R v Mbachu, 2016 ABCA 402 (CanLII)

Date: 2016-12-22
Docket: 1501-0147-A
Citation: R v Mbachu, 2016 ABCA 402 (CanLII), <http://canlii.ca/t/gwl31>, retrieved on 2017-09-17

In the Court of Appeal of Alberta

Citation: R v Mbachu, 2016 ABCA 402

Date: 20161222
Docket: 1501-0147-A
Registry: Calgary

Between:

Her Majesty the Queen

Respondent

- and -

Eze Mbachu

Appellant

The Court:

The Honourable Madam Justice Marina Paperny
The Honourable Mr. Justice Peter Martin
The Honourable Madam Justice Barbara Lea Veldhuis

Memorandum of Judgment
Delivered from the Bench

Appeal from the Conviction by
The Honourable Madam Justice M.C. Erb
Dated the 16th day of December, 2014
(Docket: 130124621Q1)

Memorandum of Judgment
Delivered from the Bench

Martin J.A. (for the Court):

[1] Following a trial by judge alone the appellant was convicted of one count of dangerous driving causing death. He appeals that conviction.

[2] The evidence at trial was submitted by way of a Statement of Agreed Facts, and from that the following picture emerges.

[3] The appellant, then a 25-year old man, had a valid Nigerian driver's licence but only a Canadian "learner's permit" which required that he be accompanied by a fully licenced driver each time he took control of a motor vehicle in Canada. Prior to the date in question, he had been convicted on four different occasions for breaching that condition and driving without a valid driver's licence.

[4] At approximately 6:30 a.m. on January 9, 2013, the appellant was alone driving his vehicle westbound on Highway 567, just north of Calgary. At the time, the highway was clear and paved and had a speed limit of 100 kilometres per hour.

[5] All vehicles on Highway 567 are required to stop at an intersecting highway, Highway 772.

[6] There were numerous warnings signs on westbound Highway 567 of the stop sign ahead. The first was 525 metres before the intersection warning "Important Intersection Ahead". Then, printed on the surface of the roadway 400 metres before the intersection were the words "Stop Ahead". Next, were five sets of "rumble strips" beginning 315 metres and ending 100 metres before the stop sign. Finally, there were flashing red lights on each of the two stop signs facing traffic on Highway 567. These flashing lights could be seen from a distance of 495 metres before the stop signs. None of these warnings were obstructed on the morning in question. We are advised that the appellant had travelled that highway before.

[7] Notwithstanding these notices, the appellant failed to stop at the intersection as required. Travelling at a speed subsequently determined to be 71 kilometres per hour, his vehicle struck that of the victim travelling at 90 kilometres per hour on Highway 772. The driver of that vehicle, a Mr. Cory Goertzen, had the right-of-way. Unfortunately, he was killed instantly. The appellant was not injured.

[8] The appellant did not testify at trial but acknowledged the numerous warnings on his lane of travel and the fact that he did not stop at the stop sign. He argued that his failing to

respond to all these warnings was insufficient evidence to support a conviction of dangerous driving. The trial judge saw it differently, and so do we. We think that on the evidence before the court, a conviction was reasonable.

[9] In support of his appeal, the appellant seeks to introduce what he refers to as fresh evidence which he says would have impacted the trial judge's decision and likely resulted in an acquittal. The nature of that evidence is an affidavit from the appellant supported to some extent by a letter from a Dr. Samuels, suggesting that the appellant suffers from sleep apnea. The appellant advises that whereas he could not earlier recall the moments before the impact, he now believes that he may have fallen asleep due to the sleep apnea, a condition of which he was unaware at the time, and that he failed to see the traffic control devices as a result.

[10] We have reviewed this evidence. We do not agree that it qualifies as fresh evidence as it was clearly available in the year between the day of the accident and the day of conviction. Furthermore, we do not agree the qualified nature of the evidence is such that it would have impacted the outcome in any event.

[11] Accordingly, the appeal is dismissed.

Appeal heard and delivered orally on April 12, 2016

Memorandum filed at Calgary, Alberta
this 22nd day of December, 2016

Martin J.A.

Appearances:

S.E. Clive
for the Respondent

C.J. Hooker
for the Appellant