. How that *mens rea* is to be proved is not a matter for consideration on this appeal. I am bound by the facts in the stated case. There was no attempt to prove *mens rea* in any way as the prosecution relied entirely on its contention that the offence created, in so far as the school board is concerned, was one of strict liability."

In my opinion the above principles are applicable to the case at bar.

I find further support for this approach in the case of *Rex v. Irish* (1909) 18 O.L.R. 351. In that particular case the *Liquor Licence Act* of Ontario provided that an occupant of an unlicensed house shall not permit any liquor to be consumed therein. It was held that the term "permit" as used in that provision involved the element of *mens rea*.

On the admitted facts of this case the necessary ingredient of *mens rea* has not been proven and I accordingly allow the appeal, quash the conviction and enter a verdict of not guilty. If the fine and costs have been paid, same will be returned to the Appellant.

There will be no order as to costs on this appeal.

Dated at Yellowknife, Northwest Territories the 4th day of March, 1977.


C. F. Tallis, J.S.C.