
CANADA / JUDGMENT

R. v. Wong

2017 BCSC 646

COURT

Supreme Court of British Columbia

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2017 BCSC 646 R. v. Wong

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Wong,

2017 BCSC 646

Date: 20170316

Docket: XO79436

Registry: New Westminster

Between:

Regina

v.

Joe Yut Wong

Before: The Honourable Mr. Justice Abrioux

Oral Reasons for Judgment

Counsel for Crown:

M. Jette

Counsel for Accused:

K. Johnston,

M. Menkes

Place and Date of Trial:

New Westminster, B.C.

January 16-19, 2017,

January 23-25, 2017

Place and Date of Judgment:

New Westminster, B.C.

March 16, 2017

Table of Contents

I: INTRODUCTION. 3

II: ADMISSIONS OF FACT. 4

III: FACTUAL OVERVIEW.. 5

A: Introduction. 5

B: The Background to the Accident, the Surveillance Video and the Police Investigation at the Scene and the Wong Residence. 6

C: Mr. Wong's Statement 10

D: The Expert Evidence. 13

III: DISCUSSION. 14

A: The Legal Framework. 14

B: Analysis. 17

IV: DISPOSITION. 23

I: INTRODUCTION

[1] I intend to issue these reasons for judgment in writing in due course. When I do I may make some editorial or stylistic revisions but the substance shall not be affected.

[2] Mr. Wong has been charged with one count on the Indictment being that:

Count 1 / Chef 1

Joe Yut WONG, on or about the 18th day of January, 2014, at or near Surrey, Province of British Columbia, having the care, charge or control of a vehicle that was involved in an accident with another person, Yip Chan, and knowing that bodily harm was caused to that person, did, with intent to escape civil or criminal liability, fail to stop his vehicle and give his name and address and offer assistance, contrary to Section 252(1.2) of the Criminal Code.

- [3] This is commonly called a "hit and run".
- [4] The offence allegedly occurred on January 18, 2014 at or near the intersection of 146th Street, Surrey, B.C. and the lane/alley behind 60th Avenue. The scene of the accident (the "Scene") was behind Mr. Wong's residence which is located at 14599 - 60th Avenue Surrey, B.C. (the "Wong Residence"). Mr. Wong admits that he struck a pedestrian as he was backing up towards his garage, that he then left the scene and that the pedestrian sustained significant injuries in the accident.
- [5] One of the principal issues in this case is whether the essential elements of the offence, including the accused's alleged knowledge or wilful blindness as to what had occurred, have been proven beyond a reasonable doubt only at the time he initially left the Scene, or on the occasion(s) when he later returned to the Scene.
- [6] The background to the alleged offence is unusual in that Mr. Wong left the Scene only to return shortly thereafter on more than one occasion, to then leave the Scene once again. On one of the occasions the accused was at the Scene he provided a brief statement to a police officer. Although he provided his name and address, he did not disclose his involvement in the accident. He also deleted a video recording from a surveillance camera located on his property which would have shown the accident as it occurred.

II: ADMISSIONS OF FACT

- [7] Admissions of fact (the "Admissions") were entered into evidence. They are to the following effect:

ADMISSIONS OF FACT

Pursuant to Section 655 of the Criminal Code, the accused herein, JOE YUT WONG, by his counsel, hereby admits the following facts alleged against him for the purpose of dispensing with the proof thereof:

- 1: At the time of the offence alleged in the indictment, JOE YUT WONG ("Mr. Wong") was the registered owner of a 2013 Mercedes Benz model GL 350 with British Columbia license plate 828 LMX ("the vehicle").
2. Mr. Wong's residence at all times material to the offence alleged in the indictment was 14599 60th Avenue in the City of Surrey, B.C.
3. Mr. Wong was operating and in care and control of the vehicle in the City of Surrey, Province of British Columbia when it struck and injured YIP CHAN ("Ms. Chan") in the early morning of 18 January 2014. The collision occurred where the laneway behind Mr. Wong's garage intersects with a sidewalk and 146th Avenue in Surrey.
4. Ms. Chan's identity as the person who was struck by the Wong vehicle is admitted.

5. Ms. Chan was treated at the scene for injuries by members of the Surrey Fire Department and the BC Ambulance Service and then transported to Royal Columbian Hospital. Medical records from the hospital establish that Ms. Chan was discovered to be suffering the following injuries:
 - (a) a traumatic brain injury associated with a skull fracture at the base of her skull and related nerve damage which has caused deafness in her right ear;
 - (b) a broken jaw;
 - (c) multiple rib fractures;
 - (d) a collapsed lung.
6. Mr. Wong's residence was equipped with surveillance video cameras at a number of locations, both external to the residence and inside the attached garage. The video recorded by those cameras was stored on the hard drive of a Dell Vostro 200 computer tower which was located in a room inside the residence. Portions of the footage from around the time of the collision between the vehicle and Ms. Chan were observed by police. Mr. Wong was detained, and the computer tower with hard drive was secured. A warrant was subsequently issued and police seized the computer tower with hard drive. The defense admits that the video footage obtained from the computer is authentically and accurately reproduced as per the DVD ROM which will be tendered by consent as an exhibit.
7. The Wong vehicle was later seized by police and examined by Sgt. Paul Vermeulen, a forensic collision reconstructionist, and by Jeff Hall, who is a mechanic. The continuity of the vehicle from the time that it was seized through to the conclusion of these examinations is admitted.
8. The vehicle inspection report prepared by Jeff Hall dated 29 January 2014, as well as Mr. Hall's qualifications to perform this work are admitted as authentically the work of Mr. Hall. The report and Mr. Hall's C.V. are attached respectively as Appendices A and B to these admissions. No fact or opinion from this report is, however, admitted, and Mr. Hall is expected by the defense to testify and be cross examined on his evidence.
9. The Collision Reconstruction Technical Report prepared by Sgt. Paul Vermeulen as well as his qualifications to perform this work are admitted as authentically the work of Sgt. Vermeulen. The report and Sgt. Vermeulen's C.V. are attached respectively as Appendices C and D to these admissions. No fact or opinion from this report is, however, admitted, and Sgt. Vermeulen is expected by the defense to testify and be cross examined on his evidence.
10. The voluntariness of Mr. Wong's statements to police at or around his residence on the morning of 18 January 2004 and later that day at the RCMP detachment is admitted.

III: FACTUAL OVERVIEW

A: Introduction

- [8] In addition to the Admissions and the documents referred to therein, including the surveillance video, the Crown called a number of witnesses including bystanders who attended to Ms. Chan at the scene, first responders, investigating police officers and two expert witnesses. Neither of the expert witnesses provided an accident reconstruction analysis.
- [9] In so far as the surveillance video is concerned, there were two cameras of particular significance. One camera was mounted on the entrance to the garage and provided a view of the area outside the garage, and in particular the lane/alley and sidewalk area where the accident occurred (the "Garage Camera Surveillance").
- [10] The other was a camera mounted on the east side of the Wong Residence which provided a partial view of the Scene (the "Residence Camera Surveillance").
- [11] The defence lead evidence from two expert witnesses, one of whom testified. As is his right, the accused did not testify.

B: The Background to the Accident, the Surveillance Video and the Police Investigation at the Scene and the Wong Residence

- [12] The accident occurred at approximately 7:08 a.m. It was foggy and still dark. Mr. Wong, who is a contractor, had left his garage a few minutes earlier in order to attend a work site. He returned to his garage to pick up some tools. While reversing his vehicle, a 2013 Mercedes Benz SUV, from 60th Avenue into the lane behind the Wong Residence, it collided with a pedestrian, Ms. Yip Chan, who was walking south on the west sidewalk of 146th Street. Mr. Wong then left the Scene.
- [13] The Crown alleges that Mr. Wong returned to the Scene a few minutes later at approximately 7:11:54 a.m. to 7:11:58 a.m. only to leave a second time. The defence's position is that it cannot be concluded beyond a reasonable doubt that the vehicle depicted on the surveillance video at this time is Mr. Wong's, an issue I will comment on below.
- [14] It is not in dispute that Mr. Wong returned to the Scene at approximately 7:18 a.m. From one of the surveillance cameras his vehicle is observed to drive northbound on 146th Street past the alley entrance and returning past the alley in a southbound direction a minute or so later. Approximately two minutes later, the vehicle comes into view northbound on 146th Street and turns left (or westbound) into the alley passing out of view at 7:20:21 a.m.
- [15] Although Ms. Chan is not visible on the surveillance video at this point in time, it is clear that Mr. Wong drove in very close proximity to Ms. Chan as he entered the alley and proceeded to drive into his garage.
- [16] There is video of the overhead garage door beginning to open, and the vehicle is seen entering the garage and being parked. An object (or objects) can be observed on the ground in the lane as the garage door begins to open. Mr. Wong gets out of the driver side of his

vehicle wearing a blue coloured "puffy" jacket or hoodie. He walks to the back of his vehicle and across the back of it and past the open garage door. He comes back into view on the passenger side and walks toward the camera before passing out of view at 7:20:56 a.m. as the overhead garage door is closed behind him.

- [17] The next time that Mr. Wong is observed on the surveillance video is at 7:29:47 a.m., when he comes back into his garage. He opens the overhead garage door a few seconds later and is seen to stand at the left rear corner of his vehicle looking to the right which would be where Ms. Chan was lying on the ground and was being assisted by civilians prior to the arrival of the Surrey Fire Department. He comes back into the garage retrieving an object resembling paper towels from a bench next to the passenger side of the vehicle. He then walked out of the garage to the right into the alley. Another person can be seen standing and then bending over and out of frame just over the top of the left rear of his vehicle. Mr. Wong returns to the garage with what again appears to be a roll of paper towels, which he returns to that same bench. He then exits the garage again and returns to the same area, just beyond the top left rear corner of the vehicle where he can be observed pacing back and forth.
- [18] At 7:32:50 a.m. the left rear door of the vehicle is opened and movement can be observed inside the rear passenger compartment. At 7:32:58 a.m. an arm can be seen as it is pushed into the sleeve of a coat or jacket. The head and shoulders of a person can be seen emerging into the lane behind the top left rear corner of the vehicle. That person, who I find to be Mr. Wong, moves off to the right and out of the camera frame at 7:33:18 a.m.
- [19] At 7:33:09 a.m., a male, who the parties agree is Mr. Wong, begins to enter into the alley from the area of Mr. Wong's garage. At this point a civilian can be observed providing assistance to Ms. Chan but there are no first responders on scene. Mr. Wong has a brief interaction with Ms. Chan. Mr. Les Periera of the Surrey Fire Department identified himself on the video as the first responder on scene at about 7:34:15 a.m..
- [20] Mr. Wong remained at the Scene after the first responders and the RCMP arrived.
- [21] At 7:48 a.m. Mr. Wong provided a brief recorded statement to Constable Lau which was completed at 7:49 a.m. Mr. Wong was asked what he had observed. He said that he saw "the lady laying there" when he opened the garage door, and observed that others, including a neighbor, were helping. He asked them what had happened and was told that that they had just found her there. He also asked them if they had called 911 and was told they had. He provided Cst. Lau with his name and address but did not disclose his involvement or potential involvement in the accident.
- [22] Mr. Wong then left the Scene and returned to his residence.
- [23] Corporal Milliard was the senior investigating officer at the Scene. Due to his knowledge arising from a prior event in the area, he remembered that the owner of the Wong Residence (i.e. Mr. Wong) had surveillance cameras located on his property. Cst. Sahota and Cst. Jones were given the task of contacting the homeowner at the residence and asking for

access to the recorded surveillance video from that morning. They met Mr. Wong at the door of his home and entered the residence at approximately 8:06 a.m. where they were invited to join him in a room where he kept the computer tower which stored the footage and a monitor to observe the various camera views.

- [24] Cst. Jones testified that for approximately 5-10 minutes he and Cst. Sahota watched a number of camera views. It became apparent to him that the camera with the best view of the area where Ms. Chan lay injured was missing approximately 20 minutes of footage. He asked Mr. Wong if he had any explanation for that. His view was Mr. Wong was being cooperative with police and that he seemed to be trying to locate the missing footage. He left the Wong Residence and reported what he had learned to Cpl. Milliard.
- [25] Cpl. Sahota was in the room with Mr. Wong viewing surveillance video at various times while in the company of Constable Jones, Cpl. Seehra, and later Cpl. Oliveira from Traffic Services. Cpl. Sahota also said that Mr. Wong was cooperative.
- [26] Cpl. Sahota testified about the missing 20 minutes of footage from the Garage Camera Surveillance. She said that Mr. Wong told the officers he was attempting to recover the footage. He explained that sometimes the recordings skipped if there was nothing there. He also said there was a number he could call to see if his alarm company was able to retrieve the footage. They waited while he made that inquiry, which he then advised was unsuccessful.
- [27] During this viewing session, Mr. Wong told the police officers that he had come back home that morning to get some tools he had forgotten. When looking at surveillance of some of the other camera views, the officers attempted to identify Mr. Wong's vehicle but were unable to pinpoint it. Mr. Wong was also unable to assist in identifying his vehicle. Cpl. Sahota asked to see the vehicle and was escorted to the garage by Mr. Wong where she was shown the Mercedes SUV.
- [28] Having seen Mr. Wong's vehicle, Cpl. Sahota returned to view additional portions of the surveillance video, being cameras depicting the front and the side of the Wong Residence. Cpl. Seehra was also present, together with two members from Traffic Services. Cpl. Oliveira testified that he and his colleague, Cst. Morgan, joined the other officers inside the Wong Residence at 09:10 a.m.
- [29] Different portions of the video were played in an effort to locate Mr. Wong's vehicle. Cst. Sahota observed a vehicle going back and around the Wong Residence and asked, "Isn't that your vehicle?" to which Mr. Wong replied, "Yeah, it looks like it's me." He said he usually circled around the area to ensure that other vehicles he owned, and which were parked on the street, had not been vandalized overnight.

- [30] Cst. Sahota testified as to when the officers and Mr. Wong watched a portion of the Residence Camera Surveillance where a vehicle appeared to back into and over what she described as a "white figure" who had been walking along 146th Street. Mr. Wong said, "It looks like somebody just hit someone." The officers asked to see the footage again. Mr. Wong said nothing about the vehicle.
- [31] Shortly thereafter, Cst. Sahota was instructed by Cpl. Seehra to detain Mr. Wong.

C: Mr. Wong's Statement

- [32] The Crown also adduced into evidence, in accordance with the Admissions, a lengthy interview conducted of Mr. Wong by the RCMP the afternoon of the day of the accident. This resulted in Mr. Wong providing a statement as to what he said had occurred that morning (the "Warned Statement"). It should be noted that Mr. Wong told the police what had occurred on two separate occasions.

- [33] The first occasion included Mr. Wong stating to Constable Williams:

'Kay, this is what exactly happened ... I went to work this morning and um ... I drove away from home. I would say five, ten minutes. And I realized I forgot something so I went back and I ... backed up close to my driveway there and um ... I didn't even feel that I hit anything, and then um, and then I decided maybe I don't need that tool for today so I drove away. And then um ... somehow when I think back, I go ... did I, did I hit something? So that's why when I went back and some, I saw something laying there. It didn't look like a person to me; it just looked something black. And then that's when I panicked. So I drove around again and then I looked and I ... no, I can't see that, if it's a person there. I can't see them laying there. So that's when I went in the garage and um I had to go to the washroom, so I went to the washroom and um ... I um ... came back out. I was going to see if the person is okay and, you know, call 911 or ambulance or whatever. And as soon as I open the garage door, then I saw the person laying there and then, and the um ... the three people was there. So um ... yeah, that's when I um asked them if they call 911 and they said yes. So I felt kind of relieved because they call 911 already, already. So, but ... I didn't mean anything like this to happen. And then I went back in and I see the tape if I did hit it or because I didn't feel anything. So when I saw the tape then I saw I did hit. I panicked and I delete the footage. And then after that I feel so bad. (sobbing)

[Emphasis added.]

- [34] And on the second occasion, which occurred shortly after the first and at the request of Chief Superintendent Fordy who had returned to the interview room:

I drove out and went to work this morning... I drove away probably around, I don't know... 8 or 10 minutes, probably around there, and then I realized that

maybe I need a tool for the job that I was gonna do today. So I went back and ... and I backed up to side of my driveway and ... um ... I thought maybe I didn't need the tool anymore, so I just, you know, drove away. But I didn't even feel that I hit any, anything. And then when I drove away ... that's when I thought maybe I, I did hit something. So I drove back and I just saw something black there. I didn't see anybody laying there; I just saw something black. And then I got panicked and so I drove back again and ... it looks like somebody laying there. And that's when I go ... I go back in the garage because I had to go to the washroom and ... after I wen-, went to the washroom I came back out, I was gonna call 911, and that's when I saw the neighbours there helping her. And then that's why, that's when I call ... asked them if they call 911, and they told me yes, they did ... But I didn't mean anything like this to happen I didn't do it on purpose . So when I went back in, I did-, I didn't know I hit it or ... because I didn't feel anything, and then that's why after that I went back in and I looked at the video and ... I saw the video and that's when I got scared and I got panicked, then I deleted the video .'Cause I was scared.

[Emphasis added.]

[35] And then Mr. Wong provided the following responses to Chief Superintendent Fordy's questions:

A I don't know was gone twenty minutes or how long. I just circle back and ... I just... went by once and then the second time that's when I go ... maybe I hit something .

Q Yeah. So when you went by the first time, how long did, did you go away for and then come back again? How long were you gone for?

A I don't know.

Q So you drove by, you saw the black thing there, right? Then where did you go?

A I go down the block and turned around.

Q Must've been scared, eh? I understand.

A Because I don't even know if I hit her or if somebody ... just laying there. I don't know. And then when I play the video back that's when I... (INAUDIBLE).

[Emphasis added.]

[36] Later in the interview Mr. Wong helped complete a sketch which indicated the location and movement of his vehicle. He also answered additional questions:

Q So you felt something when you start moving forward again?

A I don't know if it's, but I, I think I, I felt a little bump --

Q Uh hm.

A -- and then I don't know if it's from, from the road or, because there, this road here has a bump. This um, there --

Q Between the lane and the actual road?

A Yeah. And --

Q Okay.

A -- so that's when I go maybe I should go back and ch -- see what's going on.

Q Uh hm.

A And then that's when I doubled back....

Q So you double back and you took a look around and then you double back again and went into your garage.

A Yeah, I doubled back and then, and then um I went down --

Q Uh hm.

A -- and then I, I came back up and I looked again, and it didn't seem like ... that I hit anybody. It's just a black thing there and I, I don't know what happened. (before enters the garage and goes upstairs)

Q Uh hm.

A And then I went up and then I came back down, and then that's when I went into the garage and, because I had to go to the washroom.

Q Uh hm.

A So ... after that then I opened the door and see, to, like when I, when I came back out that's when I see the people there and I saw her laying there --

..

Q So you drove the car around this object, and into the garage?

A Yeah ..Because I was in a rush to go to the bathroom. So I went in, went, went to the bathroom -- shut door and then I go ... no, does that, that looks like somebody laying there? And so I went back out and that's when I saw the people there and she was laying there because if it was somebody laying there I was gonna call 911, right? But then, that's why when I asked them they said they call 911 already .She was Chinese also I think .Because when they asked me to explain to her n-, the, the, the paramedics -- Yeah -- they said can you speak Chinese to her? That's when I talked to her and she was responding but not speaking.

[Emphasis added.]

D: The Expert Evidence

- [37] Mr. Jeff Hall examined the vehicle for the Crown in order to determine whether there was evidence of any mechanical failure or malfunction which might have contributed to or caused the accident. He concluded that there were none. In the process of examining the vehicle he noted that it was equipped with rear proximity sensors and a rear view camera, each of which were operational and automatically engaged when the vehicle was placed into reverse gear.
- [38] The Crown's other expert witness was Sgt. Paul Vermeulen, a certified collision analyst and reconstructionist and the team leader for one of two Integrated Collision Analysis and Reconstruction Service ("ICARS") units in the RCMP. He was not asked to perform an accident reconstruction. He examined the vehicle and determined that there were marks on it which were consistent with what he described as clothing transfer marks, which are themselves consistent with the vehicle having come into contact with a pedestrian. The transfer marks were described as disturbances in the uniform coating of surface grime which was observed on the vehicle and were not body damage. He also observed a disturbance in the surface on the rear window of the vehicle which was consistent with the window being contacted by a hard object. Scuffs and scratches on the undercarriage just to the rear of the right front wheel (i.e. the passenger side) could not be associated to contact with a pedestrian.
- [39] Sgt. Vermeulen concluded that some of his observations and conclusions were consistent with "light contact between the vehicle and a pedestrian".
- [40] The defence lead evidence from two experts from MEA Forensic.
- [41] Mr. Kurt Ising prepared a human factors report. His conclusions included:
- while there may have been a sightline from Mr. Wong to Ms. Chan within the vehicle's various mirrors, windows or display screens this did not mean she was detectable;
 - portions of Ms. Chan's body or the white grocery bag she was carrying were detectable within the rear view camera image, the left side view mirror and the rear view mirror or by direct viewing through the rear window. This detection, however, was intermittent. Depending on the timing of glances by Mr. Wong, it was possible that Ms. Chan was never visible to Mr. Wong.
- [42] Mr. Bradley Heinrichs prepared a collision reconstruction report. He also testified at the trial. His conclusions included:
- the Wong vehicle was backing up for about 4.7 seconds before contacting Ms. Chan;
 - there was about a 0.5 second interval where there was no direct or mirror sightline to Ms. Chan after the vehicle started to back up;
 - Ms. Chan was probably in the Wong vehicle's rear camera's field of view from the time the vehicle started backing up until contact;

- a sightline is needed for detection but its existence is insufficient. His analysis did not show that Ms. Chan should have or could have been detected when a sightline was present;
- the Wong vehicle's backup sensor would not have sounded until about 0.3 seconds before contact with Ms. Chan which was insufficient time to avoid contact; and
- Mr. Wong could probably not have directly seen Ms. Chan lying on the ground in front of his vehicle from his position in front of his garage door. While she may have been within his 360 degree camera display, she would have been obscured by the hood of the vehicle.

III: DISCUSSION

A: The Legal Framework

[43] The material portions of s. 252 of the Criminal Code are:

252. (1) Every person commits an offence who has the care, charge or control of a vehicle, vessel or aircraft that is involved in an accident with

- (a) another person,
- (b) a vehicle, vessel or aircraft, or
- (c) in the case of a vehicle, cattle in the charge of another person,

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

(1.1) Every person who commits an offence under subsection (1) in a case not referred to in subsection (1.2) or (1.3) is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

(1.2) Every person who commits an offence under subsection (1) knowing that bodily harm has been caused to another person involved in the accident is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years.

- (2) In proceedings under subsection (1), evidence that an accused failed to stop his vehicle, vessel or, where possible, his aircraft, as the case may be, offer assistance where any person has been injured or appears to require 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.

[44] As Justice Verhoeven noted in *R. v. Basra*, 2015 BCSC 1075 [Basra]:

[31] For the purposes of this case, the basic elements of the offence under s. 252(1) are as follows:

1. the accused had the care, charge or control of a vehicle;
2. the vehicle was involved in an accident;

3. the accident was with another person;
4. the accused failed to (1) stop the vehicle; (2) give his name and address, and (3), where any person has been injured or appears to require assistance, offer assistance; and
5. the accused failed to do these things with intent to escape civil or criminal liability.

[45] Accordingly the Crown must establish the following elements beyond a reasonable doubt:

- (a) that Mr. Wong had the care, charge or control of a vehicle that had been involved in an accident;
- (b) that the accident was with another person;
- (c) that Mr. Wong, with the intent to escape civil or criminal liability, failed to stop the vehicle, give his name and address and, to offer assistance where any person had been injured or appeared to require assistance; and
- (d) that Mr. Wong failed to stop knowing that bodily harm had been caused to another person.

[46] With respect to the elements in paragraph (c), the list is disjunctive. The Crown need only prove that Mr. Wong failed in his duty with respect to at least one of these things: *R. v. Roche*, [1983] 1 S.C.R. 491 at pp. 493 and 496-497.

[47] The Crown's indictment charges Mr. Wong under s. 252(1.2), which contains the following additional element: "knowing that bodily harm has been caused to another person involved in the accident".

[48] The specific intent requirement under s. 252(1) arises at two stages. As noted in *Basra*:

[34] Section 252(1) is a specific intent offence, requiring proof beyond a reasonable doubt of mens rea as follows:

1. that the accused knew he was involved in an accident (in the circumstances of this case) with another person; and
2. that the accused failed to stop, give his or her name and address and render assistance if needed, in order to escape civil or criminal liability. .

[Internal citations omitted.]

[49] With respect to proof of the accused's knowledge, the Crown also relies on the concept of wilful blindness which was summarized this way in *R. v. Harrison*, 2007 BCSC 1801:

[37] In my view, the 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 *R. v. Sansregret*, [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.

[50] In *R. v. Sansregret*, [1985] 1 S.C.R. 570 at 235, the words used included "failing to inquire when he (the accused) knows there is reason for inquiry".

[51] And in *R. v. Jorgensen*, [1995] 4 S.C.R. 55 at 135 Justice Sopinka described wilfulness blindness this way:

It is well established in criminal law that wilful blindness will also fulfil a mens rea requirement. Deliberately choosing not to know something when given reason to believe further inquiry is necessary can satisfy the mental element of the offence.

B: Analysis

[52] As a result of the Admissions, the real issue in this case is whether the Crown has established the mens rea of the offence.

[53] The Crown's position is that all the essential elements of the offence have been proven beyond a reasonable doubt as at the time Mr. Wong left the Scene immediately after the accident had occurred. It points to the expert evidence and in particular the clothing transfer marks, the visual and audio warning signals which were operational in the vehicle and those portions of the accused's Warned Statement in which he acknowledges feeling a slight bump but did not make any inquiries and decided instead to leave the Scene. The Crown submits that Mr. Wong had actual knowledge that he had been involved in an accident when he left the Scene or was wilfully blind as to that fact.

[54] In the alternative, the Crown's position is that all the essential elements of the offence have been proven beyond a reasonable doubt based on the continuum of events which commenced when the accused returned to the vicinity of the Scene at approximately 7:12 am to then leave a second time and when he returned on a third occasion commencing at approximately 7:18 a.m. This involved his driving past Ms. Chan, and then doubling back to proceed right beside her as he parked his vehicle in the garage.

[55] The Crown also submits that if the Court were to have a reasonable doubt that all the elements had been proven when the accused went into his residence having parked his vehicle, they are established when he returned to the garage and proceeded into the alley where he interacted with Ms. Chan. At this point in time, at the latest, he had actual knowledge that she had sustained bodily harm. From the perspective most favourable to the accused, by this time he was wilfully blind both with respect to knowledge of the accident and that bodily harm had resulted.

[56] The Crown acknowledges that the Warned Statement does constitute evidence to the contrary pursuant to s. 251(2) of the Code but submits it has established beyond a reasonable doubt that Mr. Wong left the Scene with the intent to escape civil or criminal liability. In part it points to the accused's conduct at the Scene both in the immediate aftermath of the accident and when he returned. This includes going inside his residence, failing to disclose his involvement to anyone at the Scene, the misleading statement to Cst. Lau, the deletion of portions of the video surveillance and his interaction with the police officers who attended

at his residence to view the surveillance.

- [57] In so far as the deletion of the video is concerned, the Crown submits that this occurred after the accused left his garage, ostensibly to go to the washroom and before he entered the alley, that is between approximately 7:21 and 7:30 a.m., and not when he returned to his residence after providing a statement to Cst. Lau which is what he told Cst. Williams and Chief Superintendent Fordy later that day.
- [58] The accused's position is that the Crown has failed to establish that he knew he was involved in an accident with another person and that he failed to stop, give his name and address and render assistance if needed, in order to escape civil or criminal liability.
- [59] In addition, relying on *R. v. Slessor*, [1970] 1 O.R. 664 [Slessor] at paras. 45-46, he submits that he cannot be convicted of the offence when he leaves the Scene but only later realizes that his vehicle has been involved in an accident.
- [60] He also seeks to distinguish those authorities where wilful blindness was found, by noting that they involved significant damage and other signs from which the wilful blindness had been established.
- [61] It is also his position that by the time he left the Scene at approximately 7:49 a.m., having provided a statement to Cst. Lau, he had in fact complied with s. 251(2). That is because he had provided the officer with his name and address and there was no obligation on him to incriminate himself by advising the officer as to his potential involvement in the accident. The best evidence on this issue is the Warned Statement provided later that day. He says he was distraught and remorseful when he made the statement, told the police officers everything including when he deleted a portion of the surveillance video and did not minimize his involvement in any way. He says the Warned Statement is entirely consistent with what is depicted on the surveillance video at various times.
- [62] In any event, he submits it was not until when he reviewed the surveillance video, which was after he had provided the statement to Cst. Lau, that he appreciated it was his vehicle which had hit Ms. Chan.
- [63] When I consider all the evidence, including the Admissions and that of the expert witnesses, I conclude that the Crown has not established the existence of all the essential elements of the offence, in particular the mens rea requirements to which I have referred, as at the time the accused first left the Scene in the immediate aftermath of the accident, that is at approximately 7:08 a.m..
- [64] I reach this conclusion based on the weather and lighting conditions, the minimal physical evidence of contact between the vehicle and Ms. Chan, and Mr. Wong's statement that there was at best a light bump which could have been the result of the uneven pavement.

- [65] While there is evidence that the audio and visual warning devices in the vehicle were operating normally, the expert evidence, particularly that of Mr. Heinrichs, gives rise to a reasonable doubt as to whether the mens rea elements of the offence have been established by the Crown as at the time Mr. Wong initially left the Scene in the immediate aftermath of the accident.
- [66] This conclusion, however, does not complete the analysis. The issue then becomes whether the essential elements of the offence are established by the accused's subsequent conduct in returning to the Scene and its vicinity commencing at approximately 7:18 a.m. I find that he then failed to remain there on two occasions, the first being when he entered his garage and then proceeded into his residence at approximately 7:21 a.m.; the second when he returned to the Scene at approximately 7:30 a.m. before leaving once again to return to his residence at approximately 7:49 a.m. having provided a statement to Cst. Lau.
- [67] I refer to these two time frames in particular because I find the video evidence to be insufficient to conclude that the vehicle seen at approximately 7:12 a.m. is in fact the Mercedes SUV being driven by Mr. Wong.
- [68] In so far as the later time frames are concerned, they are entirely consistent with the surveillance video and portions of the Warned Statement, in particular driving past the alley, "doubling back" and driving past Ms. Chan to enter the garage. The video surveillance and the Warned Statement are also consistent with Mr. Wong's actions after he entered the alley at approximately 7:30 a.m. and the evidence as to his interaction with the persons, both civilian and police (including Cst. Lau), who were at the Scene.
- [69] When I apply the legal framework to which I have referred to the totality of the evidence in this case, I conclude that the Crown has proven beyond a reasonable doubt all the mens rea elements of the offence.
- [70] First, I do not accept the accused's submission that the reasoning in Slessor assists him in this case.
- [71] The accused's interpretation of Slessor is that he cannot be found guilty of the offence if he only becomes aware at a later time of his involvement in the accident. But the facts in Slessor were unusual in that the accused was asleep in the vehicle at the time of the accident and only became aware of the accident a short while later when he awoke, changed seats with the driver, and then assumed care and control of the vehicle. The issue of care and control and the accused's knowledge at the time of the accident were issues in Slessor. Here the care and control element of the offence at the time of the accident is admitted and the accused later returned to the Scene.

- [72] I am satisfied beyond a reasonable doubt that when Mr. Wong parked his vehicle in the garage before he proceeded into his residence ostensibly to go to the washroom at approximately 7:21 a.m., he knew or was wilfully blind to the fact that he had been involved in an accident with another person which had caused bodily harm and that he failed to stop, give his name and address and render assistance if needed, and did so in order to escape civil or criminal liability.
- [73] This conclusion is based on the surveillance video, portions of Mr. Wong's Warned Statement and the post offence conduct being the misleading statement given to Cst. Lau and the deletion of a portion of the surveillance video.
- [74] It is noteworthy, in my view, that although the Warned Statement does contain some discrepancies as to the accused's knowledge regarding potentially hitting "something" as opposed to "someone", Mr. Wong did state on the first occasion he gave his account as to what had occurred (paragraph 33 above) that he panicked before he drove his vehicle into the garage and that when he returned to the garage after being in his residence he went into the alley "to see if the person is okay".
- [75] Furthermore on the second occasion he described what had occurred (para 34 above), he stated in connection with panicking before he drove into the garage "it looks like somebody laying there".
- [76] At the very least, Mr. Wong was wilfully blind at this time when he decided to leave the garage and go into his residence in the sense that there was a clear need for him to inquire, but he did not do so because he did not want to know the truth. This is particularly the case when one considers that Ms. Chan was on the ground in the alley just outside the open door to his garage.
- [77] The fact that Ms. Chan was "laying there" several minutes after the accident is also proof beyond a reasonable doubt that Mr. Wong knew or was wilfully blind to the fact that she had sustained bodily harm in the accident.
- [78] But if I am wrong in reaching these conclusions, then the mens rea elements of the offence are established beyond a reasonable doubt, either based on actual knowledge or by the principle of wilful blindness when Mr. Wong:
- in fact enters the alley, sees Ms. Chan and those individuals assisting her;
 - interacts with her himself and appreciates that she has sustained bodily harm in the accident;
 - satisfies himself that the emergency responders have been called; and
 - then leaves the Scene.

- [79] On either of those two occasions it cannot be a defence for Mr. Wong to have closed his eyes through fear or panic as to what had occurred. I find that he reacted the way he did because he either knew that he had hit Ms. Chan or because he did not want to know the truth. On both occasions he left the Scene with the intent to escape civil or criminal liability and knowing that Ms. Chan had sustained bodily harm.
- [80] Mr. Wong providing a misleading statement to Cst. Lau and deleting portions of the surveillance video is also evidence upon which I rely on in concluding that he left the Scene on either of the two occasions to which I have referred with the intention of escaping civil or criminal liability.
- [81] I do not accept the accused's submission that his "cooperation" with the police by providing them with access to the surveillance video should give rise to a reasonable doubt as to his guilt. This "cooperation" was selective at best since Mr. Wong did not advise the police of his involvement in the accident, nor the fact that he had deleted the video while purporting to make contact with the monitoring company to see if the deleted portions could be recovered.
- [82] The accused submits that he complied with s. 252(1) in that he provided his name and address to Cst. Lau.
- [83] I disagree. In my view this would amount to a distorted interpretation of the section which is clearly directed at individuals who had the care and control of a vehicle (or vessel or aircraft) involved in accidents and not to third party witnesses.
- [84] The misleading statement provided to Cst. Lau at 7:48 a.m. does not constitute compliance with the section.
- [85] In conclusion, for the reasons I have outlined, I find that the Crown has established beyond a reasonable doubt all the essential elements of the offence on the two occasions when the accused returned to the Scene to which I have referred being:
- his presence at the Scene prior to and at the point of parking his vehicle in the garage and then entering into his residence; and
 - upon returning to the Scene, interacting with Ms. Wong and the police and then leaving the Scene to return to his residence.
- [86] In reaching these conclusions it is not necessary for me to find when Mr. Wong deleted the portion of the surveillance video. It is sufficient that this occurred as part of the accused's conduct which forms part of the evidence upon which his guilt is established.

IV: DISPOSITION

- [87] Mr. Wong please stand.
- [88] For the reasons I have outlined, I find you guilty of the charge set out in the Indictment.

[89] Please be seated.

"Abrioux J."

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