

CANADA / JUDGMENT

R. v. Edwards

2020 BCCA 253

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 253 R. v. Edwards

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Edwards,

2020 BCCA 253

Date: 20200917

Docket: CA46423

Between:

Regina

Respondent

And

Gregory Thomas Edwards

Appellant

Before:

The Honourable Mr. Justice Willcock

The Honourable Madam Justice Griffin

The Honourable Mr. Justice Abrioux

On appeal from: An order of the Provincial Court of British Columbia, dated
March 13, 2019 (conviction) (R. v. Edwards, Courtenay Docket 40888-1).

Counsel for the Appellant

(via videoconference):

S.J. Runyon

Counsel for the Respondent

(via videoconference):

J.R.W. Caldwell

Place and Date of Hearing:

Vancouver, British Columbia

June 12, 2020

Place and Date of Judgment:

Vancouver, British Columbia

September 17, 2020

Written Reasons by:

The Honourable Mr. Justice Willcock

Concurred in by:

The Honourable Madam Justice Griffin

The Honourable Mr. Justice Abrioux

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Summary:

The appellant was convicted of having the control of the vehicle involved in the collision and, knowing bodily harm had been caused and being reckless with respect to whether death resulted, failing to stop his vehicle and give his name and offer assistance, with intent to escape civil liability, contrary to s. 252(1.3) of the Criminal Code, R.S.C. 1985, c. C-46. He says the trial judge erred in law in finding he was wilfully blind about whether bodily harm had resulted from the collision and reckless about whether death resulted from that bodily harm. He contends the judge failed to recognize the requirement of "heightened suspicion" to find wilful blindness, lost sight of the "person" requirement contained in s. 252 of the Criminal Code; and failed to recognize the necessary temporal connection between the actus reus and mens rea of s. 252 of the Criminal Code. Held: Appeal dismissed. There was no doubt the appellant's vehicle struck the victim and caused his death, and that the appellant did not stop at the scene, identify himself and offer assistance. The sole issues, as identified by the trial judge, were whether he could draw the necessary inferences with respect to the appellants' subjective appreciation of the need to make an inquiry, and whether there was evidence to counter the inference that he fled to avoid civil responsibility. There was no error in the analysis of those questions.

Reasons for Judgment of the Honourable Mr. Justice Willcock:

Introduction

- [1] In the early morning hours of November 1, 2016, Marcus Haslehurst and his friend Dan O'Leary were walking home from a Halloween party along a highway when Mr. Haslehurst was struck by a motor vehicle and killed.
- [2] On March 13, 2019, the appellant, Gregory Thomas Edwards, was convicted of having the control of the vehicle involved in the collision and, knowing bodily harm had been caused and being reckless with respect to whether death resulted, failing to stop his vehicle and give his name and offer assistance, with intent to escape civil liability, contrary to s. 252(1.3) of the Criminal Code, R.S.C. 1985, c. C-46. He says the trial judge erred in law in finding he

was wilfully blind about whether bodily harm had resulted from the collision and reckless about whether death resulted from that bodily harm. He seeks a new trial.

Facts

- [3] The collision occurred at about 5:00 a.m. on an unlighted stretch of Highway 19A, the Old Island Highway, in Merville, north of Courtenay. It was very dark and Mr. Haslehurst was dressed in dark, camouflage clothing.
- [4] Mr. O'Leary described the collision as follows: "As me and Marcus are talking, a vehicle comes up from behind him and strikes him in the back ... he gets launched into the bushes, and then the vehicle keeps on going, doesn't stop". Mr. O'Leary tried to look for Mr. Haslehurst but was unable to see or hear him.
- [5] After the impact, Mr. O'Leary expected the car to stop but it kept going and appeared to speed up. He did not see brake lights. He last saw the vehicle as it went around a corner further south, some five or eight seconds after impact.
- [6] Mr. O'Leary ran back to the location of the Halloween party and alerted Jessie Burns and Matthew McCannell that Mr. Haslehurst had been hit. Together they drove a short distance down the highway in Mr. Burns' truck to attempt to locate Mr. Haslehurst. When they found him he had apparently died of his injuries.
- [7] Mr. Edwards had awakened at 4:30 a.m. on November 1, 2016, with the intention of catching the 8:30 a.m. ferry from Departure Bay to Vancouver and then continuing on to Kelowna. As he approached the scene of the collision, he noticed an oncoming vehicle flash its high beams and he flashed back. He next recalled looking in his rear view mirror and then hearing a very loud bang. His windshield shattered on the passenger side.
- [8] Mr. Edwards testified he pulled into a driveway a short way down the highway in order to collect himself. He says he got out of his vehicle and walked back along the road to see what he had hit. His only source of light was a flashlight on his cell phone. In some of his accounts of what followed, he says he saw a deer, or a flash in the bushes, or noise or movements that suggested a deer. He believed he was outside of his vehicle for roughly five minutes.
- [9] Mr. Edwards got back in his car and carried on to a coffee shop in Courtenay. Once there, he examined the damage to his car. The front headlight assembly was broken and the hood, the A-pillar, and the top of the car were dented. He placed some broken parts into a bag, put the bag in his car, and then continued on to catch the ferry at Departure Bay.
- [10] At approximately 7:30 a.m., he arrived at the terminal. He walked his dog and took photographs of the damage to his vehicle. He realized there was no blood on his vehicle and says he then began to question whether he had hit something other than a deer.

- [11] By the time Mr. Edwards boarded the ferry, media alerts had been posted advising that the police were looking for a car involved in a traffic fatality in the Merville area earlier that morning. While he was on the ferry, he checked Facebook from his cell phone and learned of reports of an accident in Merville and that the police were looking for a vehicle with significant front-end damage. He did not believe the article pertained to his vehicle because he thought he had struck something "further up on the road" from the identified location.
- [12] Passengers on the ferry noticed the damage to the vehicle and reported it to the police, leading to Mr. Edward's arrest after he drove off the ferry, near the Port Mann Bridge. The police officer advised Mr. Edwards he was investigating a "hit-and-run" case on Vancouver Island. Mr. Edwards spontaneously replied he thought he had hit a deer. He was detained for the offence of criminal negligence causing death, and failure to remain at the scene of an accident.
- [13] Mr. Edwards was taken to a nearby RCMP detachment where he was arrested. The RCMP requested the password for his phone. He provided it. The extracted messages and screenshots were in evidence at trial.
- [14] Two warned statements were taken. Each statement was entered into evidence and became part of the record.

Judgment at Trial

- [15] The Crown argued Mr. Edwards actually knew he had struck a pedestrian when he left the scene. Alternatively, the Crown submitted Mr. Edwards was wilfully blind to the fact he had hit a person and to the bodily harm that resulted from the accident, and reckless as to whether death resulted. The Crown contended Mr. Edwards should be presumed by law to have left the scene to escape civil or criminal liability.
- [16] Mr. Edwards testified he had not seen Mr. Haslehurst at any point. He testified that he believed he had struck a deer and he had not been wilfully blind as to whether he had struck a person or as to whether there was bodily harm resulting in death.
- [17] The judge explained in detail his reasons for finding Mr. Edwards was not a credible witness: he gave untrue and misleading statements to the police, and contradictory and evasive answers in his testimony at trial when confronted with the inconsistencies in those statements.
- [18] Having found Mr. Edwards to be unreliable, the judge (at para. 74) referred to and properly instructed himself on the analysis of the evidence that should be undertaken where an accused testifies, as described in *R. v. W.(D.)*, [1991] 1 S.C.R. 742.
- [19] He rejected the Crown's submission he should find Mr. Edwards actually saw Mr. Haslehurst at any time. Applying *W.(D.)*, he noted, at para. 81:

Even if I were to reject Mr. Edwards' evidence that he did not see Mr. Haslehurst, I am not satisfied on all the other evidence that I do accept that the Crown has proven beyond a reasonable doubt that Mr. Edwards actually saw Mr. Haslehurst.

[20] Because the Crown had not proven Mr. Edwards knew at the time of impact that he had hit a person, the judge turned to the question whether Mr. Edwards had been wilfully blind with respect to whether the collision had caused bodily injury.

[21] He adopted the description of wilful blindness in *Sansregret v. The Queen*, [1985] 1 S.C.R. 570, as applied by Justice Grist in *R. v. Harrison*, 2007 BCSC 1801 at para. 37, as a state of mind distinct from recklessness that exists where a person has become aware of the need for some inquiry but declines to make the inquiry because they do not wish to know the truth.

[22] The judge cited, as well, at para. 72, the passage in *Sansregret* in which McIntyre J. refers to the frequently cited excerpt from Glanville Williams (*Criminal Law: The General Part*, 2nd ed., 1961) in which the author says, in relation to crimes where knowledge of a fact is an element of the offence, at 157-60:

To the requirement of actual knowledge there is one strictly limited exception. Men ... regard their suspicions as unworthy of them when it is to their advantage to do so. To meet this, the rule is that if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge.

[23] He accepted that after the collision Mr. Edwards stopped, got out, and looked at the damage to his car. He regarded this as evidence Mr. Edwards' suspicions were aroused; the fact he pulled over "might be seen as confirming his understanding that he needed to make inquiries to find out what he had hit" (at para. 87).

[24] Applying the logic of Grist J. in *Harrison*, the judge held, at para. 89, that Mr. Edwards was "at very least required to determine what he had hit, simply based on the major impact, the heavy damage, the shattered windshield, and the loud bang." He continued:

[90] Put another way, these facts had to raise a subjective suspicion in the mind of Mr. Edwards requiring further inquiry. The law required him to determine what he had hit.

[25] The judge then rejected most of Mr. Edwards' evidence with respect to his post-impact conduct. In particular, he rejected Mr. Edwards' evidence he walked back along the road to investigate and saw some sign suggesting he had hit a deer:

[94] I find that Mr. Edwards stopped his car approximately 300 metres down the road south of the point of impact. Once stopped, Mr. Edwards checked the wheel, took a quick look at the damage to the rest of the car, and then proceeded to Tim Hortons.

[26] That investigation was insufficient:

- [26] Mr. Edwards was not at the location of the accident. His car remained fully operational with both headlights working. His car was capable of being driven. There was no fog or ice or other precipitation obscuring visibility. There was no traffic. The road was straight where the accident occurred. There was nothing preventing or hindering Mr. Edwards from turning his car around and driving back to the Merville Hall, and turning around again and heading south slowly to look to see what he had hit.
- [27] The judge concluded Mr. Edwards was wilfully blind to the fact the accident had involved a person and deliberately avoided obtaining actual knowledge of the bodily harm that had resulted, "in that he took no steps whatsoever to determine whether someone had been injured" (at para. 99).
- [28] Turning to the question whether Mr. Edwards left the scene to escape civil or criminal liability, the judge adopted the description of the presumption in s. 252(2) in *R. v. Basra*, 2015 BCSC 1075 at para. 62, and *R. v. Sadler*, 2008 BCCA 491 at para. 28:
- [28] Section 252(2) creates a rebuttable presumption that an accused intends to escape civil or criminal liability by leaving the scene of an accident. Evidence to the contrary that is not rejected by the trier of fact may rebut that presumption. Case law interpreting this section confirms that "evidence to the contrary" does not shift the burden of proof to an accused. Rather, it provides a basis whereby evidence which tends to show that an accused may not have possessed the specific intent required will support an acquittal verdict.
- [29] When the judge rejected Mr. Edwards' explanation that he investigated and had a reason to think that he hit a deer, there remained no evidence to rebut the presumption Mr. Edwards intended to escape civil liability by leaving the scene of the accident. Further, however, the judge held there was evidence upon which he could find an intent to avoid liability. He pointed to Mr. Edwards' initial untruthful statement to the police that he was involved in a collision 8 to 9 kilometres north of the accident scene; his evidence he heard a deer scream and that he actually saw a deer, and his denial he knew he was in an accident with a person until the police arrested him (despite being aware of the news reports while he was on the ferry).
- [30] The judge concluded: "All of this evidence points to the conclusion that he did not comply with his duties under the Code for the purposes of attempting to avoid liability" (at para. 107).

Grounds of Appeal

- [31] The appellant says the judge erred in law in two respects. First, he says the judge erred in applying the doctrine of wilful blindness in the context of s. 252 of the Criminal Code, by:
- failing to recognize the requirement of "heightened suspicion" as part of the doctrine;
 - applying the doctrine "as a form of objective liability";

- c) losing sight of the "person" requirement contained in s. 252 of the Criminal Code; and
- d) failing to recognize the necessary temporal connection between the actus reus and mens rea of s. 252 of the Criminal Code.

[32] And, second, by engaging in a flawed analysis when addressing the question whether the appellant was reckless as to whether death ensued as a result of bodily harm.

Argument

Heightened Suspicion

- [33] Citing *Sansregret* at 584, *R. v. Jorgensen*, [1995] 4 S.C.R. 55 at para. 102; and *R. v. Briscoe*, 2010 SCC 13 at para. 23, *R. v. Duncan*, 2013 ONCA 774 at para. 9; *R. v. Malcolm*, 2000 MBCA 77 at para. 12; and *R. v. Vinokurov*, 2001 ABCA 113 at para. 9, the appellant's counsel says particular attention must be paid to the level of suspicion necessary to give rise to a finding of wilful blindness. Because it fulfills the requirement that the accused has actual knowledge of a fact or state of affairs, culpable wilful blindness will only be present where there is heightened suspicion (not mere suspicion). The accused's mental state must be close enough to actual knowledge that liability for knowledge-based offences can fairly be anchored in it.
- [34] She notes the judge concluded (at para. 90) the facts "had to raise a subjective suspicion in the mind of Mr. Edwards requiring further inquiry ...". Further, at para. 93, he found: "[Mr. Edwards] did not know what he hit, but he simply hoped that it was a deer without taking adequate steps to confirm it was a deer."
- [35] The appellant says this amounts to a description of injury to a person as a possibility, rather than a probability that required investigation. That being the case, she says "[t]he trial judge's finding as to the appellant's state of mind does not amount in law to willful blindness".

Subjective Fault

- [36] Citing D. Stuart, *Canadian Criminal Law*, 2nd ed. (Toronto: Carswell, 1987) at 123-24, (a passage cited with approval in *R. Hundal*, [1993] 1 S.C.R. 867 at 882-83), counsel for the appellant says subjective mens rea is established where the court is satisfied the accused, given his personality, situation and circumstances, actually intended, knew or foresaw the consequences. Whether he "could", "ought", or "should" have foreseen, or whether a "reasonable person would have foreseen", is not the relevant criterion of liability for subjective fault.

- [37] The appellant's counsel contends the findings of fact do not prove Mr. Edwards chose to remain ignorant. She says the judge should have sought to discern the moral fault described by David M. Paciocco in "Subjective and Objective Standards of Fault for Offences and Defences", (1995) 59:2 Sask. L. Rev. 271 at 274: "the conscious decision not to confirm the existence of a fact that the accused knows is almost certain to exist, so that ignorance can be pled" (emphasis added).
- [38] The appellant's counsel contends "the trial judge infused his analysis of willful blindness with objective standards for prudence and foresight". The appellant points to the following aspects of the judge's analysis:
- a) The collision was very significant, shattering the windshield and causing the right front tire to rub. In the circumstances, the collision "had to raise a subjective suspicion in the mind of Mr. Edwards requiring further inquiry" (at paras. 86, 90).
 - b) "The law required him to determine what he had hit" (at para. 90).
 - c) Mr. Edwards "simply hoped that it was a deer without taking adequate steps to confirm that it was a deer" (at para. 93).
 - d) Mr. Edwards' own description of the investigation he made did not even "amount to a sufficient inquiry to determine what he hit" (at para. 95).
 - e) There was nothing preventing Mr. Edwards from making a better inquiry (at para. 96).
 - f) Mr. Edwards' untrue and evasive statements after his arrest were evidence of his intent to avoid liability (at para. 107).

[Emphasis added in factum.]

- [39] Counsel says the judge's emphasis upon these findings suggests he considered whether a reasonable and prudent person would have made further enquiries to determine what he hit. She says that inquiry is not necessary or helpful. These questions, she suggests, speak to constructive knowledge, which in criminal law is not knowledge at all (citing *R. v. Sault Ste. Marie*, [1977] 70 D.L.R. (3d) 430 (Ont. C.A.), *aff'd* [1978] 2 S.C.R. 1299).

The "Person" Requirement

- [40] Further, the appellant argues that even if the judge's analysis satisfies the doctrine of wilful blindness, it is not clear Mr. Edwards had a suspicion he hit a person. In order to trigger liability under s. 252(1.3) of the Criminal Code, Mr. Edwards needed to know it was probable he hit a person, as opposed to a sign or farm stand (citing *R. v. Seipp*, 2017 BCCA 54 at para. 30).
- [41] The appellant contends the judge's finding that Mr. Edwards was not certain he hit a deer does not lead to the conclusion that he believed he hit a person. The fact a witness is disbelieved does not prove the opposite of what he asserts (citing *R. v. M.J.H.*, 2019 YKCA

15).

Temporal Connection

- [42] The appellant says the trier of fact must address the subjective state of mind of the accused at the time the offence is said to have been committed, in this case, when he left the scene of the accident. Speculation as to what the accused would have learned had he chosen to make other or further inquiries is irrelevant to the determination of the blameworthiness of that accused's state of mind at the pertinent time (citing *R. v. Duong* (1998), 39 O.R. (3d) 161 at 168 (C.A.)).
- [43] He submits the judge did not make the necessary temporal connection between the *actus reus* and *mens rea*. The *actus reus* of s. 252 is failing to stop the vehicle and give a name/address and assistance if needed at the scene of the accident. Later recognition of the gravity of the accident is irrelevant. The appellant says misapprehension of this temporal distinction is evident in paras. 67-68 of the judge's reasons:
- [67] Mr. Edwards said that he did not know why he took a screenshot of the report about the accident near Merville. This was an evasive answer, in my view. There is really only one reason for taking the screen shot; namely, that he was concerned that it might be referring to his accident. ...
- [68] at that point he knew he was in trouble.
- [Emphasis added.]
- [44] The appellant says the fact he became concerned after reading news articles hours after the collision, and sent text messages to friends about that news, is not evidence of suspicion at the time of the collision.

Recklessness

- [45] Finally, the appellant argues that if Mr. Edwards was wilfully blind as to bodily harm, he could not actually know of the likelihood of death, and therefore cannot be found to have been reckless as to whether it occurred. He submits a finding of wilful blindness is insufficient to establish recklessness. There is a risk of conviction for mere negligence, and, for this reason, there are sound policy reasons to separate the analysis of wilful blindness as to whether bodily injury has been sustained, and recklessness as to whether death results from that injury.

Analysis

Applicable Law

- [46] The material offence was worded as follows:

252 (1) Every person commits an offence who has the control of a vehicle that is involved in an accident with

(a) another person,

and with intent to escape civil or criminal liability fails to stop the vehicle, give his or her name and address and, where any person has been injured or appears to require assistance, offer assistance.

(1.3) Every person who commits an offence under subsection (1) is guilty of an indictable offence and is liable to imprisonment for life if

(b) the person knows that bodily harm has been caused to another person involved in the accident and is reckless as to whether the death of the other person results from that bodily harm, and the death of that other person so results.

(2) In proceedings under subsection (1), evidence that an accused failed to stop his vehicle, offer assistance and give his name and address is, in the absence of evidence to the contrary, proof of an intent to escape civil or criminal liability.

[47] The charge required the judge to consider whether the Crown had proved:

a) the elements of the offence described in s. 252(1), specifically whether appellant knew that he had been involved in an accident with a person;

b) the elements of the offence described in s. 252(1.3), specifically

i. that bodily harm had been caused and

ii. the accused was reckless with respect to whether death resulted from that bodily harm; and

c) whether s. 252(2) was applicable to prove intent to escape civil liability.

[48] Having found the appellant did not know he had hit a person, the first question gave rise to a question of wilful blindness equivalent to knowledge.

Wilful Blindness

[49] Counsel for the appellant correctly directs our attention to the difficulty judges have had describing the state of subjective awareness of a material fact that may be said to amount to wilful blindness. Many cases suggest one may be found to be wilfully blind to the facts when one "strongly suspects" a fact, or when one recognizes the need to make further enquiries or has "real suspicions".

[50] In *Sansregret*, the Court canvassed the availability of a defence of mistaken belief in consent in a case where the accused was wilfully blind to the effect of his threats upon the victim. McIntyre J, for the Court, in frequently-cited passages at 584-86 adopts Glanville Williams' description of wilful blindness and the comments of Professor Stuart upon which the appellant relies:

Wilful blindness is distinct from recklessness because, while recklessness involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur, wilful blindness arises where a person who has become aware of the need for some inquiry declines to make the inquiry because he does not wish to know the truth. He would prefer to remain ignorant. The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it, while in wilful blindness it is justified by the accused's fault in deliberately failing to inquire when he knows there is reason for inquiry. Cases such as *R. v. Wretham* (1971), 16 C.R.N.S. 124 (Ont. C.A.); *R. v. Blondin* (1970), 2 C.C.C. (2d) 118 (B.C.C.A.), appeal dismissed in this Court at (1971), 4 C.C.C. (2d) 566 (see: [1971] S.C.R. v, unreported); *R. v. Currie* (1975), 24 C.C.C. (2d) 292 (Ont. C.A.); *R. v. McFall* (1975), 26 C.C.C. (2d) 181 (B.C.C.A.); *R. v. Aiello* (1978), 38 C.C.C. (2d) 485 (Ont. C.A.); *Roper v. Taylor's Central Garages (Exeter), Ltd.*, [1951] 2 T.L.R. 284, among others illustrate these principles. The textwriters have also dealt with the subject, particularly Glanville Williams (*Criminal Law: The General Part*, 2nd ed., 1961, at pp. 157-160). He says, at p. 157:

Knowledge, then, means either personal knowledge or (in the licence cases) imputed knowledge. In either event there is someone with actual knowledge. To the requirement of actual knowledge there is one strictly limited exception. Men readily regard their suspicions as unworthy of them when it is to their advantage to do so. To meet this, the rule is that if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge.

Glanville Williams, however, warns that the rule of deliberate blindness has its dangers and is of narrow application. He says, at p. 159:

The rule that wilful blindness is equivalent to knowledge is essential, and is found throughout the criminal law. It is, at the same time, an unstable rule, because judges are apt to forget its very limited scope. A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realized its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. It requires in effect a finding that the defendant [i]ntended to cheat the administration of justice. Any wider definition would make the doctrine of wilful blindness indistinguishable from the civil doctrine of negligence in not obtaining knowledge.

This subject is also dealt with by Professor Stuart in *Canadian Criminal Law*, 1982, at pp. 130 et seq., where its relationship to recklessness is discussed.

[Emphasis added.]

- [51] McIntyre J. held it was appropriate in the circumstances of the case to apply the wilful blindness rule. The appellant was aware of the likelihood of the complainant's reaction to his threats and "deliberately ignorant as a result of blinding himself to reality" (at 587). That being the case, the law presumed knowledge that consent was coerced. There was no room for the operation of the defence of mistaken belief. While Williams' description of the rule was adopted in *Sansregret*, there was not close consideration of its scope.
- [52] In *R. v. Jorgensen*, [1995] 4 S.C.R. 55, Sopinka J., at paras. 102-03, addressed the mens rea requirement in a case involving the sale of pornographic videos by a retailer said to have been ignorant of the videos' contents. He cited the same passages from Williams' text cited in *Sansregret*, with approval:

It is well-established in criminal law that wilful blindness will also fulfil a mens rea requirement. If the retailer becomes aware of the need to make further inquiries about the nature of the videos he was selling yet deliberately chooses to ignore these indications and does not make any further inquiries, then the retailer can nonetheless be charged under s. 163(2)(a) for "knowingly" selling obscene materials. Deliberately choosing not to know something when given reason to believe further inquiry is necessary can satisfy the mental element of the offence. As Glanville Williams wrote in *Criminal Law: The General Part* (2nd ed. 1961) at pp. 157-158:

[T]he rule is that if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge.

In other words there is a suspicion which the defendant deliberately omits to turn into certain knowledge. This is frequently expressed by saying that he "shut his eyes" to the fact, or that he was "wilfully blind".

And, at pp. 158-159, the learned author states:

Before the doctrine of wilful blindness applies, there must be a realisation that the fact in question is probable, or, at least "possible above the average".

A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realised its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness.

A finding of wilful blindness involves an affirmative answer to the question: Did the accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge? The determination must be made in light of all the circumstances. In *Sansregret v. The Queen*, this Court held that the circumstances were not restricted to those immediately surrounding the particular offense but could be more broadly defined to encompass, for example, past events. [Citations omitted.]

[Emphasis added.]

[53] The rule is clarified in *Duong*, where, faced with a submission the accused would have had his suspicions aroused had he made further enquiries, Doherty J.A. wrote at 169:

The appellant's submission misunderstands the basis upon which liability is imposed where wilful blindness exists. Liability turns on the decision not to inquire once real suspicions arise and not on the hypothetical result of inquiries which were never made. [Emphasis added.]

[54] In *R. v. Lagace* (2003), 181 C.C.C. (3d) 12 (Ont. C.A.), which involved the fraudulent re-sale of stolen motor vehicles, Doherty J.A. later wrote at para. 26:

[26] I see no need to quantify the level of suspicion beyond the recognition that it must be a real suspicion in the mind of the accused that causes the accused to see the need for inquiry: [citing *Sansregret*, *Jorgensen* and *Duong*]. The appellant on his own evidence was sufficiently suspicious vehicles were stolen that he immediately made an inquiry of the owner of the vehicle. In my view, the potential application of the wilful blindness doctrine did not require that the trial judge describe the level of suspicion beyond the finding that it was sufficient in the appellant's minds to call for an inquiry.

[Emphasis added.]

[55] In *Briscoe*, Charron J. for the Court wrote at para. 21:

[21] Wilful blindness does not define the mens rea required for particular offences. Rather, it can substitute for actual knowledge whenever knowledge is a component of the mens rea. The doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries but deliberately chooses not to make those inquiries. See *Sansregret*, and *R. v. Jorgensen*, [1995] 4 S.C.R. 55. As Sopinka J. succinctly put it in *Jorgensen* (at para. 103), "[a] finding of wilful blindness involves an affirmative answer to the question: Did the accused shut his eyes because he knew or strongly suspected that looking would fix him with knowledge?" [Emphasis added.]

[56] The test in *Briscoe* is, thus, strong suspicion or, in other words, suspicion to the point where the accused actually sees the need to make further inquiries. Charron J. cited (at para. 22) the passages in *Sansregret* distinguishing between recklessness and wilful blindness. She emphasized the words in the following passage (at 584 of *Sansregret*): "The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it, while in wilful blindness it is justified by the accused's fault in deliberately failing to inquire when he knows there is reason for inquiry."

[57] At para. 23, Charron J. also cites *Glanville Williams* but emphasised a particular phrase, not the passage referring to probabilities:

The rule that wilful blindness is equivalent to knowledge is essential, and is found throughout the criminal law. It is, at the same time, an unstable rule, because judges are apt to forget its very limited scope. A court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realised its probability; but he refrained from

obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice. Any wider definition would make the doctrine of wilful blindness indistinguishable from the civil doctrine of negligence in not obtaining knowledge.

(Criminal Law: The General Part (2nd ed. 1961), at p. 159 (cited in Sansregret, at p. 586).)

[Emphasis added by Charron J.]

- [58] The discussion that follows in Briscoe makes it clear the Court considered the expression "deliberate ignorance" to be particularly descriptive of wilful blindness.
- [59] As we have seen, Williams' proposition that wilful blindness only exists where the accused realizes "the fact in question is probable, or, at least 'possible above the average'" has been frequently cited, but there is little judicial consideration of what it means to say something is "possible above the average". When Williams speaks, in the same phrase, of a person suspecting the fact and one who "realised its probability" he appears to be referring to probability in the scientific sense, as the level of possibility, as in the expression "the probability of winning" or "the probability of getting all the answers right".
- [60] In *R. v. Malfara* (2006), 211 O.A.C. 200, the court allowed an appeal from conviction on the grounds the trial judge had erred in finding the accused had been wilfully blind by failing to inquire why he had been asked to deliver clothing to a jail in return for \$50. The court found mere suspicion there might have been more in the package than clothing "did not reach either the level of suspicion or the degree of specificity of the suspicion required to support a finding of wilful blindness" (at para. 3). Citing the passage from Williams adopted by the Supreme Court of Canada in *Jorgensen*, the court held, at para. 4:
- [4] The level of suspicion described by Professor Williams as a "probability" goes well beyond the suspicion described by the trial judge as "there may be more to the parcel than clothing". Similarly, a suspicion that a fact is probably true is much more specific than a suspicion that there was something "more to the parcel than clothing". [Emphasis added.]
- [61] If that standard requires the accused to believe the fact in question is more probable than not, it is not the standard generally applied.
- [62] In *R. v. Duncan*, 2013 ONCA 774, the court allowed an appeal and overturned a conviction on the grounds the trial judge had erred in charging the jury in relation to wilful blindness. The court held the judge had erred by using words that did not say anything about the level of suspicion to engage the doctrine of wilful blindness. The charge in question directed the jury to find the accused to be wilfully blind to the fact child pornography was being accessed through his computer if he "had a suspicion that it could be" (at para. 5). The court found the charge was defective because it did not direct the jury to consider whether the suspicion rose to the level at which the accused could be said to have been deliberately ignorant with respect to the existence of the pornography.

[63] In my view, the standard set out in *Malfara* is exceptional. The Crown is generally not required to show the accused believes a fact is probably true in order to establish wilful blindness. To impose that standard would amount to saying the trier of fact could only draw the inference the accused saw the need to call for an enquiry if, before making any enquiry, the accused believed his suspicion to be probably correct.

[64] As Professor Sherrin notes (in "Wilful Blindness: A Confused and Unnecessary Basis for Criminal Liability?" (2014) 47:2 UBC L. Rev. 709 at 714:

Given that wilful blindness is a substitute for actual knowledge, it obviously cannot require belief in fact. And Canadian courts do not hold that it does. [Emphasis in original.]

[65] Professor Sherrin helpfully summarizes the jurisprudence at 714-17:

The Supreme Court of Canada, unfortunately, has been quite inconsistent. The Court has on several occasions cited the statement of Glanville Williams that a "court can properly find wilful blindness only where it can almost be said that the defendant actually knew. He suspected the fact; he realised its probability". But this statement is always cited as part of a larger passage, other parts of which were once emphasized. The Court has also just as often cited passages from scholars (including Williams) that do not mention the need for heightened suspicion, namely that a party can be found wilfully blind if he "has his suspicion aroused" and that wilful blindness connotes a process of suppressing "a suspicion". In *R v Jorgensen* the Court quoted yet another statement by Williams: "Before the doctrine of wilful blindness applies, there must be realisation that the fact in question is probable, or, at least 'possible above the average'". But *Jorgensen* and other Supreme Court decisions contain statements in the Court's own words that suggest any level of suspicion is sufficient. In *R v Hinchey*, for example, Justice Cory wrote that wilful blindness "means that the accused suspected that he was or would be guilty of an offence if he persisted in his conduct but despite this suspicion he refused to make inquiries that would confirm or deny his suspicions." Perhaps as a result of this lack of clarity, a large number of lower level appellate decisions have defined local blindness absent any reference to the need for heightened suspicion. In *R v Lagace* the Ontario Court of Appeal even explicitly rejected the suggestion that the accused's suspicion must be aroused to any particular degree "beyond the recognition that it must be a real suspicion in the mind of the accused that causes the accused to see a need for inquiry". There is law to the contrary. A few provincial appellate decisions seem to state or at least suggest that suspicion of a possibility is insufficient. But on the whole it seems (as best one can tell) that the majority position in Canada is that an elevated degree of suspicion is not required. To the extent that there are cases to the contrary, it is difficult to distinguish them from the occasional recklessness cases that similarly require awareness of more than a possibility. [Emphasis in original; footnotes omitted.]

[66] While I agree with Professor Sherrin generally, I do not accept that the majority position in Canada is that an elevated degree of suspicion is not required. In *Malfara* and *Duncan*, for example, the trial judges were held to have erroneously failed to require the Crown to establish a heightened level of suspicion. A mere suspicion that does not lead the accused

himself to recognize the need to make inquiries is insufficient to give rise to wilful blindness. Nor are circumstances that would cause a reasonable person to have qualms sufficient. The requirement of subjective appreciation of the probability is to some extent "heightened". Further, the requirement the suspicion be such as to give rise to the obligation to make enquiries is also a requirement for "heightened suspicion". In both Jorgenson and Briscoe, the Court spoke of the need to establish the accused had a "strong suspicion". That suspicion must rise to the level where it can be said the accused deliberately failed to make enquiries he knew were warranted because he wanted to be able to deny knowledge of the truth.

- [67] The test is stated nicely in *R. v. Farmer*, 2014 ONCA 823 by Sharpe J.A. (at para. 26): the accused must have "shut his eyes because he knew or strongly suspected that looking would fix him with knowledge" or because he became "aware of the need for some inquiry [yet] decline[d] to make the inquiry because he [did] not wish to know the truth".
- [68] In *R. v. Morrison*, 2019 SCC 15, Moldaver J. for the majority described the heightened level of suspicion as follows:
- [98] Wilful blindness exists where an accused's "suspicion is aroused to the point where he or she sees the need for further inquiries, but deliberately chooses not to make those inquiries": *R. v. Briscoe*, ... at para. 21 (emphasis in original). Wilful blindness has been characterized as "deliberate ignorance" because it connotes "an actual process of suppressing a suspicion": D. Stuart, *Canadian Criminal Law: A Treatise* (7th ed. 2014), at p. 261. "A court can properly find wilful blindness only where it can almost be said that the defendant actually knew": *Briscoe*, at para. 23, citing G. Williams, *Criminal Law: The General Part* (2nd ed. 1961), at p. 159. This Court has repeatedly held that if an accused is found to be wilfully blind, that state of mind may substitute for actual knowledge: *Sansregret v. The Queen*, ... at pp. 584-85; *Briscoe*, at para. 21. Indeed, it is "equivalent to knowledge": *Briscoe*, at para. 23, citing Williams, at p. 159. [Emphasis in original.]
- [69] The hit-and-run cases referred to by counsel suggest a suspicion sufficient to cause the accused to believe he should make further enquiries before leaving the scene of a collision meets the "heightened suspicion" test.
- [70] In *Harrison*, the accused struck a person wearing dark clothing and walking, in the dark, on the gravel edge of the paved shoulder of the road. The impact shattered the windshield on the passenger side and did damage to the vehicle similar to that which was sustained in this case. The driver testified she knew she had been in a major impact with something but didn't know what and was too afraid to stop. Grist J. held:

- [37] [T]he element of knowledge accompanying s. 252(1) with respect to involvement in an accident can be satisfied by the accused exhibiting wilful blindness towards what has been struck. In *Sansregret v. R.* [1985] 1 S.C.R. 570, wilful blindness was defined as a quality different from recklessness. It is where a person is aware of the need to inquire, but makes no inquiry because he or she does not want to know the truth.
- [38] Here, the circumstances required the accused to at least determine what she had hit. She did not want to learn the truth and there cannot be a defence, in my view, to closing one's eyes through panic or fear of what has happened.
- [39] Had Ms. Harrison stopped and made the necessary inquiry, the bodily harm to Mr. Pinson would have been evident. Her failure to do so in the face of the force of impact exhibited recklessness as to whether he lived or died.
- [71] In *R. v. Basra*, 2015 BCSC 1075, Verhoeven J. convicted a driver, charged under the same provisions we are considering, on the basis the driver was wilfully blind to the fact the vehicle he drove was involved in an accident and as to the bodily harm that resulted from the accident, and reckless as to whether death resulted. The judge adopted Grist J.'s view that there may be said to be wilful blindness where a person is aware of the need to inquire, but makes no inquiry because he or she does not want to know the truth.
- [72] In *Basra*, as in *Harrison*, awareness of the need to make further enquiries supported a finding of wilful blindness. While the driver in *Basra* did not know what he had hit, it was obvious the vehicle had been involved in a major impact. As in the case at bar, there was a loud bang at the time of impact and the windshield was severely damaged on the passenger side. In cross-examination, the driver said he recognized at least three possibilities to explain the impact: collision with an animal, collision with a person and collision with a rock that might have been thrown at the vehicle. There was nothing to indicate a rock had been thrown. The driver did not testify he thought he might have hit an animal and, in the words of the judge "there was really nothing to suggest that he might have struck an animal" (at para. 48).
- [73] As in the case at bar, the driver stopped his vehicle after impact but did not return to the scene of the impact to further investigate. The judge found, at para. 57,
- [57] I find that Mr. Basra was well-aware of the possibility that the accident had involved a collision with a person, but chose not to investigate or inquire, in order to avoid finding out what he did not want to find out. He was wilfully blind to the fact that the accident had involved a collision with Mr. McKay.
- [Emphasis added.]
- [74] In my view, the judges in these cases correctly found the requisite mens rea to exist because the accused were aware of the need for some inquiry, and yet declined to make the inquiry because they did not wish to know the truth.

Subjective Fault

- [75] The appellant's counsel, focusing upon certain phrases used by the judge, says he implicitly adopted an objective analysis of mens rea.
- [76] In my view, that submission should be weighed in light of the judgment in Hundal. In that case, (at 883) the Court adopted with approval a passage from Professor Stuart's text, *Canadian Criminal Law* (2nd ed., 1987) at 125:

In trying to ascertain what was going on in the accused's mind, as the subjective approach demands, the trier of fact may draw reasonable inferences from the accused's actions or words at the time of his act or in the witness box. The accused may or may not be believed. To conclude that, considering all the evidence, the Crown has proved beyond reasonable doubt that the accused "must" have thought in the penalized way is no departure from the subjective substantial standard. Resort to an objective substantial standard would only occur if the reasoning became that the accused "must have realized it if he had thought about it".

Temporal Connection

- [77] Insofar as the temporal connection between the actus reus and the mens rea is concerned, the appellant cites *R. v. Cooper*, [1993] 1 S.C.R. 146. In that case, Cory J. for the Court, at 156-57, referred to the classic rule, described by Professor D. Stuart, the "simultaneous principle": at some point the actus reus and the mens rea must coincide.
- [78] The application of that unquestioned rule in this case means the Crown was obliged to establish that at the time Mr. Edwards left the scene of the accident without making sufficient enquiries (which is the actus reus), he had the necessary intent: to leave the scene of an accident when he knew a collision had occurred and bodily injury had resulted.

Recklessness

- [79] The appellant's counsel notes that in *Sansregret*, the Supreme Court stated recklessness "involves knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur" (at 584).
- [80] Citing the statement of McLachlin J. (as she then was) in *R. v. Thérroux*, [1993] 2 S.C.R. 5 at 20 that "recklessness presupposes knowledge of the likelihood of the prohibited consequences", she argues an accused cannot be reckless if he is wilfully blind to a risk or danger. Wilful blindness, she contends, is incompatible with the constitutional requirement that the prosecution prove each element of the crime, in this case recklessness, beyond a reasonable doubt.

Application of the Law

Wilful Blindness

- [81] The appellant's counsel contends the doctrine of wilful blindness was misapplied in this case because the judge failed to look for "heightened suspicion", and he applied the doctrine "as a form of objective liability".
- [82] I would not accede to the argument the judge erred in his application of the doctrine of wilful blindness. He began his analysis by referring to the description of wilful blindness in *Sansregret* and this description, from Williams, of the rule: "if a party has his suspicion aroused but then deliberately omits to make further enquiries, because he wishes to remain in ignorance, he is deemed to have knowledge". That is clearly the test he applied when he concluded the facts "had to raise a subjective suspicion in the mind of Mr. Edwards requiring further inquiry" (at para. 90). That, in my view, is a sufficient description of the heightened suspicion, as described in *Sansregret*, *Jorgenson* and *Briscoe*, upon which to ground a finding of wilful blindness. In the words of Charron J. in *Briscoe*, cited above, Mr. Edwards' suspicion was "aroused to the point where he [saw] the need for further inquiries but deliberately [chose] not to make those inquiries" because he wanted to be able to deny the truth.
- [83] In support of her argument an inappropriate objective test was applied, counsel for the appellant says the judge found Mr. Edwards did not have actual knowledge that he had hit a person, but convicted him because ought to have known he hit a person. She says that is an inappropriate objective analysis of fault. In my view, that is not an accurate description of the judge's analysis. He accepted Mr. Edwards did not know he had hit a person. The facts he found, however, "had to raise a subjective suspicion in the mind of Mr. Edwards requiring further inquiry". The existence of subjective suspicion is always an inference (see *Briscoe* at para. 21). It is clear the judge drew an inference of subjective suspicion. There was a basis in the evidence upon which he could do so.
- [84] Insofar as the words used by the judge are concerned, here, to paraphrase Professor Stuart, as cited in *Hundal*, to which I have referred, to conclude the accused "must" have thought in the penalized way is not a departure from the subjective standard.
- [85] It should also be borne in mind that some of the analysis the appellant says is an enquiry into objective facts is aimed, not at the appellant's *mens rea*, but, rather, the question whether he fled the scene to avoid civil liability. The judge rejected Mr. Edwards' evidence he investigated what had happened and he had a reason to think he hit a deer. The judge concluded the Crown was entitled to rely on the presumption set out in s. 252(2). That being the case, the judge's analysis of the appellant's intent to avoid liability is obiter. That obiter includes the judge's consideration of Mr. Edwards' untruthful statement to the police that he was involved in a collision 8 to 9 kilometres north of the accident scene; his evidence that he heard a deer scream; he actually saw a deer, and his denial he knew he was in an accident with a person until the police arrested him (despite having saved a screenshot of an article about the accidental death). These facts were relied upon to draw inferences about the

appellant's subjective intentions upon leaving the scene. In my view, they do not reflect an inappropriate objective assessment of mens rea. In any event, the judge's assessment of the evidence of intent is of no moment as the conviction hinged upon the application of the presumption in s. 252(2) of the Criminal Code.

- [86] The appellant submits the judge lost sight of the "person requirement", that is the requirement that the Crown establish the appellant knew or was wilfully blind to the fact he had been involved in an accident "with another person", and knew or was wilfully blind to the fact that bodily harm has been caused "to another person involved in the accident".
- [87] I would not accede to that argument.
- [88] Throughout the testimony of the witnesses and the submissions, the judge's attention was drawn to the likelihood (or unlikelihood) of a person being present on the edge of the highway, along the fog line, at this relatively remote location and early hour.
- [89] The appellant did not say he thought he hit a stationary object at the time of the collision. At that time, he testified his "only assumption" was that he had hit a deer.
- [90] The appellant's testimony to the effect that, looking back on what had occurred, while he was on the ferry, he considered whether he might have hit a sign or farm stand (because there was no blood on his vehicle), was pure speculation. He claimed to have been trying, in retrospect, to think of what might have happened. He had not looked for a sign or farm stand when he brought his vehicle to a stop after the collision. When challenged, in cross-examination, he offered no explanation of how a farm stand might have been on the road at the location of the accident. He acknowledged he saw no sign of a foreign debris on his vehicle when he examined it after the crash, only broken parts of the vehicle itself. He did not mention the possibility of a collision with a sign or farm stand when he spontaneously told the arresting officer he had hit a deer. In short, there was no evidence to support the view that the appellant subjectively believed he had hit anything other than a body (human or animal) when he stopped his car and hoped it was an animal.
- [91] Finally, the appellant's counsel submits the judge failed to recognize the necessary temporal connection between the actus reus and the mens rea.
- [92] It is correct to say that in the course of assessing the appellant's credibility, the judge reviewed the appellant's conduct and his apparent state of knowledge from the collision to the making of the statements to the police upon his arrest. However, as I read the reasons for judgment, it is clear the judge concluded the circumstances leading the appellant to stop his car at the side of the highway "had to raise a subjective suspicion in the mind of Mr. Edwards requiring further inquiry" (at para. 90). At that point, knowing nothing further and before turning to information the appellant later obtained, the judge concluded that the duty to make an inquiry arose. In my opinion, the judge found the necessary mens rea existed at the time the appellant failed to stop his vehicle and offer assistance.

[93] In summary, I am of the view the appellant has not established that the judge erred in concluding that the appellant was wilfully blind with respect to the fact that he had hit a person and caused bodily injury when he left the accident scene.

Recklessness

[94] The appellant's second argument, in my view, hinges upon the argument wilful blindness may amount to knowledge in law, but is not knowledge in fact. If knowledge in fact is not proven, it follows that recklessness as to the consequences cannot be proven.

[95] I would not accede to that argument. Charron J. observed in *Briscoe*, at para. 20, that "wilful blindness, correctly delineated, is distinct from recklessness and involves no departure from the subjective inquiry into the accused's state of mind which must be undertaken to establish knowledge", and, at para. 21, "it can substitute for actual knowledge whenever knowledge is a component of the mens rea" (emphasis added).

[96] In *Briscoe*, the offence charged required the Crown to prove beyond a reasonable doubt that the abettor knew of the perpetrator's intention to kill the victim. The Crown did so by establishing the accused was wilfully blind with respect to that intention. If proof of wilful blindness is sufficient to prove the requisite knowledge in relation to the offence of first degree murder, and if it is not constitutionally impermissible to base a conviction of an abettor upon wilful blindness, then I can see no reason why the accused's wilful blindness should not be considered to be knowledge of the likelihood of the prohibited consequences, which is a prerequisite to a finding of recklessness.

[97] In *Duong*, Doherty J.A. for the court wrote, after reviewing the case law, at 168:

These authorities make it clear that where the Crown proves the existence of a fact in issue and knowledge of that fact is a component of the fault requirement of the crime charged [in this case that bodily injury was sustained], wilful blindness as to the existence of that fact is sufficient to establish a culpable state of mind.

[98] While it is true that s. 7 of the Charter prohibits the imposition of imprisonment in the absence of proof of an element of fault, that fault may consist of a state of mind amounting to intent, recklessness or wilful blindness: (*Hundal* per Cory J. at 882).

[99] Recklessness exists where an accused is conscious of a risk and proceeds in the face of that risk. Here, the finding of wilful blindness with respect to whether the accident had caused bodily injury to a person amounted to a finding that the accused was conscious of that risk. The recklessness analysis entailed an enquiry into the accused's conduct after the collision, and required the judge to assess the accused's evidence he took appropriate steps to ensure no injury had occurred. The accused's evidence on that question was rejected.

- [100] While the jurisprudence supports the proposition that one cannot be reckless if one is not wilfully blind as to the existence of a risk, (because one cannot be conscious of a risk of which one is not strongly suspicious) (see Vinokurov), the converse is not true; one may be found to have the requisite awareness of a risk where one deliberately omits to make an inquiry that is warranted.
- [101] The appellant's argument, if correct, would preclude any person who is wilfully blind with respect to the consequences of an accident from being convicted under s. 252(1.3)(b). Here, in my view, as in *Théroux* (at 23-24), pragmatic considerations support the view I have taken of mens rea. A person who is wilfully blind as to the bodily injury resulting from a car accident, and leaves a victim to die without assistance, should not escape criminal responsibility merely because he failed to make the inquiry he knows is necessary.
- [102] Last, the appellant's counsel submits the judge misapplied the W.(D). analysis by using rejection of the appellant's evidence to bolster the case against him, and by failing to consider whether the evidence that remained after the rejection of Mr. Edwards' testimony was enough to prove his guilt beyond a reasonable doubt. Relying on M.J.H, she says the fact a witness is disbelieved does not prove the opposite of what he asserted. In my view, the critical findings of the trial judge did not hinge upon his rejection of the appellant's evidence.
- [103] The judge's care to observe the approach described in W.(D.) is evident in his consideration of whether the appellant saw the victim. He believed the appellant in this regard, in part, as the appellant's counsel notes, because the circumstantial evidence supported his testimony. However, he went on to note that even if he had rejected the appellant's evidence, he could not find the accused actually saw the victim because the Crown had not made out a case to that effect.

Conclusion

- [104] There was little dispute with respect to the material facts in this case, with the exception of the extent of the appellant's post-accident inquiry. There was no doubt the appellant's vehicle struck the victim and caused his death, and that the appellant did not stop at the scene, identify himself and offer assistance. The sole issues, as identified by the trial judge, were whether he could draw the necessary inferences with respect to the appellant's subjective appreciation of the need to make an inquiry, and whether there was evidence to counter the inference that he fled to avoid civil responsibility.
- [105] Finding no error in the analysis of those questions, I would dismiss the appeal.

"The Honourable Mr. Justice Willcock"

I agree:

"The Honourable Madam Justice Griffin"

I agree:

"The Honourable Mr. Justice Abrioux"

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