

IN THE PROVINCIAL COURT OF NOVA SCOTIA
(R. v. Merritt, 2005 NSPC 18)

Date: 2005, May 27th
Docket: Case #1464781
Registry: Digby Justice Centre

Between:

Her Majesty The Queen

v.

Elaine Merritt

Revised Decision: **The text of the original decision has been corrected as of this date, May 11th, 2006 and replaces the previously distributed decision.**

Judge: **The Honourable Judge Jean-Louis Batiot, J.P.C.**

Heard: **April 28th, 2005 at Digby, Nova Scotia**

Charge: **Contrary to section 143(n) of the Motor Vehicle Act**

Counsel: **Murray Judge, for the Crown**

Philip J. Star, Q.C., for the Defense

1. Ms. Malay of Sandy Cove was driving in a westerly direction on highway 217 the evening of the 25th of August 2004, in the county of Digby, in this Province. She is familiar with the road and that crest. She describes it as “blind”. She approached it driving at a regular speed of 80 to 90 kilometers an hour (the limit is 90km/h). There is no indication of sunlight or other impediments to her visibility. She saw a Jeep, stopped, partly on the south shoulder, facing an easterly direction, obstructing her view. Suddenly a blue car went around that Jeep, “*at me*”; she turned *hard*, headed for the ditch; the blue car hit her own van on the left front end. She ended up in her van, *flipped* on its side, in the ditch.
2. People arrived on the scene, including Ms. Merritt whom Ms. Malay had seen in the driver’s seat of the Jeep just prior to the collision. People attempted to help Ms. Malay, who was quite upset.
3. The blue car, a Hyundai Elantra, came to rest in the ditch on its own side of the highway. Both disabled vehicles were found west of the Jeep, according to Ms. Morehouse who lives at 6996, Highway 217.
4. Constable Gillis investigated, talked to various people and charged Ms. Merritt with this infraction, using the wording authorized in Schedule IV pursuant to the **Summary Proceedings Act**, R.S.N.S. 1989, c-450 and the **Summary Offence Tickets Regulations**, OIC 2001-21 (January 18th, 2001), NS Reg. 4/2001, as amended up to OIC 2005-152 (April 14th, 2005), NS Reg. 86/2005. He took photographs on the 8th of April 2005 to show the scene. He described a long crest, the cumulation of 2 long and slight grades, blind for about 50 meters, or approximately a hundred and fifty feet. The photographs confirm this.
5. Ms. Merritt had stopped to let out a passenger whom she had just picked up Mr. Morehouse, at his driveway, by the crest. Her Jeep, her husband’s vehicle, did not have a seat belt for that *under-sixteen* passenger. She says that she stopped as close to the ditch as she could; her passenger had to step down into the ditch when he got out of her vehicle. Ms. Malay observed the Jeep’s driver’s side wheels on the pavement.
6. Mrs Merritt explicitly described how she was keeping an eye on Mr. Morehouse; saw the van passing her Jeep; followed it through her rear view mirror; suddenly appeared in her field of vision the blue car, out of nowhere, going fast, well over the center line; the ensuing accident, with all the accompanying debris. There was “*all kinds of room to pass me*” .
7. The charge is that the defendant “... *at or near Lake Medway, County of Digby, Province of Nova Scotia, did unlawfully commit the offence of stopping on crest of grade where view obstructed contrary to section 143(n) of the Motor Vehicle Act*, R.S.N.S. 1989, c-293.
8. This is a strict liability offence (**R. v. Sault Ste Marie (City of)** (1976), 30 C.C.C. (2d) 257, aff’d [1978] 2 S.C.R. 1299).

ISSUES

9. The defense argues:
 - a. the Crown has not established its case as it has not proved the Jeep was parked *on the crest of a grade where the view of an approaching driver is obstructed* [my emphasis];
 - b. even if it had, the defendant was not negligent in doing what she did; indeed, she was justified in doing so.
10. There was no objection taken to the wording of the Summary Offence Ticket. It is clear from the conduct of the defense that it was not surprised by the difference between that wording and the wording of section 143(n) which specifies that it is the “*view of an approaching driver*” that is at issue. The evidence made it very clear that both parties were addressing this issue.

ACTUS REUS

11. The **Motor Vehicle Act, supra**, does not define the word “*crest*”. The **Shorter Oxford English Dictionary**, 3rd Ed., Clarendon Press, Oxford, at p. 455, defines it as *5. the head, summit, or top of anything.*
12. According to the description of the observers, and from the photos, it appears that the highway forms a long and rounded crest where both east-bound and west-bound grades meet. Constable Gillis mentions that the view of approaching traffic is obstructed, over some fifty meters. The photographs show the appearance of an ill-defined peak. The defendant’s Jeep was east of that location, on the east facing grade. That fact lends support to the defense’s argument; is it a full answer to the charge?
13. The dictionary definition is only one aspect. One has to look at s. 143 to better ascertain the mischief addressed by that section (see **Driedger on the Construction of Statutes**, 3rd Ed., Butterworths at p.52 et subseq.). I reproduce the entire section here for ease of reference:

No stopping, standing or parking

143 It shall be an offence for the driver of a vehicle to stop, stand or park the vehicle, whether attended or unattended, except when necessary to avoid conflict with other traffic or in compliance with the directions of a peace officer or traffic control signal or sign, in any of the following places:

(a) within an intersection;

(b) on or within 5 metres of a crosswalk;

(c) between a safety zone and the adjacent curb or within 10 metres of points on the curb immediately opposite the ends of a safety zone, unless local or traffic authorities shall indicate a different length by signs or markings;

(d) within 7.5 metres from the intersection of curb lines, or, if none, then within 5 metres of the intersection of property lines at an intersection within a business or residence district, except at alleys;

(e) within 10 metres upon the approach to any official flashing beacon, stop sign, yield sign, or traffic control signal located at the side of the roadway;

(f) within 5 metres of the driveway entrance to any fire station;

(g) *within 5 metres of a fire hydrant;*
 (h) *in front of a private driveway;*
 (i) *on a sidewalk;*
 (j) *alongside or opposite any street or highway excavation or obstruction when the stopping, standing or parking would obstruct traffic;*
 (k) *on the roadway side of any vehicle stopped or parked at the edge or curb of a highway;*
 (l) *at any place where official traffic signs have been erected prohibiting standing and parking;*
 (m) *within 15 metres of the nearest rail of a railway crossing;*
 (n) *on the crest of a grade where the view of an approaching driver is obstructed.*
R.S., c. 293, s. 143.

14. The purpose of this section is to protect the visibility or access traveling motorists must have, as they approach various sites described, such as intersection, a sidewalk, a driveway, etc... to avoid other users of the roadway, be they pedestrians or motorists or to better see, or access, or avoid, certain locations, such as fire hydrants, safety zones, etc... It does mention these particular locations, or situations, as worthy of special attention, recognizing the special danger an obstruction may create, to those approaching, or wishing to use, for instance, a crosswalk (b), a sidewalk (i), or a railway crossing (m), intersections (a), or safety zones (c).
15. It prohibits such *stop, stand or park* at certain, well defined sites, such as sidewalk, private driveway, or within or near or at, a precise distance from other specifically described locations. The prohibition is clear and easily ascertained.
16. Subsection 143(n), the one in question here, does not give a precise distance where it is prohibited to “*stop, stand or park*” but defines the distance in terms of lack of visibility of oncoming traffic. It is understandable, since each grade and crest will define the reasonable distance, given its geographical and unique contour, one that could not be the subject of an arbitrary distance.
17. S. 143 (n) attempts to prevent further dangerous situations, where, because of a grade, there exists already an impediment to visibility. Obviously a vehicle at the top of the crest could, ideally (depending on the length of the crest), have a good view down both grades. Those who approach it, however, would not. A driver of a vehicle, thus, ought not to “*stop, stand or park*” such vehicle anywhere within the right of way of the highway, to not aggravate an existing difficulty.
18. In effect, the prohibition applies only where visibility is obstructed. Where it is not, then one need not observe the direction of s. 143 (n).
19. Is the location then restricted to a crest, a peak, of a grade, or to any location, along that grade, apparently near the top, where the view of another motorist may be obstructed? The subsection is very clear: the forbidden stop must be at a specific location, a *crest*, i.e. the *peak* of that grade, an easily identifiable area by all users of the highway, including the

defendant. This is supported by a reading of the section, above, indicating that such prohibition applies only in a well defined area or location.

20. Even though there is no evidence to clearly identify such crest, I accept that the defendant was stopped well east of the apparent crest, at the Morehouse driveway.
21. The Crown has not established the **actus reus** beyond a reasonable doubt. I find the defendant not guilty, and need not deal with the issue of due diligence.

Dated this 27th of May, 2005, at Annapolis Royal.

Hon. Jean-Louis Batiot, J.P.C.

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