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(Winnipeg Centre)
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COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

HIS MAJESTY THE KING,	)	Nick J.T. Reeves
	)	for the Crown
- and -	)	
	)	R. Ian Histed
KEENO SHAWN PAUL WRIGHT,	)	for the accused
	)	
accused.	)	JUDGMENT DELIVERED:
	)	April 20, 2026

McCARTHY J.

INTRODUCTION

[1] Keeno Shawn Paul Wright stands charged with two counts of dangerous driving causing bodily harm. The charges result from a collision that occurred on March 7, 2022, at approximately 5:03 p.m. just north of the intersection of Archibald Street and Mission Avenue in Winnipeg, Manitoba.

[2] Just prior to the collision the accused, Mr. Wright, had been driving in the southbound median lane on Archibald. His vehicle struck another vehicle in the same lane and almost simultaneously crossed the centre median and collided with a vehicle travelling toward him in the northbound median lane on Archibald.

[3] The driver of the first vehicle struck by Mr. Wright was not injured. Mr. Wright sustained a broken finger and both the passenger and the driver of the vehicle in the northbound lane were very seriously injured.

[4] Mr. Wright does not dispute that the injuries sustained by the passenger of the northbound car, Kendra Kelly, constituted bodily harm caused by the collision. He did, however, argue that the very significant injuries sustained by Timothy Kelly were caused largely by a pre-existing condition, his failure to wear a seatbelt, and improperly administered first aid and CPR.

[5] The issues to be decided by the court in this case are whether Mr. Wright's driving leading up to the collision constituted dangerous driving within the meaning of s. 320.13(2) of the ***Criminal Code***, and if so, whether that dangerous driving caused bodily harm to Mr. Kelly and Ms. Kelly, as charged.

THE LAW

[6] The test to be applied in determining whether someone is guilty of the criminal offence of dangerous driving was set out by the Supreme Court of Canada in ***R. v. Beatty***, 2008 SCC 5, and clarified further by the Supreme Court in ***R. v. Roy***, 2012 SCC 26.

[7] Both cases identify that the test for being held liable for penal or criminal negligence is different and more stringent than the test for being held liable for civil negligence (***Beatty***, at para 20, and ***Roy***, at para 28) and more stringent than that required for a conviction for driving offences under *The Highway Traffic Act*, C.C.S.M. c. H60 (the "***HTA***") (***Roy***, at para 31).

[8] The law is clear that, in order to be found guilty of the offence of dangerous driving, the court must be satisfied beyond a reasonable doubt that the accused has committed the act for which he is charged and that he had the required mental state to be convicted of a criminal offence.

[9] In the case of dangerous driving the criminal act, or *actus reus*, which must be proven beyond a reasonable doubt is that the driving of the accused was objectively dangerous in the circumstances. In making that assessment, the court must look to the manner of driving and not to the consequences of the driving (see ***Beatty***, at para 46, and ***R. v. Blostein***, 2013 MBQB 159, at para 102).

[10] The required mental state, or *mens rea*, for the criminal offence of dangerous driving can be proven either through evidence that the accused had a subjective, or actual intention to drive dangerously or had wanton or reckless disregard for the life and safety of others (***Beatty***, at para 47; ***Roy***, at para 38), or on an objective basis by assessing the dangerous conduct of the accused against the standard of a reasonably prudent driver. Where there is insufficient evidence to prove subjective intent the dangerous driving if found to be a *marked departure* from the norm, may be sufficient to prove the requisite mental state for a criminal conviction (***Beatty***, at para 48; ***Roy***, at para 28). Having said that, drawing an inference of fault from the manner of driving requires consideration of all of the relevant evidence (***Roy***, at para 40) and the court must find that the dangerous or careless driving departs markedly from the standard of care of a reasonable person in the circumstances (***Roy***, at paras 30, 37 and 42).

[11] In making the determination as to whether the accused had the requisite *mens rea* for a conviction, the Supreme Court of Canada has cautioned that criminal fault must be based on conduct that merits punishment (***Beatty***, at para 35, and ***Roy***, at para 28), and that the test for criminal conviction is not driving that falls below the standard of a reasonably prudent driver, but rather driving that constitutes a *marked departure* from that of a reasonably prudent driver. The court in both cases cautioned against casting too wide a net and characterizing all driving that is dangerous or careless as criminal (***Beatty***, at para 34, and ***Roy***, at paras 2, 30, and 37).

[12] The third element of the offences before the court requires that the Crown must prove beyond a reasonable doubt that the dangerous manner of the accused's driving was a contributing cause of the injury (see ***R v Maybin***, 2012 SCC 24, ***Smithers v. R.***, 1977 CanLII 7 (SCC), and ***R v. Malkowski***, 2015 ONCA 887, at para 14), and that the injury constitutes bodily harm. The presence of an intervening act which was not a natural consequence of the conduct of the accused, or reasonably foreseeable, may prevent the Crown from establishing causation (***Maybin***, at paras 24 and 30).

[13] Finally, because the accused testified in this case the analysis outlined by the Supreme Court of Canada in ***R. v. W.(D.)***, 1991 CanLII 93 (SCC), [1991] 1 S.C.R. 742, must be applied where appropriate.

POSITIONS OF THE CROWN AND THE ACCUSED

[14] In this case the Crown alleges that the conduct of the accused which was dangerous, and which forms the *actus reus* of the offence, was driving while inexperienced and not licenced to do so, travelling at an unsafe rate of speed on a busy

roadway during rush hour, and swerving into the oncoming lane of traffic. The Crown argued that this conduct by the accused was objectively dangerous and resulted in Mr. Wright's vehicle striking two other vehicles and seriously injuring two people.

[15] The specific evidence at trial in support of the Crown's position was that traffic analysis conducted shortly after the collision determined that the accused was driving at a speed of approximately 81 km/h in a designated 60 km/h speed zone immediately preceding the collision. The traffic analysis concluded that at the point at which the accused first applied his brakes, he was travelling at approximately 81 km/h and that he steered to the left approximately 14 meters before hitting the vehicle that was stopped in the lane in front of him. The Crown argued that the accused's excessive speed and sudden steering caused the vehicle to skid. His car then veered into the oncoming northbound lane, where it collided with another vehicle while travelling 69 km/hr. The results, they argued, were foreseeable and catastrophic and resulted from the actions of the accused.

[16] The Crown also lead evidence, which was not challenged, that a speed of 50 km/h was recommended on the curve immediately preceding the collision. While none of the exhibits filed at trial show signage recommending a reduction in speed, there were cautionary yellow arrows on the right-hand side of the southbound lanes on the curved portion of the road on which the accused was travelling. The accused did not give evidence and was not asked about whether he saw or was aware of posted warnings to reduce his speed around the curves. There was also no evidence as to whether this was a route that Mr. Wright was familiar with.

[17] While counsel for the accused challenged much of the evidence at trial, particularly with respect to the method of calculating the accused's rate of speed prior to applying his brakes, at the end of the day the accused argued that even if the evidence is accepted that he was travelling 81 or 82 km/h in a 60 km/h zone, that evidence was not sufficient to establish that his driving was a *marked departure* from the norm, that the collision would not have occurred if he had been driving the speed limit, or that the circumstances as a whole rise to the level of the criminal offence of dangerous driving.

[18] The accused conceded in argument that his driving may have constituted civil negligence and that he was committing other offences such as speeding and driving without a valid licence at the time of the collision. He argued, however, that there was no evidence that he had any intention of driving in a manner that was dangerous or reckless. He argued that aside from driving in excess of the posted speed limit there was no other aspect of his driving which should attract an inference of criminal fault.

[19] The accused argued that speeding alone does not constitute dangerous driving and that driving without a valid licence does not form a basis for a criminal conviction.

ANALYSIS

[20] With respect to the court's analysis there is no question that this collision was tragic and had life altering consequences for two of the people involved. However, the role of the court in arriving at a just verdict is to conduct a dispassionate and impartial review of the facts and the law to determine the guilt or innocence of the accused. Impartiality of the judge requires that his or her decision not be influenced in any way by prejudice or sympathy. And, specifically with respect to the offense of dangerous driving,

the applicable legal test requires that the *consequences* of the impugned driving are not to be considered by the court at the verdict stage.

ACTUS REUS

[21] On the issue of whether or not Mr. Wright's driving leading up to the collision was objectively dangerous, I find that it was. Whether as a result of excess speed, being distracted, or some combination of both, it is clear that immediately preceding the collision, Mr. Wright was driving in a manner that prevented him from being able to stop as required for vehicles stopped to turn left at the intersection ahead of him. His excessive speed, or perhaps momentary inattention, resulted in a last minute evasive action which was insufficient to stop his vehicle before striking the vehicle in his lane from behind and skidding into the lane of oncoming traffic. In my view his speed was objectively dangerous in the circumstances, particularly given that it was rush hour and the evidence suggests that he did not slow down for the curve.

[22] With respect to the speed Mr. Wright was travelling, I have some reservations with respect to the methodology and accuracy of the estimate of the speed calculated by using the video surveillance, given that the officer conducting the calculation had not previously used that method and it was not clear to me that all factors such as his angle of view and which lane the vehicle was travelling in, had been accounted for. However, the result was consistent with the speed calculated using accepted collision reconstruction techniques and I am therefore satisfied that Mr. Wright was driving up to 21 km/h over the posted speed limit and had failed to slow down rounding a curve. The risk of his speeding was exacerbated by the fact that it was rush hour and the view of the

intersection was somewhat obscured by the curve and oncoming traffic. The possibility that driving over the speed limit could pose a danger is an objectively reasonable conclusion.

[23] With respect to the Crown's suggestion that Mr. Wright's steering to the left also constituted a dangerous manner of driving, I find that argument to be less than persuasive. Based upon the evidence of Constable Staples immediately prior to, or at the time of braking, Mr. Wright also steered to the left. The evidence is not that Mr. Wright drove his vehicle into the oncoming lane, but rather that by turning his wheel even slightly to the left and applying the brakes, he entered a skid to the left. As a result, Mr. Wright's vehicle struck the back driver's side of the vehicle stopped in his lane in front of him almost simultaneously with striking the oncoming vehicle. Constable Staples agreed that the time from when Mr. Wright applied the brakes and entered a skid to the point of impact would have been a fraction of a second, and that even at 50 km/h the time from braking to impact would have been just over a second. He also testified that upon Mr. Wright's vehicle entering a skid he likely would have been unable to control the vehicle.

[24] In my view, the actions taken by Mr. Wright immediately preceding the impact were likely taken instinctively and in an effort to avoid colliding with the vehicle stopped in his lane. Those actions are better characterized as evasive actions, rather than a dangerous manner of driving. As stated by the Supreme Court of Canada in ***Beatty*** the automatic and reflexive nature of driving highlights the need for a marked departure requirement in a criminal setting (at para. 33). These actions all happened extremely

quickly and, in my view, do not comprise a marked departure from the actions of a prudent driver in the same circumstances.

[25] I, therefore, find that it was Mr. Wright's rate of speed that rendered his manner of driving objectively unsafe in the circumstances.

MENS REA

[26] The next issue to consider is whether Mr. Wright also had the requisite mental state, or intention, to be found guilty of the criminal offence of dangerous driving.

[27] With respect to Mr. Wright's subjective state of mind, in my view, there was no evidence that suggested that leading up to the collision Mr. Wright was intentionally driving in a dangerous manner or acting with reckless or wanton disregard for the safety of others.

[28] I accept Mr. Wright's evidence that on the night of the collision he was driving to the hospital after work to visit his less than three-month-old son who had just had surgery. His partner was already at the hospital, so he drove her car to join her there. Based upon his evidence it is clear that Mr. Wright made the decision to drive knowing that he did not have a valid Manitoba drivers' licence. Based upon his evidence there is also the possibility that he may have been distracted, and/or rushing to see his child in the hospital. Apart from these findings, there was no other evidence of Mr. Wright's subjective mental state that would support a conviction.

[29] However, even where there is no evidence of a subjective intention to drive in a manner that poses a danger, the court must also consider whether the circumstances and manner of driving as a whole, when compared to the standards expected of a

reasonably prudent driver, were so dangerous as to constitute a *marked departure* from the norm.

[30] In this case the officers conducting the analysis of the collision concluded using two different methodologies, that Mr. Wright was travelling 81 km/h at the time that he first slammed on his brakes and entered into a skid. This was ascertained by using video surveillance of Mr. Wright driving just prior to the collision, and by reconstruction of the collision through evidence found at the scene. For the most part, the evidence and methodologies of the officers conducting the analysis was not shaken at trial. As I stated earlier, despite the fact that the speed analysis using the video had not been done previously, the consistency between the two estimates suggests a degree of reliability.

[31] With respect to the cross-examination with respect to the coefficients of friction used, and the fact that the curve was not factored into the calculations, I find those issues to have no effect on the reliability of the speed estimates. The coefficient used was determined by a qualified officer using appropriate equipment and was consistent with standardized tables produced by a recognized source outside of the investigating police service. The issue raised by the defence with respect to the curve was irrelevant in my view as there was no suggestion that the accused's vehicle was affected by centrifugal force or moved to the outside of the curve. I, therefore, accept the evidence that Mr. Wright was driving approximately 21 km/h over the posted speed limit when he came around the curves and realized that there was a vehicle stopped in the lane ahead of him.

[32] I also find that Mr. Wright recognized that vehicles were stopped prior to the intersection and took evasive action by turning his wheel and braking in an effort to avoid hitting them.

[33] Mr. Wright's evidence as to how the collision occurred was that he had driven down Regent and turned left onto Archibald Street southbound. Then, as he rounded the curve and was approaching the intersection where the collision occurred, he saw cars and decided to slow down and press the brakes. He testified that as soon as he "hit the brakes" he started sliding or fishtailing and that everything happened very quickly. He struck the car in front of him and then he "woke up" and that he does not remember anything else. He was unable to say what speed he was driving prior to or at the time of the collision. There was also no evidence that he had any kind of medical condition or suffered any medical event that contributed to the collision.

[34] With respect to Mr. Wright's evidence as a whole his recollection was very limited, and at times I found him to be defensive and even evasive during cross-examination. Overall, I found his testimony as to his manner of driving leading up to the collision to be generally consistent with the physical evidence and the traffic analysis reports, however where his evidence conflicted with the traffic analysis reports, for instance as to whether he steered prior to braking, I prefer the evidence presented by the Crown as generally more reliable. Given his inability to remember much, or offer any evidence as to his speed that contradicted the evidence of the Crown, I find that his evidence did not raise a reasonable doubt such that he must be acquitted.

[35] I must therefore turn to the other evidence to determine whether the Crown has proven the offence beyond a reasonable doubt. As I have indicated, there was testimony and physical evidence from the scene that satisfies me as to the speed that Mr. Wright was driving, and that he took evasive action in an effort to avoid the collision, albeit too late to do so successfully.

[36] With respect to the conditions at the time of the collision, I accept the evidence that it was daylight and the pavement on the southbound lane was dry and in reasonably good condition. It was not icy, snowing, or raining at the time.

[37] I also note as relevant, the evidence that the traffic light at the intersection was green as Mr. Wright was approaching and that the vehicle he first struck was stopped three vehicles back from the stop line at the intersection, in Mr. Wright's lane of travel. The driver of that vehicle testified that she was intending to proceed straight through the intersection, but was waiting for one of the vehicles ahead of her to turn left. The intersection has no left turn lane. The stopped vehicles were sitting in Mr. Wright's lane of travel at the end of a curve in the road that Mr. Wright had just come around before the collision. It is clear from a photo of the location of the collision that northbound traffic on that curve could, and likely would, obstruct the view by southbound traffic of signal lights, brake lights, or traffic stopped at or before the Mission Avenue intersection. Therefore, there are some inherent safety issues with the location of the collision which are not related to Mr. Wright's driving.

[38] The video surveillance evidence at trial was obtained from a business located approximately 120 meters north of the Mission Avenue intersection. That video shows a

steady flow of traffic in both the northbound and southbound directions in the minutes leading up to the collision, including the vehicle driven by the accused as it approached the curve and the intersection with Mission Avenue. That video was used to calculate the estimated rate of speed the accused was driving approximately two minutes prior to the collision. It is unfortunate that no comparable calculations were done with respect to the speed of any of the other vehicles passing at that time. Such evidence would have provided additional evidence of the general speed of the flow of traffic. My visual review of the video suggests that the speed that Mr. Wright was travelling was somewhat faster than some of the southbound vehicles, but not markedly so. There were also some vehicles which appeared to be travelling at a comparable rate of speed as they passed the surveillance camera. While this evidence supports the finding that Mr. Wright was speeding it does not in my view establish that he was travelling at a speed which was notably in excess of that travelled by other vehicles at that time.

[39] There was evidence from one witness, Mr. Fargher, that shortly before the collision Mr. Wright's vehicle drove up behind him in the curb lane and then flew past him in the median lane. Mr. Fargher testified that he was travelling at 50 km/h at the time. While this evidence may be accurate given my finding that Mr. Wright was likely driving approximately 80 km/h prior to the accident, I am treating the evidence of this witness with caution. While he was clearly very well-intentioned and played an important role in comforting Ms. Kelly after the collision, some of his recollections, while very strongly held, were at odds with other evidence which I accept as true. For instance, he adamantly denied that Mr. Wright's brake lights ever came on prior to the collision, which is at odds

with the presence of skid marks and the conclusions of Constable Staples. Further, he was certain that there was only one car stopped in the southbound lane at the intersection, however the driver of the vehicle first struck by Mr. Wright testified that there were two other vehicles stopped ahead of her and the collision occurred more than one car length before the intersection. As a result, I find that Mr. Fargher's evidence as to his own, or the accused's manner of driving is not reliable, and I have attributed it very little weight with respect to the accused's manner of driving.

[40] In addition to speed, the Crown argued that the fact that Mr. Wright was driving without a licence at the time of the collision is a factor that militates in favour of a finding that he is guilty of dangerous driving. The Crown argued that driving without a valid Manitoba drivers' licence is evidence that Mr. Wright lacked the driving authority and experience of a reasonably prudent driver. With respect to this issue, driving without a valid licence is certainly an ***HTA*** offence, however committing such an offence does not necessarily support a conviction for dangerous driving. The test for dangerous driving under the ***Criminal Code*** is whether the manner of driving is objectively dangerous. Whether or not the driver has a valid licence does not go to the manner of driving, unless there is evidence that the licence was suspended for a reason that would impact the individual's ability to drive or ability to appreciate or avoid the risk of his conduct. The evidence at trial was less than clear as to what the status of Mr. Wright's licence was. Mr. Wright himself testified that he had failed a learner's test as a teenager and subsequently never obtained a Manitoba licence. However, there was no evidence on direct or cross-examination as to whether Mr. Wright has ever held a licence in any other

jurisdiction, or with respect to his actual driving experience. While I accept that Mr. Wright was not the most forthcoming witness, it is the Crown who bears the onus of establishing the factual basis for proving the offence and the Crown could have pursued that line of questioning further. The court cannot properly assume that the absence of a drivers' licence means that an individual has no driving experience or is incapable of driving safely. In the circumstances I find that there is insufficient evidence to find that Mr. Wright's status as an unlicenced driver at the time of the collision affected his ability to drive in a manner that did not pose a danger.

[41] While I agree with the submission of the Crown that speeding alone can constitute dangerous driving, the facts of this case are quite different than cases such as: ***R. v. Chung***, 2020 SCC 8 (CanLII), [2020] 1 SCR 405, where the driver was travelling at three times the speed limit through a major intersection in Vancouver; ***R. v Parsons***, 2021 BCSC 1965, where the driver was driving more than 24 km/h over the speed limit while operating a tractor trailer and pulling two trailers loaded with crushed vehicles; or ***R v Xiong***, 2017 MBQB 210, where the accused was driving 202 km/h in a 100 km/h zone, made an unsafe lane change, swerved around two other vehicles, and drove through an intersection at 185 km/h in an 80 km/h zone. The unsafe manner of driving in those cases involved significantly higher rates of speed or dangerous driving conduct in addition to high rates of speed.

[42] In this case, while Mr. Wright was speeding and may have been momentarily distracted or rushing, I find that he was not driving in a manner that was a marked departure from that expected of a reasonably prudent driver. His speed was clearly too

fast for conditions and may well have constituted negligent, careless, or imprudent driving, however, I find that it was not a marked departure from the norm sufficient to support a finding that he is guilty of dangerous driving pursuant to section 320.13(2) of the ***Criminal Code***.

CAUSATION

[43] Given my finding with respect to *mens rea* it is not necessary for the court to rule on the issue of causation. However, having considered the evidence at trial and the case law provided and argued by counsel, I would have no difficulty finding that the collision caused by Mr. Wright was a contributing cause outside of the *de minimis* range of injuries to both Kendra and Timothy Kelly.

[44] With respect to the accused's arguments, I am not satisfied that the first aid and CPR administered at the accident were independent intervening acts which served to break the chain of causation. In my view the need to be extricated from the vehicle and have emergency services provided on an emergency basis and in a less-than-ideal manner is a reasonably foreseeable consequence of a serious motor vehicle collision.

[45] With respect to the argument that the injuries to Mr. Kelly resulted from a pre-existing condition, I am satisfied that the thin skull principal applies in these circumstances (see ***Smithers***). Additionally, as criminal law does not recognize the concept of contributory negligence (***R. v. Nette***, 2001 SCC 78 (CanLII), [2001] 3 SCR 488, at para 49), the fact that Mr. Kelly was not wearing a seatbelt has no bearing on the issue of whether the actions of Mr. Wright caused Mr. Kelly to be injured.

[46] In all of the circumstances, had I found that Mr. Wright's manner of driving was a *marked departure* from the norm, I would have found that causation was established with respect to the injuries to both Timothy and Kendra Kelly.

CONCLUSION

[47] Given my findings that Mr. Wright lacked the requisite *mens rea* to be found guilty of dangerous driving, I find Keeno Shawn Paul Wright not guilty on counts 1 and 2 of dangerous driving causing bodily harm.

McCarthy J.