

Case Name:

R. v. Gill

Between

**Her Majesty the Queen, and
Baljeet Gill**

[2003] O.J. No. 4761

61 W.C.B. (2d) 534

46 M.V.R. (4th) 230

2003 CarswellOnt 4911

Ontario Court of Justice
Brampton, Ontario

Duncan J.

November 27, 2003.

(17 paras.)

Motor vehicles -- Regulation of vehicles and traffic -- Observance of signs and traffic control signals -- Red light, failure to stop -- Offences -- Evidence and proof -- Standard of proof -- Appeals.

Appeal by Gill from her conviction on a charge of failing to stop for a red light. A police officer testified that as he was about to pull away on a green light at an intersection, he observed Gill's vehicle travel through the red light. At trial, Gill's agent argued that the officer could not have accurately observed the light being red at the same time as observing Gill's vehicle, and there was reasonable doubt as to her guilt. Gill did not attend at trial.

HELD: Appeal dismissed. The evidence supported the conviction. The appeal provisions in the Provincial Offences Act were generously worded and allowed for appeal on the issue of the sufficiency of the evidence to support the conviction. The trial judge found the officer's evidence credible.

Statutes, Regulations and Rules Cited:

Criminal Code, ss. 686, 687.

Highway Traffic Act, ss. 144(3), 144(18).

Provincial Offences Act, ss. 120, 122, 135, 135(1), 135(2), 136(1), 136(2), 136(3), 138(1).

Counsel:

A.M Sokolsky, for the appellant.

J. Stinson, for the respondent.

1 DUNCAN J.:-- This is an appeal pursuant to section 135 of the Provincial Offences Act from conviction of the Appellant for the offence of failing to stop for a red light, contrary to section 144(18) of the Highway Traffic Act.

Facts:

2 It was alleged that the defendant drove her van through a busy intersection at Goreway and Etude in Mississauga. There was no accident. The defendant did not attend her trial, appearing instead by agent. The only witness heard was police Sergeant Kelly who said that he was approaching the intersection northbound on Goreway facing a green light when the defendant's van crossed in front of him traveling westbound on Etude. He said that it his habit when approaching an intersection where the lights have changed to look sideways at the lights facing cross traffic to see if anyone is committing an offence. He said he looked to the left (and saw the red light for westbound Etude) and then looked to his right and saw the defendant's van about 15 feet back of the white stop line "not slowing or stopping at all".

3 Cross examination elicited that other traffic going northbound and southbound on Goreway was still stopped when the defendant drove through, suggesting that the light for that traffic was still green or had very recently turned to green. It was further suggested that it was improbable that the officer could see both the red light to the left and the defendant's van to the right at the same time. It was also suggested that it would be even more difficult for the officer to make the observation he claimed to have made of the defendant's van being 15 feet back of the white stop line when the light was red.

Grounds of Appeal:

4 On appeal it is argued that the above summarized evidence should have lead to there being a "reasonable doubt as to entering the intersection when the light was red."

5 The first issue that arises is whether, sitting as a POA Appeal Court under section 135, I have authority to deal with and give effect to this type of ground of appeal which does not allege legal, or factual error on the part of the trial justice but rather seeks a reassessment of the evidence and a second opinion as to whether the case was proven beyond a reasonable doubt.

6 An appeal such as this one, from proceedings by way of certificate of offence, is given a very broad scope by the Act:

135(1): A defendant or the prosecutor ... is entitled to appeal an acquittal, conviction, or sentence in a proceeding commenced by certificate of offence ...

- (2) notice of appeal shall be in the prescribed form and shall state the reasons why the appeal is taken ...

136(1) Upon an appeal, the Court shall give the parties an opportunity to be heard for the purpose of determining the issues and may, where the circumstances warrant it, make such inquiries as are necessary to ensure that the issues are fully and effectively defined.

- (2) An appeal shall be conducted by means of a review.
- (3) In determining a review, the court may,
 - (a) hear or rehear the recorded evidence ... and may require any party to provide a transcript ...
 - (b) receive the evidence of any witness whether or not the witness gave evidence at trial
 - (c) require the justice presiding at the trial to report in writing on any matter specified in the request ...
 - (d) receive and act upon statements of agreed facts or admissions

138(1) Upon an appeal, the court may affirm, reverse or vary the decision appealed from or where, in the opinion of the court, it is necessary to do so to satisfy the ends of justice, direct a new trial.

7 The appeal created by these words could hardly be more generous. Unlike appeals from proceedings under POA Part III, or those governed by the Criminal Code, for example, the court is not limited as to when it may intervene - in particular it is not required to find that the trial judgment was unreasonable, unsupportable or erroneous in law (s. 120 POA Part III; s. 686 of the Code; *R. v. Colbeck* (1978), 42 C.C.C. (2d) 117 (Ont. C.A.) re summary conviction appeals) or that the sentence imposed at trial was unfit, unreasonable, or erroneous in principle (s. 122 POA Part III; s. 687 of the Code; *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500). Even the requirement in section 138 above that it "is necessary to satisfy the ends of justice" apparently applies only to the order for a new trial, rather than the allowance of the appeal itself.

8 In *R. v. Anderson*, [1985] O.J. No. 608 (Ont. H.C. Reid J.) the Court was concerned with its jurisdiction to grant certiorari to quash a conviction on the grounds of alleged bias of the trial judge. Then as now the Act limited the availability of the prerogative remedy to cases where no appeal was available. Accordingly, the scope of the appeal that was available to the applicant came into issue. Reid J. wrote:

para 6 Ms Brewer submitted that the appeal contemplated by s. 119 was wide enough to encompass any such point as Mr. Woogh sought to raise here. She referred to Drinkwater and Ewart, Ontario Provincial Offences Procedure (Carswell, 1980). Therein, the authors make an extensive examination of the Act. They observe the "two entirely distinct channels of appellate review" from cases commenced under Parts I and II of the Act, which is the type under consideration on this application, and under Part III of the Act. At page 355, under the heading, "Appeals under Parts I and II", they observe,

In one of its most sweeping changes, the Provincial Offences Act has created an entirely new type of appellate remedy for minor offences. If proceedings are taken under Parts I or II, then the more complex and expensive appellate remedies are replaced by a simple quick, inexpensive method of obtaining a review of the conviction, acquittal or sentence. This review is available regardless of whether the defendant appeared at trial, was convicted at a trial in absentia or was convicted administratively under s. 9.

para 7 On page 356 the authors comment that because of the absence of formality and because transcripts will seldom be required, the appellate remedy can be made extremely expeditious. They then state,

Appellate relief is available as of right; leave to appeal need not be obtained. Nor are there any restrictions on the sorts of issues which can be raised. (emphasis added)

para 8 I agree with the authors ...

9 See also *R. v. Francisty*, [1997] O.J. No. 2118 (Ont. C.J.) Libman J. and authorities cited therein.

10 On the other hand, it could not have been the intention of the legislature that the Provincial Offences Appeal Court re-try every case. The Act grants a defendant only one trial; it is not a trial run. (*R. v. Mei*, [1996] O.J. No. 3833 (P.C.)). Further, it should be obvious that some issues, such as findings that are based on credibility, are at least practically - if not also legally - beyond the reach of an appeal court that has not heard or seen the witnesses.²

11 It is not necessary to decide the limits of my authority under these appeal provisions. It suffices to conclude, for present purposes, that I am quite satisfied that the issue of sufficiency of the evidence to support the conviction is well within my broad jurisdiction. Further, I am of the view that I must review the record before me and reach my own conclusion on the issue. It is not a matter of deferring to the trial justice's conclusion and intervening only if I conclude that her decision was unreasonable. To approach it in that way would be to effectively transpose the Part III provisions to Part I and II appeals when the legislature took pains to distinguish between the two. However, where findings of credibility are in issue, I should accept the trial justice's findings unless they are unreasonable.

Analysis:

12 The only evidence in this case came from the police officer. The Appellant called no evidence and in fact did not attend the trial at all. It is apparent that the trial judge found the police officer to be credible and accepted his evidence on the core issue of whether the appellant drove through a red light.

13 I have considered the evidence and have given particular consideration to the points raised by the appellant both here and at trial. In my opinion they are not, either individually or collectively, such as to raise a doubt. To deal with them individually:

- * The fact that the traffic on Goreway was still stopped when the officer approached does not mean the light for Goreway was red and therefore the light for the Appellant was green. Traffic does not immediately start to move when a light changes to green. It could be that these motorists were simply slow off the mark. It is also possible that they saw the Appellant coming and did not move to avoid a collision. Accordingly, their being stopped does not have a tendency to support the position urged by the appellant.
- * I do not see anything improbable about the officer's claim that he looked to the left and saw the red light and looked to the right and saw the defendant's vehicle enter the intersection against it.
- * As for the 15 feet from the white line point, there was no evidence that the observation claimed by the officer was impossible or unlikely. He did not claim precision but made an estimate with reference to his familiarity with five yards (15 feet) on a football field. Moreover, the distance back from the line - and even the line itself - is something of a red herring. The HTA provides:

144(18) RED LIGHT - Every driver approaching a traffic control signal showing a circular red indication and facing the indication shall stop his or her vehicle and shall not proceed until a green indication is shown.

144(3) WHERE TO STOP - INTERSECTION- A driver who is directed by a traffic signal erected at an intersection to stop his vehicle shall stop,

- a) at the sign or roadway marking indicating where the stop is to be made;
- b) if there is no sign or marking, immediately before entering the nearest crosswalk or
- c) if there is no sign marking or crosswalk, immediately before entering the intersection.

I do not understand these sections to mean that a driver who has passed any of the points mentioned in paragraphs a, b, or c of subsection 3 may proceed against a red light. Rather, the obligation to stop in subsection 18 is unqualified. The proper construction of these subsections, in my opinion, is that even a driver who stops may be liable for the offence under 144(18) if he fails to do so where required by subsection (3). In this case, the Appellant did not stop at all. Her position in relation to the white line was irrelevant.

14 In my view the evidence amply supported the conviction and the ground of appeal urged by the appellant must fail.

15 During the course of argument I raised the question of whether the reasons for judgment of the trial justice were sufficient to satisfy the legal requirements in *R. v. Sheppard* (2002), 162 C.C.C. (3d) 298 (S.C.C.) and *R. v. Braich* (2002), 162 C.C.C. (3d) 324 (S.C.C.). The trial justice said:

In the matter of Baljeet Kaur Gill, there's seems to have been some doubt on behalf of Baljeet Kaur Gill expressed to this Court that the officer giving testimony, acting Sergeant Kelly, that perhaps he is not as precise in his evidence as he was too precise in his recollection of the facts that took place that day.

Now the Court listened to Officer Kelly who stated that while he was driving north, car in front - one car was in front of him that was stopped. That car was stopped at a red light but as he approached it turned green and he was moving.

He also stated that prior to him going through and coming immediately behind that car, which had already started moving, he observed the east/west traffic signal red.

He also noted that other cars were stationary at the west going east - or going west and that Baljeet Kaur's car, or van, proceeded through the intersection on a red light while the others were stopped.

This Court has no way to know why Baljeet Kaur Gill's van proceeded through the intersection other than Officer Kelly, who is an officer practiced in observing the traffic on the roads, traffic lights and pedestrians, made that observation.

(The trial judge then went on to deal with the other argument raised at trial).

16 While perhaps not a model of clarity, it is important to consider these reasons in the context of the case. The agent for the appellant had just delivered the argument that has been dealt with herein. The trial justice could not have failed to appreciate the position taken by the defence. The issue was simple and the evidence was neither confused nor contradictory. It is apparent that the trial justice accepted the only evidence before her to the effect that the appellant proceeded through the intersection on a red light as observed by the officer. Case closed. The appellant could be in no doubt as to why she was convicted. Assuming without deciding that the Sheppard and Braich standards apply to busy Provincial Offences trial courts (a debatable proposition), I am of the view that the reasons given at trial satisfied those standards both from a standpoint of function and fairness.

17 The appeal is dismissed.

DUNCAN J.

¹ The other ground mentioned in the Notice of Appeal concerning identity was not pursued in argument.

² Subject to the limited exception applicable in other types of appeals: *R. v. Burke*, [1996] 1 S.C.R. 474.