

Case Name:
R. v. Anderson

Between
Tashna Anderson, and
Her Majesty the Queen

[2010] O.J. No. 928

Ontario Court of Justice
Toronto, Ontario

M. Omatsu J.

Heard: February 26, 2010.
Judgment: February 26, 2010.

(15 paras.)

Counsel:

Provincial Prosecutor (Province): Ms. I. Mamane.

Agent for the Appellant: Mr. V. Manoukian.

1 M. OMATSU J.:-- This is an appeal by Tashna Anderson from a decision of His Worship, Justice of the Peace Maraca, given on Tuesday March 10th, 2009 on the charge of fail to stop ... disobey sign, fail to stop, contrary to The Highway Traffic Act, Section 136(1)(a).

2 I heard the submissions of Counsel, thank you very much and various cases have been referred to and brought to my attention. To my mind given due deference to the learned Justice I believe there are two problems with the proceedings.

First -- when evidence is not tested by cross-examination and the evidence is, therefore, uncontested the Court is to give it full weight. Now it's very clear in the transcript that the appellant said that she did stop. In fact, she said she stopped twice.

3 Now Madam Prosecutor is saying that the second stop was simply a stop behind another car and not a stop at the proper place. Now that, in my view, is a conclusion that she had come to. It is not a conclusion that is clear and this is at page 16 of the transcript. "I came to the first Stop sign; I came to a full stop. I came to the second Stop sign which is a three way stop and I came to a full stop. There was a car stopped there making a left turn so I had to stop. I indicated left and as soon as that car made that left to go onto Humber College I proceeded because I came to a full stop to go home".

4 In my view it's ambiguous and she continues, "I had to stop at the Stop sign, high traffic area. I had to stop at the Stop sign". It's unfortunate that the appellant was not cross-examined at all on her evidence and we just have her evidence that she stopped.

5 The Court has to give it full weight. So what we have is two witnesses -- a police officer who is saying that her vision was obstructed by a hedge but she managed to see that the wheels did not stop at the appropriate place versus the appellant, who is telling the Court under oath and at least three times that she did come to a complete stop and again the fact that there is no cross-examination at all.

6 The second problem with the decision, in my view, is the case of R. v. W.D. Now the Justice says at page 17, line 23 that he has heard all the evidence and the submissions and "Suffice to say the Court has taken it all into consideration when reaching its decision".

7 Mr. Manoukian for the appellant is saying is that sufficient to meet the R. v. W.D. test? The Prosecutor has brought to the Court's attention the Supreme Court of Canada decision of R. v. R.E.M. (2008) which is saying that an appellant court should give due deference to the decisions of a trial judge and perfection is not required.

8 However, I think there should be some further explanation given to the appellant as to why her evidence was given less weight than the officer's, especially when her evidence was uncontested.

9 If I could come to the same conclusion as Madam Prosecutor from the evidence that Ms. Anderson failed to stop at the proper place then I could understand her argument, but based on what's before me in the transcript I am unable to come to that conclusion given that the evidence wasn't tested.

10 So, for those two reasons I am going to grant the Application.

11 CLERK OF THE COURT: Is that an acquittal, Your Honour?

12 THE COURT: Is that what you are seeking?

13 MR. MANOUKIAN: Yes, Your Honour, I am seeking an acquittal.

14 THE COURT: Okay, an acquittal.

15 MR. MANOUKIAN: Thank you, Your Honour, and thank you my friend.

qp/s/qlrxg/qljxr