

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,)	<u>Nick J.T. Reeves</u>
)	for the Crown
- and -)	
)	
SUKHBIR SINGH,)	<u>Katherine E. Smith</u>
)	for the accused
accused.)	
)	Judgment Delivered:
)	May 14, 2025

PERLMUTTER A.C.J.

INTRODUCTION

[1] The accused Sukhbir Singh is charged with operating a conveyance in a manner that was dangerous to the public and thereby causing death contrary to s. 320.13(3) of the ***Criminal Code***. This charge arises out of a motor vehicle collision that occurred on February 28, 2020, at the intersection of Highways 2 and 13, in the Rural Municipality of Grey, Manitoba. Mr. Singh was the driver of a semi-trailer truck that failed to stop at a stop sign at the intersection. After Mr. Singh entered the intersection, Andrew Labossiere, who was the driver of a pick-up truck, entered the intersection and struck Mr. Singh's semi-trailer truck, resulting in Mr. Labossiere's death.

FACTUAL BACKGROUND

Evidence

[2] There were no eyewitnesses to this collision. At trial, an agreed statement of facts was filed. As well, the Crown called RCMP Corporal Jeffrey McIntosh as an expert in analyzing crash data retrieved from a vehicle using a crash data retrieval tool and in the area of traffic accident reconstruction and RCMP Sergeant Jeffrey Burnett as an expert in the field of analyzing crash data retrieved from semi-trucks and large commercial vehicles using a crash data retrieval tool. In addition, by consent, the Crown filed as an exhibit a report from RCMP Sergeant Chris McCuen who attended the collision scene at 8:10 a.m. on the date of the collision and took photographs, took measurements, and made drawings, but did not testify at trial. Corporal McIntosh, who did not attend the collision scene on the date of the collision, testified the goal of his own report was to fact check Sergeant McCuen's report to see what conclusion he could come to with the evidence reported. The defence called Babak Malek as an expert in the area of accident reconstruction, including human factors, biomechanics, and analyzing crash data. The expertise of all three experts was not challenged. The foregoing evidence revealed the following.

The Intersection

[3] At the time of the collision at the intersection of Highways 2 and 13, in the early morning hours of February 28, 2020, Mr. Singh was driving a 2018 Freightliner Cascadia semi-trailer truck southbound on Highway 13. Mr. Labossiere was driving a 2018 GMC Sierra truck east on Highway 2. Highway 13 is a two-lane undivided highway that travels north/south. Highway 2 is a two-lane undivided highway that travels east/west.

A turning lane expands Highway 2 to three lanes at the intersection of Highway 2 and Highway 13 to allow for traffic to turn left onto Highway 13.

[4] Southbound traffic on Highway 13 (in Mr. Singh's lane of travel) was required to stop at the intersection as indicated by a stop sign on the north side of the intersection. This stop sign had a red flashing light, also referred to as a beacon, on top of it that was flashing at the time. The pattern of the flashing, the wattage, and how far it illuminated are all unknown. The white stop line across the southbound lane, adjacent to this posted stop sign, had almost completely deteriorated. Traffic on Highway 2 (in Mr. Labossiere's lane of travel) was not required to stop at the intersection.

[5] The speed limit on Highway 13 leading up to the intersection was 100 km/h when travelling south. The speed limit on eastbound Highway 2 was 80 km/h at the intersection.

[6] 250 metres north of the intersection on Highway 13 was a warning sign indicating that there is a stop sign for southbound traffic at the intersection. This warning sign was of standard reflective material that highway signs are mandated to be, but was not illuminated. There were two "rumble strips" on the highway near this warning sign. Corporal McIntosh testified that rumble strips are multiple individual grooves placed a specified distance apart and are grouped in twos to make a repetitive noise to grab a driver's attention and make drivers aware. Streetlamps were also present at the intersection. There were some small trees, a camper, and a large spruce tree that could have partially obstructed the view of a driver (like Mr. Singh) southbound on Highway 13 at the intersection looking west to oncoming traffic.

[7] From the photographs taken by Sergeant McCuen, Corporal McIntosh testified Highway 13 heading south towards the intersection was a well-maintained winter road. There was no ice on the road. There was some snow on the shoulder. Corporal McIntosh did not think that the conditions of the road affected the cause of the collision. Corporal McIntosh testified that it was his understanding that there was no other traffic on the road that was within eyesight of this collision at the time it occurred.

The Collision

[8] It is common ground that at the time of the collision, at around 6:00 a.m., it was dark. Mr. Singh was driving south on Highway 13, towards the intersection, and Mr. Labossiere was driving east on Highway 2, approaching the intersection. After Mr. Singh entered the intersection, Mr. Labossiere entered the intersection and struck Mr. Singh's semi-trailer truck on the passenger side. Mr. Labossiere's truck was pushed into the southwest ditch. The semi-trailer truck came to rest in the southeast ditch. Mr. Labossiere died as a result.

[9] Mr. Malek testified that the impact of the two vehicles happened roughly 1.5 seconds **before** a "hard braking event" (Mr. Singh's foot remaining on the brake and the speed of the semi-trailer truck dropping from 83 km/hr to 58 km/hr in 1 second). That is, Mr. Singh actually applied the brakes **after** the impact of the two vehicles, but Mr. Malek testified that roughly 1 second or 120 feet before impact, Mr. Singh reacted (taking his foot off the gas and transitioning it to the brake). This means that before impact, Mr. Singh was perceiving a potential hazard or condition ahead, although Mr. Malek could not tell what Mr. Singh was perceiving and reacting to

- whether another vehicle, the stop sign, or the intersection. At the time, Mr. Singh was travelling 85.6 km/hr. Mr. Malek testified that Mr. Singh was unable to avoid impact with the pick-up truck mainly because he was still in the process of reaction and because he needed roughly 222 feet of hard braking to come to a stop, while, as noted, he was only 120 feet away from impact.

Mr. Singh

[10] Mr. Singh did not testify but the agreed facts show that, at the time of the collision, Mr. Singh was working as a delivery driver. He had a valid licence to operate the semi-trailer truck. He was the sole occupant and was sober. Mr. Singh's driver's daily log indicated his shift started at midnight on February 28, 2020. From midnight until 1:30 a.m., he was marked as driving. From 1:30 a.m. until 2:00 a.m., he was marked on duty but was not driving. From 2:00 a.m. until 3:00 a.m., he was marked as driving. From 3:00 a.m. until 3:45 a.m., he was marked on duty but not driving. His logs were up to date and complied with industry standards. Mr. Singh was not driving over hours or without adequate rest. Mr. Singh's cell phone was analyzed and it was determined Mr. Singh was on a phone call for the 18 minutes leading up to the collision – the analysis was unable to say whether he was using a hands-free device.

THE LAW

[11] Subsection 320.13(3) of the ***Criminal Code*** provides:

Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes the death of another person.

[12] It is undisputed that the applicable legal principles governing this offence are those outlined in **R. v. Roy**, 2012 SCC 26, which reflects the principles outlined in **R. v. Beatty**, 2008 SCC 5, dealing with the offence of dangerous driving in the context of the former ss. 249(1) and (4) of the **Criminal Code**. In **Roy**, the Supreme Court of Canada discussed the *actus reus* and the *mens rea* applicable to this offence as follows:

[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. As Charron J. put it, at para. 46 of *Beatty*, "The court must not leap to its conclusion about the manner of driving based on the consequence. There must be a meaningful inquiry into the manner of driving" (emphasis added in original). A manner of driving can rightly be qualified as dangerous when it endangers the public. It is the risk of damage or injury created by the manner of driving that is relevant, not the consequences of a subsequent accident. In conducting this inquiry into the manner of driving, it must be borne in mind that driving is an inherently dangerous activity, but one that is both legal and of social value (*Beatty*, at paras. 31 and 34). Accidents caused by these inherent risks materializing should generally not result in criminal convictions.

...

[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 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.

(see also, **R. v. Chung**, 2020 SCC 8, para. 24)

[13] In **Roy**, the Supreme Court of Canada underscored that criminal culpability does not arise by reason of negligent driving alone. Cromwell J. wrote about the importance of the fault requirement so as to avoid "making criminals out of the merely careless", as follows:

[1] ...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.

[2] Defining and applying this fault element is important, but also challenging, given the inherently dangerous nature of driving. Even simple carelessness may result in tragic consequences which may tempt judges and juries to unduly extend the reach of the criminal law to those responsible. Yet, as the Court put it in *R. v. Beatty*, 2008 SCC 5, [2008] 1 S.C.R. 49, at para. 34, "**If every departure from the civil norm is to be criminalized, regardless of the degree, we risk casting the net too widely and branding as criminals persons who are in reality not morally blameworthy". Giving careful attention to the fault element of the offence is essential if we are to avoid making criminals out of the merely careless.**

[emphasis added]

[14] In *Beatty*, McLachlin C.J. noted "[a] momentary lapse of attention *without more* cannot establish the *actus reus* and *mens rea* of the offence of dangerous driving" (para. 72).

THE PARTIES' POSITIONS

[15] The defence concedes that the *actus reus* of an offence under subsection 320.13(3) of the ***Criminal Code*** is established.

[16] The Crown relies upon *R. v. Beedawia*, 2023 ONSC 6257, (paras. 97 - 99), for its submission that commercial drivers of semi-trailer trucks like Mr. Singh owe an enhanced duty such that the question of marked departure from the standard of care should be compared to a reasonable commercial driver. It is the Crown's position that Mr. Singh's level of inattention was such that it was a marked departure from the standard of care expected of a commercial driver in a semi-trailer truck in the same circumstances as Mr. Singh and thus Mr. Singh is criminally at fault.

[17] It is Mr. Singh's position that the *mens rea* of the offence has not been proven beyond a reasonable doubt. Mr. Singh asserts that the Crown's case is premised on there being properly functioning stimuli present sufficient to allow him to perceive and react to the upcoming hazard of the intersection but that the presence of these stimuli cannot be proven based on the evidence, in large part, due to an incomplete and flawed scene investigation by police.

ANALYSIS

[18] It is undisputed that Mr. Singh did not stop at the stop sign and that by the time he began the process of applying the brakes of the semi-trailer truck, it was too late for him to avoid impact with Mr. Labossiere's pick-up truck.

[19] Corporal McIntosh testified that the primary causal factor for the collision was driver inattention and that this collision occurred because Mr. Singh failed to perceive and react to the stop sign controlling his lane of travel.

[20] Mr. Malek disagreed that driver inattention was the primary cause of the accident. Mr. Malek testified the number one causal factor is that driving in a rural area is very monotonous and a driver needs sufficient stimuli to perceive and react or be aware of an upcoming hazard. Mr. Malek suggested various investigations that ought to have been undertaken by police to determine whether sufficient stimuli were present. For example, if investigating this collision at the time, Mr. Malek would have conducted a visibility study to determine the line of sight of a driver, he would have measured the depth and wear of the rumble strips, he would have taken a video of the beacon light on the top of the stop sign to determine if it was working, and he would

have checked the streetlights to determine if there was illumination of the area. He also testified about several "flaws" at the intersection. These included the absence of a white stop line across the southbound lane adjacent to the posted stop sign, which would have been a visual cue, and the absence of a speed reduction sign like the speed reduction sign for northbound traffic on Highway 13.

[21] As discussed, 250 meters before the intersection was a sign warning drivers that there is a stop sign at the intersection. This warning sign was of standard reflective material that highway signs are mandated to be. As such, I infer that, as it was designed to do, with no evidence of an obstruction, this sign would have been a visual warning of the upcoming stop sign to Mr. Singh.

[22] There were two rumble strips on the highway near the warning sign. While Corporal McIntosh acknowledged in his testimony that it was possible that during the snowploughing of the highway, salt, sand, or snow could be forced into the rumble strips which can make them shallower than they are originally cut into the road surface, there is no evidence that the rumble strips over which Mr. Singh drove were filled with salt, sand, or snow. The photographic evidence of these rumble strips, taken in the hours after the collision, show them on a road that is bare, clear, and not snow packed and the rumble strips are clearly visible. According to Corporal McIntosh's evidence, the rumble strips should have caused noise and vibration that would grab Mr. Singh's attention.

[23] It is apparent from the photographic evidence that the beacon on top of the stop sign was flashing when Sergeant McCuen took photos of the intersection after his

arrival on scene. Mr. Malek testified that it cannot be determined at what point in the dark the stop sign would have become visible to a southbound driver like Mr. Singh because it would require him to actually, very close to the time of the incident, undertake a visibility study with a similar vehicle of the same height with a driver of similar characteristics as Mr. Singh driving through the area. However, with no evidence of a visual obstruction between Mr. Singh and the flashing red light on top of the stop sign, approaching the flashing red light on a flat stretch of highway, this too would have signaled to Mr. Singh that an intersection controlled by a stop sign was ahead.

[24] There were streetlamps present at the intersection which Crown counsel described in his submissions as part of “an oasis of light on the blackened prairies” and would have provided warning of the intersection ahead. There was some argument about whether the streetlamps were working. Corporal McIntosh testified that he could not confirm if they were on at the time of the collision. There is nothing in the evidence that suggests these streetlamps would not have been operating as intended as municipal infrastructure. Nevertheless, I do not give a lot of weight to the presence of the streetlamps.

[25] I appreciate Mr. Malek’s evidence to the effect that, if he was conducting the investigation, he would have conducted additional investigation to confirm the effectiveness of the flashing red light on top of the stop sign, the rumble strips, and the streetlamps in warning of the intersection. However, his opinion about what he would have done does not detract from the inferences that I can draw from the available

evidence. As well, while Mr. Malek testified as to additional warnings that would have helped alert a driver to the stop sign, the question before me is whether there was **sufficient** warning to alert the reasonable person.

[26] It is unnecessary for me to decide whether commercial drivers of semi-trailer trucks owe an enhanced duty (as submitted by Crown counsel). Regardless, in my view, a reasonable person driving a semi-trailer truck, which takes longer to stop than a sedan, at 85 km/hr, on a highway in dark conditions in the winter would have been highly attentive to their surroundings and would have observed the sign warning of the stop sign and other warnings, namely the rumble strips and flashing red light on top of the stop sign. This was more than a **momentary** lapse of attention. It was a failure to observe multiple warnings over several hundred feet of highway. Mr. Singh's failure to perceive and react to all of the warnings was a marked departure from the standard of care expected of a reasonable person in Mr. Singh's circumstances.

CONCLUSION

[27] In conclusion, for the foregoing reasons, I am satisfied beyond a reasonable doubt that Mr. Singh's 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. Accordingly, I find Mr. Singh guilty.