PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Slauenwhite*, 2021NSPC 5

Date: 2021-01-19
Docket: 8357072
8357073
Registry: Bridgewater

Between:

Her Majesty the Queen

v.

Brittany Joyce Slauenwhite

Judge:	The Honourable Judge Paul B. Scovil, JPC
Heard:	November 3, 2020, in Bridgewater, Nova Scotia
Decision	January 19, 2020
Charges:	Section 430(4) of the **Criminal Code** Section 320.13(1) of the **Criminal Code**
Counsel:	Bryson McDonald, for the Public Prosecution Nicholaus Fitch, for the Accused

By the Court:

Facts

[1] On May 12, 2019, Brittany Slauenwhite and Melissa Rafuse exchanges unpleasantries outside a shop in Chester, Nova Scotia. Very shortly one or both tried to run the other off the road. As a result of these improprieties, Ms. Slauenwhite was charged with mischief under $5,000.00 contrary to s. 430(4) of the **Criminal Code** along with operating a conveyance in a dangerous manner, contrary to s. 320.13(1) of the **Criminal Code**.

[2] Both Melissa Rafuse and Brittany Slauenwhite have similar components to the factual background of what took place. Both, not surprisingly, have different recollections of other facts.

[3] Rafuse and Slauenwhite stated they met outside a shop in Chester and had words. Rafuse stated that it was herself who began the verbal confrontation.

[4] After this back and forth, Rafuse got into her vehicle and left. Very shortly after Slauenwhite left that scene as well in her vehicle. Slauenwhite caught up to the Rafuse vehicle somewhere along Route 14 between Robinson's Corner and the 103 Highway. At this point, the general testimony of Rafuse and Slauenwhite diverged.

Rafuse said that Slauenwhite appeared behind her in her vehicle. Further, that Slauenwhite' s vehicle bumped into her rear bumper.

[5] Rafuse identified a photograph of her rear bumper which had been damaged and an orange smear of paint. No damage existed there prior to the collision by Slauenwhite.

[6] Rafuse testified that Slauenwhite then passed her on a double solid yellow line and began pacing beside her. Slauenwhite then began to bump her vehicle into the side of Rafuse's vehicle. At the same time Slauenwhite's brother was leaning out the passenger side window with what appeared to be a broomstick and began striking at Rafuse.

[7] On coming traffic appeared and the Slauenwhite vehicle pulled ahead and sped off. Rafuse and Slauenwhite both would have came upon the RCMP detachment just after crossing the 103 Highway. Slauenwhite continued past the detachment while Rafuse pulled in and reported the incident to the authorities.

[8] Slauenwhite's testimony was somewhat different. Slauenwhite stated that when she caught up to Rafuse, Rafuse slammed on her brakes. She denied running into the back of Rafuse's vehicle but swerved to avoid a collision and then began a passing maneuver to get around the Rafuse vehicle. At that point Slauenwhite said

that Rafuse pulled her vehicle into the side of Slauenwhite's. Slauenwhite then determined to "hit her back" and swerved her vehicle into Rafuse.

[9] Slauenwhite stated her brother did not use a broom handle to strike out the window at Rafuse but rather a plunger handle. It should be noted that photograph 26 of Exhibit one has a clear picture of a broom handle in the back of Slauenwhite's vehicle.

[10] Seeing an approaching vehicle and being in that vehicle's lane of travel, Slauenwhite sped up and passed Rafuse, as Slauenwhite said, "to get away from her".

[11] Slauenwhite advised that she didn't stop at the RCMP detachment as she intended to call the police when she arrived home. When she did get home the police were already there waiting for her.

[12] Constable Guptar of the RCMP investigated the complaint and took photos of both the Slauenwhite and Rafuse vehicle.

Law

[13] Throughout all trials, judges must remind themselves of the most fundamental rule in hearing the matters before them is that the burden of proving the guilt of the

accused rest upon the prosecution. Before an accused can be convicted of an offense the trier of fact must be satisfied beyond a reasonable doubt of the existence of all the elements of the offense. This principle of reasonable doubt also applies to issues of credibility as well as fact. (see *R. v. Ay [1994] B.C.J. No. 2024 (BCCA)*

[14] The question of what 'is reasonable doubt as a standard of proof' is discussed by the Supreme Court of Canada in *R. v. Lifchus, [1997] 3 S.C.R. 320*. There, the Supreme Court set out that reasonable doubt is not like subjective standards of care that we employ in important everyday situations. It is not proof to an absolute certainty. It is not proof beyond any doubt nor is it an imaginary or frivolous doubt. It is based on reason and common sense and not sympathy or prejudice. The Court was clear about proof beyond a reasonable and that it falls much closer to absolute certainty than to proof on a balance of probabilities. See *R. v. Starr, [2000] S.C.J. No. 40*.

[15] In this matter, given that an accused has testified, I must also apply the principles of *R. v. W.D., [1991] 1 S.C.R. 742*. If having heard all the evidence, I believe the accused, then I must acquit her. If I do not know whether to believe the accused and her testimony raises a reasonable doubt, I must acquit. Even if I reject her evidence, before I can convict, I must ensure myself that on each and every

element of the offence, there is proof beyond a reasonable doubt. If the Crown has not proven any element beyond a reasonable doubt, then I must acquit.

[16] Credibility plays a crucial role in the matter before this court. Ms. Slauenwhite has put forward her position that the credibility of the Crown's witnesses are such that proof beyond a reasonable doubt is unattainable. Ms. Rafuse says Ms. Slauenwhite is unbelievable.

[17] While a trial judge must give reasons for how they resolved credibility issues the Supreme Court of Canada has recognized that it is difficult "to articulate with precision the complex intermingling of the impressions that emerge after watching and listening to witnesses". It is not a "purely intellectual" exercise. See *R. v. R.E.M., [2008] 3 S.C.R. 3*.

[18] Judges are entitled to accept all, some, or none of the witness's evidence.

[19] Trial judges must scrutinize and examine all the evidence when considering the credibility of any single witness. In *R. v. D.D.S. [2006] NSJ No. 103 (NSCA)*, Justice Saunders of our Court of Appeal stated as follows:

> … It would be wise to consider what has been said about the trier's place and responsibility in the search for truth. Centuries of case law that remind us that there is no formula with which to uncover deceit or rank credibility. There is no crucible for truth, as if pieces of evidence, a dash of procedure, and a measure of principle mixed together by reason judicial stirring will yield proof of veracity.

> Human nature, common sense, and life experiences are indispensable when assessing credit worthiness, but they cannot be the only guidepost. Demeanour too can be a factor taken into account by the manner in which a witness testifies, and it may not, depending on other variables with respect to a particular witness.

[20] The test for dangerous driving is well-established in Canadian law. This test was articulated in *R. v. Roy, [2012] SCC 26 at paragraph 36*. There the court set as follows:

> The focus of the mens rea analysis is on whether the dangerous manner of driving was the result of a marked departure from the standard of care which a reasonable person would have exercised in the same circumstances (*Beatty, at para. 48*). It is helpful to approach the issue by asking two questions. The first is whether, in light of all the relevant evidence, a reasonable person would have foreseen the risk and taken steps to avoid it if possible. If so, the second question is whether the accused's failure to foresee the risks and take steps to avoid it, if possible, was a marked departure from the standard of care expected of a reasonable person in the accused circumstances.

[21] This test was reaffirmed by the Supreme Court of Canada *in R. v. Chung, [2020] S.C.J. No. 8*. See also *R. v. Gray [2020] N.S.J. No. 243*.

Analysis

Credibility of Slauenwhite

[22] There are portions of Ms. Slauenwhite's evidence which gives me concerns as to their accuracy. In relation to the vehicle encounter with Rafuse, I accept that Ms. Slauenwhite, in fact, rear ended the bumper of Ms. Rafuse's car. This is based

on the presence of damage and paint smears which are consistent with Ms. Rafuse's evidence that there was no such damage present prior to her encounter with Ms. Slauenwhite.

[23] Ms. Slauenwhite's testimony that she was intending to call police upon arriving home while at the same time passing right past the local RCMP detachment rings untrue. The tenor and content of Ms. Slauenwhite's testimony lend itself to being incredulous.

[24] Having rejected Ms. Slauenwhite's evidence, I must ask if it still may raise a reasonable doubt. It does not. Moreover, if I were to accept Ms. Slauenwhite's evidence that evidence would still lead this court to convicting her of dangerous driving.

[25] Ms. Slauenwhite stated that after her vehicle had been struck by Ms. Rafuse, she then used her vehicle to "hit her back". This maneuver was conducted while Ms. Slauenwhite was passing Ms. Rafuse on the highway. There was oncoming traffic. Additionally, Ms. Slauenwhite's passenger was waiving a wooden handle out of the car window attempting to strike Ms. Rafuse.

[26] Any reasonable person would have foreseen the risk of engaging in that type of driving and taken the steps to avoid it. Hitting Ms. Rafuse's vehicle put Ms.

Slauenwhite, her brother, Ms. Rafuse and the public at high risk. It would have been abundantly clear that the best way to avoid the potential calamities that Ms. Slauenwhite face while passing Ms. Rafuse was to simply apply her brakes and allow the Rafuse vehicle to proceed ahead.

Conclusion

[27] I have accepted Ms. Rafuse's evidence as to how this matter unfolded. Taking those facts into account, it is clear that Ms. Slauenwhite's driving met the test for being a marked departure from the standard of care expected of a reasonable person in those circumstances. To back-end a moving vehicle and then sideswipe it as you passed it shows a total disregard for the safety of the public. The actions of Ms. Slauenwhite clearly infringes Section 320.13(1) of the **Criminal Code** and I find her guilty according.

[28] As it is clear, that through intentional acts of Ms. Slauenwhite caused damage to Ms. Rafuse's vehicle, I according find her guilty under Section 430(4) of the **Criminal Code.**

Paul B. Scovil, JPC