

SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. Matthews*, 2020 NSSC 72

Date: 20200225

Docket: HFX488956

Registry: Halifax

Between:

William J. Matthews

Appellant

v.

Her Majesty the Queen

Respondent

DECISION

Judge: The Honourable Justice Patrick J. Duncan

Heard: November 6, 2019, in Halifax, Nova Scotia

Counsel: William J. Matthews, Appellant (self-represented)

Joshua J. Judah QC and James S. Janson, Municipal Crown,
for the Respondent

By the Court:

Introduction

[1] The appellant, William Joseph Matthews, was charged:

That on or about the 8th of November 2018, at or near Main Street and Gordon Avenue in Halifax County, Nova Scotia, he did unlawfully commit the offence of failing to give his name, address and the registration number of his vehicle, and exhibit his driver's licence, to a person struck, or to a driver or occupants of the vehicle collided with, contrary to section 97(3) of the *Motor Vehicle Act*; and

That at the same time and place he did unlawfully commit the offence of failing to report an accident resulting in property damage of over \$1000 to police, contrary to section 98(10) of the *Motor Vehicle Act*;

[2] According to the Court Record (noted on the back of the Summary Offence Tickets) Mr. Matthews appeared on January 2, 2019, entered pleas of not guilty and the matters were set for trial on May 28, 2019.

[3] The trial proceeded on the scheduled date before Adjudicator Judith Gass. At the end of the prosecution evidence and before closing its case, the prosecution successfully moved to amend the date of the s. 98(10) MVA offence to November 8, instead of November 11, which was cited on the Summary Offence Ticket issued to the appellant.

[4] Following trial, the Adjudicator found the appellant guilty of both offences and imposed a fine plus costs totalling \$697.50 for the offence contrary to s. 97(3) MVA, and a fine plus costs totalling \$295 in relation to the offence contrary to s. 98(1) MVA.

[5] A third charge alleging an offence contrary to s. 97(1) MVA was withdrawn by the prosecution prior to the commencement of the trial.

[6] On June 10, 2019, Mr. Matthews filed a Notice of Appeal from those verdicts.

History of the Appeal

[7] The appeal was scheduled to be heard August 15, 2019. The respondent Crown filed a brief on August 1, 2019. The appellant filed a brief on August 2,

2019. A transcript of the trial was prepared and filed on August 8, 2019, too late for the appeal to proceed on the scheduled hearing date of August 15, 2019. The parties appeared, and the hearing was rescheduled for September 15, 2019.

[8] On August 23, 2019, Mr. Matthews filed an application to introduce fresh evidence. It was heard by Arnold J. on August 29, 2019. At that time Mr. Matthews sought to introduce the 34-page police General Occurrence report in relation to the accident in question.

[9] The appellant also complained that the transcript of evidence that had been prepared and filed August 8, 2019, omitted some information at the beginning of the proceeding in Provincial Court and he wanted to file a complete version.

[10] The prosecution agreed to the appellant's requests and Justice Arnold granted the application. New dates were set for filings and hearing.

[11] The Respondent filed a revised Brief on October 16, 2019.

[12] The first transcript, filed August 8, 2019, begins at 6:11 p.m. and ends at 6:54 p.m. It contains the witness testimony, submissions and the decision as to verdict and sentence. A supplementary transcript was filed October 18, 2019. It responds to the appellant's complaint by beginning with the opening of court at 6:03 p.m. and ending at 6:11:50 p.m. when Mr. Matthews' case was called.

[13] The appellant filed his final brief on October 29, 2019.

Grounds of Appeal

[14] The Notice of Appeal states as the ground of appeal that:

An unfair trial was given. Review the tape and make a decision on the testimony of Krista Wolfe.

[15] Krista Wolfe was the chief prosecution witness in the trial and the operator of the vehicle which Mr. Matthews' vehicle came into collision with, and which collision ultimately gave rise to the charges.

[16] In Mr. Matthews' briefs of August 2 and October 29, 2019, he sets out a number of points that he takes issue with. Taken together, the appellant alleges errors of fact and of mixed fact and law. His principal issue is with the sufficiency

of the evidence to support the offences alleged, and the legal conclusions reached by the Adjudicator based on that evidence.

Powers of a Summary Conviction Appeal Court

[17] This appeal has been brought pursuant to s. 813(a)(i) of the *Criminal Code*. The powers of a summary conviction appeal court are, in accordance with the provisions of s. 822 (1) of the *CC*, as found in s. 686 (1) of the *CC*, which reads:

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;

(b) may dismiss the appeal where

- (i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of the indictment, was properly convicted on another count or part of the indictment,
- (ii) the appeal is not decided in favour of the appellant on any ground mentioned in paragraph (a),
- (iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph (a)(ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred; or
- (iv) notwithstanding any procedural irregularity at trial, the trial court had jurisdiction over the class of offence of which the appellant was convicted and the court of appeal is of the opinion that the appellant suffered no prejudice thereby;

Standard of Review

[18] The applicable standard of review is set out in the case of *R. v. Nickerson*, [1999] N.S.J. 210 (N.S.C.A.), where it is stated:

6 The scope of review of the trial court's findings of fact by the Summary Conviction Appeal Court is the same as on appeal against conviction to the Court of Appeal in indictable offences: see sections 822(1) and 686(1)(a)(i) and *R. v. Gillis* (1981), 60 C.C.C. (2d) 169 (N.S.C.A.) per Jones, J.A. at p. 176. Absent an error of law or a miscarriage of justice, the test to be applied by the Summary Conviction Appeal Court is whether the findings of the trial judge are unreasonable or cannot be supported by the evidence. As stated by the Supreme Court of Canada in *R. v. B. (R.H.)*, [1994] 1 S.C.R. 656 (S.C.C.) at 657, the appeal court is entitled to review the evidence at trial, re-examine and reweigh it, but only for the purpose of determining whether it is reasonably capable of supporting the trial judge's conclusions. If it is, the Summary Conviction Appeal Court is not entitled to substitute its view of the evidence for that of the trial judge. In short, a summary conviction appeal on the record is an appeal; it is neither a simple review to determine whether there was *some* evidence to support the trial judge's conclusions nor a new trial on the transcript.

[emphasis added]

[19] Cromwell J.A., as he then was, in *R. v. Barrett*, 2004 NSCA 38, outlined the scope of appellate review of evidence relied upon to support a verdict as follows:

[15] This Court may allow an appeal in indictable offences like these if of the opinion that "... the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence.": s. 686(1)(a)(i). In applying this section, the Court is to answer the question of whether the verdict is one that a properly instructed jury (or trial judge), acting judicially, could reasonably have rendered: *Corbett v. The Queen*, [1975] 2 S.C.R. 275 at 282; *R. v. Yebes*, [1987] 2 S.C.R. 168 at 185; *R. v. Biniaris*, [2000] 1 S.C.R. 381 at para. 36.

[16] The appellate court must recognize and give effect to the advantages which the trier of fact has in assessing and weighing the evidence at trial. Recognizing this appellate disadvantage, the reviewing court must not act as if it were the "thirteenth juror" or give effect to its own feelings of unease about the conviction absent an articulable basis for a finding of unreasonableness. The question is not what the Court of Appeal would have done had it been the trial court, but what a jury or judge, properly directed and acting judicially, could reasonably do: *Biniaris* at paras. 38 - 40.

[17] However, the reviewing Court must go beyond merely satisfying itself that there is at least some evidence in the record, however scant, to support a conviction. While not substituting its opinion for that of the trial court, the court of appeal must "... re-examine and to some extent reweigh and consider the effect of the evidence.": *Yebes* at 186. As Arbour, J. put it in *Biniaris* at para. 36, this requires the appellate court "... to review, analyse and, within the limits of appellate disadvantage, weigh the evidence..."

[emphasis added]

[20] To the extent that the appellant may believe that the learned trial judge misapprehended the evidence, it is useful to refer to the decision of Oland J.A., writing on behalf of the court in *R. v. Delorey*, 2010 NSCA 65, which addressed that question in the following terms:

[27] The third issue asserts a misapprehension of evidence in regard to credibility and as provided by expert evidence. The standard of review is that summarized in *R. v. Peters*, 2008 BCCA 446 :

Material misapprehension of the evidence can justify appellate intervention. The standard is a stringent one: the misapprehension of the evidence must go to the substance rather than to the detail; it must be material to the reasoning of the judge and not peripheral; and the errors must play an essential part not only in the narrative of the judgment but in the reasoning process itself. If this standard is met, appellate intervention is justified, even if the evidence actually does support the conclusion reached: see *R. v. C.L.Y.*, [2008] 1 S.C.R. 5 at para. 19 and *R. v. Lohrer*, [2004] 3 S.C.R. 732 at paras. 1-2, both citing *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 (Ont. C.A.) at 221.

See also, R. v. Miller, [1999] N.S.J. No. 17 (N.S.S.C.)

Motor Vehicle Act

[21] The offences of which the appellant was convicted are set out in of the *Motor Vehicle Act*:

Section 97(3):

The driver of a vehicle involved in an accident resulting in injury or death to any person or damage to property shall also give his name, address and the registration number of his vehicle and exhibit his driver's license to the person struck or to the driver or occupants of any vehicle collided with or to a witness and shall render to any person injured in the accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

Section 98(10):

Any person who fails to report or furnish any information or written statement required by this Section shall be guilty of an offence.

[22] The information required, and which is relevant to this matter is set out in s. 98(1) of the *MVA*:

Accident report

98 (1) The driver of a vehicle involved in an accident resulting in... property damage to an apparent extent of two thousand dollars or more, shall, within twenty-four hours,

- (a) if the accident takes place within a city or incorporated town forward a written report of the accident, or report the accident in person to the Registrar, or to the nearest detachment of the Royal Canadian Mounted Police, or to the chief of police or any regular member of the police force of the city or incorporated town;

The Adjudicator's Decision

[23] The Adjudicator, after a brief review of the evidence, concluded that the appellant did provide his name, and that Ms. Wolfe wrote down his license plate number. However, the law also required that the appellant provide the vehicle registration information and that he exhibit his driver's licence to Ms. Wolfe. The evidence satisfied the Adjudicator that the appellant did not do this. Therefore, he had not fulfilled all the requirements of s. 97(3) of the *MVA* and he was found guilty as charged.

[24] In relation to the second charge, the Adjudicator concluded that the accused had failed to report the accident to the police as required by s. 98(10) of the *MVA*. There being no factual dispute that would provide a defence to this allegation, the appellant was found guilty of that offence as well.

The Testimony

[25] I have reviewed the two transcripts and have the benefit of the audio recording of the trial as well, to be confident in the accuracy of the transcript. I am satisfied that, in all material particulars, the transcript accurately reflects the evidence given in this matter. The trial was not lengthy.

[26] Kristin Wolfe and Cst. Scott Kuhn testified for the prosecution. Mr. Matthews gave evidence in his own defence.

[27] Ms. Wolfe testified that she was driving on Main Street in Dartmouth, Nova Scotia, inbound from Dartmouth toward the bridge to Halifax. Cars were stopped at an intersection that she identified by certain businesses on either side of the street. She stopped and then a black Ford Ranger truck, operated by William Matthews, ran into the back of her vehicle.

[28] She pulled into a parking lot adjacent to the Tax Smart building. Mr. Matthews also pulled in, and parked beside her. She identified the appellant as the driver of the vehicle that struck hers.

[29] Ms. Wolfe testified that Mr. Matthews got out of his truck, looked at his front bumper and then looked at her back bumper. He asked if she would agree to have an auto body shop repair it. She refused, indicating that she would like to have his insurance information because hers was a new vehicle.

[30] She returned to her vehicle to get a piece of paper and a pen, intending to write down his information. Ms. Wolfe realized that she had her cell phone in hand and decided that it would be easier to simply take a photograph of Mr. Matthews' insurance information. Ms. Wolfe described Mr. Matthews as getting upset because he thought she was videotaping him, and so she put the phone in her pocket and told him that she was intending to take his information down.

[31] She reported that the appellant identified himself as "William Matthews" and said that he was leaving, but that she could take his plate information as he left.

[32] Mr. Matthews did not provide a copy of his insurance or vehicle registration. According to Ms. Wolfe, Mr. Matthews opened his wallet and had his hand on his driver's license but then put it back into the wallet and told her his name. She was unable to take any information from the driver's license.

[33] She wrote down the appellant's license plate number as he left, and then called 911 for assistance. She provided the appellant's name and license plate number to the police.

[34] Ms. Wolfe testified that the cost to repair the damage to her vehicle was "just under \$5,000".

[35] In cross-examination, Mr. Matthews asked Ms. Wolfe whether he took his license from his wallet and laid it on her phone. She said he did not. Mr. Matthews

apparently had disclosure notes from the police which may have suggested an inconsistency as between the testimony of Ms. Wolfe in the trial and what she told the police previously. The Adjudicator asked Mr. Matthews whether he did have a prior statement from the witness. He replied:

There is not a signed copy of the full interview statement from her, no. There's a patchwork of emails and the email she gave me was from the officer to her, not from her to the officer. No evidence has been given to me whatsoever.

[36] The second prosecution witness was Constable Scott Kuhn of the Halifax Regional Police. He testified that the incident occurred on November 8, 2018. He said he was dispatched to a hit-and-run motor vehicle accident at approximately 8:07 a.m. and arrived on scene at 8:22 a.m. He and his partner met with the complainant who was parked in front of Aabel Fuels, at 99 Main Street.

[37] Ms. Wolfe told him that her vehicle was rear-ended while stopped in traffic near the intersection of Main Street and Gordon Avenue. She indicated that she and the person who rear-ended her both drove into the parking lot at 99 Main Street. They exited their vehicles. Ms. Wolfe said she attempted to obtain the other driver's insurance information because her vehicle was new.

[38] As a result of receiving this information the officer obtained the license plate number of Mr. Matthews' vehicle from Ms. Wolfe. A computer check confirmed that the plate was associated with a black Ford Ranger truck registered to William Matthews. Constable Kuhn's next investigative step was to call Mr. Matthews which he did and left a voicemail. He also confirmed the identity of Mr. Matthews by use of a digital photograph that the police had on file.

[39] Cst. Kuhn testified that Mr. Matthews failed to report the accident to the police. Between November 8 and 11, 2018, the officer called a phone number associated with Mr. Matthews on several occasions, and left a message, which was not returned.

[40] The officer attended at the appellant's house on November 11, 2018, at around 10:15 p.m. and met with Mr. Matthews. He confirmed Mr. Matthews' identification using the appellant's driver's license. He was also able to obtain Mr. Matthews' insurance information at that time. The officer identified the appellant for the court.

[41] During cross examination of the officer, Mr. Matthews asked the constable to read a portion of a police report in relation to the initial complaint. The officer testified that the information contained in the report was the initial dispatch information that he received and that it was not directly from Ms. Wolfe. He obtained information directly at the scene from talking to her and which he related in his direct examination.

[42] In response to questions as to what the officer believed the appellant's obligations to be in relation to compliance with *Motor Vehicle Act* provisions, Constable Kuhn advised that all necessary documents, including insurance, had to be provided at the scene.

[43] The officer was examined on whether he permitted the appellant to give an accident report when he was interviewed at his home on November 11, 2018. The officer responded that he had already taken an accident report at the scene on the day of the collision. When he met with Mr. Matthews he received the appellant's version of events.

[44] Cst. Kuhn outlined investigative steps taken in response to a complaint filed by Mr. Matthews with the officer's Sergeant. This included attending the scene and speaking with people that Mr. Matthews supplied the names of. The officer also reviewed video from the scene. He determined that none of the information he obtained added to the case.

[45] The appellant sought to examine the officer on his belief as to whether Ms. Wolfe was truthful. That line of questioning was not permitted.

[46] The appellant testified and stated:

I gave the woman my license, my driver's license card. She sat it on her phone and now, you heard her deny it, but that's why her face turned red. So the fact of the matter is, it's a matter of the truth. Now I don't know how to get her back up here and get her to tell the truth, so I am now screwed, right. That's all I have to say. If you have any questions, go ahead.

[47] In cross-examination Mr. Matthews' was asked if he called the police and reported the accident. His reply was:

No, I didn't. I waited for them to call me, but I didn't receive a "call from any... anyone or a clear message".

[48] When asked whether he provided his registration, he did not answer the question directly, instead saying that Ms. Wolfe had his license plate information.

Analysis

[49] In relation to both charges there is no issue with respect to the identity of the accused as the person involved in the collision. Similarly, there is no issue as to the date the accident occurred or that it took place in the province of Nova Scotia.

Section 98(10) MVA Offence

[50] Section 98(10) of the *MVA* says that the driver of a vehicle “shall”, within twenty-four hours of that accident, report that accident when it has resulted in property damage to an “apparent extent” of two thousand dollars. I note that the offence incorrectly cited a threshold amount of \$1,000. For reasons set out below I conclude that this error is not material to the result.

[51] The proof of the apparent value of the damage is a precondition to requiring a motorist to report the accident. All the evidence in this regard was elicited from Ms. Wolfe. Mr. Matthews did not address it in his testimony.

[52] Ms. Wolfe testified that the cost to repair her vehicle was almost \$5,000. She also testified that her vehicle sustained visible damage which was observed by Mr. Matthews who offered to have it repaired. Based on this evidence, it was open to the Adjudicator to draw the conclusion that it would be “apparent” that the damage would exceed the statutory threshold, and thus trigger the requirement to report the accident.

[53] I find that there is no basis upon which to conclude that the Adjudicator erred in her findings of credibility and in accepting the evidence of Ms. Wolfe, notwithstanding Mr. Matthews’ allegations that she was not truthful.

[54] Mr. Matthews testified that he expected the police to call him and that he would then file the report. That is not what the law requires. Mr. Matthews had to file the report and he admitted that he did not do so. He waited for the police to arrive at his home which was more than 24 hours after the accident and only then offered to make the necessary report. That is not sufficient.

[55] I find no error on the part of the Adjudicator in her conclusions. The appeal in relation to the conviction for an offence contrary to s. 98(10) of the *MVA* is dismissed.

Section 97(3) MVA Offence

[56] Section 97(3) of the *MVA* required the appellant to provide Ms. Wolfe with his name, address, the registration number of his vehicle and to exhibit his driver's licence to her.

[57] He submitted at trial and again on appeal that he had met the requirements of this section by providing his name and telling Ms. Wolfe that she could take his licence plate number, which he equated to providing the registration of the vehicle. He contested Ms. Wolfe's assertion that he failed to exhibit his driver's licence to her.

[58] It is uncontested that Mr. Matthews provided his name to Ms. Wolfe.

[59] It is apparent that by her decision the Adjudicator did not accept that telling Ms. Wolfe to take the licence plate number from the appellant's vehicle as he drove off complied with the requirements to give his registration number to Ms. Wolfe. The Adjudicator's conclusion also makes it clear that she did not accept Mr. Matthews' evidence that he exhibited his driver's licence to Ms. Wolfe. There is no evidence that Mr. Matthews gave Ms. Wolfe his address.

[60] The section required the appellant to provide four pieces of information. He did not provide three of those. Failure to comply with any one of them results in a breach of the law.

[61] Mr. Matthews was legally bound to provide Ms. Wolfe with the registration information for his vehicle. There is no ambiguity in the section that would suggest that telling Ms. Wolfe to take the licence plate information would amount to compliance with that legal requirement. On this basis alone, the appeal of this conviction fails.

[62] The Adjudicator accepted the evidence of Ms. Wolfe over that of Mr. Matthews as to the circumstances surrounding the attempt by Ms. Wolfe to observe and record the driver's licence information. I note Mr. Matthews' frustration with

what he asserted was a falsehood by Ms. Wolfe, but I am unable to say that the Adjudicator's decision was unreasonable or unsupported by the evidence. It was open to her to reach this conclusion and that determination is owed deference.

[63] I find that the Adjudicator made no error of law and that the conclusion did not give rise to a miscarriage of justice.

[64] For these reasons the appeal of the conviction for an offence contrary to s. 97(3) of the *MVA* is dismissed.

Conclusion

[65] The appeal is dismissed.

Duncan, J.