
CANADA / JUDGMENT

R. v. Gosse

2017 BCCA 356

COURT

British Columbia Court of Appeal

DECIDED

17 October 2017

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2017 BCCA 356 R. v. Gosse

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Gosse,

2017 BCCA 356

Date: 20171017

Docket: CA43975

Between:

Regina

Respondent

And

Eric Gosse

Appellant

Before:

The Honourable Mr. Justice Tysoe

The Honourable Mr. Justice Harris

The Honourable Mr. Justice Fitch

On appeal from: An order of the Supreme Court of British Columbia, dated April 14, 2016 (R. v. Gosse, 2016 BCSC 812, Victoria Docket Number 161715-1).

Counsel for the Appellant:

P. Firestone

D. Williams

M. Melnyk, A/S

Counsel for the Respondent:

J. Dickie

Place and Date of Hearing:

Victoria, British Columbia

September 18, 2017

Place and Date of Ruling/Judgment given to Parties, with Reasons to Follow:

Victoria, British Columbia

September 18, 2017

Place and Date of Reasons:

Vancouver, British Columbia

October 17, 2017

Written Reasons to Follow by:

The Honourable Mr. Justice Fitch

Concurred in by:

The Honourable Mr. Justice Tysoe

The Honourable Mr. Justice Harris

Summary:

The appellant was convicted of dangerous driving causing bodily harm following a collision between his SUV and a motorcycle. He appealed the conviction on grounds that the trial judge misapprehended the evidence, reached an unreasonable verdict, and erred by taking into account a speed advisory sign in determining whether the offence was made out. Held: Appeal dismissed. The trial judge did not misapprehend the evidence. The verdict was reasonable and well-supported by the evidence. Finally, the trial judge did not err when she considered a speed advisory sign in her analysis of the circumstances surrounding the collision.

Reasons for Judgment of the Honourable Mr. Justice Fitch:

I. Introduction

- [1] Eric Gosse was convicted by a Supreme Court judge on April 14, 2016, of dangerous driving causing bodily harm, contrary to s. 249(3) of the Criminal Code, R.S.C. 1985, c. C-46 [Code].
- [2] The offence arose out of a serious collision between the appellant's SUV and a motorcycle driven by Mr. Ron Broda. There were no witnesses to the collision, but the events in the seconds preceding the collision and the collision itself were captured by video surveillance cameras located near the scene. As a result of his injuries, Mr. Broda has no recollection of the collision. The case against the appellant was comprised of testimony from witnesses near the scene who observed the appellant's manner of driving just moments before the collision, the video surveillance evidence, the evidence of two collision analysts, forensic evidence gathered at the scene, and re-enactment videos created in an effort to depict what the appellant would have been able to see as he approached the site of the collision. The appellant did not testify at trial.
- [3] The appellant appealed his conviction primarily on grounds that the trial judge misapprehended material evidence that went to the core of her reasoning process and that the verdict was unreasonable. He sought an acquittal or, in the alternative, a new trial.
- [4] On September 18, 2017, this Court dismissed the appeal from conviction with reasons to follow.

II. Background

- [5] I will provide only so much of the factual background of this matter as is necessary to address the grounds of appeal.
- [6] The collision occurred on the morning of July 24, 2013, at Ogden Point in Victoria, British Columbia. Ogden Point is a large, open parking lot and mixed-use area of approximately 30 acres. It consists of a number of buildings and port facilities abutting the waterfront where cruise ships dock. Buses and other vehicles park at Ogden Point in parking areas joined by roadways.
- [7] The appellant was driving a Toyota Highlander sport utility vehicle. Mr. Broda was driving a Honda motorcycle.
- [8] The video surveillance camera evidence established that Mr. Broda had been following the appellant at a safe distance for a considerable period of time before both vehicles turned into Ogden Point at its south entrance. The judge was unable to conclude that the appellant knew Mr. Broda was behind him when both vehicles turned into Ogden Point.
- [9] There was no evidence that the appellant was operating the SUV in a dangerous manner until shortly before the collision, no evidence that the appellant and Mr. Broda knew one another on the date of the offence, and no evidence that any sort of altercation had occurred between the two men before the collision.

- [10] After turning into Ogden Point, the appellant pulled straight into a parking lot. Rather than following the SUV into this lot, Mr. Broda made a right-hand turn onto a road that travels toward the north entrance of Ogden Point. The appellant executed a quick U-turn in the parking lot, accelerated, and made a left turn out of the parking lot that put him on the same road behind the motorcycle. No one saw the collision, but witnesses in the area heard the SUV's engine rev and its tires squeal as the appellant turned left. The same witnesses also heard, very shortly thereafter, the sound of a collision.
- [11] The road on which both the appellant and Mr. Broda were travelling has two lanes of travel, one for northbound traffic and one for southbound traffic. The appellant and Mr. Broda were in the northbound lane. Just after the appellant entered the roadway by turning left, it curves to the right and then straightens out as one approaches the site of the collision. The north lane is narrow and has a pedestrian walkway on the right side which is separated from the roadway by metal poles and chains.
- [12] Ogden Point is private property and speed is not subject to municipal regulation or police enforcement. This stretch of road did, however, have a speed advisory sign recommending that vehicles not travel in excess of 30 km/h.
- [13] The video surveillance camera evidence captured the vehicles of both the appellant and Mr. Broda at various times and from different vantage points within Ogden Point. One of the video surveillance cameras captured the collision. Three re-enactment videos were done with a GoPro camera to simulate what would have been visible to the appellant as he approached the site of the collision.
- [14] The video evidence depicted the appellant rapidly gaining ground on the motorcycle. The collision occurred some distance away from the right curve, after the road straightens out for northbound traffic, and just past a marked pedestrian crosswalk and the first of two speedbumps in that area.
- [15] The evidence established that the motorcycle went around and to the right of the first speedbump and was turning back into the lane of travel when it was overtaken and struck by the appellant's SUV. The SUV did not move from the northbound lane to make way for the motorcycle before the collision. The video also established that the appellant's brake lights did not come on before the speedbump or the collision.
- [16] Unfortunately, Mr. Broda suffered what the trial judge described as serious and life-altering injuries as a result of the crash, including multiple fractures and, ultimately, the loss of his left leg below the knee.
- [17] The appellant stayed at the scene of the accident and was observed by witnesses to be crying and upset. There was no evidence that the appellant had consumed alcohol or drugs, or that his attention was distracted by anything before the accident occurred.

[18] The appellant was charged with criminal negligence causing bodily harm arising from the manner in which he was operating the SUV prior to the collision, along with assault with a weapon and aggravated assault. The latter two counts were based on the Crown's theory that the appellant deliberately drove his SUV into Mr. Broda's motorcycle. The trial judge acquitted on both of the assault counts, finding that the evidence fell "well short" of establishing beyond a reasonable doubt that the appellant intentionally applied force to Mr. Broda by using his SUV as a weapon.

III. The Findings of the Trial Judge

[19] The judge reviewed the governing jurisprudence with respect to the offence of dangerous driving including: *R. v. Hundal*, [1993] 1 S.C.R. 867; *R. v. Beatty*, 2008 SCC 5, [2008] 1 S.C.R. 49; and *R. v. Roy*, 2012 SCC 26, [2012] 2 S.C.R. 60. On appeal, the appellant took no issue with the judge's articulation of the law, including her summary of the conduct and fault requirements for the offence of dangerous driving.

[20] The judge was not satisfied beyond a reasonable doubt that the appellant's driving displayed a wanton and reckless disregard for the lives or safety of others and acquitted the appellant of criminal negligence causing bodily harm.

[21] The judge convicted the appellant of the included offence of dangerous driving causing bodily harm. Tracking the language of s. 249(1) of the Code, she found that the appellant operated his motor vehicle in a manner dangerous to the public having regard to all the circumstances, including the nature, condition and use of the place at which the motor vehicle was being operated and the amount of traffic that is or might reasonably be expected to be present at that place and time. She found that the appellant's conduct caused the collision and Mr. Broda's injuries. Further, she found that the appellant's driving constituted a marked departure from the standard of care that a reasonable person would have observed in the circumstances.

[22] In coming to these conclusions, the judge made these critical findings:

- The area in which the collision occurred is a popular walking area and could be expected to have pedestrian and vehicular traffic, including buses, at that time in the morning. As the trial judge put it:

[110] Although the collision occurred in the early morning, it was a time of day when the area was waking up with the kind of activities that could occur throughout the day including pedestrian traffic and vehicle traffic including buses. Pedestrian traffic, vehicle traffic and buses are all apparent in the videos and should reasonably have been expected by any driver in the area at the time.

- The engine revving heard by witnesses after the appellant completed the U-turn signified the acceleration and speed of the Highlander as it took up the route taken by Mr. Broda;

- Based on the surveillance videos and the evidence of a collision analyst who viewed them, Mr. Broda was travelling at a speed of 26 to 34 km/h before the accident occurred, while the appellant was travelling at a minimum speed of 50 to 57km/h. The trial judge accepted that the estimated speed of the appellant's SUV at the time of the collision was low because the slide-to-stop speed estimate calculated by the accident reconstruction analyst did not take into account the fact that Mr. Broda's motorcycle hit a fence before coming to rest. Nevertheless, for the purposes of her analysis, the trial judge determined to proceed on the footing that the appellant's minimum speed just before the accident was at the bottom end of the range, or 50 km/h;

- The appellant drove his SUV "at a substantially greater speed than the motorcycle and any other vehicles that appear in the videos";

- The speed of the appellant's SUV "was excessive based on the video and all of the conditions that could reasonably have been expected in the area";

- The motorcycle proceeded around and to the right of the speedbump and was turning back into the northbound lane of travel when it was overtaken by the appellant's SUV and the collision occurred. The judge summarized what occurred immediately before the collision in these terms:

[111] The motorcycle slowed for the speedbump and then drove slowly around it. The Highlander accelerated as it made the left-hand turn into the parking lot and failed to slow down or break either for the crosswalk, the speedbump, or the motorcyclist. Based on the GoPro video of Constable Elliott [the re-enactments] and my review of the photographs and maps of the scene, I conclude that the motorcycle would have been within the field of vision of the Highlander well before the crash. The Highlander was travelling at a minimum speed of 50 kilometres per hour at the time of the collision. Therefore, the collision occurred when the Highlander appeared to be attempting to pass or overtake the motorcycle in a manner that I would characterize as aggressive and dangerous.

[112] I am of the view that, since the travelling lane was so narrow and included a speedbump, it was not appropriate for any kind of ordinary passing, let alone a pass of that nature. Passing would only have been appropriate in very limited circumstances and using caution which clearly was not exercised here. Given that the roadway area of Ogden Point had a reduced speed advisory sign, had a visible crosswalk and speedbump, and given that it was reasonable to expect both pedestrian traffic and vehicle traffic through the area at that time, the usage of the road required a high standard of care that would have been obvious to any reasonably prudent driver. I find that the driving was objectively dangerous in the totality of the circumstances and the actus reus is made out.

- Based on the re-enactments, the motorcycle would have been in the appellant's view for several seconds before the collision occurred;

- The circumstances leading up to the accident were inconsistent with the "momentary inattention" line of cases;

· In concluding that the appellant's driving constituted a marked departure from the standard of care required of a reasonable driver in the same circumstances, the judge said this:

[113] There are a number of dangerous aspects to Mr. Gosse's driving that, in my view, his driving goes beyond momentary inadvertence. In that regard, I consider:

- a) The nature of the parking lot itself;
- b) The revving, acceleration, and continuing speed at a minimum speed of 50 kilometres per hour at the time of impact which was well beyond the posted speed;
- c) The failing to slow or brake for a crosswalk and for speedbump and for a motorcycle, all of which would have been within his field of view for several seconds; and
- d) If this was an attempt by Mr. Gosse to overtake the motorcycle, this was not a location where such an action should have been taken at all or in that manner.

IV. The Grounds of Appeal

[23] I would reframe the central issues on appeal as follows:

1. Did the trial judge misapprehend the evidence by concluding:
 - a. That the collision occurred further down the road at the second speedbump, rather than at the first speedbump?
 - b. That pedestrian and vehicular traffic was present and could reasonably be expected to be present at Ogden Point when the collision occurred? and/or
 - c. That Mr. Broda's motorcycle would have been within the appellant's field of vision for several seconds before the collision occurred?
2. Was the verdict unreasonable or unsupported by the evidence?
3. Did the trial judge err in law by taking into account the speed advisory sign in determining whether the offence of dangerous driving causing bodily harm was proved beyond a reasonable doubt?

V. Analysis

- (a) Did the Trial Judge Misapprehend the Evidence on Material Points that were Essential to her Reasoning Process?

[24] The test to be applied where an appellant contends that the trial judge misapprehended the evidence was summarized in *R. v. Swales*, 2014 BCCA 350 at paras. 48-49:

[48] The threshold to be met in demonstrating a misapprehension of evidence warranting appellate intervention is stringent. The misapprehension must be a question of substance; must be "material" to the trial judge's reasoning process; and must play an essential role, not just in the narrative of the judgment, but in the reasoning process resulting in conviction: *R. v. Lohrer* at para. 2, 2004 SCC 80, [2004] 3 S.C.R. 732. All three elements of the test must be

satisfied to establish a material misapprehension of evidence. The trial judge must be shown to have erred by actually misapprehending the evidence. As LeBel J. explained in *R. v. Sinclair*, 2011 SCC 40, [2011] 3 S.C.R. 3 at para. 53, "[t]he plain language or the thrust of the reasons must disclose an actual mistake".

- [49] It is not enough for the appellant to merely suggest a different interpretation of the evidence, or merely point to some evidence which arguably weighs against the trial judge's finding. Mere differences in interpretation on factual matters are not misapprehensions but simple disagreement with the judge's differing view of the evidence.
- (i) Where the Collision Occurred
- [25] The appellant argued that the reasons for judgment clearly indicate that the judge found the collision to have occurred further down the road at the second speedbump. As the accident occurred at the first speedbump, he submitted that the judge was mistaken as to the substance of the evidence on this point. The appellant said this misapprehension of evidence related to a material point because one of the critical issues at trial was the amount of time the appellant had to see and react to Mr. Broda's motorcycle. The appellant submitted that, as a result of the misapprehension of the evidence on this point, the trial judge concluded that the motorcycle would have been within the appellant's field of view for several seconds. The appellant argued that this finding was essential to the judge's reasoning process and that, consequently, her reliance on this mistaken understanding of events gave rise to a miscarriage of justice within the meaning of s. 686(1)(a)(iii) of the Code.
- [26] I am not persuaded that the judge misapprehended the evidence by proceeding on the erroneous footing that the collision occurred further down the road at the second speedbump.
- [27] Some further background is necessary to put the issue in context. Constable Elliott used a GoPro camera to conduct three re-enactments of what the appellant would have seen from the U-turn to the point of the collision. In all three enactments, she placed Mr. Broda's motorcycle at or near the second speedbump, further away from the place where the collision actually occurred. In each of the three enactments, she put the motorbike in a different position vis-à-vis the roadway. In one re-enactment, she positioned the motorbike to the right of the fog line, outside the northbound lane of travel. In a second re-enactment, she positioned the motorbike in the northbound lane of travel. In the third re-enactment, she positioned the motorbike on what appears to be about a 45° angle to the road in an effort to approximate the position it would have been in had it been returning to the road after skirting the speedbump when the collision occurred. What I have characterized as the third re-enactment was marked at trial as GoPro115.
- [28] In closing submissions, Crown counsel addressed Constable Elliott's decision to locate the motorbike at the second speedbump in these terms:

It also appears from a view of the video, and from the marks that the officer [Constable Elliott] made on the book of photographs showing the placement of the motorcycle, that the motorcycle was placed in fact after the first speedbump. In other words, slightly farther away, or further down the path of travel, if you will, from where Mr. Broda would have been at the time that Mr. Gosse in fact drove that route

But when considering what is visible in that video, it is, in my respectful submission, important for Your Ladyship to keep in mind that the motorcycle is placed slightly further down the roadway, and in fact when Your Ladyship views the surveillance video from Ogden Point, and compares it to the video that Constable Elliott took, it becomes apparent where that difference in location is.

Notwithstanding that error, My Lady, I say that the video accurately shows what was visible to the driver of a vehicle of approximately the same size as the vehicle operated by Mr. Gosse in that location, at that time of day, and with that clear, sunny weather.

Clearly, Constable Elliott's placement of the motorcycle at the second speedbump for re-enactment purposes was acknowledged by the Crown in its closing submissions to be in error.

[29] Second, all of the forensic evidence before the judge was to the effect that the collision occurred at the first speedbump. The parties focused on the evidence gathered from the area of the first speedbump. No one suggested at trial that the second speedbump further down the road was somehow relevant to the determination of this case.

[30] Third, the video depicting the collision upon which Crown and defence counsel and the judge all relied (referred to at trial as DriveS_12-18-2104_094129) clearly shows that the collision occurred immediately after the SUV crossed over the first speedbump. Against this background, it is fair to say that, by the end of this case, it was common ground that the collision occurred at the first speedbump.

[31] Fourth, there is nothing in the reasons for judgment demonstrating that the judge misapprehended the evidence on this fundamental point. The judge never said that the collision occurred at the second speedbump. Further, it would, in my view, be unreasonable to conclude that her references to the speedbump at which the collision occurred were anything other than a reference to the first speedbump. In fact, where the trial judge made reference to "the speedbump", it is obvious from the surrounding context that she was referring to the first speedbump. For example, in describing the roadway where the accident occurred, the judge noted that the poles and chains separating the roadway from the pedestrian walkway end just before the site of the collision. The photographic evidence admitted at trial demonstrated that the poles and chains end at the first speedbump. In addition, in describing where the accident occurred, the judge said that the road curves to the right and then travels straight before a marked crosswalk and raised speedbump. This was obviously a reference to the first speedbump. There was no crosswalk at the second speedbump. Later in her reasons, she confirmed that the collision occurred after the Highlander traversed the crosswalk and speedbump. Again, this could only be a reference to

the first speedbump.

- [32] In support of this ground of appeal, the appellant emphasized that the trial judge relied on the re-enactment labelled GoPro115. In doing so the judge said this:
- [57] The vehicle driven by Constable Elliott during the re-enactment was similar to the 2005 Highlander driven by Mr. Gosse and Constable Elliott wore the GoPro on her forehead to adjust for any height differential between herself and Mr. Gosse. The motorcycle was placed in three different positions in order to provide a perspective on what Mr. Gosse would have been able to see. It is my view that it is clear from the viewing of the Ogden Point video, "DriveS_12-18-2014_094129" and from the enlarged video, that Mr. Broda's motorcycle was going around the speedbump and entering back into the roadway when the collision occurred; therefore, the re-enactment video that is relevant and I have considered is "GoPro115" that re-enacts that motorcycle position.
- [33] The appellant submitted that the judge's reliance on GoPro115 demonstrates that she proceeded on a mistaken understanding that the collision occurred at the second speedbump, because that is where the motorcycle was placed in all three re-enactments.
- [34] I do not agree. In all the circumstances, I am satisfied that the judge understood that the collision occurred at the first speedbump and that the decision to place the motorcycle at the second speedbump for re-enactment purposes was based on Constable Elliott's misunderstanding of where the collision occurred. In my view, it is clear that the trial judge relied on GoPro115, not because it accurately depicted the site of the collision, but because it accurately depicted the position of the motorcycle vis-à-vis the roadway when the collision occurred. That the motorcycle was on an angle and re-entering the roadway when the collision occurred was relevant because it informed both the visibility of the motorcycle as the appellant sped towards it and the extent to which a reasonable person in the appellant's shoes would have seen a risk of collision if the SUV did not slow down or move out of the way.

(ii) Pedestrian and Vehicular Traffic at Ogden Point when the Collision Occurred

- [35] As noted earlier, based on surveillance footage, the judge found as a fact that Ogden Point was "waking up" with activities such as pedestrian and vehicular traffic at the time of the collision. She found that such traffic could reasonably have been expected to be present at the time of the collision.
- [36] The appellant disagreed. He submitted that Ogden Point was "very quiet and literally bereft of traffic" at the time of the collision and that little traffic could be expected at that hour of the morning.
- [37] The trial judge did not, in my view, misapprehend the evidence on this point. The surveillance cameras depict vehicular and pedestrian traffic in the area of the collision. In fact, the appellant's position on this point was not an allegation that the judge misapprehended the evidence, but a dispute about a factual finding the judge reached on the

surveillance video evidence. It is not open to this Court to interfere with that finding absent a demonstration of palpable and overriding error and none has been shown in relation to this issue.

(iii) The Appellant's Opportunity to See the Motorcycle Prior to the Collision

[38] The appellant submitted that the judge misapprehended the evidence by concluding that the motorcycle would have been within the appellant's field of view for "several seconds" before the collision. The appellant's position on this point was related to, but not dependent on, his assertion that the judge erred by mistakenly concluding that the collision occurred further away from the curve, at the location of the second speedbump. I have rejected that submission.

[39] In my view, the judge did not misapprehend the evidence on this point. The appellant simply disagreed with the factual conclusion of the judge. The photographs and video evidence, including GoPro115, all support the conclusion that the appellant would have had several seconds to observe and respond to the motorcycle in front of him.

[40] The appellant argued on appeal that his sightlines were obstructed as he approached the point of the collision and that the judge was wrong to conclude that Mr. Broda would have been within his field of view for several seconds before the collision. Once again, this was not a misapprehension of evidence argument but rather an assertion that the factual findings of the trial judge reflect palpable and overriding error. Having reviewed the videos and the photographs, I am not persuaded that such an error has been shown. The videos and photographs provide an ample evidentiary foundation upon which the judge could reasonably conclude that Mr. Broda would have been in the appellant's sightline for several seconds before the collision. In fact, on the evidence I have reviewed, I do not see how the judge could have come to any other conclusion.

(b) Is the Verdict Unreasonable?

[41] The test to be applied when a conviction is challenged under s. 686(1)(a)(i) of the Code is whether a properly instructed jury, acting judicially, could reasonably have rendered the verdict: *R. v. Yebes*, [1987] 2 S.C.R. 168; *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381 at paras. 36-37.

[42] The trial judge was obliged, as is this Court, to consider the evidence in its totality. In convicting the appellant of the included offence of dangerous driving causing bodily harm, the judge relied on a number of considerations, including the following: the appellant was driving at least 20 km/h in excess of the speed advisory sign; the appellant was driving at a substantially greater speed than the motorcycle and any of the other vehicles that appear in the surveillance videos; given the conditions that existed or could reasonably have been expected to exist in the area of the collision, the appellant was travelling at an excessive rate of speed; Mr. Broda's motorcycle would have been in the appellant's field of view for several seconds before the collision; and the appellant did not slow down for the crosswalk, the

speedbump or the motorcycle before plowing into the motorcycle as it re-entered the road on the north side of the first speedbump.

- [43] As Cromwell J. pointed out in Roy at para. 39, determining whether an objective fault element has been proved will generally be a matter of drawing inferences from all the circumstances. The judge was alive to the cautionary note sounded in Roy, at paras. 1-2, that the requirement of a marked departure from the standard of care of a reasonable person is critical for ensuring that criminal responsibility is only assigned to those who deserve the stigma of a criminal conviction, rather than those who are merely careless.
- [44] The judge was also alive to what she characterized as the "momentary-inattention line of cases", referencing Roy, Beatty and this Court's judgment in R. v. De Ciantis, 2011 BCCA 437. Even though the appellant's dangerous driving began only several seconds before the collision, the judge concluded that both the actus reus and mens rea of the offence were established beyond a reasonable doubt. On established authority, it was open to the judge to conclude that conduct occurring within several seconds can constitute a marked departure from the standard of care of a reasonable person: Beatty, at para. 48.
- [45] Considering the evidence in its totality, the judge concluded that the manner in which the appellant drove the SUV was dangerous within the meaning of s. 249(1) of the Code and that his "pattern of driving" showed a marked departure from the standard expected of a reasonably prudent driver.
- [46] In my view, the verdict was one that a properly instructed jury acting judicially could reasonably have rendered. Whether the appellant proceeded as he did in the face of a risk a reasonable driver would have been aware of, or failed to appreciate the risk that a reasonable driver would have perceived, it was open to the judge to find that the appellant's driving was dangerous and that the appellant's conduct constituted a marked departure from the standard of care that a reasonable person would have observed in the circumstances. In my view, the verdict was reasonable and amply supported by the evidence.
- (c) The Speed Advisory Sign
- [47] The appellant submitted that the speed advisory sign was irrelevant and should not have factored into the judge's analysis. The Crown submitted that the speed advisory sign was properly taken into account by the judge as part of the factual matrix, as it was one of several visual cues that ought to have alerted the appellant to the need for caution as he approached the crosswalk, the first speedbump and the site of the accident.
- [48] This issue was raised by the appellant for the first time on appeal. At trial, the appellant did not suggest that the speed advisory sign was irrelevant. Rather, he took the following position in closing argument:

What's significant that from the defence perspective is this, is that we're not talking about a municipal roadway. The point of this discussion is that this must be contextually determined, and the fact that Ogden Point is a private parking lot, and that these are speed advisories only, support the defence contention that this is not dangerous driving in law, or for that matter criminal negligence.

Speed is a factor, but in my respectful submission the context suggests that it is not dangerous to drive in that kind of parking lot in and of itself over the speed limits recommended. Again everything has to be contextually determined.

So in my respectful submission if the test is beyond a reasonable doubt, the Crown has not established a speed that you can be satisfied, beyond the fact that he was speeding, beyond a reasonable doubt. That's the position of the defence. I accept he was speeding. How much he was speeding is a matter of discussion, speeding meaning go more than the speed advisory of 30 kilometres an hour.

Speeding's been proved, not how much speeding, in my submission.

[49] In my view, the judge made no error in taking into account the speed advisory sign as one of the contextual factors that formed, to use the language of s. 249 of the Code, "all of the circumstances" she was obliged to consider in determining whether the manner of driving was dangerous to the public and constituted a marked departure from the standard of care that a reasonable person would have observed in the same situation.

[50] In a number of cases involving dangerous driving under s. 249 of the Code, courts have considered the existence of speed advisory signs in assessing the circumstances surrounding the accused's driving and the reasonableness of the accused's conduct. For example, in *R. v. Jakovljevic*, 2006 BCSC 1510 at paras. 39, 41, and *R. v. Bandet*, 2001 BCPC 73 at para. 64, the courts compared the accused's speed to the posted speed on speed advisory signs. This comparison formed part of the assessment of the reasonableness of the drivers' actions. In *R. v. Bilodeau*, 2004 BCPC 440 at para. 14, *aff'd* on other grounds, 2005 BCCA 618, the judge considered the signage leading up to the scene of the collision, including two speed advisory signs, in his decision to convict the accused for dangerous driving causing bodily harm. Conversely, in *R. v. Nielsen*, 2012 BCSC 1581 at paras. 23, 120, the judge considered the absence of speed advisory signs leading up to the scene of the accident in the course of his decision to acquit the accused.

VI. Conclusion

[51] It is for these reasons I concluded that the appeal from conviction should be dismissed.

"The Honourable Mr. Justice Fitch"

I AGREE:

"The Honourable Mr. Justice Tysoe"

I AGREE:

"The Honourable Mr. Justice Harris"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/17/03/2017BCCA0356.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-gosse-2017>

Prepared on 26 October 2026 · Esheria