COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Ibrahim, 2023 ONCA 167
DATE: 20230309
DOCKET: C69058

Hoy, Thorburn and Favreau JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Adib Ibrahim

Appellant

Peter Thorning, for the appellant

Davin Michael Garg, for the respondent

Heard: March 6, 2023

On appeal from the conviction entered by Justice Alfred J. O'Marra of the Superior Court of Justice on September 25, 2020, with reasons reported at 2020 ONSC 5815, and the sentence imposed on January 20, 2021, with reasons reported at 2021 ONSC 1112.

REASONS FOR DECISION

[1] Immediately following the hearing in this matter, the court dismissed the appellant's appeal, with reasons to follow. These are our reasons.

[2] On May 14, 2012, the appellant was driving westbound on King St. East, in Toronto, in his taxi. Ralph Bissonnette was riding his longboard beside him, in the

curb lane. The appellant's taxi abruptly veered into the curb lane travelling at 40-50 km/h, instantly killing Mr. Bissonnette.

[3] The appellant was found guilty of manslaughter in 2015, following a trial by jury. However, this court ordered a new trial due to a deficiency in the instructions to the jury: *R. v. Ibrahim*, 2019 ONCA 631, 147 O.R. (3d) 272. The appellant was re-tried by judge alone and again found guilty of manslaughter in 2020.

[4] The evidence at trial included that of ten witnesses who observed the incident[1]. It also included a surveillance camera video and a variety of forensic evidence, including photographs of the scene and of the taxi taken at the scene after the collision. There was also evidence of an external examination of the taxi by officers of the Forensic Identification Service which revealed skin rubs and finger impressions on the hood of the taxi and that the taxi's right-side passenger mirror was dislodged within the housing, and the report of the Toronto Police Service mechanic that no mechanical or operational deficiencies were found on examination of the taxi.

[5] The trial judge noted that there were some inconsistencies in the witnesses' evidence. However, each was an independent witness without any vested interest

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[1] Six witnesses testified at the trial. The transcribed evidence of four of the witnesses from the first trial in 2015 was admitted on the consent of the parties.

in the event or outcome of the matter and all made their observations from different vantage points.

[6] The consistencies in several witnesses' evidence, combined with the surveillance video and the forensic evidence led the trial judge to be satisfied that Mr. Bissonnette was in the curb lane beside the front passenger side of the taxi; he banged on the hood of the taxi; he grabbed at the hood by the windshield and knocked the mirror askew. Then he yelled at the appellant, who was in the driver's seat.

[7] The trial judge rejected the appellant's evidence that he collided with Mr. Bissonnette as a result of a momentary lapse of attention as he changed lanes. Based on the evidence he accepted as to the sequence of events, the trial judge had no doubt that the appellant knew that Mr. Bissonnette was in the curb lane and purposely steered his taxi into the curb lane.

[8] He sentenced the appellant to 3 years' and 11 months' imprisonment.

[9] The appellant appeals his conviction and seeks leave to appeal against sentence.

[10] On his appeal against conviction, he argues that the trial judge made three principal errors and that these errors rendered the verdict unreasonable.

[11] First, the appellant argues that the trial judge's finding that one of the witnesses, Michael Brown, testified that Mr. Bissonnette hit the taxi before the

appellant's taxi veered into the curb lane was a misapprehension of the substance of Mr. Brown's evidence. Moreover, the appellant submits, this mistake warrants this court's intervention: if Mr. Bissonnette hit the taxi at the same time as the taxi turned into the curb lane, Mr. Brown's evidence does not support the inference that the appellant was aware of Mr. Bissonnette's presence.

[12] We are not persuaded that the trial judge misapprehended the evidence of Mr. Brown. He repeatedly testified that there was a gap in time, however slight, between Mr. Bissonnette hitting the taxi and the appellant turning into him. Further, the trial judge's assessment of Mr. Brown's evidence must be considered in the context of the surveillance footage. It showed a gap of one or two seconds between Mr. Bissonnette hitting the taxi and the taxi turning.

[13] Second, the appellant argues that the trial judge erred in his assessment of the credibility of another witness, a TTC streetcar operator, Benjamin Yau, in three respects: (1) he did not meaningfully engage with the inconsistencies in Mr. Yau's evidence; (2) his conclusion that Mr. Yau was not Islamophobic was an obvious error and he failed to also consider whether Mr. Yau was unconsciously biased against the appellant; and (3) he failed to properly assess the impact of media reports on Mr. Yau's testimony.

[14] We reject these arguments.

[15] The trial judge specifically adverted to the inconsistencies in Mr. Yau's evidence, namely that the appellant was in the curb lane, close to the centre line, contrary to what was shown in the surveillance video, and that in his initial statement to police Mr. Yau did not mention hearing yelling. The trial judge noted that within an hour of making his initial statement to police, Mr. Yau emailed the officer to clarify that while he had not heard what the parties were saying he heard yelling and then saw the appellant turn the steering wheel.

[16] The trial judge addressed appellant's counsel's argument that Mr. Yau was possibly Islamophobic and biased against the appellant as a result. The suggestion was made based on an internet search which revealed that Mr. Yau had posted a comment indicating that he found a YouTube video showing a burka-clad woman operating a burka-clad motor vehicle humorous. The video was created after Muslim women were given the right to drive in a country that had banned such activity. The trial judge was not persuaded that this indicated that Mr. Yau was Islamophobic and found that there was nothing in his testimony that reflected a cultural bias toward the appellant.

[17] The trial judge noted that Mr. Yau acknowledged that it was possible that he had seen, heard, or read media reports, but could not recall anything specifically. Further, nothing in articles referenced by defence counsel was reflected in Mr. Yau's testimony.

[18] The trial judge concluded that “none of these suggestions detract from the significant aspects of [Mr. Yau’s] testimony.” Like the trial judge, we are not persuaded that Mr. Yau’s reaction to the video or anything in his testimony indicates that he is Islamophobic or that he has any conscious or unconscious biases that affected his observations. There is no basis to interfere with the trial judge’s credibility assessment of Mr. Yau. In any event, the trial judge relied on Mr. Yau’s evidence to support only two facts which other witnesses corroborated: (1) Mr. Bissonnette yelled before the collision; and (2) Mr. Bissonnette (who was 6’4”, riding a longboard at least 5” in height, and carrying a large backpack) was noticeable that day.

[19] Third, the appellant argues that the trial judge’s reasons are insufficient. In particular, he says that the trial judge failed to provide sufficient reasons explaining how he resolved the material inconsistencies in the evidence before him. He found that Mr. Bissonnette yelled before the collision, banged on the taxi, and communicated with the appellant, but only three out of ten witnesses testified that he did so.

[20] We reject this argument. We are satisfied that the reasons are sufficient and permit meaningful appellate review. The trial judge’s reasons must be read as a whole and in context: *R. v. G.F.*, 2021 SCC 20, 404 C.C.C. (3d) 1, at para. 69. The trial judge thoroughly reviewed the evidence of each witness. He explained that each of the witnesses had a different vantage point. Notably, Mr. Brown was

possibly the closest to the collision. It follows that what the witnesses were able to see and hear differed. This resolves what the appellant characterizes as inconsistencies in the evidence. Moreover, the trial judge explained how his findings were corroborated by the surveillance video and the forensic evidence.

[21] As to the sentence imposed, the appellant argues that it is demonstrably unfit. At the time of the offence, he was 44 years of age. At the time of sentencing, he was 52 years of age. He has no criminal record and strong family and community support. He renews his argument at trial that a conditional sentence of two years less a day was appropriate.

[22] The trial judge rejected this argument, distinguishing the cases relied on by the appellant on the basis that, in this case, the appellant had intentionally driven into Mr. Bissonnette's path. There was a high degree of moral blameworthiness. Given the trial judge's findings, the sentence imposed is not demonstrably unfit and there is no basis to interfere with it.

[23] Accordingly, the appeal against conviction is dismissed. Leave to appeal sentence is granted, but the appeal against sentence is dismissed.

"Alexandra Hoy J.A."
"J.A. Thorburn J.A."
"L. Favreau J.A."