

Ontario Court Finds Supervisor Guilty Of Criminal Negligence In Avoidable Death Of Truck Driver



Back during my university days I had a summer job working for a fleet trailer leasing company. In the hot summer months, the tires on transport trucks are far more susceptible to damage, even explosion, particularly if they are under-inflated. My job was to inspect and inflate the fleet's tires, and report any damaged or unsafe equipment for repair or replacement. You can spot a bald tire in seconds. If you need to use a tread depth gauge...well it's just a few more seconds. That's probably why this case hits home for me, but the lessons are important for all employers.

The [Ontario Superior Court of Justice](#) has held a supervisor guilty of criminal negligence causing death, pursuant to section 219 of the *Criminal Code*. The facts are tragic and frustrating, because with a modicum of diligence, the worker would be alive today.

The employer operated a small freight trucking company. The business was run by a common law couple, one of whom was the owner *per se* and responsible for the administration of the company, while the other had experience in the industry and was the supervisor. The company's driver was their employee, and he unfortunately died as a result of a single-vehicle

traffic accident.

The driver advised his supervisor one evening that the truck's steering was not working properly. The supervisor's only response was to give his assignment for the next day, less than twelve hours later. The warning about the steering issue was received by the supervisor, but not addressed. About five hours into the assignment, the truck's front left tire exploded. The truck veered into a ditch and struck a tree, and the driver was instantly killed as a result. Upon examination, it was clear that the tires on the truck were bald. They were badly damaged and the truck had no business being on the road in its condition.

The standard for a finding of criminal negligence in this context was that the supervisor showed "wanton or reckless disregard" for the driver's life or safety. Proof of wanton or reckless disregard required evidence that the supervisor's conduct "was a marked and substantial departure from what a reasonable supervisor would do in the same circumstances." Further, the act or omission by the supervisor need not be the only or even primary cause of death. For liability to follow, the act or omission can be at least a contributing cause of death.

The Court's analysis was based on a number of elements, which will be briefly outlined below.

The first question was whether the supervisor had authority to direct how the driver performed his work. The supervisor agreed that he was in fact the supervisor, and communicated with the drivers about their work assignments. The Court found that he had authority, and therefore that he "had a duty to take reasonable steps to prevent bodily harm to [the driver], namely to ensure that the Freightliner was properly maintained and safe to drive before [the driver] operated it."

Next, the Court found that the supervisor failed to take

reasonable steps to prevent bodily harm. Given what was established to be the entirely unsafe condition of the front tires, the Court ruled that the truck was not properly maintained. When the defence argued that the supervisor was only alerted to a steering issue, and not any issues with the tires, the Court noted the ease with which the dangerous tire condition could be observed, and the fact that the supervisor's duty was to ensure that the truck was road-worthy in all aspects, regardless of whether there was a safety complaint. When the defence argued that the driver consented to drive the truck in its condition, the Court ruled that the concept of "contributory negligence" has no application to criminal cases. The focus was exclusively on what the supervisor did, or failed to do, and the Court ruled that he did not take reasonable steps to prevent bodily harm to his employee.

Next, the Court had to determine whether the supervisor's actions were wanton and reckless. The Court found that the supervisor instructed the driver to operate the truck the next day, even after knowing that there was a potentially dangerous issue with the steering. He failed to notice the unsafe condition of the tires, and took no steps to ensure the truck's compliance with the *Highway Traffic Act*. These omissions showed a wanton and reckless disregard for the driver's life, which was a marked and substantial departure from the conduct of a reasonably prudent supervisor in the circumstances. There was a foreseeable risk of serious bodily harm to the driver, and the supervisor knowingly failed to take the action required of him by law – to have the truck inspected and repaired by a licensed mechanic.

It is important to note that the standard by which a Court assesses guilt in a criminal matter is proof beyond a reasonable doubt. This is a high threshold, stricter than for charges under the *Occupational Health and Safety Act* or the *Highway Traffic Act* for example. It is telling that the

Court's reasoning showed no hesitation in rendering the guilty verdict. Based on the facts established at trial, the outcome cannot be surprising. Supervisors face harsh punishment when they disregard their obligations to keep their workers safe.

Employers should heed this lesson carefully. Your obligations are not only defined by the *Occupational Health and Safety Act* in Ontario, but can also be judged under the *Criminal Code* where substantial prison terms can and will be given for convictions. At a minimum, employers need to ensure that their operations are properly assessed for the safety and well-being of their employees. Systems need to be in place to receive and effectively address complaints from employees about safety concerns. And supervisors need to know their obligations to diligently keep workers safe, and have proper supports to meet their responsibilities.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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