
CANADA / JUDGMENT

R. v. Sidhu

2006 BCSC 1801

COURT

Supreme Court of British Columbia

DECIDED

13 October 2006

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sidhu,

2006 BCSC 1801

Date: 20061013

Docket: X067705-2

Registry: New Westminster

Regina

v.

Sarwan Singh Sidhu

Before: The Honourable Mr. Justice Truscott

Oral Reasons for Judgment

October 13, 2006

Counsel for the Crown:

L. Kiner

Counsel for the Accused:

A. Dhinsa

Place of Trial/Hearing:

New Westminster, B.C.

- [1] THE COURT: Mr. Sidhu is charged with the offence of dangerous driving causing death under s. 249 of the Criminal Code. Section 249.1(a) makes it an offence to operate a motor vehicle in a manner that is dangerous to the public having regard to all the circumstances including the nature, condition and use of the place at which the motor vehicle is being operated, and the amount of traffic that at the time is or might reasonably be expected to be at that place.
- [2] In *R. v. Hundal*, [1993] 1 S.C.R. 867, 79 C.C.C. (3d) 97, the Supreme Court of Canada instructed as follows:

Thus, it is clear that the basis of liability for dangerous driving is negligence. The question to be asked is not what the accused subjectively intended but rather whether, viewed objectively, the accused exercised the appropriate standard of care. It is not overly difficult to determine when a driver has fallen markedly below the acceptable standard of care. There can be no doubt that the concept of negligence is well understood and readily recognized by most Canadians. Negligent driving can be thought of as a continuum that progresses, or regresses, from momentary lack of attention giving rise to civil responsibility to careless driving under a provincial Highway Traffic Act to dangerous driving under the Criminal Code.

...

It follows then that a trier of fact may convict if satisfied beyond a reasonable doubt that, viewed objectively, the accused was, in the words of the section, driving in a manner that was "dangerous to the public, having regard to all the circumstances, including the nature, condition and use of such place and the amount of traffic that at the time is or might reasonably be expected to be on such place". In making the assessment, the trier of fact should be satisfied that the conduct amounted to a marked departure from the standard of care that a reasonable person would observe in the accused's situation.

- [3] The court went on to deal with the necessary considerations where an explanation is offered by the accused, but here I do not have to consider any explanation of Mr. Sidhu because none was offered in evidence.
- [4] The motor vehicle operation that gives rise to the charge occurred on July 13th, 2003, at approximately 5:00 a.m., on the Mary Hill Bypass in Port Coquitlam, British Columbia at a location just west of the intersection of Broadway Street. At that time, Mr. Sidhu was driving a 1997 white Acura Integra motor vehicle eastbound on the Mary Hill Bypass, when the vehicle came into collision with a metal pole on the right edge of the eastbound lanes of travel near Broadway Street and off the roadway. Mr. Chohan, a friend of Mr. Sidhu's, was a front seat passenger in the vehicle, and he died later that morning, at 9:00 a.m., from the abdominal injuries he sustained in the collision with the pole.
- [5] The blood sample obtained from Mr. Chohan at autopsy was analysed at 170 milligrams of alcohol in 100 millilitres of blood.

- [6] A blood sample taken from Mr. Sidhu, pursuant to a lawful demand, approximately four hours after the collision, was analysed at 44 milligrams of alcohol in 100 millilitres of blood.
- [7] The Mary Hill Bypass, at the location of the collision, has two paved lanes for travel in an eastbound direction, as well as two in a westbound direction. As Mary Hill Bypass proceeded eastbound towards Broadway Street and approached that intersection, another paved lane was added as a right hand turn lane for vehicles to turn right on Broadway to head south.
- [8] The posted speed limit on the Mary Hill Bypass at the location of the collision was 60 kilometres per hour.
- [9] Approximately 1 kilometre west of Broadway Street on the Mary Hill Bypass was Pitt River Road that crossed the Bypass. Further west of that intersection by another .7 kilometres was the crest of a hill on the Bypass.
- [10] Sergeant Alexander, a collision reconstruction expert with the RCMP, attended the scene of the collision at 6:03 a.m. that same day. He measured a distance of 304.37 metres from the intersection of Pitt River Road east to the commencement of an "S" curve in the Mary Hill Bypass. He determined that the exit for that "S" curve further east was another 500 metres and at the exit of the "S" curve, the right hand turn lane for turning south on to Broadway Street commenced.
- [11] There was only one witness at the trial who actually saw the path of the Acura vehicle before the collision, and saw the collision itself, and that was Mr. Forsythe. His evidence was as follows.
- [12] Mr. Forsythe was operating his 5-ton bread truck eastbound on the Mary Hill Bypass heading towards Maple Ridge to deliver bread that he had picked up from a baker in Langley earlier that morning. He had started his shift at approximately 2:00 a.m. that day and had spent the initial time period thereafter loading and sorting the truck. This was to be his first delivery of the morning. His bread was piled on plastic trays that were stacked in the back of his truck, and he was conscious of maintaining a speed of approximately 60 kilometres per hour as he went through the intersection of Pitt River Road in order to avoid any risk of disrupting his load.
- [13] Shortly after clearing the intersection at Pitt River Road, he noticed in his side view mirror, a white car behind him at the crest of the hill on the Mary Hill Bypass that he estimated to be approximately 800 metres behind him at that point. In his evidence in chief, he referred to seeing this white vehicle in his rear view mirror, but he acknowledged in cross-examination that his vehicle was not equipped with a rear view mirror, but was only equipped with side view mirrors, and he saw the vehicle in his side view mirror. I am satisfied Mr. Forsythe saw the white vehicle being driven by Mr. Sidhu at the crest of the hill that Sergeant Alexander measured as .7 kilometres west of the Pitt River Road intersection.

- [14] In his evidence at trial, Mr. Forsythe was referred to a statement he gave to the police where he supposedly referred to seeing a red car, but at trial, he could not remember telling the police this. He was not asked to confirm that he did make mention of a red car, and that it was a true statement of his. At trial, he was clear that it was a white car that he saw in his side view mirror. I accept his evidence that he saw a white car.
- [15] Mr. Forsythe said that he travelled perhaps 200 metres from when he first saw the white vehicle behind him at the crest of the hill, to when he saw the white vehicle again, for the second time in his side view mirror, to his left beside him as he exited the "S" curve. He guessed it took him about 30 seconds to travel this distance. He said he was shocked to see the white vehicle there beside his vehicle as he could not believe it -- because of the distance involved, when he first noticed the white vehicle, to when he next noticed it, meaning the distance that the white vehicle had travelled over 800 metres to catch up to him in the same time period that he had travelled perhaps 200 metres.
- [16] He said that he went through the "S" curve in the road in his vehicle at approximately 50 kilometres per hour, and when he came out of the curve and noticed the white car, it was beside his vehicle on the left. He said it was about 10 feet into the back of his vehicle. The white vehicle proceeded past him at a speed, he guessed, was 120 kilometres per hour, and a second or so later, when the white vehicle was approximately two truck lengths ahead of him or 60 feet, it cut in front of his vehicle, back into the slow lane, immediately spun out of control and impacted the pole. He said this all happened in seconds from when he saw the vehicle beside him to the impact with the pole. He said that as soon as the white vehicle got in front of his vehicle, the driver lost control of the vehicle, and it began to spin. It appeared to him that the white vehicle made a controlled move to cut in front of his vehicle and he did not have to brake for it, but immediately thereafter, the driver lost control of the vehicle. He did not see any brake lights on the vehicle.
- [17] Mr. Forsythe said that it had rained earlier that night, although it was not raining at this time, the road was damp and very oily. He described it as very scary, very slippery, almost ice-like, and later that morning, two or three hours later, his own vehicle slipped on the roadway. In his mind, he attributed the loss of control he saw to speed and the slippery road conditions.
- [18] The collision with the pole occurred in front of him, with no obstruction to his vision, and he thinks the white vehicle that passed him cut in front of him at a point that was quite near to the beginning of the right turn lane for Broadway Street.
- [19] When Sergeant Alexander attended, it was for the purpose of providing an opinion through an examination of physical evidence of the speed of the Acura Integra at the time of the collision.
- [20] He inspected the road surface and took photographs and determined that, at the start of the painted lane divider to the right turn lane, was a set of curved tire marks that proceeded in an arc towards the right side of the roadway and into the grass area beyond. The tire marks

bore striations, and the tire marks continued to the right for a distance of 22.8 metres to the edge of the roadway, before entering the grass area and creating furrows in the grass.

Thereafter, his photographs show that the furrows curved back towards the east and led to a concrete foundation for a mounting bracket located further east towards Broadway Street on the edge of the grass area. His photographs indicate that the path of the curved tire marks took the vehicle off the right side of the roadway, at a point just east of another metal pole on the edge of the grass area, beyond the paved shoulder of the roadway before angling through the grass towards the concrete foundation.

- [21] East of the concrete foundation, a short distance, and lying across the paved shoulder of the roadway and a portion of the right turn lane, was found the pole from the concrete foundation that had broken off the foundation.
- [22] To the east of that pole, and totally within the grass area and facing south- westerly, was found the white Acura Integra with impact damage to the passenger side door, indicating a directional force towards the driver's side of the vehicle. It was determined that the white Acura had collided with that pole on the passenger side, knocking the pole off its concrete foundation.
- [23] Sergeant Alexander determined that the distance between the first pole mentioned and the concrete foundation was 22.60 metres, and the rough distance from that concrete foundation to the final resting place of the Acura Integra was another 26 metres.
- [24] He determined that the curved tire marks were yaw marks starting near the beginning of the right turn lane and moving in an arc to the right side of the roadway and into the grass.
- [25] Sergeant Alexander measured the curved tire marks using cord and mid-ordinate measurements from what he determined to be the left front tire of the Acura. He determined the radius of the yaw mark to 153.145 metres and the coefficient of friction to have a value of 0.74.
- [26] From these two measurements, he determined the minimum speed of the Acura at the onset of the yaw to be no less than 119 kilometres per hour. He explained that this yaw mark was created by a rolling tire being forced in a direction other than the direction of the vehicle causing over-deflection of the tire and causing friction to the road surface.
- [27] Sergeant Alexander's method of determining speed through cord and mid-ordinate measurements from one tire and his use of a coefficient of friction of 0.74 were attacked at trial.
- [28] Sergeant Alexander did not measure the coefficient of friction on the same day, but returned the next day when he considered the road conditions were comparable to the previous day. He did not know how much it had rained on the day during July 13th, or that night, or the morning of July 14th, before he attended for his coefficient tests. He allowed at trial that it was possible that more rain had washed away oil on the road, or that there was more debris on the road the next day, or anything else that might have changed the coefficient, although

he was trying to duplicate the conditions as they were at the time he had attended the previous day.

- [29] The defence accident reconstruction expert, Dr. Toor, was highly critical of Sergeant Alexander's methodology and conclusions. His opinion was that Sergeant Alexander applied the incorrect analysis methodology in interpreting the tire marks deposited by the Sidhu vehicle, and his measurements and analysis presented a scenario which was physically impossible and defied the laws of physics. Dr. Toor considered Sergeant Alexander's speed calculation to be physically impossible.
- [30] In his view, generally, the police data was insufficient to accurately and technically analyse the collision in order to determine the speed of the Sidhu vehicle. Based on the available data and technical analysis limited to the available data, he considered that Sergeant Alexander's assessment of the speed of the Sidhu vehicle was an overestimate and likely a significant overestimate.
- [31] Sergeant Alexander went back to his notes to determine how Dr. Toor could conclude that his speed calculation was physically impossible, and he concluded that he had inaccurately transposed one of the numbers in his calculations, and Dr. Toor was quite correct in his conclusion, if the wrong number was used. In his review of Dr. Toor's criticisms, Sergeant Alexander also stated that the tire marks he had measured were faint and quite short, that it had started raining while he was at the scene, which made the roadway darker, and that the tire marks were difficult to see.
- [32] This led to Dr. Toor doing a supplementary analysis, with the addition of Sergeant Alexander's handwritten response to his criticisms, and Sergeant Alexander's notebook entry.
- [33] Even with Sergeant Alexander's revised data, Dr. Toor concluded that the revised data yielded a collision scenario that was still physically impossible.
- [34] The Crown asked Mr. Brown, a professional engineer, to review Sergeant Alexander's methodology and the criticisms of Dr. Toor.
- [35] He agreed with Sergeant Alexander using the cord and mid-ordinate technique from one tire, but he also acknowledged that a problem occurs with this technique when using short cord lengths as Sergeant Alexander did, because a small measurement error in the mid-ordinate can affect the radius and the resulting speed calculation.
- [36] In his view, it would be realistic to expect errors of 2 to 3 millimetres in the mid-ordinate measurements and these measurement errors should be considered.
- [37] He then postulated a different set of numbers involving an increase of 2 millimetres in the first measurement, and a decrease of 2 millimetres in the second measurement done by Sergeant Alexander, that he said produced resulting speeds of 112.8 kilometres per hour and 116.8 kilometres per hour.

- [38] This all resulted in Dr. Toor criticising Mr. Brown's report and concluding that Mr. Brown was wrong, too.
- [39] The conclusion of all the experts' evidence is that Sergeant Alexander and Mr. Brown stand by Sergeant Alexander's method of determining speed, while Dr. Toor is adamantly opposed to that method being used.
- [40] My conclusion is that I am not prepared to rely upon the speed estimates of Sergeant Alexander, or even of Mr. Forsythe, with respect to the Sidhu vehicle. Once Mr. Brown conceded that an error analysis should also be considered, I can have no complete confidence in the measurements taken by Sergeant Alexander.
- [41] I also found Dr. Toor to be a very compelling and convincing witness, giving me further doubt about the methodology of Sergeant Alexander.
- [42] However, in my opinion, the result of this case does not depend upon an exact calculation of the speed of the Sidhu vehicle.
- [43] It is clear to me from Mr. Forsythe's evidence of how quickly the Sidhu vehicle caught up to him from behind, and the sharp move that Mr. Sidhu made to cut in front of him, resulting in a loss of control of the vehicle, causing it to completely leave the roadway and collide with a metal pole off the roadway, that Mr. Sidhu was travelling at a rate of speed well in excess of the posted speed limit of 60 kilometres per hour, and well in excess of the speed that was necessary to safely make a sharp turn in front of Mr. Forsythe's vehicle, and remain in control of his own vehicle, bearing in mind the road conditions then prevailing.
- [44] In my opinion, Mr. Sidhu was driving in a manner that was dangerous to the public, having regard to all the circumstances, and I am satisfied that his conduct amounted to a marked departure from the standard of care that a reasonable person would observe in his situation.
- [45] Mr. Sidhu, I find you guilty as charged of the offence of dangerous driving causing the death of Mr. Chohan.

"J. Truscott, J."

The Honourable Mr. Justice J. Truscott

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Prepared on 28 October 2026 · Esheria