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R. v. Wu

Between
Her Majesty the Queen, respondent, and
Shukin Wu, appellant

[1996] O.J. No. 5361

Ontario Court of Justice (Provincial Division)
Brampton, Ontario
Flaherty Prov. J.

Oral judgment: August 30, 1996.
(7 paras.)

Charge: Turn on red light

Counsel:

P. Armstrong-Renwick, for the respondent.
M. Higgins, agent for the appellant.

¶ 1 **FLAHERTY PROV. J. (orally):**— I am of the view that there had to be some evidence for the learned justice to conclude that the light facing the defendant was red. It did not have to be direct evidence, but something other than an affirmative answer to a leading question asked of the other driver that as far as she was concerned what colour was the light facing the defendant is needed. It is evident that she would have no knowledge of what colour the light was facing the defendant unless she could actually see it from where she was. That does not appear to be the case.

¶ 2 You can not take judicial notice of the fact that when an east/west traffic light is green that the north/south traffic light at the same intersection would be red. That is something that requires some evidence. Even if the officer did not observe how the lights were functioning that particular day at the time of his attendance, or even if he had never been to that particular intersection, the threshold could have been crossed by him simply putting on record how these kinds of traffic lights are supposed to function. The operation of mechanical devices has been held in other cases to be something that judicial notice can not be taken of.

¶ 3 I am of the view that there should not have been a conviction on this evidence. The right questions were never asked even though the witnesses were there for that purpose.

¶ 4 So where does that leave us in terms of this application?

¶ 5 **MR. ARMSTRONG-RENEWICK:** I think an acquittal should be entered.

¶ 6 **MR. HIGGINS:** He was fined a sum of \$300.00. I suppose it's on automatic -- a corollary -- that that's refunded to him on an acquittal?

¶ 7 THE COURT: Yes. All right then. I will allow the appeal and the accused will be found not guilty.

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