
CANADA / JUDGMENT

R. v. Bhatti

2019 BCSC 1905

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bhatti,

2019 BCSC 1905

Date: 20190517

Docket: X081393

Registry: New Westminster

Regina

v.

Jaspreet Singh Bhatti

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

Counsel for the Crown:

R. Flannigan

Counsel for the Accused:

A. Samra

Place and Date of Trial:

New Westminster, B.C.

May 13-17, 2019

Place and Date of Judgment:

New Westminster, B.C.

May 17, 2019

- [1] Mr. Bhatti is charged with impaired driving causing bodily harm. The Crown withdrew count 2 at the close of its case.
- [2] The charge relates to an incident which occurred June 6, 2017 in Surrey. The alleged complainant is Fay Dewetter.
- [3] It is not in dispute that on June 6 2017 Mr. Bhatti was the driver and sole occupant of the blue Honda Civic that turned left onto 122a Street from 75 Avenue in Surrey at approximately 11:16 p.m.
- [4] Nor is it in dispute that when he made the turn he veered into the wrong lane and hit a parked truck head on causing considerable damage to the front end of the Honda.
- [5] What is in dispute is whether he was impaired, whether he hit Ms. Dewetter with his car while making the left hand turn, and if so, whether he caused her bodily harm.
- [6] I will begin by outlining the facts. I will then deal with the issues in turn.

Background

- [7] Ms. Dewetter and Mr. Gunter were walking across 122a Street when Mr. Gunter saw a car turning off 75 Avenue coming directly toward them. They were about halfway across the street. Mr. Gunter grabbed Ms. Dewetter by the front of her sweater and pulled her out of the way of the fast approaching vehicle.
- [8] According to both Ms. Dewetter and Mr. Gunter the Honda clipped Ms. Dewetter in the right buttocks then swerved onto the opposite side of the road on 122a Street and hit a parked truck head on. Ms. Dewetter fell into Mr. Gunter's arms. She was in extreme pain and was crying. An ambulance attended and took her to the hospital.
- [9] Mr. Kuhendrarajah was sitting in his living room when he heard a screech and a bang. The screech sounded like brakes. He immediately went to his balcony which looks directly out onto the intersection of 75 Avenue and 122a Street and saw a person on the ground about 3/4 of the way across 122a Street. He saw that a Honda had hit a truck that was parked on 75 Avenue. He noticed a person get out of the driver's door of the Honda. The person reached into the back of the Honda to get something then ran away on 122a Street.
- [10] Mr. Kuhendrarajah called the police then went down to the street to check on the people. The woman was on the ground in pain. She was crying. The man was helping her.

- [11] Police arrived within 5-10 minutes of his call. Mr. Kuhendrarajah saw the police detain the driver. He observed the driver to be stuttering and not making sense. The driver was unable to stand still and was swaying back and forth. In his opinion the driver was obviously drunk. Mr. Kuhendrarajah is familiar with how people act when they are under the influence of alcohol as he goes to bars and sees his friends act like that when they get drunk.
- [12] A second civilian witness, Mr. Raheja was at home on 122a Street when he heard a smash. He went outside and saw that a Honda had collided head on with a parked monster truck. The driver of the Honda was standing by the driver's side door which was open. He was throwing bottles and cans out of his car.
- [13] Mr. Raheja could smell alcohol on the accused and based on that and on the way he was acting, formed the opinion that he was drunk. He is a taxi driver and deals with a lot of people that are under the influence of alcohol.
- [14] Constables Sherriffs and Mann were the first officers on the scene. Upon arrival they found Ms. Dewetter and her then boyfriend Brandon Gunter at the corner of 75 Avenue and 122a Street. Ms. Dewetter was supporting herself on a post. She was crying and in obvious pain. Constable Mann stayed with the couple while Constable Sherriffs walked a short distance down 122a Street to where a blue Honda had collided head on with a parked truck. When Constable Sherriffs was looking in the windows of the Honda, Mr. Bhatti called out from the crowd of people gathered nearby that he was the driver. He then uttered "They (indicating Ms. Dewetter and Mr. Gunter) are just looking for an ICBC claim". The officer had not said anything to Mr. Bhatti about Ms. Dewetter being struck at that point.
- [15] Constable Sherriffs observed the accused to have glassy eyes, slurred speech and a strong odour of liquor on his breath.
- [16] He formed the opinion that the accused had within the preceding three hours been operating a motor vehicle while impaired. He testified that he believed Mr. Bhatti was heavily impaired by liquor.
- [17] He then detained him for impaired driving and read him the breath demand. When Constable Sherriffs asked Mr. Bhatti if he understood Mr. Bhatti said that he had been driving but should not be at fault because the pedestrians had been crossing illegally.
- [18] The officer then advised him of his Charter rights and the police warning. Mr. Bhatti started crying and said "I fucked up, I know".
- [19] Constable Martin arrived a short time after Constable Sherriffs. While he had limited dealings with the accused he observed him to have glassy, bloodshot eyes and was quite unsteady on his feet. In his opinion the accused was impaired.
- [20] Mr. Bhatti was taken to the RCMP detachment and ultimately provided two samples of breath - the first at 0219 was 130 mg % and the second at 0240 was the same.

- [21] Because the samples were taken outside the two hour limit the Crown was not able to rely on a certificate of qualified technician. Accordingly they called Amy Minh, an alcohol specialist from the toxicology section of the RCMP Forensic Lab, to extrapolate the readings back to the time of driving.
- [22] Ms. Minh, who was qualified as a forensic alcohol expert, testified that the accused's blood alcohol content (BAC) at the time of the accident would have been between 160-190 mg %. Body weight has no bearing on this calculation. The absolute minimum amount of alcohol required to reach this level of impairment would be 3.1 to 4.2 bottles (341 ml) of 5% volume by volume beer. At this level of impairment Ms. Minh would expect a person to exhibit trouble with their fine motor skills, and have slurred speech.
- [23] According to Ms. Minh a person at this BAC would definitely have an impaired ability to drive as their judgment, visual acuity, depth perception, ability to focus on things and ability to multi-task are all diminished.
- [24] Mr. Bhatti testified in his own defence. He said that he had driven to Kelowna that day to see his girlfriend and that they had broken up. Upset, he drove back home and went directly to a friend's house where he and his friend shot gunned Budweiser beer (355 ml cans) which means they poked a hole in the bottom and guzzled it in one gulp. They drank "the majority" of a 24 pack in about 20-25 minutes. He cannot say how many beers he drank, but testified that it was more than 5 or 6. Mr. Bhatti then drove the short distance home. He had been home for a few minutes when his mother asked him to pick up pizza. He drove the approximate four minute drive to the restaurant. While waiting the minute or so for the pizza he drank about one-quarter of a bottle of beer that he took from his friend's house. The accident happened on his way home.
- [25] Mr. Bhatti testified that before the accident he felt relaxed, good, and no longer anxious about the day's events. As he was driving he felt "a slight buzz" but did not feel drunk or intoxicated. He said that what had happened in Kelowna that day was no longer in his mind. According to Mr. Bhatti, at that point in his life, he was drinking every day.
- [26] The route he drove home from the pizza place was a route that he drove many times a day. As he was taking a left onto 122a Street he saw people running/fast walking across the street. They were about halfway across the road. He hit his brakes then swerved to avoid them and smashed into a truck that was parked on the opposite side of the road. He did not see the pedestrians until he was into his turn.
- [27] He was adamant that he did not hit anyone and that the closest he got to the pedestrians was four feet.
- [28] After he hit the truck he noticed the pedestrians yelling for help. He thought they were looking for an ICBC claim.

[29] After the collision Mr. Bhatti got out of his car to look at the damage. He threw two containers of beer out of his car. He went down the road looking for the owner of the truck he had hit but then returned to the scene.

Issues

[30] The issues are as follows:

- a) Whether the Crown has proved beyond a reasonable doubt that Mr. Bhatti's ability to drive was impaired by alcohol;
- b) Whether the Crown has proved beyond a reasonable doubt that Mr. Bhatti struck Ms. Dewetter with his car; and
- c) Whether the Crown has proved beyond a reasonable doubt that Mr. Bhatti caused bodily harm to Ms. Dewetter.

Analysis

[31] I found all of the Crown witnesses to be credible and I accept their evidence. Their evidence all fits together and makes sense. It also fits with the real evidence.

[32] As Mr. Bhatti testified I must apply the principles in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 at p. 758 as follows:

- If I believe the evidence of Mr. Bhatti, I must acquit him;
- If I do not believe his evidence, but am left in reasonable doubt by it, I must acquit;
- Even if I am not left in doubt by the evidence of Mr. Bhatti, I must ask myself whether, on the basis of the evidence that I do accept, I am convinced beyond a reasonable doubt by that evidence of his guilt.

[33] There is a fourth step to the *W.(D.)* analysis; that is, if I am unable to decide who to believe, I must acquit: *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146 (B.C.C.A.) at p. 155.

[34] Dealing with the first issue: whether the Crown has proved beyond a reasonable doubt that Mr. Bhatti's ability to operate a motor vehicle was impaired by alcohol.

[35] All of the evidence regarding Mr. Bhatti's state of intoxication was consistent - both civilian witnesses and police witnesses observed symptoms of impairment and formed the opinion that he was impaired. On Mr. Bhatti's own evidence he was impaired. He had consumed a large amount of alcohol and admitted that he was feeling the effects of it - was feeling a buzz.

[36] Mr. Bhatti's judgment was clearly affected by alcohol. He testified that he never drank and drove yet he chose that night to drive not once but twice after he had shot gunned a large number of beers. He also drank more while he was waiting for the pizza.

- [37] I accept the evidence of Ms. Minh that the readings at the time of the incident were in the range of 160-190 mg %. Mr. Bhatti's drinking pattern and symptoms as observed by police and civilians were consistent with that.
- [38] Not only does Mr. Bhatti's own evidence not raise a doubt, it corroborates that finding.
- [39] Having regard to all of the evidence and all of the circumstances I am satisfied beyond a reasonable doubt that Mr. Bhatti's ability to drive was impaired.
- [40] Turning now to the issue of whether Mr. Bhatti struck Ms. Dewetter with his vehicle.
- [41] Both Ms. Dewetter and Mr. Gunter gave detailed evidence regarding being in the cross walk and seeing Mr. Bhatti's car coming toward them. Ms. Dewetter took photos showing bruising on her buttock. The evidence of Mr. Gunter and Mr. Raheja corroborates her as does the evidence of the police officers that found her on the ground.
- [42] The accused counters that he did not hit Ms. Dewetter and argues that if he did the injury to her would be much more serious.
- [43] I disagree. I prefer the evidence of Ms. Dewetter and Mr. Gunter to Mr. Bhatti's. There is no evidence that they were under the influence of anything at the time. Plus their evidence fits with all of the other evidence including the demonstrative evidence.
- [44] Considering all of the evidence I find the following facts:
- a) Mr. Bhatti was under the influence of alcohol and he was driving;
 - b) His judgment and ability to drive was impaired;
 - c) He did not notice the pedestrians until he had started his turn;
 - d) He swerved to avoid them;
 - e) At the same time the pedestrians ran to get out of his path;
 - f) The pedestrians were almost able to get out of the way safely but not quite - Mr. Bhatti struck Ms. Dewetter in the right buttocks with his car; and
 - g) He then continued on to hit the parked truck head on.
- [45] Fortunately Mr. Gunter was able to pull Ms. Dewetter most of the way out of the path of the car so Mr. Bhatti just clipped her. It is possible given his level of impairment that Mr. Bhatti was not aware that he hit Ms. Dewetter. He was focussed on avoiding her and Mr. Gunter and almost did.
- [46] In all of the circumstances and all of the evidence, I am satisfied beyond a reasonable doubt that he did hit her with his car.
- [47] The final issue is whether the accident caused Ms. Dewetter bodily harm.

- [48] In order to find Mr. Bhatti guilty of impaired driving causing bodily harm I must be satisfied that the Crown has proved beyond a reasonable doubt that Ms. Dewetter suffered bodily harm and that there is a causal link between the accused's impairment and the bodily harm.
- [49] The test for causation in an impaired driving causing bodily harm case is whether the accused's impaired driving was a contributing cause beyond the de minimis range to the bodily injuries: *R. v. Gentles*, 2016 BCCA 68 at para. 14.
- [50] In *Gentles* the accused struck two pedestrians with his car, killing one and injuring the other. The trial judge found that the accused's ability to drive was impaired but held that the Crown did not prove that his impairment caused the death and bodily harm as the accident was unavoidable. The judge found that the pedestrians walked in front of the accused's car and that he had no opportunity to stop. That finding was upheld by our Court of Appeal.
- [51] Madam Justice Dillon recently discussed the test for causation in impaired driving cases in *R v. Zotich*, 2018 BCSC 1735 where she stated the following:
- [57] One must remember that the fact of an accident itself does not prove that it was caused by impairment (Stump at para. 75). If the accident was unavoidable, then causation has not been proven (*R. v. Phan*, 2015 ONSC 2088 at para. 77; *R. v. Gentles*, 2016 BCCA 68 at para. 8).
- [58] The law related to the test for causation in the context of drinking and driving causing death was specified in *Gentles* at paras. 14-16 as arising from *R. v. Andrew* (1991), 91 C.C.C. (3d) 97 at 120 and clarified in *R. v. Cabral*, 2001 MBCA 10. The pertinent portions from *Gentles* state:

[14] :

I am satisfied that, so long as one bears in mind the distinction between a motorist driving in an impaired condition who is involved in an accident, and the motorist driving in an impaired condition whose impaired driving ability (as evidence by driving conduct, or failure to react or to make a certain judgment) comprises a contributing cause outside of the de minimis range to the victim's bodily harm or death, the *Smithers* test is appropriate to apply to the offences under s. 255(2) and (3).

[Emphasis in original]

- [15] In *Andrew*, the Court concluded that the expert evidence of the effect of alcohol on a driver, along with the pattern of irrational driving, was sufficient to sustain the trial judge's finding of causation.

[16] :

- [13] The law does not provide that if you are impaired and involved in an accident you are automatically guilty of impaired driving causing death or bodily harm. It must be proven that the impairment was a contributing cause of the accident. Some fault on the part of the driver must be found, aside from the fact of impairment alone.

- [14] As well, the law does not provide that if you drive while impaired, you are automatically guilty of dangerous driving. It must still be proven that the manner of driving was a marked departure from the norm.
- [15] On the facts as found by the trial judge, the Crown failed to prove beyond a reasonable doubt that the death and the injuries came about because of the impairment or manner of driving of the respondent.
- [52] First I will deal with bodily harm. I am satisfied based on the evidence of Ms. Dewetter, Mr. Gunter and Dr. Gill that Ms. Dewetter suffered bodily harm as a result of being struck by the accused's car. Bodily harm is defined in the Criminal Code, R.S.C. 1985 c. C-46 as more than trifling in nature. Ms. Dewetter still suffers the effects of being struck and lives in constant pain.
- [53] The question is whether the accused's impaired driving was a cause outside the de minimis range of that bodily harm.
- [54] This is not a case like Gentiles where the pedestrians ran out in front of Mr. Bhatti's car. It was not a case where an accident was unavoidable - it was.
- [55] The intersection was well lit and wide open meaning visibility was good. It was a dry night. Skies were clear. The intersection was well known to the accused.
- [56] The pedestrians were halfway across when the accused turned toward them.
- [57] The accused clearly did not look before he turned as he testified that he did not see them until he was into his turn.
- [58] Ms. Minh's evidence that at this BAC the accused's ability to drive would be impaired as his judgment, visual acuity, depth perception, ability to focus on things and ability to multi-task are all diminished.
- [59] As discussed above it was clear that the accused's judgment was affected as he had made some bad choices that night.
- [60] The accused testified that he never looks before he makes that turn so impairment was not the cause of the accident. I do not accept that argument. Nor do I find that Mr. Bhatti's evidence raises any doubt.
- [61] There is no doubt that Mr. Bhatti was highly intoxicated when he got behind the wheel of a car. On his own evidence he felt buzzed. His visual acuity was diminished. His judgment was diminished. His ability to focus, multitask and make good decisions were diminished. As a result he failed to notice the pedestrians, turned into them, then was unable to react appropriately. If Mr. Gunter had not pulled Ms. Dewetter out of the path of his car, there is no question that Ms. Dewetter would have suffered a much worse fate.

[62] Having considered all of the evidence, I am satisfied that the Crown has proved beyond a reasonable doubt that the accused failed to take more effective evasive action because he was impaired. Accordingly, I am satisfied that the accused's impaired driving was at least a contributing cause of him striking Ms. Dewetter with his car, beyond the de minimis range.

[63] I should address an argument advanced by the accused that it was the pulling of Ms. Dewetter by Mr. Gunter that caused her injuries not being struck by his car. I reject that argument.

Conclusion

[64] Stand up Mr. Bhatti. I find you guilty of impaired driving causing bodily harm.

"The Honourable Madam Justice Murray"

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