

CANADA / JUDGMENT

R. v. Morin

[1992] 3 SCR 286**COURT**

Supreme Court of Canada

DECIDED

30 January 1992

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

R. v. Morin Collection Supreme Court Judgments Date 1992-01-30 Report

[1992] 3 SCR 286 Case number 22530 Judges Lamer, Antonio; La Forest, Gérard V.; L'Heureux-Dubé, Claire; Sopinka, John; Gonthier, Charles Doherty; Cory, Peter deCarteret; McLachlin, Beverley; Stevenson, William; Iacobucci, Frank On appeal from Alberta Subjects Criminal law Notes SCC Case Information: 22530 Decision Content R. v. Morin, [1992] 3 S.C.R. 286 Kevin Martie Morin Appellant v. Her Majesty The Queen Respondent Indexed as: R. v. Morin File No.: 22530. 1992: January 30.* Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin, Stevenson** and Iacobucci. on appeal from the court of appeal for alberta Criminal law -- Appeals -- Crown appeal -- Question of law -- Evidence -- Accused acquitted on charges of dangerous driving -- Court of Appeal disagreeing with facts to which trial judge directed herself and with inferences that could be drawn from them -- Whether Court of Appeal erred in setting aside acquittal and ordering new trial -- Criminal Code, R.S.C., 1985, c. C-46, s. 676(1) (a). The accused was involved in an accident and was charged with two counts of dangerous driving causing death and one count of dangerous driving causing bodily harm. The accused had been driving to work and was late. As he approached the intersection of a major highway, he looked, thought the highway was clear, came to a "rolling stop" at the stop sign and proceeded onto the highway. His vehicle collided with another vehicle, severely injuring the driver and killing the two passengers. At trial, the accused was acquitted. The trial judge found that he was clearly negligent, but that he was not guilty of the offences charged. The Crown appealed under s. 676(1) of the Criminal Code and the majority of the Court of Appeal set aside the acquittal and ordered a new trial. Under s. 676(1), the jurisdiction of the Court of Appeal was limited to a question of law alone. After reviewing the evidence and the facts as found by the trial judge, the majority concluded that the trial judge had erred in law by failing to consider all relevant evidence and by failing to ask herself whether the manner of the accused's driving considered in its totality amounted to dangerous driving. The majority relied on passages taken from R. v. B. (G.), [1990] 2 S.C.R. 57, which identify three grounds which may constitute an error of law by a trial judge in assessing the facts as they apply to the law: (1) an acquittal based on an erroneous conclusion of reasonable doubt constitutes a question of law where the trial judge has

erred as to the legal effect of undisputed or found facts rather than the inferences to be drawn from such facts; (2) a question of law may also arise when the trial judge misdirects himself with respect to the relevant evidence or (3) when he failed to consider the evidence in its totality. Held: The appeal should be allowed and the acquittal restored. While both the majority and minority proceeded on the basis that the trial judge did not err in law in respect of the principles relating to the definition of dangerous driving, the majority concluded that the trial judge erred in her application of those principles to the facts of the case. The three principles relied upon by the majority, however, did not justify the setting aside of the acquittal in this case. First, this was not a case of undisputed facts to which a correct interpretation of the law could be applied so as to yield a different result. The majority disagreed with the facts to which the trial judge directed herself and with her inferences from those facts. Second, there was no misdirection in respect of any legal principle. The trial judge referred to the evidence which in her opinion was important. This was part of the weighing process, and stressing one item over another was not the result of the misapplication of any legal principle. Third, there is no basis for concluding that the trial judge failed to consider the evidence in its totality in arriving at the ultimate result. In sum, the majority of the Court of Appeal had a different theory of the facts and the inferences that could be drawn from those facts. While the majority's view of the facts might be preferable, this was a matter for the trial judge to determine and, absent an error of law, the Court of Appeal should not have interfered. Cases Cited Considered: *R. v. B. (G.)*, [1990] 2 S.C.R. 57; referred to: *R. v. Morin*, [1988] 2 S.C.R. 345; *R. v. Roman* (1987), 38 C.C.C. (3d) 385 (Nfld. C.A.), rev'd [1989] 1 S.C.R. 230; *Peda v. The Queen*, [1969] S.C.R. 905; *R. v. Binus*, [1966] 4 C.C.C. 193; *R. v. Fotti* (1978), 45 C.C.C. (2d) 353 (Man. C.A.), aff'd [1980] 1 S.C.R. 589; *Belyea v. The King*, [1932] S.C.R. 279; *Ciglen v. The Queen*, [1970] S.C.R. 804; *Poitras v. The Queen*, [1974] S.C.R. 649; *Johnson v. The Queen*, [1975] 2 S.C.R. 160; *Harper v. The Queen*, [1982] 1 S.C.R. 2; *Sunbeam Corporation (Canada) Ltd. v. The Queen*, [1969] S.C.R. 221. Statutes and Regulations Cited Criminal Code, R.S.C., 1985, c. C-46, ss. 249(1) [rep. & sub. c. 27 (1st Supp.), s. 36], (3) [idem], (4) [idem], 676(1)(a), 691(2) (a). APPEAL from a judgment of the Alberta Court of Appeal (1991), 117 A.R. 36, 2 W.A.C. 36, 30 M.V.R. (2d) 92, allowing the Crown's appeal from the accused's acquittal on charges of dangerous driving causing bodily harm and dangerous driving causing death contrary to ss. 249(3) and 249(4) of the Criminal Code . Appeal allowed and acquittal restored. Richard A. Stroppel, for the appellant. Goran Tomljanovic, for the respondent. //Sopinka J.// The judgment of the Court was delivered by Sopinka J. -- The appellant, Kevin Martie Morin, was charged with two counts of dangerous driving causing death and one count of dangerous driving causing bodily harm, under ss. 249(4) and 249(3) of the Criminal Code, R.S.C., 1985, c. C-46 respectively. The charges arose out of an accident which occurred at approximately 7:30 a.m. on February 28, 1990, near Spruce Grove, Alberta, at the intersection of Campsite Road, a secondary highway, and Highway 16X, a four lane divided highway. The appellant was driving a Ford Bronco southbound on Campsite Road. The intersection where the collision occurred is controlled by a stop sign for vehicles entering Highway 16X from Campsite Road. The appellant was driving to work and was late. He

looked as he approached Highway 16X and thought the westbound portion of Highway 16X was clear. He came to a "rolling stop" at the stop sign and proceeded to enter Highway 16X. Unfortunately his vehicle collided with a white Dodge three quarter ton pick-up truck being driven by Mr. René Laflamme westbound in the right-hand lane. No evasive action was taken by either driver and a severe impact resulted. The pick-up truck driven by Mr. Laflamme rolled sideways after being struck. Mr. Laflamme was seriously injured and the two passengers in his vehicle, John Guy Sauvé and Paul Guy Lalonde, were fatally injured after being thrown from the vehicle. At the time of the collision, the sun was just rising. Considerable evidence was led as to the effect that this may have had on the appellant's ability to see oncoming traffic. The trial judge found the appellant to be negligent, but not guilty of the offences charged on the basis that the "necessary criminal element" required for a conviction for dangerous driving under the Criminal Code was not present in his conduct. The majority of the Court of Appeal allowed the appeal, set aside the acquittal and directed a new trial on all three charges: (1991), 117 A.R. 36, 2 W.A.C. 36, 30 M.V.R. (2d) 92. The appeal to this Court is as of right pursuant to s. 691(2) (a) of the Criminal Code .

Judgments Below Alberta Court of Queen's Bench Foster J. commenced by describing the events of the morning on which the collision occurred. She found that the appellant "looked as he approached Highway 16X, thought the westbound portion was clear, came to a rolling stop at the stop sign, and proceeded". She reviewed the testimony of Mr. and Mrs. Schmidt who had been travelling immediately behind the appellant's vehicle on Campsite Road for some distance. The Schmidts saw the appellant come to a rolling stop as he approached the stop sign. They then saw the appellant proceed onto the highway and saw the collision occur. The trial judge indicated that considerable evidence had been adduced as to what effect the sun may have had on the appellant's ability to see. Mr. Schmidt, who was driving immediately behind the appellant, said the sun did affect him in that it made him look more than once for traffic on Highway 16X. There were three westbound vehicles on Highway 16X. Mrs. Schmidt, a passenger, did not see the vehicle that was struck until the point of collision; however, she saw the two vehicles which were following it. The trial judge made the following findings: I find the accused as he approached Highway 16X believed that he had a clear view and believed that the westbound portion of the highway was free of traffic. He was wrong. Whether he failed to see the vehicles because of the sun, the glare, the dawn lighting, the colour of the vehicles, or any combination of these, I do not know. He was clearly negligent. Charges could no doubt have been laid against him under the Highway Traffic Act; but I do not, in these circumstances, see the necessary criminal element in his conduct required for a conviction of dangerous driving under the Criminal Code . The charges were therefore dismissed. Alberta Court of Appeal (1991), 30 M.V.R. (2d) 92 Fraser J.A. (Laycraft C.J.A. concurring) The Crown appealed the appellant's acquittal pursuant to s. 676(1) (a) of the Criminal Code on the basis that the trial judge had erred in law. After reviewing the evidence and the facts as found by Foster J., Fraser J.A. (now Chief Justice of the Court of Appeal of Alberta) concluded that the trial judge had committed such an error. In her view, Foster J. failed to consider relevant evidence, in particular, to what extent the appellant's failure to stop at the stop sign contributed to the

accident. She stated that although Foster J. dealt with the effect of the sun as the appellant approached the intersection, she did not address whether the location of the sun would have affected his vision had he chosen to stop at the intersection. She noted that based on the appellant's own statement, he was aware that the sun was affecting his visibility and yet knowing this, he proceeded without stopping onto a major four lane divided highway. Under these circumstances, she considered it open to the trial judge to have concluded that the appellant's driving was such as to constitute dangerous driving. Fraser J.A. thus concluded that by failing to consider all relevant evidence and by failing to ask herself whether the manner of the appellant's driving considered in its totality amounted to dangerous driving, the trial judge had erred in law. She stated in part: (1)"... it was open to the trial Judge to have inferred that the sun would not have presented a visibility problem had Morin stopped and looked to the east along the highway before leaving the stop sign. This issue was not addressed by the trial Judge" (p. 96). (2)The trial judge failed to consider the evidence in its totality. Accordingly, the trial judge failed to appreciate or disregarded material evidence. Under these circumstances, it was open to the trial judge to conclude that the appellant's driving was such as to constitute dangerous driving. In support of this conclusion, Her Ladyship relied on the following passages from *R. v. B. (G.)*, [1990] 2 S.C.R. 57, at pp. 71, 72 and 77: An acquittal based on an erroneous conclusion of reasonable doubt constitutes a question of law where the trial judge has erred as to the legal effect of undisputed or found facts rather than the inferences to be drawn from such facts. ... A question of law may also arise, it seems to me, when the trial judge misdirects himself or herself with respect to the relevant evidence. ... A review of the trial judge's decision in this case makes it clear that he failed to consider the evidence in its totality. This was the result of misdirection and brought the matter within the jurisdiction of the Court of Appeal. Foisy J.A. (dissenting) Foisy J.A. set out the two arguments made by the Crown, namely, that the learned trial judge erred in law (a) in failing to apply the proper test to the offence of dangerous driving, and (b) in failing to appreciate or in completely disregarding relevant evidence. In dealing with the first ground, he noted that the trial judge found that the appellant was "clearly negligent". In order to appreciate exactly what Foster J. meant by these words, Foisy J.A. reproduced the entire trial judgment. He noted that just before rendering her decision, the legal elements which must be proven by the Crown on the charge of dangerous driving were reviewed extensively before the trial judge, and that she was referred to the decisions of *Peda v. The Queen*, [1969] S.C.R. 905, *R. v. Binus*, [1966] 4 C.C.C. 193 (Ont. C.A.), and *R. v. Fotti* (1978), 45 C.C.C. (2d) 353 (Man. C.A.), aff'd [1980] 1 S.C.R. 589, among others. Foisy J.A. concluded that the trial judge was aware of the principles involved. Her judgment was to be interpreted as meaning that the Crown had simply not proven dangerous driving beyond a reasonable doubt. With respect to the second ground of appeal, Foisy J.A. concluded that the trial judge had not failed to appreciate nor had she disregarded relevant evidence. He stated that it was not useful to dwell upon what might have happened had the appellant stopped at the stop sign and taken a more careful look. He reviewed the facts and concluded that the driving came close to constituting dangerous driving; however, he was not prepared to disturb the trial

judge's finding that the offence of dangerous driving was not proven beyond a reasonable doubt. Foisy J.A. would therefore have dismissed the appeal. Relevant Statutory Provisions Criminal Code, R.S.C., 1985, c. C-46

249. (1) Every one commits an offence who operates
- (a) a motor vehicle on a street, road, highway or other public place in a manner that is dangerous to the public, having regard to all the circumstances, including the nature, condition and use of that place and the amount of traffic that at the time is or might reasonably be expected to be on that place; ...
 - (3) Every one who commits an offence under subsection (1) and thereby causes bodily harm to any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.
 - (4) Every one who commits an offence under subsection (1) and thereby causes the death of any other person is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. ...
676. (1) The Attorney General or counsel instructed by him for the purpose may appeal to the court of appeal
- (a) against a judgment or verdict of acquittal of a trial court in proceedings by indictment on any ground of appeal that involves a question of law alone; A Question of Law Alone The jurisdiction of the Court of Appeal herein was limited to a question of law alone. Both the majority and minority proceeded on the basis that the trial judge did not err in law in respect of the principles relating to the definition of dangerous driving. The majority concluded, however, that the trial judge erred in her application of those principles to the facts of the case. In this regard the majority relied on the passages referred to above in *R. v. B. (G.)*, supra, which identify three grounds which may constitute an error of law by the trial judge in assessing the facts as they apply to the law.
 - (1) Legal Effect of Undisputed Facts If a trial judge finds all the facts necessary to reach a conclusion in law and in order to reach that conclusion the facts can simply be accepted as found, a Court of Appeal can disagree with the conclusion reached without trespassing on the fact-finding function of the trial judge. The disagreement is with respect to the law and not the facts nor inferences to be drawn from the facts. The same reasoning applies if the facts are accepted or not in dispute. In this situation, the court can arrive at the correct conclusion in law without ordering a new trial because factual issues have been settled. Examples of this type of error of law can be found in *Belyea v. The King*, [1932] S.C.R. 279, *Ciglen v. The Queen*, [1970] S.C.R. 804, *Postras v. The Queen*, [1974] S.C.R. 649, *Johnson v. The Queen*, [1975] 2 S.C.R. 160, and *Fotti v. The Queen*, [1980] 1 S.C.R. 589.
 - (2) Misdirection as to Evidence *R. v. B. (G.)*, supra, proceeded on the basis (conceded by the Crown at p. 72) that failure by the trial judge to direct himself to all the evidence is only a question of law if based on legal misdirection. In this regard, reliance on *Harper v. The*

Queen, [1982] 1 S.C.R. 2, must be treated with caution. In that case the appeal was from conviction and the trial judge treated as irrelevant the evidence of several witnesses without an adverse finding with respect to their credibility. This was held to be an error of law by this Court. See Estey J. at p. 14. That decision must be applied in light of the principle that in an appeal from conviction, the Court of Appeal has the duty of reviewing the evidence in order to determine whether the conviction is unreasonable and cannot be supported by the evidence. In an appeal from acquittal, the Court of Appeal has no such power. See *Sunbeam Corporation (Canada) Ltd. v. The Queen*, [1969] S.C.R. 221. Failure to appreciate the evidence cannot amount to an error of law unless the failure is based on a misapprehension of some legal principle. Any statement to the contrary in *R. v. B. (G.)* must be considered in light of the assumption made by Wilson J. that the statement to this effect by Marshall J.A. in *R. v. Roman* (1987), 38 C.C.C. (3d) 385 (Nfld. C.A.) was correct. That assumption was incorrect by reason of the fact that this Court, differently constituted, had reversed *Roman* prior to the decision in *R. v. B. (G.)*. See [1989] 1 S.C.R. 230. Nevertheless, *R. v. B. (G.)* was correctly decided on the basis of a misdirection in law. As pointed out in the concurring reasons of McLachlin J., the trial judge erred in law in respect of the issue of time. This error affected his overall assessment of the evidence. This error was noted as well by Wilson J. and must be taken as the basis for her judgment.

- (3) *Totality* In *R. v. Morin*, [1988] 2 S.C.R. 345, we decided that the trial judge erred in instructing the jury that they should examine individual pieces of evidence and subject them piecemeal to the criminal standard. We held that the criminal standard was to be applied to the ultimate issue and not in the weighing of individual pieces of evidence. With respect to the weighing of evidence, the manner in which the jury assessed individual pieces of evidence was not a question of law in respect of which the trial judge was required to instruct the jury. The basic requirement was that the jury was to be instructed that they must consider the whole of the evidence and determine on that basis whether the guilt of the accused had been established beyond a reasonable doubt. See *Morin*, *supra*, at pp. 361-62. A jury does not record its deliberations, and its assessment of individual pieces of evidence is not known. On the other hand, a trial judge will frequently record in his or her reasons the process by which the decision is reached, or at least some of it. There is, however, no obligation in law on a trial judge to record all or any specific part of the process of deliberation on the facts. To apply *Morin*, *supra*, as a basis of review of a trial judge's findings of fact whenever the reasons for judgment fail to deal with a particular piece of evidence, or the inference from such evidence would require a trial judge to record each piece of evidence and his or her assessment of it. This would be a misapplication of *Morin* to the trial process when the trial is by judge alone. A trial judge must consider all of the evidence in relation to the ultimate issue but unless the reasons demonstrate that this was not done, the failure to record the fact of it having been done is not a proper basis for concluding that there was error in law in this respect. Application to This Case In my opinion, none of the principles outlined above entitled the majority of the Court of Appeal to reverse the acquittal in this case. First, this was not a case of undisputed facts to which a correct interpretation of the law could be

applied so as to yield a different result. The majority disagreed with the facts to which the trial judge directed herself and with her inferences from those facts. This is evident from the observations of the majority that "it was open to the trial Judge" to take a different view of the facts. It is also evident from the fact that a new trial was ordered. A new trial would not have been necessary if all necessary findings of fact had been made. Second, there was no misdirection in respect of any legal principle. The trial judge referred to the evidence which in her opinion was important. This was part of the weighing process, and stressing one item over another was not the result of the misapplication of any legal principle. Finally, there is no basis for concluding that the trial judge failed to consider the evidence in its totality in arriving at the ultimate result. In summary, the majority of the Court of Appeal had a different theory of the facts and the inferences that could be drawn from those facts. While I might agree that the majority's view of the facts is preferable, this was a matter for the trial judge to determine and, absent an error of law, the Court of Appeal should not have interfered. In accordance with the order made at the conclusion of the appeal, the appeal is allowed and the acquittal restored. Appeal allowed and acquittal restored. Solicitors for the appellant: Brimacombe, Sanderman, Stroppel & Finlayson, Edmonton. Solicitor for the respondent: The Attorney General's Department, Edmonton. *Reasons delivered October 29, 1992. **Stevenson J. took no part in the reasons for judgment.

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://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/927/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-morin-1992-3-scr-286>

Prepared on 26 October 2026 · Esheria