COURT OF APPEAL OF YUKON

Citation: *R. v. Sidhu*,
2017 YKCA 3

Date: 20170516
Docket: 16-YU786

Between:

Regina

Respondent

And

Mandeep Sidhu

Appellant

(Before: The Honourable Chief Justice Bauman
The Honourable Mr. Justice Donald
The Honourable Madam Justice Tulloch

On appeal from: an order of the Supreme Court of Yukon, dated July 22, 2016 (*R. v. Sidhu*, 2016 YKSC 32, Whitehorse Docket No. 15-AP016)

Oral Reasons for Judgment

The Appellant appearing In Person:

Counsel for the Respondent: L. Whyte

Place and Date of Hearing: Whitehorse, Yukon
May 16, 2017

Place and Date of Judgment: Whitehorse, Yukon
May 16, 2017

Summary:

The appellant was convicted of careless driving. At trial he suggested that the arresting officer had animus towards him. On appeal to the summary conviction court, the appellant sought to adduce fresh evidence that the officer had previously made false and misleading statements about him to the court. Held: Leave to appeal denied. The summary conviction appeal court judge made no error of law. The test in R. v. Palmer was properly applied. The fresh evidence proposed was present at the time of the trial and, if admitted, it would not have affected the verdict given the totality of the findings made by the trial judge.

[1] **TULLOCH J.A.**: On August 24, 2015, Mr. Sidhu was charged with careless driving and stunting. The charges arose from an incident that took place in Whitehorse on July 12, 2015.

[2] At trial, the account of events presented by Mr. Sidhu and the investigating officer, Cst. Hutton of the RCMP, were similar except for the short period of time during which the alleged offences occurred.

[3] Cst. Hutton had pulled a vehicle over in a routine traffic stop. The driver and the police car were located in the left-hand lane. Mr. Sidhu was driving his truck up the highway toward the traffic stop. Cst. Hutton estimated his rate of speed to be between 100 and 110 km/hr. Mr. Sidhu said he was travelling between 50 and 60 km/hr as he approached. Mr. Sidhu's vehicle then passed very closely to the police vehicle as he drove by. Cst. Hutton was standing at the front hood of his vehicle and estimated the distance between his vehicle and Mr. Sidhu's truck to be approximately one foot. Mr. Sidhu then increased his speed when he pulled away.

[4] At trial, Mr. Sidhu presented himself as a careful and prudent driver, who assumed that the police vehicle was parked on the right-hand side of the road in the right-hand lane. He said that he reduced his speed to below the speed limit but had to engage in an evasive driving technique to avoid colliding with the police vehicle when he realized the cars were parked in the left lane.

[5] The trial judge rejected Mr. Sidhu's version of events based on the favourable driving conditions which would have permitted him to see where the officer was parked in plenty of time had he been driving at or below the posted speed limit. The

trial judge based this conclusion on a video of the area in question taken by Mr. Sidhu sometime after the incident. Accordingly, on October 16, 2015, Mr. Sidhu was convicted of careless driving. Judge Chisholm stayed the charge of stunting, based on the rule against multiple convictions in *Kienapple v R* [1975] 1 SCR 729, 44 DLR (3d) 351. A fine was imposed in the amount of $400.

[6] The trial judge found Cst. Hutton's testimony to be credible and reliable. He could not reconcile Mr. Sidhu's testimony with the driving conditions at the time. Judge Chisholm also noted that Mr. Sidhu had the presence of mind to honk his horn when he passed, which refuted his assertion that he had to evade the police vehicle at the last second.

[7] At trial, Mr. Sidhu suggested that Cst. Hutton's credibility was questionable, due to previous incidents in which the officer had arrested Mr. Sidhu in 2010 and 2011. These arrests did not result in convictions. Mr. Sidhu was given the opportunity at trial to cross-examine Cst. Hutton on these previous interactions. In his reasons, Judge Chisholm rejected this challenge to Cst. Hutton's credibility, finding that there was no basis to conclude that Cst. Hutton was untruthful with respect to the charges before the Court.

[8] Mr. Sidhu appealed his conviction and applied to adduce fresh evidence to establish that Cst. Hutton had animus towards him and had previously made false and misleading statements to the Court. The proposed evidence consisted of a number of reports and notes concerning interactions between Mr. Sidhu and Cst. Hutton in 2010 and 2011, as well as Cst. Hutton's notes from July 12, 2015. It included a number of court transcripts; a recorded interview of a witness in an earlier investigation; and a letter from a car dealership about a defect in Mr. Sidhu's truck. Mr. Sidhu argued that this material, if admitted, undermined Cst. Hutton's credibility and demonstrated that in the past he engaged in a campaign to gain convictions against him.

[9] Further, given that Cst. Hutton was the only Crown witness in his careless driving trial, this evidence of alleged animus could have affected the trial judge's verdict.

[10] On July 22, 2016, the summary conviction appeal judge dismissed both the application to adduce fresh evidence and the appeal.

[11] Yesterday, Mr. Sidhu argued that because he is a layperson in the law, he did not understand that on that day he was expected to argue both the application for fresh evidence and the appeal of Judge Chisholm's decision.

[12] With the greatest of respect, this claim is unsubstantiated by the appeal transcript, where on two occasions Justice Veale invited Mr. Sidhu in plain and easy to understand language to make arguments on the merits of the trial judge's overall decision.

[13] With respect to the fresh evidence application, Justice Veale concluded that the fourth element of the *Palmer* test was determinative, namely, that the evidence could not reasonably be expected to have affected the trial outcome. He acknowledged that the evidence could arguably challenge Cst. Hutton's credibility, but he reasoned that not only was the evidence available at the time of trial but also that Mr. Sidhu cross-examined Cst. Hutton on it during the trial.

[14] The constable did not disagree with the history as it was put to him and the appeal judge ruled that admitting the fresh evidence would not have gotten Mr. Sidhu any further ahead in challenging Cst. Hutton's credibility.

[15] With respect to the summary conviction appeal itself, Justice Veale held that the decision to convict Mr. Sidhu could not be said to be unreasonable. He declined to interfere with it and the conviction appeal was dismissed.

[16] Yesterday, Mr. Sidhu once again argued that admission of the fresh evidence showing the perceived animus between himself and Cst. Hutton in the past could very well have affected the trial verdict.

[17] He submits that not only should the fresh evidence be admitted but that the conviction should be set aside and an acquittal should be entered.

[18] In order to succeed, Mr. Sidhu must first obtain leave of this Court and, if leave is granted, convince this Court that the appeal court judge made an error of law.

[19] In my view, the test for leave to appeal has not been met in this case. Mr. Sidhu's ground of appeal does not involve a question of law alone; the issue is not one of importance; and there is not sufficient merit in the proposed appeal to find that it has a reasonable possibility of success.

[20] That being said, yesterday the Court allowed further argument from Mr. Sidhu, given his status as a self-represented litigant. I find that nothing further was provided to cause this Court to grant the remedy sought in this case.

[21] Mr. Sidhu's submissions, although articulate and passionate, amounted to nothing more than an attempt to reargue the position he took in front of the summary conviction appeal judge.

[22] Further, in reviewing the legal principles supporting Justice Veale's decision, I can find no error of law.

[23] The summary appeal court judge correctly applied the test for admission of fresh evidence, pursuant to what is referred to as the *Palmer* test (*Palmer v The Queen*, [1980] 1 SCR 759, 106 DLR (3d) 212). The first branch of the test indicates that "evidence should generally not be admitted if, by due diligence, it could have been adduced at trial".

[24] A review of the appeal transcript indicates that Mr. Sidhu believed that when he got to trial he did have all the evidence that he felt was necessary to prove animus. It is only later, after he reviewed the actual information that had been in his possession at the time of the trial, that he wanted the Court to admit further material that he had not presented. Many of the documents that the accused sought to have

admitted were deficient and inadmissible, and Justice Veale found that even the new evidence did not suggest in its totality animus on behalf of Cst. Hutton.

[25] Justice Veale focussed on the fourth part of the *Palmer* test to find that even if he did admit the so-called "fresh evidence" produced on appeal by Mr. Sidhu, it had no potential to affect the trial court's verdict. He ruled that the trial court judge reviewed the evidence of the accused and the officer and drew reasonable conclusions supported by that evidence.

[26] Another way of putting it would be that the trial judge took into account the perceived animus between Mr. Sidhu and Cst. Hutton. He went on to reject Mr. Sidhu's portrayal of himself as a very safe and prudent driver who was so vigilant, due to the police presence further up the road, that he reduced his speed to below the speed limit.

[27] Judge Chisholm rejected Mr. Sidhu's story that he barely avoided an accident with the police vehicle, having assumed it would be stopped in the far right lane. He found that, for a significant distance, Mr. Sidhu had a clear and unobstructed view of the vehicle and its activated emergency lights.

[28] The judge could not reconcile the favourable driving conditions and Mr. Sidhu's speed with the actions he says he had to employ at the last second to avoid a collision.

[29] The trial judge used Mr. Sidhu's video evidence to underscore his finding that he could have changed lanes with ease and removed himself from the vicinity of the police vehicle if he had not been driving carelessly.

[30] Overall, he found that Mr. Sidhu's evidence at trial was not credible and he accepted the evidence of Cst. Hutton.

[31] I find that even if the fresh evidence was admitted in this case and even if it was persuasive in showing animus between Mr. Sidhu and Cst. Hutton, it would not make the trial court's decision unreasonable.

[32] Even if that evidence showed that the officer had previously made false and misleading statements about the accused in the past, given the totality of the findings made at trial, Judge Chisholm's decision was a reasonable one, based on the finding of facts at the time of the particular incident which gave rise to the charges Mr. Sidhu was facing.

[33] In my view, for all of the reasons given, I would refuse leave to appeal.

[34] **BAUMAN C.J.Y.K.**: I agree.

[35] **DONALD J.A.**: I agree.

"The Honourable Madam Justice Tulloch"