

CANADA / JUDGMENT

R. v. Wang

2021 BCSC 1547

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 1547 R. v. Wang IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Wang, 2021 BCSC 1547 Date: 20210809 Docket: 31555 Registry: Vancouver Regina v. Han Wang Before: The Honourable Madam Justice MacNaughton On appeal from: An order of the Provincial Court, dated March 30, 2021 (AJ06312839-1). Reasons for Judgment Counsel for the Crown: K. Gagnon The Appellant, appearing in person H. Wang Place and Date of Trial/Hearing: Vancouver, B.C. August 4, 2021 Place and Date of Judgment: Vancouver, B.C. August 9, 2021 Table of Contents The Appeal. 3 Background Facts. 3 The Applicable Law.. 5 Application of the Legal Test to the Facts. 5 Conclusion. 7 The Appeal

- [1] Mr. Wang appeals his conviction of excessive speeding under s. 148(1) of the B.C. Motor Vehicle Act, R.S.B.C. 1996, c. 318. He was convicted after a trial by Judicial Justice Osborn at North Vancouver Provincial Court and ordered to pay the minimum prescribed penalty of \$483.
- [2] In his notice of appeal, Mr. Wang set out three grounds of appeal, which I paraphrase as follows:
- (a) He followed the traffic and did not speed.
 - (b) The police singled out his car because of its very distinctive colour.
 - (c) The judge entered a conviction without any direct proof of him speeding.
- [3] In his submissions, Mr. Wang also submitted that the Vehicle Identification Number ("VIN") of his vehicle was inaccurately recorded on the notice of violation that he was given by the officer. I have treated this as a fourth ground of appeal. Background Facts
- [4] On October 14, 2020, just after 1:00 a.m., Cst. Colgan of the West Vancouver Police Department saw a green Porsche 911, registered in Mr. Wang's name, driving at a high rate of speed, eastbound in the 600 block of Highway 1. Cst. Colgan visually estimated the speed at which the Porsche was travelling at 150km/h in 90km/h zone.

- [5] Cst. Colgan used his hand-held laser device, which he testified that he tested before and after his shift, and registered a speed of 152km/h when he pointed it at the Porsche. Cst. Colgan then began to "pace" the Porsche in his police vehicle and its speedometer read 160 km/h as he followed the Porsche.
- [6] He pulled the Porsche over and ticketed Mr. Wang.
- [7] Mr. Wang testified in his own defence. As English is not his first language, he testified through a Mandarin translator. He said that he was driving on the highway in with his female friend, Ms. Jia Haipei. He was in the slow lane, and the vehicle ahead of him had its emergency lights flashing. He moved into the passing lane to get around the slow vehicle.
- [8] When in the passing lane, Mr. Wang noticed a white BMW 335 approaching him from behind at a very high rate of speed and it was flashing its lights. He wanted to avoid the BMW as he was unsure if the downhill slope to the road would create a danger, so he tried to move back into the right lane. He testified that the vehicle on his right believed that Mr. Wang was "challenging him" and it accelerated. Mr. Wang said he was able to move back into the slow lane and "went back to [his] normal speed".
- [9] Mr. Wang testified that the BMW became the "number one, the lead vehicle" in that group of vehicles. Mr. Wan then got back into the fast lane. Another "super fast" vehicle approached him from behind, and he moved over into the slow lane, but, shortly thereafter, he was pulled over by the police. His vehicle was the only one towed.
- [10] Ms. Jia also testified. She said that she and Mr. Wang were travelling together and noticed a car ahead in the "outside lane" with its lights "double flashing" and that they moved into the "inside lane" to avoid it. She recalled that "after a while", a car approached fast from behind and Mr. Wang told her it was a BMW 335. She got scared and asked Mr. Wang to move over to avoid it.
- [11] Neither Mr. Wang nor Ms. Jia testified as to the speed they were travelling. On cross-examination, Ms. Jia testified that she did not read the speedometer but said their speed was "not too scary".
- [12] In his reasons, the judicial justice briefly summarized the evidence. He noted that whereas Cst. Colgan estimated the speed at 160Km/h visually, by the tested laser, and by pacing the vehicle, neither defence witness testified as to their vehicle's actual speed. The judicial justice operated on the assumption that Mr. Wang was making some sort of necessity defence but said that it failed.
- [13] Because the offence was one of absolute liability, the judicial justice convicted Mr. Wang and levied the fine of \$483. The Applicable Law

- [14] An appeal of a conviction or sentence from a violation ticket is governed by ss.101-124 of the Offence Act, R.S.B.C. 1996, c. 338. Section 109 of the Offence Act provides that, in respect of a summary conviction, appeal brought pursuant to s. 102, ss. 683-689, with the exception of s. 686(5), of the Criminal Code, R.S.C. 1985, c. C-46 apply. Those Criminal Code sections relate to appeals of indictable offences.
- [15] Section 686(1)(a) of the Criminal Code states that on the hearing of an appeal against a conviction ... the court of appeal may allow the appeal where it is of the opinion that:
- (i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence, (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or (iii) on any ground there was a miscarriage of justice; Application of the Legal Test to the Facts
- [16] Based on Mr. Wang's grounds of appeal, he is directing his challenge at the judicial justice's findings of fact.
- [17] As explained in *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235 at paras. 10, 18 and 25, a trial judge's findings and inferences of fact are subject to a standard of review of palpable and overriding error. Where there is some evidence to support those findings and inferences, an appeal court will not revisit them, absent an error in principle or palpable and overriding error.
- [18] With respect to Mr. Wang's submission on appeal that he followed the traffic and did not speed, the transcript of the proceedings does not contain any evidence from Mr. Wang or Ms. Jia about the actual speed at which they were travelling. Instead, Mr. Wang used relative speeds to describe how quickly he was driving. For example, as he was moving in and out of the slow lane, he said he "sped up" to pass a slow vehicle with its lights flashing. He also said he returned to his "regular" speed.
- [19] In light of Cst. Colgan's evidence as to the specific measures he took of Mr. Wang's actual speed, which was not shaken on cross-examination, there is a clear basis for the judicial justice's finding that Mr. Wang was speeding. In particular, Cst. Colgan's evidence about his estimate of Mr. Wang's speed, his testing of his laser device and its readout, and the speedometer reading on his vehicle during his pacing of Mr. Wang, was not the subject of any cross-examination. As a result, there was an evidentiary basis for the judicial justice's finding, and there was no palpable and overriding error.
- [20] With respect to Mr. Wang's second ground of appeal, his assertion that his Porsche was singled out because of its distinctive colour, I accept that it is likely that a police officer's attention might more easily focus on such a car. However, this does not displace the evidence that the green Porsche was, in fact, speeding.

- [21] A review of the transcript shows that Cst. Colgan was not asked in cross-examination about the possibility that, in measuring the speed of the Porsche in the three ways he used, he had mistakenly measured the speed of the wrong vehicle or was otherwise mistaken about his observations of the green Porsche. As a result, it was open to the judicial justice to reach the conclusion he did about the Porsche's speed, and there was no palpable and overriding error.
- [22] With respect to Mr. Wang's third ground of appeal, his assertion that there was no direct proof that he was speeding, it is not clear what Mr. Wang suggests Cst. Colgan was required to do. Broadly understood, Mr. Wang may be suggesting that Cst. Colgan should have shown him a laser readout from the measuring device, proof that the laser had been appropriately tested or calibrated, dash cam footage, or other photographic evidence. Such evidence might be required in a case in which a police officer's viva voce evidence was called into question through cross-examination but, in this case, Cst. Colgan's evidence was not contradicted in cross-examination or through other evidence at the trial. In this case, Mr. Wang and Ms. Jia did not directly testify as to the speed at which the Porsche was travelling. As a result, the judicial justice was not required to make a credibility assessment as to the accuracy of Cst. Colgan's estimates.
- [23] With respect to Mr. Wang's fourth ground of appeal, the inaccurate VIN number recorded on the violation ticket, Mr. Wang's argument cannot succeed in the circumstances of this case as there is no dispute that Mr. Wang was stopped driving a green Porsche in the early morning hours of October 14, 2020. Recording the VIN number is not important if you have the vehicle which was observed speeding. There is no confusion about the vehicle in this case: Cst. Colgan described a bright green Porsche in his evidence; Mr. Wang does not dispute that he has a bright green Porsche; he was stopped while driving a bright green Porsche; he was handed the violation ticket after he was stopped; and the bright green Porsche was apparently towed from the scene. On the evidence, there is no reason to believe that Cst. Colgan had the wrong person or the wrong vehicle.

Conclusion

- [24] As a result of my conclusions set out above, I dismiss Mr. Wang's appeal against his conviction. "MacNaughton J."

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