CITATION: R. v. Janzen, 2018 ONSC 2914
COURT FILE NO.: CR 208/17
DATE: 2018/05/10

2018 ONSC 2914 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
Her Majesty the Queen	)	Gregory Smith, for the Crown
– and –	)	
Jeremy Janzen	)	V. J. Singh, for the Accused
	)	**HEARD:** February 20, 21, 22, 23, 26, 27, 28, March 1, 2, 15, 2018

REASONS FOR JUDGMENT

M. J. DONOHUE, J.

INTRODUCTION

[1] The sunny morning of July 26, 2016 became a morning of tragedy. The accused, Jeremy Janzen, drove his 1988 GMC Sierra pickup truck eastbound on Carlton Street, Niagara-on-the-Lake into work at Wiens Farms. Between McNab Road and Townline, the front passenger corner of his truck struck and maimed a cyclist who was also on his way to work. Mr. Janzen heard a loud bang, but did not stop. The cyclist, Daniel Millar, landed in a rocky ditch where he was not discovered until an hour later. His injuries were catastrophic. He was paralyzed from the waist down and will never walk again.

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The Charge

[2] Jeremy Janzen was charged under s. 252(1.2) of the *Criminal Code*, R.S.C. 1985, c. C-46, of having care and control of a motor vehicle that was involved in an accident with another person, knowing that bodily harm had been caused, and with intent to escape civil or criminal liability, failing to stop his motor vehicle and give his name and address and offer assistance.

The Issue

[3] The *actus reus* is admitted by the defence. The *mens rea* component is whether he did not stop at the accident with intent to escape civil or criminal liability.

[4] Pursuant to section 252(2), evidence that an accused failed to stop his vehicle, offer assistance, and provide his identification is, **in the absence of evidence to the contrary**, proof of an intent to escape civil or criminal liability.

[5] It is the defence position that Mr. Janzen did not know he struck Mr. Millar. When later he was confronted with information that he could have been involved, he immediately returned to the scene of the accident. The defence led evidence to rebut the presumption that he failed to remain with intent to escape civil or criminal liability.

[6] It is the Crown's position that Mr. Millar's body came up on the hood of the truck and had to have been visible to Mr. Janzen, and so he had to have known there was an accident.

FACTUAL BACKGROUND

A Decrepit Vehicle

[7] Mr. Janzen's truck was 28 years old. He acknowledged it was in rough shape, but driveable. It got him from "point A to point B." He testified that "everything rattles" and there was a lot of wind noise. The driver's seat was severely worn down, the windshield was dusty and dirty, and mechanically it would not pass a safety test. He described it as a "clunker."

[8] Mr. Prinson, mechanic, inspected the vehicle for police. He found the rear tire drums rotten, the left front brake seized, the rocker panel rotted away, the exhaust not secure, the steering shaft with excessive play, the upper control arm loose to the frame, the front suspension not properly secured to the frame, and the steering not in proper working order.

[9] Mr. Janzen said that in April of that year, he had hit a large pot hole on a mud road. It jarred the CV joint, which made a snapping noise until he reached his destination that day. He had had to manipulate and reposition the rubber joint. By using the truck in two wheel drive

rather than four wheel, he found it seemed to work "okay." He did not want to "sink any more money" into the truck.

Sun Glare

[10] Eastbound traffic at 6:40 in the morning was facing the rising sun at that time of year. Mr. Janzen described the sun as being over the horizon and shining "almost directly at you." He stated that at times it was "blindingly right in your eyes".

[11] He was not wearing sunglasses. Mr. Janzen agreed that he told police in his statement that he could see two feet ahead of his vehicle, but said it was a guess.

[12] Police photographs show a bright, low sun shining slightly south of the eastbound roadway at the eyeline of a driver.

Speed Test

[13] The accident reconstruction officer, Officer Lucey, together with the Officer in Charge, Officer Lord, performed a road test on August 3, 2016 to determine if speed was a factor. They drove a pickup truck while another officer rode a bicycle ahead of them. The test was audio and video recorded.

[14] This was a week after the accident at the same time of day and was intended to "replicate how bright it was that day."

[15] The two officers in the truck discussed the position of the sun. One is heard to say, "The sun is in your eyes." Another replies, "He had the visor down and if he was wearing sunglasses it would not be a problem."

Technical Collision Investigation Report

[16] Officer Lucey's reconstruction made no analysis of the lighting at that time of the morning nor did it refer to the visor or the need to wear sunglasses. His technical report simply confirmed that the accident occurred in daylight. He stated only that "lighting conditions were not a factor." His analysis did not address the angle of the sun or speak to visibility at all.

[17] Under cross-examination, Officer Lucey agreed that sun glare could have been a factor.

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Expert Engineering Evidence

[18] Scott Walters, a forensic engineer who has specialized in accident reconstructions since 1993, testified on the effects of sun glare and their application in this case. He reported,

> Sun glare is likely to degrade drivers' visual performance. Furthermore, the disabling effect of glare on drivers varies from driver to driver. As a result, objects ahead may not sufficiently contrast with the background ahead, or drivers' strategies to deal with glare, such as squinting or looking down to the roadway in the near foreground may make drivers not observe hazards ahead.

[19] Mr. Walters took video stills of the police speed test to show the effect of sun glare. He demonstrated how the cyclist in the speed test was "impossible to see" in the glare. He added that a dirty windshield could make a difference as particles on the glass refract light into different locations. He stated that drivers may compensate for disability glare by squinting or averting their eyes from the glare.

CV Joint

[20] Mr. Janzen testified that although he heard a loud bang, he had not seen anything ahead of him. He thought the bang was a mechanical problem with his truck and that the CV joint had broken again. He agreed that this bang was louder than previously and sounded as if it was to the right.

[21] In his rear view mirror, he saw a small round object roll across the road to his left, to the north. He thought it was a piece of the CV joint.

[22] His manager, Gary Wiens, testified that Mr. Janzen told him he had initially thought the bang had been the CV joint.

[23] No one from the police examined the CV joint on the truck.

Actions at Work

[24] Mr. Janzen testified that he continued to work, a further 10 to 15 minutes away, and parked in the next available space, which was in the middle of the parking yard facing east. He exited his truck to the left and walked north to the barn where his workshop was located. He put down his lunch pail, grabbed a coffee, and said good morning to the workers. After he was settled, he went to check his truck. He stated he was going to examine the CV joint shaft, but did not as he saw the damage to his right front fender.

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[25] At that point, he said he felt surprise. He realized that the bang must not have been the CV shaft and that he must have hit something. He did not end up inspecting the CV joint. At some point, his manager, Gary Wiens, came out and looked at the damage with him. Mr. Janzen said he told Gary that he had thought he snapped the CV but "clearly I hit something."

[26] Mr. Janzen did not think he had hit a person. As a volunteer firefighter, he had been to pedestrian car accidents in the past and said, "There would be blood everywhere." There was none on his truck. He said he could not figure it out and thought perhaps he hit something sticking out from the road. Looking at the damage, he assumed it was an object. He said he told Gary that he would have to go back, see if he damaged property, and if so, offer to pay for it.

[27] Gary Wiens testified that Mr. Janzen approached him and said, "I think I hit something pretty good. My front panel is munched." They went to look at it. They tried to think what it was from. Gary Wiens confirmed that Mr. Janzen told him he had assumed the CV joint had let go as he had had problems with the front end the week prior. He also confirmed that Mr. Janzen said he planned to go back at his break to see what caused the damage as he did not see what he had hit - perhaps it was a mailbox.

[28] The owner of Wiens Farms, Ernst Wiens, testified that he walked past the Janzen truck in the yard and saw the damage. He asked Mr. Janzen, "What did you hit?" and Mr. Janzen replied, "I have no idea. I should probably go and look." Mr. Janzen told Mr. Wiens that when he heard the noise, he had thought it was the CV joint.

[29] Mr. Janzen said he had been in his workshop for 15 to 20 minutes when his volunteer firefighter pager went off giving information that a cyclist had been struck on Carlton between McNab and Townline. He testified that his "stomach sank." He said that he thought surely he would have seen a cyclist "but it can't be a coincidence". He went to his boss, Ernst Wiens, and explained he heard a page of a cyclist being hit and "seeing as I clearly hit something….I think I need to go back there and make sure it wasn't me." Mr. Wiens offered him a vehicle or to drive him. Mr. Janzen said he asked Mr. Wiens to drive him and they left in about five minutes. They returned to the scene and Mr. Janzen explained to a police officer that he had heard a bang and saw damage to his truck and that it could not be a coincidence.

[30] Ernst Wiens testified to this conversation. He confirmed that Mr. Janzen came to him and said the firefighter radio reported that an individual had been hit at the same location where he heard the bang. Mr. Wiens testified that Mr. Janzen wanted to go back and see if possibly he was involved.

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Timing of Returning to the Scene

[31] An agreed fact was that the accident occurred between 6:40 and 6:42 a.m.

[32] Mr. Janzen got to work before 7:00 a.m. Mr. Millar was discovered in the ditch at 7:39 a.m. and the first officer on scene arrived at 7:49 a.m.

[33] No evidence was given as to the timing of the firefighter radio broadcast, but it can reasonably be inferred that it occurred sometime between 7:39 and 7:49 a.m., between the time of discovery and the time of police arriving on scene.

[34] It was a 10 to 15 minute drive from the Wiens farm to the scene.

[35] An agreed fact was that Mr. Janzen arrived on scene at 8:06 a.m.

[36] An agreed fact was that Mr. Janzen provided several voluntary statements to police that day although cautioned.

Change in Demeanour

[37] Mr. Janzen was 30 years old and had been employed at Wiens Farms for a year. Gary Wiens had known him since high school. Ernst Wiens had known him for 15 years.

[38] Ernst Wiens described Mr. Janzen's initial demeanour as "no different than any other day." Gary Wiens described him as "normal" when he came in to work and later as seeming "confused" and "perplexed" when they examined the truck damage.

[39] Ernst Wiens said when Mr. Janzen came to him with the firefighter radio information, he was showing obvious signs of stress.

Evidence of Good Character

[40] Mr. Janzen had been a volunteer firefighter for 11 years at that time. He testified to other volunteer work such as teaching Sunday school, vacation bible school, and helping at events at Brock University.

[41] Gary Wiens described him as a solid employee. Ernst Wiens described him as a committed employee, who was eager to please and trustworthy.

[42] Ernst Wiens testified that Mr. Janzen was trained as a first responder, as a firefighter, and that that was "more his role" than a person who is a "runner." He described him as a people-pleaser and someone who wants to do what is correct.

[43] Mr. Janzen testified that he did not see Mr. Millar at all. He said if he had seen someone, he would have rendered assistance. He would not have kept going. He would have stopped. He said as soon as he found out that he had hit a person, he went back right away. He said he had no intention of doing anything wrong.

[44] Mr. Janzen stated, "I just wish I would have seen it. I would have gladly stopped to help. It's what I do. It's upsetting that I didn't have the opportunity that day."

Credibility

[45] Mr. Janzen and the Wiens employers came across as straightforward and credible witnesses. No material inconsistencies were raised in cross-examination from their prior statements.

What Was Seen Before Impact

[46] The area of impact, near the fog line in the eastbound lane of Carlton Street, was determined by Officer Lucey as a tire mark, a scratch mark, and a gouge mark. This was confirmed by the expert forensic engineer, Mr. Walters.

[47] Officer Lucey confirmed that the marks were not indicative of any braking, locked and sliding tire, or steering scuff marks. He agreed there was no evidence to suggest that Mr. Janzen observed Mr. Millar before the impact. His report concluded that the Janzen truck did not deviate from its original direction of travel.

[48] This is consistent with the speed test video, which shows the cyclist not visible in the sun glare.

[49] Mr. Millar was wearing a silver bike helmet and riding a silver bike. He wore khaki shorts and a red shirt but had a black backpack on his back. His bike was equipped with a small rear flashing light under the seat. There was no evidence that that would have been visible in the morning glare of the sun.

What Was Seen After Impact

[50] Officer King photographed a view from the driver's seat looking out at the hood. He agreed that the damage to the right front corner was not visible from the driver's seat.

[51] Officer King is six feet, three inches and Mr. Janzen is five feet, ten inches. Mr. Janzen testified that the steering wheel was at nose level for him. As mentioned above, the driver's seat was severely worn down and lower as a result.

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[52] Mr. Janzen testified that he observed a small round part rolling to his left on the road. This is confirmed in the photos as there was a small gear found in the westbound lane.

[53] The photographic evidence confirms that one could not see any other debris on the road, looking back westward on Carlton Street. A misshapen bicycle tire ended up on the south shoulder of the roadway.

[54] A witness, Ron Adam, testified that he drove eastbound on Carlton Street at 7:00 a.m., roughly 20 minutes after the accident. He recalled seeing the sun hit some shiny piece of frame. He saw a piece of tire and possibly a piece of chain on the shoulder. He observed nothing else. He slowed to look at it but did not stop. When later he heard someone was hurt, he returned to speak to police.

[55] To the south of Carlton Street there is a narrow shoulder and a four-and-a-half foot grassy ditch. The debris field fanned out to this grassy area and is clearly lower than the roadway and less visible to motorists.

Debris Field

[56] Officers photographed and mapped the debris field which fanned east and south of the area of impact. Gouge marks through the grassy ditch lined up to a hydro pole at the road side with Mr. Millar being found to the south and east of the hydro pole, in the rocky ditch.

[57] The black backpack was found in the middle of the grassy ditch some distance west of where Mr. Millar was found.

[58] The hydro pole had damage marks with grass imbedded. Officer Lucey gave his opinion that the bicycle hit the hydro pole and deflected off south and west.

[59] A cell phone was located further west and south from the backpack.

[60] Mr. Millar had no memory of the accident, but testified that his normal practice was to carry his cell phone in the outside left-hand mesh pocket of his backpack.

Bicycle Impact with the Truck

[61] Officer Lucey was able to match marks on the vertical seat portion of the bike frame to marks on the truck bumper. The marks are on the far edge of the bumper on the passenger side. The bicycle seat would be located just at the top of the bumper.

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Damage to the Truck

[62] The passenger headlight was ajar and pushed rearward, the hood was slightly buckled, the fender was pushed out toward the wheel, and the passenger marker light was missing. Behind the marker light on the fender are three horizontal lines.

[63] Officer Lucey pointed to polishing marks, which are visible in the photographs, on the front passenger corner of the hood and fender.

[64] Officer Lucey described several scuff marks in a linear configuration, angled up to the far right passenger side of the windshield, where a rectangular smudge mark could be seen. The mechanic, Mr. Prinson, noted the smudge mark located about four inches from the “A” pillar.

[65] Officer Lucey opined that the scuff marks were possibly from fabric. He said they were not dents or scratches.

[66] Officer Lucey suggested that the angle of marks off toward the passenger side could indicate some steering input from the driver, away from the hazard - a subtle change in direction. This opinion was not mentioned in his report. His report states that the truck did not deviate from its original direction of travel as a result of the collision.

[67] At trial, Officer Lucey noted the radio antenna was pushed rearward and the base was raised slightly, leaving a gap.

[68] There was no evidence of blood, DNA, or clothing fibres on the hood.

[69] Officer Lucey admitted it was possible that on this 28-year-old truck there were scuff marks on the driver’s side of the hood as well.

Officer Lucey’s Analysis

[70] The officer concluded that Mr. Millar’s lower back struck the leading edge of the hood and the right side marker light assembly.

[71] He further concluded that Mr. Millar’s body wrapped rearwards onto the hood, rode up on the hood and onto the windshield before it was projected forward.

[72] In his report, he described a narrow path of contact damage from the right front leading edge across the hood and off the passenger “A” pillar.

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Truck Speed

[73] Officer Lucey was unable to calculate a speed of the truck prior to the collision due to the absence of skid marks, yaw marks, and usable roadway evidence. In the speed test, they drove at roughly 80 km/h and concluded that was the possible speed.

[74] Mr. Janzen testified that he thought his speed would have been 70 km/h.

[75] Had his body rode up onto the vehicle, no evidence was given about how long Mr. Millar or his backpack would have been visible as it travelled along the passenger side of the hood.

Windshield Smudge

[76] Officer Lucey concluded that Mr. Millar's cell phone, which was found in the debris field, caused the rectangular smudge on the windshield. Only one photo in evidence identifies the cell phone in a protective "OtterBox". Officer Lucey recognized it as being an iPhone that was the same size as his own and so he tested the smudge using his own phone. He explained that the smudge would have been made by the phone having some weight behind it and pushing into the windshield.

[77] Officer Lucey testified that his cell phone was 14.5 by 7.5 centimetres. He could not explain why measurements of the smudge were 13 by 6 centimetres at the longest.

[78] The engineer, Mr. Walters, noted that there were no corresponding scuffs or scratches on the four corners of Mr. Millar's phone. There was only one corner scuffed.

[79] The backpack where the cell phone was to have been was not seized as evidence so there was no analysis of any marks it may have shown.

Radio Antenna Damage

[80] Officer Lucey did not mention the antenna in his report, but at trial he suggested that the rearward angle of the antenna was caused by Mr. Millar's body up on the hood. In cross-examination, he agreed that such an antenna could break off if a body hit it.

[81] The photographs show that the antenna is angled back perhaps 15 degrees. They show that it does not sit flush at the base and there is a small gap, angling rearward.

[82] Mr. Janzen testified that he had replaced the fender on the truck prior and the base of the antenna was never properly secured, but it was enough to get a radio signal.

Alternate Theory of Mr. Millar's Movement in a Forward Projection

[83] Officer King took the photographs at the scene and made notes of what they were to indicate.

[84] The gouges through the ditch which lead to the hydro pole where the bicycle was said to have hit were described as "Path of Victim". The path is marked with cones and are in line with the location where Mr. Millar came to rest. Officer Lucey's report confirms that "these gouge marks all extended in an easterly direction towards the rider's [Mr. Millar's] final rest position."

[85] At trial, Officer Lucey opined that the gouge marks were the path of the bicycle, only. This conflicts with his report noted above.

[86] Officer Holly testified that Mr. Millar was wearing cleated bike shoes. Mr. Millar said the shoes clip onto the pedals and lock his feet onto the pedals. Officer Lucey admitted that he did not consider the cycling shoes in his analysis that Mr. Millar separated from his bicycle at impact.

[87] Mr. Millar was six feet tall and weighed 170 pounds.

[88] Mr. Walters gave his opinion that Mr. Millar did not travel up the hood to the windshield. If that had occurred, he would expect to see more intrusion into the hood and transfers or cleaning to the hood. He would expect to see damage to the windshield. He would expect the loose dust and dirt loosely attached to the hood to have been wiped off. He testified that if a body travelled onto the hood, one would expect denting or downward intrusion on the hood. If a body contacted an antenna or wiper, one would expect them to be bent, displaced, or showing transfers of clothing or hair. These indications were not in the evidence on this truck.

[89] As an example, Mr. Walters showed a photo of a vehicle where the pedestrian did ride up on the hood and smash the windshield. The vehicle in the example had a pontoon style nose to the front end which served to shovel the pedestrian onto the hood. In contrast, the front of the Janzen truck was flat and blunt. He explained this was illustrative of his theory that Mr. Millar was projected forward from the impact.

[90] On examination of the evidence, Mr. Walters opined that Mr. Millar's centre of gravity was struck below the leading edge of the hood and his body was likely projected forward. Under cross-examination he agreed, however, that Mr. Millar's centre of gravity was likely higher and could have been at the leading edge of the hood or even higher.

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POSITION OF THE PARTIES

The Crown

[91] The Crown argues that the physical evidence supports the Crown's theory that Mr. Millar was thrown up onto the hood, and rode up the hood to the windshield before being thrown off. As such, Mr. Janzen would have seen Mr. Millar and would have been fixed with the knowledge that he struck and injured a person.

[92] The Crown submitted that the sun was not an issue.

[93] It was the Crown's position that the Court should reject Mr. Janzen's testimony as not credible, and find that he knew, or was wilfully blind, that he had hit a person.

The Defence

[94] The defence submitted that Mr. Janzen has given ample evidence to support evidence to the contrary, that he had no knowledge that he hit a person until his suspicions were raised by the firefighter radio call. When he got that information he promptly reported himself to police and therefore cannot be found guilty of the offence.

LAW

General Principles

[95] This case involves the accused's credibility. As a result, the test as stated in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, applies. Cory J. stated, at p. 758:

> First, if you believe the evidence of the accused, obviously you must acquit.
>
> Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.
>
> Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the built of the accused.

[96] In conducting the analysis under *W.D.*, it is important to remember two things. First, this analysis is not a formula. Rather, it is a framework for conducting credibility assessments. Second, if the trier of fact does not know whether or not to believe the accused but is nonetheless

in a state of reasonable doubt based on the evidence heard, then the trier of fact must acquit the accused.

[97] The Crown in this case seeks to fix Mr. Janzen with knowledge based on circumstantial evidence, as presented.

[98] The approach to circumstantial evidence of knowledge is clearly explained by Hill J. in *R. v. Ukwuaba,* 2015 ONSC 2953, at paras. 98 and 99:

> With the prosecution's reliance on circumstantial evidence in the present case, some review of the principles governing consideration of that form of evidence is warranted. In order to find guilt in a circumstantial evidence case, the trier of fact must be satisfied beyond a reasonable doubt that the only rational inference that can be drawn from the circumstantial evidence is that the accused is guilty: *R. v. Griffin and Harris* (2009), 244 C.C.C. (3d) 289 (S.C.C.), at paras. 33-4. Inference must be carefully distinguished from conjecture or speculation. At all times, in assessing circumstantial evidence, a trier must be alert to explanation or contradiction or inference pointing toward innocence. The trier of fact must assess the reliability and credibility of any underlying direct evidence as well as whether that evidence reasonably supports the circumstantial inference to be drawn while always having regard to the scope of inferential bridges or gaps the trier is invited to make.
>
> Circumstantial evidence is not to be evaluated piece by piece but rather cumulatively. With circumstantial evidence based on reasoning or inference-drawing through probability (*R. v. Arp* (1998), 129 C.C.C. (3d) 321 (S.C.C.), at para. 64), a trier of fact's application of logic, common sense and experience to the evidence engages consideration of both inherent probabilities and inherent improbabilities and, not infrequently, eliminating the unlikelihood of coincidence: *C.(R.) v. McDougall*, [2008] 3 S.C.R. 41, at paras. 33-40, 47-8; *R. v. Yousif,* 2011 ABCA 12, at para. 5; *In re B (Children)*, [2009] 1 A.C. 11 (H.L.), at paras. 5, 15, 70. Financial pressures, not economic status, may amount to a motive to become involved in a profit-motivated crime: *R v. Mensah* (2003), 9 C.R. (6th) 339 (Ont. C.A.), at paras. 7-13 (leave to appeal refused [2003] S.C.C.A. No. 207); *R. v. Phillips*, 2008 ONCA 726, at paras. 50-51.

[99] The burden of proof rests with the Crown to establish knowledge as long stated by the Ontario Court of Appeal in *R. v. Slessor*, [1970] 2 C.C.C. 247, at para. 43:

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> Insofar as awareness of an accident is a precondition of the obligation of a person having care, charge or control of an involved car to stop the car, it is not enough in order to raise that obligation, to find that he should have known of the accident. More important, knowledge or awareness of an accident is an element of the offence of which proof must be made by the prosecution; a person in care, charge or control of a car cannot be found guilty of a failure to stop and do the other things required by s. 221(2) if he does not know that an accident had occurred: see *Harding v. Price*, [1948] 1 K.B. 695, [1948] 1 All E.R. 283.

[100] The Crown must prove actual knowledge or wilful blindness. As stated by the Supreme Court in *R. v. Briscoe,* 2010 SCC 13, [2010] 1 S.C.R. 411, at para. 21, "the doctrine of wilful blindness imputes knowledge to an accused whose suspicion is aroused to the point where he or she sees the need for further inquiries, but *deliberately chooses* not to make those inquiries."

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ANALYSIS

W.D. Analysis

Does Mr. Janzen's Testimony Raise a Reasonable Doubt?

[101] Mr. Janzen's evidence in the context of all the evidence was a sensible story, and I did find it credible.

[102] The Crown's evidence supports Mr. Janzen's testimony that Mr. Janzen did not see Mr. Millar *before* the actual impact.

[103] The police road test, the early morning photographs, and the evidence of Mr. Walters on the disabling effects of road glare make it very reasonable to believe Mr. Janzen's evidence that the sun was blindingly in his eyes, particularly as he was not wearing sunglasses.

[104] Mr. Janzen's view out the windshield was further compromised by the dirt on his windshield and his low position behind the steering wheel.

[105] Although the polishing marks on the front corner of the truck make it clear that at some point at least part of Mr. Millar's body was rubbing over the corner, I am not satisfied beyond a reasonable doubt, in the face of the evidence of sun glare, that Mr. Janzen had to have seen him. I am satisfied that the sun's location in the east, slightly to the south of this eastbound vehicle could well have caused Mr. Janzen to squint, turn his eyes toward the north east direction, and not perceive what we now know was there.

[106] I find the evidence that Mr. Millar's body travelled up the hood to the windshield to be equivocal and not the only reasonable inference that could be drawn. Potentially, the backpack flew back to the edge of the windshield, left a rectangular mark, and pushed the antenna rearward. I accept the evidence that had someone of Mr. Millar's height and size travelled up the hood, there would be much more evidence than smudges. There is much to support Mr. Walter's analysis that both Mr. Millar and his bicycle were projected forward toward the hydro pole.

[107] This not a case of wilful blindness. All Mr. Janzen saw behind him was the small round object to his left, to the north. In the context of his thought process of the recurring mechanical problem, this was something he could look into once he got to work. After impact, the truck damage was not observable from the driver's seat. It is reasonable that he was unable to conclude that he hit something until after he got to work, got out, and stood in front of his truck. Considering the miserable state of his truck, it is not surprising that his initial assumption was a mechanical problem.

[108] Ron Adam drove the road 20 minutes later and, although he noticed light shining on the bike wheel at the side of the road, there was nothing to indicate he should stop.

[109] Mr. Janzen's post-accident statements and conduct raise a reasonable doubt as to his intent as well. His employers found his demeanour to be calm and normal on arrival. He was then perplexed by the fender damage and stressed when he received the radio information. Their evidence supported Mr. Janzen's testimony of his dawning realization that he was involved, over the hour that he was at work.

CONCLUSION

[110] Mr. Janzen's evidence did raise a reasonable doubt on the issue of his knowledge.

[111] On review of the evidence as a whole, I am not satisfied that Mr. Janzen knew he had been involved in an accident with a person until an hour later. He then reported himself and explained what happened.

[112] Accordingly, I find him not guilty.

M. J. Donohue, J.

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