

ONTARIO COURT OF JUSTICE

HIS MAJESTY THE KING

V.

MATTHEW SCHNEIDER

R E A S O N S F O R J U D G M E N T

BEFORE THE HONOURABLE MADAM JUSTICE GREENE

On April 25, 2022, at OLD CITY HALL, TORONTO, Ontario

APPEARANCES:

C. Ponesse

Counsel for the Crown

L. Izakelian

Counsel for Matthew Schneider

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T A B L E O F C O N T E N T S

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1.
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- Greene, J.

MONDAY, APRIL 25, 2022

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R E A S O N S F O R J U D G M E N T

GREENE, J. (ORALLY):

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[1] On May 21st, 2020 Ms. Lau and her friend Ms. Bui were walking outside on Spadina Avenue. Ms. Lau heard a person say, "fucking Asians". The voice that she heard was behind her, so Ms. Lau testified that she was born in Toronto and that the man should not be saying these things to her. The man then sprayed her with his drink and shoved her. Ms. Lau testified about these events and my understanding is that there is no issue that Mr. Schneider was in fact this man. There was video evidence of contact thereafter.

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[2] According to Ms. Lau, this man then continued to make disparaging comments about Asians. Ms. Lau testified that he opened his drink, and he sprayed it at her. She then took out her phone and followed him as he walked away from her and around the area. Ms. Lau followed Mr. Schneider for quite some time, much of it was captured on video. A series of videos were then played for the court, following Mr. Schneider, at times Ms. Lau and at times Ms. Bui, throughout the events of that day.

[3] Ms. Lau testified that she thought the

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bottle was in his left hand when he sprayed it. The videos, again, were played. Ms. Lau conceded that in the video Mr. Schneider is seen mostly with that bottle in his right hand and not his left hand. She also conceded that she made the mistake about which hand the bottle was in the moment that it was sprayed on her.

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[4] In relation to the liquid that Mr. Schneider allegedly sprayed on her, Ms. Lau thought the liquid on her dried up before the police arrived. I know that in videos of Ms. Lau in the police cruiser, from my perspective what I could see, was there was nothing physical on her shirt. Ms. Lau had said that she thought she might be able to see some liquid on her shirt on the video, when questioned about the video.

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[5] Ms. Bui testified that she and Ms. Lau were walking north on Spadina when a man said some bad things to them. Ms. Lau then looked at him and said, "I don't know what you're talking about, I was born here." This man then, who was Mr. Schneider, then pushed Ms. Lau into Ms. Bui. After he shoved Ms. Lau, the man either threw or sprayed his drink.

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[6] Ms. Bui's testimony on this point varies slightly from what she told the police. She told the police at the time that the man pushed both of them. Ms. Bui maintained at trial that the man pushed Ms. Lau and Ms. Lau bumped into her.

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5 She also told the police that the drink started to spill on them, as opposed to what she said at trial, is that he sprayed and threw the drink on them. Ms. Bui then testified that Ms. Lau was wet from head to toe, which is on its face in my view is completely inaccurate having seen the video. Ms. Bui said that the drink hit her but there were no stains on her. She did not think it was water because the drops were sticky.

10 [7] When asked about the tone of voice that the male was using, Ms. Bui testified that he sounded like "crazy people" here on the street. She thought that he was "a crazy person", yelling at first, then realized it was directed at them. Ms. Bui and Ms. Lau admitted to speaking to each other about the events of this day, in particular Ms. Bui admitted that she could not recall what she was wearing, and that Ms. Lau reminded her of what she was wearing that day before she testified.

25 [8] Mr. Schneider testified at trial. He said that he was walking southbound on Spadina going towards the water and saw two girls pointing phones at him and giggling, so he assumed that they were taking his picture. He then became verbal with them. He said that for the past seven years Asians have been gossiping about him and taking pictures of him. Mr. Schneider said he walked past these women, and they started to follow him.

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5 [9] He also testified that he said he likes
being around people that are different from him,
yet he thinks that Asians have been taking photos
of him for about seven years and gossiping about
him. He said the majority of the time, when he
sees people taking phones out, they are taking
pictures and it is Asians that are doing so. Mr.
10 Schneider also testified at one point that all
Asians like gossiping, in particular they gossip
about him.

15 [10] Having reviewed the evidence in this trial,
there was also an agreed statement of fact filed
and then all the videos filed with the court.

The Burden of Proof:

20 [11] The starting point in understanding any
decision in a criminal court is understanding the
burden of proof. The burden lies on the Crown to
prove each essential element of the offence
beyond a reasonable doubt. This is a high
standard. Reasonable doubt is based upon reason
and common sense. It is logically connected to
25 the evidence or the lack of evidence. It is not
enough for me to believe that Mr. Schneider is
possibly or probably guilty. Reasonable doubt
requires more. As a standard, reasonable doubt
lies far closer to absolute certainty, than it
30 does to a balance of probabilities. At the same
time, reasonable doubt does not require proof

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beyond all doubt, and nor is it proof to an absolute certainty. In order to convict, however, a trial judge must be sure that all the essential elements of the offences before the court have been made out.

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[12] In the case at bar I have essentially two versions of events. To properly apply the burden of proof, I am not permitted to merely pick which version of events I prefer best, or it sounds more likely. Instead, I am first required to ask myself if I believe Mr. Schneider. If I believe him, then I must find him not guilty. Even if I do not believe Mr. Schneider, if I am left with any reasonable doubt by his evidence, I must also find him not guilty. In other words, if I believe Ms. Lau and/or Ms. Bui, but I am not sure if Mr. Schneider has been truthful, I must find Mr. Schneider not guilty of these offences. If I completely reject Mr. Schneider's evidence, I must still not find him guilty, unless on all the other evidence I am satisfied beyond a reasonable doubt of his guilt.

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[13] In assessing Mr. Schneider's evidence I am not to ask myself whether or not his evidence could reasonably be true. There is no burden on Mr. Schneider. The burden lies with the Crown to prove each essential elements of every offence beyond a reasonable doubt. Oftentimes in assessing credibility the Court is asked to consider inconsistency within the witness'

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5 testimony. Not all inconsistencies will necessarily lead to rejecting the witness' evidence. The court must still go on and consider the nature of the inconsistency and what effect if any the inconsistencies have on the witness' credibility or reliability. While inconsistencies may affect my view of the witness' credibility or reliability, a prior consistent statement is not evidence that a witness is being truthful or reliable. Making the same statement on more than one occasions does not make that statement more likely to be true. As such, the extent that prior inconsistent statements were admitted at trial, they are not admitted to bolster credibility or reliability of any witness.

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20 [14] This case really is, however, a credibility based case. No one takes issue with the legal principles at issue. If I find beyond a reasonable doubt that Mr. Schneider intentionally poured his drink on, or sprayed his drink on Ms. Lau and pushed her, then an assault with a weapon has taken place and that event has been made out. If I find beyond a reasonable doubt that Mr. Schneider pushed or sprayed water on Ms. Bui, then that offence would also have been made out.

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30 [15] There is also a fail to comply with probation charge before the court that I understand that the Crown is not seeking a conviction on, so I will enter it as a not guilty

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verdict for that count at this stage.

5 [16] With that said, I now turn to my findings of fact, which then relates to whether or not a find Mr. Schneider guilty or not guilty of these offences.

10 [17] In relation to Ms. Bui's evidence, it is my view that I must be very cautious with her evidence. In my view, her evidence was prone to exaggeration, for example, in the 911 call to the police, she said that he spilled the drink on them. While this does not sound accidental, there is not really a significant difference between spraying, spilling, or pouring, and that is not what caused me the concern, it's the other part of her evidence where she testified that Ms. Lau was covered from head to toe with the drink. That is just not an accurate statement of what took place by Ms. Lau's evidence, and by the video evidence that I saw. It is that piece that causes me great concerns about accepting Ms. Bui's evidence. I, therefore, could not ever make a finding of guilt based on her evidence alone and, in fact, I am going to put her evidence aside and not rely on it. In my view, it is just not reliable evidence or credible evidence at this stage.

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30 [18] As to Ms. Lau, I found her to be a very compelling, credible and reliable witness. I realize the Crown may have told us as to why she

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5 was credible and reliable. Much of his
submissions about why she was credible, in my
view, were based on common sense about how
someone might act, and how a victim might act,
and I am not placing any weight on that piece of
his argument. There are other aspects of her
evidence that in my view caused me to find that
she was both credible and reliable and that I can
accept her evidence.

10 [19] First of all, I note that there was nothing
about her evidence that would cause me to reject
it. She was not inconsistent in any meaningful
way and she, in my view, went through in a very
15 clear manner the events of that day. Moreover,
she made admissions that in my view speak to her
overall credibility, as in she would not try to
present as being better than she was, or put
herself in only a positive light. Ms. Lau, in my
20 view, gave a very clear narrative of what took
place, explained her actions, and had a clear
recollection of the events. I found her overall
to be a credible and reliable witness.

25 [20] Defence counsel had a couple of issues with
her evidence, in particular the main focus was
that Ms. Lau was asked about whether or not there
was any liquid visible on her shirt when she was
in the police cruiser. Ms. Lau took a look at
30 the video and said she thought she saw some
liquid on her sweater. I have looked at that
video and I can see nothing on it. Ms. Izakelian

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argued that I should, therefore, reject her evidence because she is trying to overstate and see something that is not really there and, therefore, she is not credible or reliable.

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[21] Respectfully I disagree. There were times throughout the video where I thought I could see a mark or marks on her sweater from examining the TTC vehicle, it was either a shadow or a mark, and I cannot tell because videos are not ideal. But oftentimes when someone is looking at themselves, they can see and they know their clothing, they can see things that others cannot see so clearly, and it may look like a shadow or something else. But in my view, there is nothing about - well, I cannot see what Ms. Lau is pointing to in that video, I cannot find that it was not there given her knowledge of her own clothing and what it otherwise looked like. I definitely do not find this to be a basis to reject Ms. Lau's testimony. Ultimately, I found her to be credible and reliable and I accept her testimony in its entirety.

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[22] In relation to Mr. Schneider's evidence, Mr. Ponesse made an interesting comment, that there is no aha moment with Mr. Schneider that he can point to to say this establishes that he is not telling the truth because it is inconsistent or not possible. And he is right I cannot point to any of those aha moments in relation to Mr. Schneider's evidence.

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5 [23] Nonetheless, in my view, Mr. Schneider's
evidence was not believable and I do reject his
testimony, and I do so for the following reasons.
First of all, his comments during the course of
his testimony about Asians are inconsistent with
his evidence that he has nothing against them.
In other words, that is a key inconsistency. Mr.
Schneider stated a number of times he has nothing
10 against Asians, which is why he would not have
engaged in this particular offence or made that
comment, yet, throughout his testimony, he made
comments that suggested otherwise. For example,
they're always taking photos; they're always
15 gossiping about him in particular. And so when I
look at the overall tenure of the evidence, in my
view, that is a clear inconsistency that goes to
the heart of the event, such that I reject his
testimony.

20 [24] Moreover, there is another piece, and I am
not using this as after the fact conduct, because
it does not rise to that level, but it more
bolsters my view that his evidence is not
25 credible, and at one point in the video at the
fifty-two-second mark in one of the videos on the
TTC he says, "I don't care if they charge me."
And while that may be because someone is yelling
at him that he is going to be charged, Ms. Lau
30 has now been following him around with a video,
and so there's all these other reasons for it,
and so I don't place significant weight on that

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comment, but I did want to highlight it because
there is a risk of it being misused, and that did
go in, so I want to be very clear that in
rejecting his testimony, I am not using that as
after the fact conduct. I only want to
highlight, I was concerned the way it came out at
trial, that it may be misused, but ultimately the
essence for my decision rejecting his testimony,
10 is when you look at his overall conduct on those
videos, and you hear his assertions at trial that
he has nothing against Asians and this was all
just an accident, in my view those are two
utterly inconsistent events.

15 [25] In my view, I am satisfied beyond a
reasonable doubt that Mr. Schneider did, in fact,
make the comments that Ms. Lau related to him,
that she did confront him, and in her reaction to
that, he pushed her and he sprayed some of his
20 drink on her, that this was not an accident and
that this was an intentional act. I am,
therefore, satisfied beyond a reasonable doubt
that Mr. Schneider is guilty of assault with a
weapon that relates to Ms. Lau.

25 [26] In relation to the count of assault with a
weapon on Ms. Bui, in my view, the evidence is
that Mr. Schneider focussed on Ms. Lau and
assaulted Ms. Lau, and that Ms. Bui was caught in
30 the fray. I am, therefore, left in reasonable
doubt and the charge with assault with a weapon
on Ms. Bui. I find him guilty on the single

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count assault weapon only, and that is count one
on the information, and not guilty on the other
two counts.

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Certification

FORM 3

Electronic Certificate of Transcript

Evidence Act, Subsection 5(2)

5 I, Elaine Paquette, certify that this document is a true and
accurate transcript of the recording of R. v. Matthew Schneider
in the Ontario Court of Justice held at 60 Queen Street West,
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10 6-GREENEMA, which has been certified in Form 1.

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April 15, 2023

Date

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