

COURT OF APPEAL FOR ONTARIO

CHARRON, SHARPE and SIMMONS JJ.A.

B E T W E E N:

HER MAJESTY THE QUEEN	)	Christopher Webb, for the appellant
	)	
Appellant	)	
	)	
- and -	)	
	)	
SCOTT PAMENTER	)	Richard A. Allman, for the respondent
	)	
Respondent	)	
	)	
	)	Heard: February 22, 2001

On appeal from the decision of Justice Peter H. Wilkie sitting as a *Provincial Offences Act* Appeal Court judge dated May 31, 2000

BY THE COURT:

[1] On September 8, 1995, the respondent Scott Pamenter proceeded through an intersection without stopping at a stop sign and struck another vehicle. Three of the four occupants in the other vehicle were killed, and a fourth was seriously injured. The respondent was convicted of careless driving contrary to s.130 of the *Highway Traffic Act*, R.S.O. 1990, c. H-8. On appeal from his conviction and sentence to the Provincial Offences Appeal Court, the appeal court judge set aside the conviction and entered an acquittal. Leave to appeal the judgment of the Provincial Offences Appeal Court was granted pursuant to s. 131(1) of the *Provincial Offences Act*, R.S.O. 1990, c. P-33 on a question of law alone.

[2] The appeal court judge held that the expert opinion evidence called by the defence at the reopening of his trial before the trial justice “provided another rational explanation for missing the sign other than an extended period of inattention.” He concluded that this evidence, when taken together with other evidence on the trial, gave rise to a substantial

doubt that the respondent was guilty of careless driving. For these reasons, he held that the verdict of the trial justice was unreasonable and not supported by the evidence.

[3] In our view, the appeal court judge did not apply the proper test for appellate review of the reasonableness of the verdict. He failed to appreciate that the determinative issue was whether, on the evidence, a properly instructed trier of fact acting judicially could reasonably make a finding of carelessness notwithstanding the other possible rational explanation provided by the expert testimony.

[4] In our view, the evidence at trial amply supported the trial justice's verdict. It is noteworthy that the appeal court judge himself concluded, based on his reassessment of the evidence, that "accepting the prosecution evidence about the visibility of the sign, the only logical inference that emerged from the evidence [other than the expert evidence] was that the sign and intersection were missed because the appellant was not exercising due care and attention." It was open to the trial justice to accept the prosecution evidence about the visibility of the sign and to conclude on the whole of the evidence that the offence was made out. It was also open to the trial justice to find that the expert evidence called on the reopening of the trial did not assist the respondent where the respondent's own explanation for the accident failed to correspond with the possible explanation offered by the expert witness.

[5] Consequently, the trial justice did not err in finding that the expert evidence did not alter her previous finding of carelessness. The appeal court judge erred in effectively substituting his own view of the evidence for that of the trial justice.

[6] The appeal is allowed, the acquittal is set aside and the conviction is restored. The matter is referred back to the appeal court judge for consideration of the respondent's sentence appeal.

(signed) Charron J.A.

(signed) Robert J. Sharpe J.A.

(signed) J. Simmons J.A.