Tillamook County Justice Court
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May 17, 2006

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Courthouse
Tillamook OR 97141

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Re: **State v Dorothy Nichols**
Following Too Close
Our file 03-O-4987

This matter came before the court for trial on March 16, 2004. I make the following findings.

On October 18, 2003, at about 12:18 p.m., Oregon State Police Sr. Trooper Jeff Herder was parked facing east on the south side of Highway 6 in Tillamook County, Oregon. He was observing traffic traveling on the highway. At that point, there are two westbound lanes, which merge at the end of a straight stretch at the start of a long curve. There is one westbound lane.

Trooper Herder observed the defendant driving in the left lane of the westbound lanes, following another vehicle, which I refer to as Vehicle #1. The defendant and Vehicle #1 were passing a pickup. Defendant testified that the pickup was traveling at about 55 mph.

55 mph is the posted speed in the area, which is within the Tillamook State Forest. There are several side roads entering the highway in that area.

Trooper Herder observed that both Vehicle #1 and defendant were traveling at a visually high rate of speed, in excess of the speed limit. He activated his stationary radar and obtained separate readings on both Vehicle #1 and the defendant's vehicle, a passenger car. Both readings noted speeds of 71 mph. The radar readings were consistent with the device's audio pitch.

Trooper Herder testified that defendant was one car length behind Vehicle #1 at that point. He then entered traffic and followed the defendant, pacing her with both radar and his vehicle speedometer, at 45 mph, for 0.8 mile. Defendant kept within one and a half to two car lengths of Vehicle #1, until the trooper activated his overhead lights and stopped the defendant.

Defendant testified that on the straight stretch, she was traveling from 60 to 65 mph and was three car lengths distance from Vehicle #1.

The pickup in the right hand lane maintained a steady speed on the straight stretch, during this passing activity.

At 70 mph, a vehicle travels 102 feet per second.

The roadway was dry. It was daylight. Four vehicles had just previously traveled west past Trooper Herder's vantagepoint. Defendant believed there was a pickup followed by another vehicle in the right hand lane.

Defendant was cited for violating ORS 811.485, which states, in part:

"(1)A person commits the offense of following too close if the person does any of the following:

"(a) Drives a vehicle so as to follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the vehicles and the traffic upon, and condition of the highway."

I do not find any appellate cases in Oregon applying this statute.

In reading a statute, the court is required to first look at the plain meaning of the statute. PGE v Bureau of Labor and Industries, 317 Or 606 (1993).

"Reasonable" is defined as "wise, sensible, not excessive". Webster's New World Dictionary and Thesaurus, (1996).

"Prudent" is defined as "exercising sound judgment in practical matters, cause in conduct; not rash, managing carefully". (Ibid)

Both witnesses agree that the defendant was traveling over the posted speed limit and was three carlengths or less distant from a vehicle traveling at the same speed. Both vehicles were passing at least one other vehicle, and

coming to the end of a straight stretch where the two lanes merged and then the roadway entered a substantial curve.

Looking at this situation solely from the defendants' testimony, the defendant's driving was neither reasonable nor prudent. She was traveling at a high rate of speed, in excess of the posted speed, headed for a lane merger amid traffic in both lanes, and also headed for a significant curve on a highway which follows a fairly narrow river canyon through the Coast Range.

Added to the speed is her close proximity to the vehicle ahead of her. She did not allow herself any leeway or allowance for the possibility of the vehicle ahead of her slowing, swerving, braking, or merging, nor of the possibility of the pickup along side of her in the right lane from accelerating, veering, or merging.

The more believable testimony as to the distance between the two vehicles is that of Trooper Herder. His testimony is that the distance was from one to one and a half car lengths between Vehicle #1 and the defendant. This incredibly close distance compounds these concerns for a crash. In the event of a sudden emergency or change in situation, the defendant would have had no opportunity to avoid a crash with Vehicle #1 and, given that the lanes were merging, with the pickup and the vehicle behind the pickup in the right hand lane.

Defendant continued to not be reasonable and prudent in her driving for the next 0.8 mile, as she continued to tailgate Vehicle #1 during that distance. Again, she put herself and others on the road at substantial risk for a crash, and an inability on her part to avoid a crash.

Defendant simply did not give herself time to be a defensive and prudent driver, by giving sufficient space and time between her and other drivers.

I find the State has proven its case by a preponderance of evidence, and I am entering a finding of guilty.[1]

Looking at defendant's driving record, I note several recent speeding convictions. I decline to impose the minimum fine of $177. I impose the base fine of $237.00. This is now due and payable. The defendant may arrange a payment plan with the clerk.

The defendant has a right to appeal this finding and judgment to the Circuit Court of the State of Oregon for Tillamook County, 201 Laurel, Tillamook

[1] The Oregon Driver's Manual, and its discussion of this safety issue, was not admitted at trial. I did not utilize that reference in my decision.

OR 97141, (telephone [503]842-7914), within 30 days from today, by filing a notice of appeal with the Circuit Court and paying the Circuit Court filing fee of $200.00 and a $5 fee to Justice Court for the transcript on appeal.

Sincerely,

NEAL C. LEMERY
Justice of the Peace