

## THE PROVINCIAL COURT OF MANITOBA

BETWEEN:	)	Ms. S. De Filippis,
	)	for the Crown
HER MAJESTY THE QUEEN	)	
	)	Mr. J. Rogala and
	)	Ms. T. Cannon,
- and -	)	for the Accused
	)	
JASON AUBREY LAFLEUR,	)	
	)	Judgment delivered
Accused.	)	May 24, 2012

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1 POLLACK, P.J. (Orally)

2 This is a tidy little case because, as I

3 understand the evidence, there's no issue concerning what

4 it is the police observed, said or did their duty. That's

5 -- there's no -- I don't have to weigh any of the evidence

6 of the police because it's accepted. And, in fact, I don't

7 really have to weigh any of the evidence of the accused

8 according to the Crown's submission because the Crown's

9 submission says, first of all, accept what the officer saw

10 and what the accused says, that he was asleep, reclined in

11 the driver's seat, that he was using the car as his home,

12 that, of course, he was drinking there, and accepted that

13 he really was intending to sleep at the time. He wasn't

14 intending to do anything but sleep in the car. So there's

15 no real credibility issues there with respect to the

16 accused.

17 What the Crown, where the Crown's argument really

18 is, I think, is on the danger risk aspect of the case.

19 But let me say this about section 258(1), that a

1 plain reading of the section is that I have to determine  
2 whether the accused occupied the seat or position  
3 ordinarily occupied by a person who operates a motor  
4 vehicle, and in this case the evidence is unequivocal that  
5 the accused was not occupying the seat or position  
6 ordinarily occupied by a person who operates a motor  
7 vehicle. He, in fact, altered the seat or position in such  
8 a way that he couldn't operate the vehicle without, as we  
9 saw, sitting up, waking up first and then sitting up. So  
10 in my view, the presumption under subsection 258(1) of the  
11 Criminal Code does not apply here.

12 As to the, the danger risk criterion, one of my  
13 favourite quotes about care and control comes from Justice  
14 Hill in a case called Hannemann, H-A-N-N-E-M-A-N-N, 2001  
15 Ontario Judgments Number 1686. At paragraph 44 of the  
16 judgment, Justice Hill wrote:

17  
18 "What has emerged through judicial  
19 attempts to define the *actus reus*  
20 of the care or control crime in  
21 terms of risk of danger analysis  
22 would not ever be confused with  
23 bright line rules. ... While acts  
24 of care or control may vary  
25 widely, and each case is fact-  
26 driven, principled line-drawing  
27 should be the objective of a  
28 rational legal regime."

29  
30 In this case, I can say with confidence that I am  
31 not sure the accused presented any danger when he was found  
32 by the constable in the circumstances that presented a few  
33 minutes before midnight. I have a reasonable doubt that  
34 the accused presented any risk of danger whatsoever and I

1 base that upon his evidence, the credibility of which  
2 really isn't an issue in this case. I cannot say that I  
3 have a lasting belief that in his circumstances he created  
4 a risk of danger.

5 I think that the bright line approach that  
6 frustrated Justice Hill has to be just plain old  
7 evidentiary analysis of whether or not, first of all,  
8 evidence is acceptable and here in this case evidence is  
9 clearly acceptable as it stands in the courtroom; and then  
10 after that, has the risk of danger in a case like this one  
11 being proved beyond a reasonable doubt. I have a  
12 reasonable doubt and for that reason I have to find the  
13 accused not guilty.

14 In saying that, I wish to make it clear that I  
15 don't give out any certificates of merit for somebody who  
16 decides when they're drunk to risk being the subject of  
17 this kind of a police investigation by going to sleep in  
18 the driver's seat, reclined or otherwise.

19 Thank you.  
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