

CANADA / JUDGMENT

R. v. Zhang

2020 BCSC 123

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 123 R. v. Zhang

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Zhang,

2020 BCSC 123

Date: 20200204

Docket: 28719

Registry: Vancouver

Regina

v.

Jing Ting Zhang

Before: The Honourable Mr. Justice Bernard

On appeal from: An order of the Provincial Court of British Court, dated July 26, 2019 (R. v. Zhang, Vancouver Registry, AJ03130523).

Reasons for Judgment

Counsel for the Crown:

K.H. Gagnon

The Appellant, appearing in person:

J.T. Zhang

Place and Date of Trial/Hearing:

Vancouver, B.C.

October 16, 2019

Place and Date of Judgment:

Vancouver, B.C.

February 4, 2020

A. Overview

- [1] On July 26, 2019, Mr. Zhang was found guilty of Using an Electronic Device while Operating a Motor Vehicle on a Highway, contrary to s. 214.2(1) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 ("Act").
- [2] In brief, RCMP Cst. Faustino testified that he saw Mr. Zhang holding a cell-phone in his hand while seated behind the wheel of a van stopped on the roadway. Mr. Zhang testified that his cell-phone remained in a bag on the seat beside him, at all material times, but the presiding justice rejected Mr. Zhang's evidence and found that the offence had been proved beyond a reasonable doubt.
- [3] Mr. Zhang now appeals from that conviction, on the following grounds:
 - a) "The policeman falsified the story; he gave me [the] wrong ticket after he found [that he had] no reason to stop me."
 - b) "[The] judge made [the] wrong decision against the evidence."
- [4] Mr. Zhang also alleged that there were errors in the court interpreter's translation of his evidence from Mandarin to English.
- [5] For the reasons that follow, the appeal is dismissed.

B. Trial Evidence Synopsis

Cst. Faustino

- [6] Cst. Faustino testified that shortly before 12:00 PM on August 13, 2017, he was in uniform, on duty, and engaged in "static" traffic enforcement at the intersection of Willingdon Avenue and Kingsway, in Burnaby, B.C. He said his attention was drawn to Mr. Zhang's van in the southbound curb lane of Willingdon Avenue just north of Kingsway, stopped approximately one car-length behind a transit bus at a red light. Cst. Faustino said he approached the passenger side of the van, looked through the window, and saw Mr. Zhang seated behind the wheel and holding a cell-phone in his right hand near his lap, with the screen facing him. He described the cell-phone as a white-framed iPhone in a brown "flip" case that had been flipped opened to expose the screen.

- [7] Cst. Faustino said he approached the driver's side of the van, asked Mr. Zhang for his driver's licence, and directed him to pull over into a nearby parking lot. He said he noted that Mr. Zhang placed the cell-phone in a white plastic bag that was beside him.
- [8] In the parking lot, Cst. Faustino said he informed Mr. Zhang that the reason for the police stop was a "cell-phone infraction", and then served Mr. Zhang with a violation ticket ("VT").
- [9] In cross-examination, Mr. Zhang suggested that Cst. Faustino first spoke to him through the passenger side window of the van, told Mr. Zhang that he was not allowed to stop where he was, and directed him to drive around [to the parking lot]. Cst. Faustino agreed it was possible that there was some conversation through the open passenger window, but said if there was then he did not recall what it was. He added that if there had been any conversation, it would have included him telling Mr. Zhang that he had seen him with a cell-phone in his hand.
- [10] Mr. Zhang also suggested that he and Cst. Faustino were "quarrelling", for as long as 20 minutes in the parking lot, over where Mr. Zhang had stopped on the road, rather than his cell-phone use. Cst. Faustino said that if such had occurred he would have made "substantial" notes of it (in the event of a later complaint), and that he had no notes of it.
- [11] Cst. Faustino denied Mr. Zhang's suggestion that he had threatened Mr. Zhang with arrest if he did not sign the VT. Cst. Faustino explained that there were no grounds to arrest Mr. Zhang, and added he would never arrest a driver who refused to sign a VT because drivers have the right to refuse. He said that in such instances he simply fills out the "affidavit of service" portion of the VT.
- [12] Cst. Faustino agreed that he had issued a VT to Mr. Zhang once before, at some unspecified time in the past. In relation to that prior matter, he said there were unusual circumstances relating to "Mr. Zhang's misunderstanding of something that was going on", which resulted in the VT being withdrawn at trial.

Mr. Zhang

- [13] In August 2017, Mr. Zhang was living near the intersection of Kingsway and Willingdon. On the Sunday morning in question, Mr. Zhang said he left his home at approximately 10:00 AM to drive to his workplace at Highway #1 and 152nd Street, in Surrey, B.C.; it was a trip he had taken many times and he said it typically took 30 minutes. On this day, however, Mr. Zhang said his mind was "not working very well, for whatever reason" and he became confused and lost; he drove "round and round" for approximately two hours, unable to find his way to Highway #1, before he stopped at the side of the road to ask for directions and to clear his head. He said it was at this point in time when Cst. Faustino approached his van and yelled at him through the passenger window. Mr. Zhang said he could not understand what the officer was saying, but shouted back these words: "Lost. Lost. Bag. Map. Map."

- [14] Mr. Zhang said he activated his hazard lights and then began stepping from his van to clear his head and get directions, when Cst. Faustino told him he could not leave his van in the traffic lane where it was stopped, and directed him to drive it into a nearby Save-On Foods parking lot. Once he was stopped in the parking lot, Cst. Faustino approached him and asked for his driver's licence.
- [15] Mr. Zhang said he argued with Cst. Faustino when the officer told him he was not allowed to stop where he had stopped. Mr. Zhang explained: "I did not agree with him. I said I was confused and I needed to ask for direction and to do that I must stop." He added: "If I did not stop something bad would happen".
- [16] Mr. Zhang said he was very angry with Cst. Faustino for giving him a ticket, and he drove off without reading it. He added that he did not want "to deal with" the officer, because he had threatened to arrest him if he would not sign the VT. Later that same day, Mr. Zhang said he read the VT and realized, for the first time, that he had been ticketed for using an electronic device.
- [17] While Mr. Zhang was testifying, he produced a cell-phone he said was the phone he had with him on August 13, 2017. He described it as an Apple iPhone with a silver or grey frame, in a black case. He said he purchased this cell-phone in October 2016.
- [18] In cross-examination, Mr. Zhang was asked whether he usually used "GPS" on his cell-phone for directions, and he replied:

No, no, I was very familiar with my route, so coming out from 152 - - - or 152nd Street, or Avenue. Out from my house, then I would take 29th Avenue to Boundary and onto Number 1, but I don't know what happened that day.

- [19] Mr. Zhang was also asked what he meant when he said "Map. Map" at the scene where he had stopped his van on the roadway, and Mr. Zhang replied:

I used two English words, one is "lost". I think you understand that means I am lost. I was taking my bag and I said "Map. Map." meaning I need to come out to ask the way.

- [20] In relation to the cell-phone he produced, Mr. Zhang was asked whether it had a white frame, and he said he would choose the colour grey to describe it.

- [21] When asked whether he was confused and frustrated because he was lost, Mr. Zhang said:

I was not confused. I was very clear about the fact that I have to stop. I have to consider safety. I have to clear my mind. So, as I said earlier, there are two things. One is I was - wanted to clear my mind. The second [was] to ask for directions.

C. Trial Judgment

- [22] The justice summarized the evidence of both witnesses. He described Mr. Zhang's cross-examination of Cst. Faustino as wide-ranging, rarely relevant to the charge, and ineffective in shaking Cst. Faustino's evidence to any material degree. As for Mr. Zhang's testimony, the justice noted that Mr. Zhang said he was very familiar with the 30-minute drive from his home to his workplace, yet he was lost and confused on the day in question and had stopped on the roadway to ask for directions. He also noted that Mr. Zhang said he had been driving for approximately two hours but was still very close to his home.
- [23] The justice rejected Mr. Zhang's evidence that he had been threatened with arrest if he did not sign the ticket, as "absolutely incredible". He explained that it was not necessary for a driver to sign a ticket or acknowledge receipt of same; there would therefore be no reason for the officer to have threatened arrest.
- [24] The justice described the cell-phone Mr. Zhang produced in court as a white-bordered iPhone in a black flip-case. He found that it was "exactly as described by the officer . . . with the possible exception that the case was black and not brown."
- [25] The justice accepted the testimony of Cst. Faustino as true and rejected the evidence of Mr. Zhang. He found the officer's evidence precise and explicit, and said that much of Mr. Zhang's evidence did not make sense and was self-contradictory. He noted that Mr. Zhang did not answer questions candidly, and that his answers were often deflective and not responsive.
- [26] The justice instructed himself on the proper approach to the evidence where a disputant testifies, by citing, *inter alia*, R. v. W. (D.), [1991] 1 S.C.R. 742. He then concluded as follows:

I am left with absolutely no doubt that at the time and place in question Mr. Zhang had his iPhone, accurately described by Corporal Faustino, in his right hand. I therefore find that the Crown has proven every essential element of the offence charged beyond a reasonable doubt and I find you guilty as charged, Mr. Zhang.

D. Legal Framework

- [27] The Criminal Code, R.S.C., 1985, c. C-46 provisions germane to the instant appeal are as follows:

Appeal by defendant, informant or Attorney General

813 Except where otherwise provided by law,

- (a) the defendant in proceedings under this Part may appeal to the appeal court
- (i) from a conviction or order made against him,

Certain sections applicable to appeals

822 (1) Where an appeal is taken under section 813 in respect of any conviction, acquittal, sentence, verdict or order, sections 683 to 689, with the exception of subsections 683(3) and 686(5), apply, with such modifications as the circumstances require.

Powers

686 (1) On the hearing of an appeal against a conviction . . . the court of appeal

- (a) 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;

E. Discussion

[28] Mr. Zhang's appeal raises the following two questions for determination:

- a. Was the justice's verdict unreasonable or unsupported by the evidence?
- b. Was there a miscarriage of justice?
- (a) Was the verdict unreasonable or unsupported by the evidence?

[29] The essence of Mr. Zhang's complaint is that the justice's findings of credibility, which caused him to reject Mr. Zhang's version of events and accept Cst. Faustino's evidence, resulted in an unreasonable verdict.

[30] In *R. v. Ceal*, 2012 BCCA 19 at paras. 23-27, Madam Justice Smith, speaking for the Court, made the following apposite remarks regarding the limited scope of appellate review in relation to credibility assessments:

23 The test for appellate review under s. 686(1)(a)(i), where a verdict is challenged as unreasonable or not supported by the evidence, is whether the verdict is one that a properly instructed jury acting judicially could reasonably have rendered: *R. v. Biniaris*, 2000 SCC 15, [2000] 1 S.C.R. 381 at paras. 36-37. The scope of that review is limited because of the "special position of the trier of fact on matters of credibility" and the appellate disadvantage in reweighing the evidence: *Biniaris* at para. 36 and *R. v. W.(R.)*, [1992] 2 S.C.R. 122 at 131.

24 It is trite law that the assessment of credibility involves not only an assessment of the inconsistencies and discrepancies of a witness's evidence but also includes an assessment of his or her demeanor in the witness stand. In other words it is not just "what was said, but how it was said": *R. v. Howe* (2005), 192 C.C.C. (3d) 480 at para. 46 (Ont. C.A.). The opportunity to observe how a witness delivers his or testimony is the "advantage" of the trier of fact and the

corresponding "disadvantage" of the appellate court: see *W.(R.)* at 131-32; *R. v. François*, [1994] 2 S.C.R. 827; *R. v. Horton*, 1999 BCCA 150; and *R. v. McLean*, 2010 BCCA 341 at para. 51.

25 In determining whether a verdict is unreasonable or cannot be supported by the evidence, the focus of the inquiry is on whether there is any evidence to support the trial judge's findings based on the totality of the evidence before him or her, and whether the verdict logically flows from those findings. An appellate court will not interfere with a trial judge's assessment of credibility absent palpable and overriding error in the findings that support his or her assessment. As was noted in *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621:

[20] Assessing credibility is not a science. It is very difficult for a trial judge to articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events. That is why this court decided, most recently, in *H.L.*, that in the absence of a palpable and overriding error by the trial judge, his or her perceptions should be respected.

26 This approach to appellate review under s. 686(1)(a)(i) was succinctly summarized by Mr. Justice Doherty in *Howe* at para. 47, cited with approval by this Court in *R. v. Turner*, 2010 BCCA 76 at para. 25:

[47] Some arguments on appeal, ostensibly directed at the trial judge's reasoning process, are in reality thinly veiled invitations to the Court of Appeal to substitute its own credibility assessments for those made at trial. Where the essence of the argument advanced on appeal comes down to an assertion that the trial judge was wrong in accepting the evidence of the complainant and rejecting the evidence of the accused, this submission should be treated for what it is, an assertion that the verdict is unreasonable. The success of that assertion turns, ultimately, not on the reasoning process of the trial judge, although that process is relevant, but on whether the verdict can withstand the limited review contemplated by s. 686(1)(a)(i) of the Criminal Code: *R. v. Biniaris* (2000), 143 C.C.C. (3d) 1 (S.C.C.) at 20-24.

27 Thus, absent palpable and overriding error in the findings that support a trial judge's assessment of a witness's credibility, appellate deference must be given to that assessment.

[31] Accordingly, when a trial judge's assessment of witness credibility is in question on appeal, the inquiry is whether, in making the assessment, the trial judge demonstrated a palpable and overriding error; in other words, did the trial judge commit an error in assessing credibility that was clear and obvious, and so serious as to be determinative (see *Geophysical Services Inc. v. Sable Mary Seismic Inc.*, 2012 NSCA 33).

[32] In *Ceal* at paras. 51 and 52, the court concluded there was no palpable and overriding error in the trial judge's assessment of credibility. The court considered the appellant's submission, examined the record, and said:

51 Based on the totality of the evidence, I am satisfied there existed an evidentiary basis for the trial judge's assessment of the credibility and reliability of C.W.'s evidence and find no error in his approach to that assessment.

Conclusion

52 An assertion that a verdict is unreasonable turns, ultimately, not on the reasoning process of the trial judge, but on whether the verdict can withstand the limited review contemplated by s. 686(1)(a)(i) of the Criminal Code, namely, whether a properly instructed jury, acting judicially, could reasonably have rendered the verdict. It is the totality of the evidence that must be considered in determining if the verdict is unreasonable. In my view the totality of the evidence in this case clearly demonstrated an evidentiary basis for the verdict rendered by the trial judge. Accordingly, I would dismiss the appeal.

- [33] The justice in the case at bar found Cst. Faustino to be credible and Mr. Zhang to lack credibility, and articulated the reasoning behind these assessments. He described Cst. Faustino's evidence as precise and explicit, and much of Mr. Zhang's evidence as nonsensical and self-contradictory.
- [34] The justice noted that Cst. Faustino gave "a very detailed and specific description" of the phone he said he saw in Mr. Zhang's hand, including its make (iPhone), frame-colour (white), and its case (a brown wallet or flip-case). The justice found that this description matched the phone Mr. Zhang produced on the witness stand "exactly", with the possible exception that the case was black and not brown. He also found that Cst. Faustino's evidence was not shaken in a wide-ranging and rarely relevant cross-examination by Mr. Zhang.
- [35] As for Mr. Zhang, the justice described him as not candid, often deflective, and not responsive. He noted it was "hard to align" Mr. Zhang's evidence that he was very familiar with his intended route that morning, with his testimony that he was lost and had been driving around for two hours before he decided to stop on the roadway and leave his van, for the purpose of clearing his head and seeking directions to Highway #1. He found Mr. Zhang's evidence that he was threatened with arrest if he did not sign the VT "absolutely incredible", and explained why.
- [36] At this appeal, Mr. Zhang attempted to show that the justice was wrong to reject his evidence and believe Cst. Faustino. In so doing, he referred to evidence that was neither before the trial judge nor admitted as "new" evidence on appeal.
- [37] For the first time, on appeal, Mr. Zhang gave explanations for:
- a) being confused and lost on the morning he was ticketed. He said:

Maybe because the pressure of injury, business slow and also not enough sleep / long time discuss with some customers and my helpers in previous night, on the way to check my large customer's complaints in 10620 150 Street Surrey (near 152 Ave.) in the morning after 10am on Aug. 13, 2017. I lost my directions and turned circles around and around for about one hour or 2 and could not find the way out to Hwy 1.

- b) why Cst. Faustino "guessed right" that Mr. Zhang had an Apple iPhone. He said that Cst. Faustino knew from an unrelated investigation in November 2011 that Mr. Zhang had an iPhone, and it was just lucky for Cst. Faustino that when Mr. Zhang replaced that iPhone in 2016, he did so with another iPhone. Mr. Zhang also added that his iPhone was set to a "no disturb mode while driving" which, he said, lasts long after he steps from the vehicle.
- c) why Cst. Faustino is a "dirty cop". He proffered information about two prior encounters with Cst. Faustino (from 2011 and earlier), in which Mr. Zhang was ticketed.

[38] Mr. Zhang's opportunity to present evidence and argument on the foregoing was at his trial; this appeal is not a second "kick at the can" for the purpose of bolstering his case with evidence available at the time of trial but not tendered, and/or with arguments that could have been advanced then.

[39] As for Mr. Zhang's appeal arguments based on the trial record, they are, in the words of Mr. Justice Doherty in *R. v. Howe* (2005), 192 C.C.C. (3d) 480 (Ont. C.A.) at para. 47, cited at para. 26 of *Ceal*, supra, a thinly veiled invitation to this Court to substitute its own credibility assessment for that of the trial judge. His submission that the justice was wrong to reject his evidence and accept Cst. Faustino's evidence is an assertion that the verdict was unreasonable. The success of such an assertion does not turn, ultimately, on the justice's reasoning process - although that process is relevant - but rather on whether the verdict withstands the limited scope of appellate review. I conclude that it does. The justice's verdict of guilt is one that a properly instructed jury, acting judicially, could reasonably have rendered. The totality of the evidence before the court clearly demonstrated an evidentiary basis for the verdict rendered.

[40] For these reasons, Mr. Zhang's first ground of appeal cannot succeed.

(b) Was there a miscarriage of justice?

[41] The alleged miscarriage of justice arises from Mr. Zhang's submission that the interpreter at his trial made several errors in translation. Although Mr. Zhang did not raise this ground of appeal in his Notice of Appeal or give the respondent notice that he wished to raise it at the hearing, the respondent invited the court to consider it.

[42] Mr. Zhang's first language is Mandarin and his trial was conducted in English with the assistance of a Mandarin-speaking interpreter. Similarly, a Mandarin interpreter assisted Mr. Zhang at his appeal.

- [43] Mr. Zhang identified the following as errors in translation at his trial, as shown in the official transcript:
- a) The interpreter said "stop", "stopped", and "stopping", instead of "park", "parked", and "parking".
 - b) The interpreter said "vehicle" instead of "van/trailer".
 - c) The interpreter said "I was on the way to Surrey to check my workplace. My home is located in 27th and Lawrence, very near Kingsway and Willingdon, so my usual route would be starting from home, going from the back via Highway 1 and 152nd Ave." Mr. Zhang submitted this was the wrong address and route, but did not say what his actual words were at the trial.
 - d) The interpreter said "big bag", instead of "lunch bag".
 - e) The interpreter said "Map, bag, lost, lost" instead of "Map, map, lost, lost."
 - f) The interpreter said "mirror", instead of "meter" or "measure".
 - g) The interpreter said "green" (for the iPhone frame colour) instead of "silver".
- [44] This appeal ground raises Mr. Zhang's constitutional right to the assistance of an interpreter at his trial. It is, however, not in question that Mr. Zhang had the assistance of an interpreter, and it has not been suggested that Mr. Zhang did not understand any part of the proceedings because of deficiencies in that assistance; rather, the narrow appellate issue raised is whether the assistance he received met the constitutional standard in relation to accuracy or precision.
- [45] Section 14 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K), 1982, c. 11 ("Charter") provides as follows:

INTERPRETER

14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.
- [46] The constitutional standard for interpreter assistance was considered in *R. v. Tran*, [1994] 2 S.C.R. 951. In relation to that standard and the precision required, the court said:

(ii) Guaranteed Standard of Interpretation

54 The second step in determining whether an accused has been deprived of his or her constitutionally guaranteed right to interpreter assistance involves a consideration of whether there has been a departure or deviation from what is considered "proper" interpretation. Where the accused shows that he or she was in need of an interpreter, but was refused such assistance, the limitation on the right will be self-evident (subject, of course, to the accused establishing that

the denial occurred at a point when the case was being advanced). However, where, as here, an interpreter was appointed and it is the quality of the interpretation provided that is being challenged, assessing whether there has been an infringement of the right becomes more complicated. To do so, it is necessary to consider the scope of the right guaranteed by s. 14 of the Charter and to begin to define what constitutes an appropriate standard of interpretation in criminal proceedings.

55 While the standard of interpretation under s. 14 will be high, it should not be one of perfection. In my view, it can be defined by reference to a number of criteria aimed at helping to ensure that persons with language difficulties have the same opportunity to understand and be understood as if they were conversant in the language being employed in the proceedings. These criteria include, and are not necessarily limited to, continuity, precision, impartiality, competency and contemporaneousness. I shall consider each one in turn.

...

59 The need for precision in interpretation is self-evident. As Steele suggests at pp. 240-41 of his article, *supra*:

... the interpretation must be, as close as can be, word-for-word and idea-for-idea; the interpreter must not "clean up" the evidence by giving it a form, a grammar or syntax that it does not have; the interpreter should make no commentary on the evidence; and the interpretation should be given only in the first person, e.g., "I went to school" instead of "he says he went to school".

This necessity for precision is an additional reason why summaries are most unlikely to meet the general standard of interpretation required under s. 14 of the Charter. Indeed, in the American case *Negron*, *supra*, Kaufman J. held, at pp. 389-90, that the summaries provided to the defendant by the prosecutor's interpreter were inadequate because:

However astute [the interpreter's] summaries may have been, they could not do service as a means by which *Negron* could understand the precise nature of the testimony against him during that period of the trial's progress when the state chose to bring it forth.

60 However, it is important to keep in mind that interpretation is an inherently human endeavour which often takes place in less than ideal circumstances. Therefore, it would not be realistic or sensible to require even a constitutionally guaranteed standard of interpretation to be one of perfection. As Steele explains, at p. 242:

Even the best interpretation is not "perfect", in that the interpreter can never convey the evidence with a sense and nuance identical to the original speech. For that reason, the courts have cautioned that interpreted evidence should not be examined microscopically for inconsistencies. The benefit of a doubt should be given to the witness.

In this respect, it may be helpful to note the conceptual distinction that exists between "interpretation", which is primarily concerned with the spoken word, and "translation", which is primarily concerned with the written word. In light of the fact that interpretation involves a

process of mediation between two people which must occur on the spot with little opportunity for reflection, it follows that the standard for interpretation will tend to be lower than it might be for translation, where the source is a written text, where reaction time is usually greater and where conceptual differences which sometimes exist between languages can be more fully accommodated and accounted for.

...

VI. Summary

66 In sum, the purpose of furthering understanding of the proceedings which underpins the right to interpreter assistance is most likely to be fulfilled if the standard for interpretation under s. 14 of the Charter is defined as one of continuity, precision, impartiality, competency and contemporaneousness. Given the underlying importance of the interests being protected by the right to interpreter assistance, the constitutionally guaranteed standard of interpretation must be high and allowable departures from that standard limited. In assessing whether there has been a sufficient departure from the standard to satisfy the second stage of inquiry under s. 14, the principle which informs the right -- namely, that of linguistic understanding -- should be kept in mind. In other words, the question should always be whether there is a possibility that the accused may not have understood a part of the proceedings by virtue of his or her difficulty with the language being used in court.

[47] From the foregoing, it is clear that while the standard for the assistance of an interpreter is high, it is not one of perfection, and the interpreted evidence should not be examined microscopically for inconsistencies. Applying this standard to the instant appeal, I am not persuaded that Mr. Zhang has shown that the interpreter assistance at his trial did not meet the requisite constitutional standard. Notably, the inconsistencies identified by Mr. Zhang are insignificant and immaterial to the live issues; it cannot reasonably be maintained that they could have had any bearing on the trial result. This includes the misinterpretation of Mr. Zhang's evidence of the phone's colour as "green". Once Mr. Zhang produced the phone for the court's viewing and described its colour as grey, the earlier misinterpretation was of no consequence.

[48] For these reasons, Mr. Zhang's second ground of appeal cannot succeed.

F. Disposition

[49] The appeal is dismissed.

"Bernard, J."

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