

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Lewis*, 2021 NSPC 2

Date: 2021/01/13

Docket: 8411076

8411077

8411078

Registry: Bridgewater

Between:

Her Majesty the Queen

v.

TRENT WILLIAM LEWIS

Judge:	The Honourable Judge Paul Scovil, JPC
Heard:	November 9 and December 9, 2020, in Bridgewater, Nova Scotia
Decision	January 13, 2021
Charge:	s. 320.14 (1)(a) of the Criminal Code s. 320.14 (1)(b) of the Criminal Code s. 129 (a) of the Criminal Code
Counsel:	Bryson McDonald, for the Public Prosecution Alan G. Ferrier, Q.C. for the Defendant

By the Court:

Facts

[1] It was December 3, 2019 when Cst. Bishop of the RCMP was dispatched to a motor vehicle complaint on the 103 Highway just outside of Bridgewater, Nova Scotia.

[2] Coming upon the scene Cst. Bishop saw a car that was straddling the white fog-line of the highway. There was a shattered hole in the back window of the car. Window glass was strewn on the roadway. The front windshield was missing in its entirety. An axe lay on the backseat. This piqued the officer's curiosity.

[3] A quick glance of the driver side window seemed to show no one in the driver's seat. Then an individual, later identified as the accused, leaned forward in the driver's seat. With that person came a strong smell of alcohol from his breath. Mr. Lewis, from the driver's seat, then inquired of the officer as to why he had been pulled over. It should be noted that the vehicle had a manual transmission.

[4] Determining that he had reasonable and probable grounds to arrest Mr. Lewis for impaired driving, Cst. Bishop asked Mr. Lewis to exit the vehicle. It was then Cst. Bishop noted that the driver's pants were pulled down to his knees. I believe I

can take judicial notice that this is an unusual way to wear one's pants when operating a motor vehicle.

[5] Cst. Bishop had Mr. Lewis, for patently obvious reasons, pull up his pants at which time the officer again advised Mr. Lewis he was under arrest for impaired driving. Mr. Lewis then tried to run away. He did not get far before being tackled by the police officer. Given Mr. Lewis's condition the officer could have given him a 100-meter head start and he still would not have evaded capture. Mr. Lewis was found with two apparatuses known as crack pipes on his person.

[6] Once Mr. Lewis was under control, Cst. Bishop found the keys in the vehicle that Mr. Lewis had occupied. The keys were located between the driver's seat and the side door. These keys were later used to start the vehicle which was completely operable other than offering a very windy drive.

[7] The facts regarding how Mr. Lewis came to be in the vehicle are as interesting as the scene itself.

[8] Elizabeth Roy was with Mr. Lewis earlier that day. Mr. Lewis was at her home with her boyfriend. Both men were intoxicated and high on cocaine. The two men wanted Ms. Roy to drive them from Liverpool, Nova Scotia to a friend's home in Hebbville, just outside of Bridgewater. The group left Liverpool at 10:30 pm

arriving at the location where Mr. Lewis was found at about a half an hour to forty-five minutes later.

[9] Apparently, Mr. Lewis began as Ms. Roy put it, “freaking out”. He kicked the front windshield of the vehicle out causing Ms. Roy to pull the car over.

[10] Ms. Roy and her boyfriend ran to a nearby service station and called for a friend to come get them. Her boyfriend put the keys back in the damaged vehicle. Ms. Roy testified that when they were picked up by their friend neither the axe nor the glass strewn about were there. Where the axe came from remains a mystery as deep as the money pit on Oak Island.

[11] Mr. Lewis, for his part, recalled very little of what happened. He testified this event happened at end of a four-day party at the end of which involved cocaine and a quart of rum. He remember being at a house party and after that things fade in and out until he recalled being dealt with by the police.

[12] Mr. Lewis was transported by the police back to the RCMP detachment where he later provided samples of his breath. Two readings of 140 milligrams of alcohol in 100 milliliters of blood and 120 milligrams of alcohol in 100 milliliters of blood were obtained. The readings and how they were obtained are not in issue but Mr.

Lewis argued the facts do not prove beyond a reasonable doubt that he had care and control of the vehicle.

Law of Care or Control

[13] In 2012, the Supreme Court of Canada clarified the law relating to when an individual has care or control of a motor vehicle while driving. *R. v. Boudreault*, [2012] 3 S.C.R. 157, dealt with the prior impaired driving regime under 253(1)(a) and (b) nothing in the wording of the **Criminal Code** concerning the term “care and control” has changed under 320.14.

[14] Justice Fish for the majority, held that “care or control” required proof of (1) on intentional course of conduct associated with a motor vehicle, (2) by a person whose ability to drive is impaired or whose blood alcohol level exceeds the legal limit and (3) in circumstances that create a realistic risk, as opposed to a remote possibility of danger to persons or property.

[15] The Court at paragraphs 34 to 37 states:

[34] The risk of danger must be *realistic* and not just *theoretically possible*: *Smits*, at para. 60. But nor need the risk be *probable*, or even *serious* or *substantial*.

[35] To require that the risk be “realistic” is to establish a low threshold consistent with Parliament’s intention to prevent a danger to public safety. To require only that the risk be “theoretically possible” is to adopt too low a threshold since it would criminalize unnecessarily a broad range of benign and inconsequential conduct.

[36] It is settled law that an intention to set the vehicle in motion is *not* an essential element of the offence: *Ford v. The Queen*, [1982] 1 S.C.R. 231. This may appear anomalous in view of the presumption set out at s. 258(1)(a) of the *Criminal Code*, which provides that an accused who was found in the driver's seat of a motor vehicle

shall be deemed to have had the care or control of the vehicle . . . unless the accused establishes that the accused did not occupy that seat or position for the purpose of setting the vehicle . . . in motion

[37] Accordingly, an accused found in the driver's seat will be presumed, as a matter of law, to have care or control of the vehicle, unless the accused satisfies the court that he or she had no intention to drive — an intention that, pursuant to *Ford*, is not an essential element of the offence!

[16] A realistic risk of danger may arise when an individual who didn't intend to drive, may later change their mind and do so while still impaired. The impaired person may while behind the wheel unintentionally set the vehicle in motion, or through negligence or bad judgement, set the vehicle in motion. (see also *R. v. Bisson*, [2016] N.S.J. No. 269 (N.S.P.C.) and *R. v. MacDonald* [2013] N.S.J. No. 144 (N.S.P.C.)).

[17] Turning to Mr. Lewis. Was he a realistic danger while behind the wheel of the vehicle on the night in question? It is clear he was in the driver's seat. It is also clear he was very impaired with a blood alcohol level above the legal limit.

[18] The realistic risks of danger were clear and present that evening with Mr. Lewis behind the wheel. The keys to the vehicle were in an easy position to access between the seat and the door. The vehicle was a manual whose stick shift could realistically be moved to allow the vehicle to be put in motion. Mr. Lewis's

comment to the police of, “why did you pull me over”, shows his thoughts were that he had driven to where the car rested, gave a realistic concern that upon being aroused, Mr. Lewis would start the vehicle and try to continue on his way. Driving or moving that vehicle with the front window absent would present a danger whether the driver was impaired or not. It also was Mr. Lewis’s vehicle which would, with the familiarity that it being your own car brings, heightens the risk of poor judgement in that setting.

[19] Having reviewed all the above, I find that the accused is guilty under s. 320.14(1)(b) of the **Criminal Code**. Mr. Lewis indicated that he was not contesting the 129 (a) charge related to fleeing the police, so he is convicted of that as well. The 320.14(1)(a) charge is stayed.

Paul B. Scovil, JPC