# COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Da Silva Couto, 2026 ONCA 243
DATE: 20260401
DOCKET: COA-24-CR-0829

Rouleau, Miller and Paciocco JJ.A.

BETWEEN

His Majesty the King

Respondent

and

Ricardo Da Silva Couto

Appellant

Nick Whitfield, for the appellant

Evan Akriotis, for the respondent

Heard: March 25, 2026

On appeal from the conviction entered by Justice James R. Chaffe of the Ontario Court of Justice on February 15, 2024, and from the sentence imposed on October 1, 2024.

## REASONS FOR DECISION

[1] On February 15, 2024, the appellant was convicted of dangerous operation of a conveyance causing bodily harm, contrary to s. 320.13(2) of the *Criminal*

*Code*, R.S.C. 1985, c. C-46. For the following reasons, we dismissed his appeal from that conviction at the end of his oral submissions.[1]

[2] The charge was laid after a May 20, 2021 incident in which the motor vehicle the appellant was operating collided with, and seriously injured Hootan Gol, who was operating an electric scooter on a residential street near the appellant's home. The incident was largely captured on surveillance videos.

[3] At the time of the collision, Mr. Gol's daughter was on a bicycle closer to the curb than he was. They were travelling ahead of the appellant in the same direction and in the same lane. The appellant knew that the street was frequently occupied by pedestrians and cyclists and had been following Mr. Gol and his daughter for some distance. The trial judge found that he had a clear and unobstructed view of them while following them.

[4] Evidence confirmed that the appellant, who claimed that his ex-wife had made it impossible for him to have access to his young son, was deeply upset by his inability to see his son. On the day of the accident, he had received a disappointing email from his lawyer and became emotional as he was approaching home. He started crying, knowing that his son would not be there. It was clear from his testimony that this was not the first time he cried while driving as the result of

[1] The appellant's notice of appeal also sought leave to appeal sentence. However, he made no submissions on the sentence appeal either in his factum or orally. In the circumstances we dismiss the sentence appeal as abandoned.

his emotional upset over access to his son and that he often found himself crying. While closing in on Mr. Gol and his daughter, the appellant decided to wipe his eyes and nose. He looked and reached down for a tissue. In his distraction, he did not see that Mr. Gol had stopped on the road. Approximately four seconds after Mr. Gol had stopped, the appellant's vehicle struck him, without the appellant having engaged his brakes or attempting any evasive action.

[5] The appellant argued that he did not have the requisite *mens rea* for dangerous driving because his driving was not a marked departure from the standard of care that a reasonable person would observe in the circumstances, but a momentary lapse of attention. In making this submission, he relied on his emotional state to explain the distraction that had occurred. The trial judge was persuaded otherwise. He found that the period of inattention was much longer than suggested by the appellant. He further found that it was a marked departure for the appellant to take his eyes off the road when approaching human obstructions in his lane, "at the point he is closest to them," and to "be so inattentive as to drive over them instead of attempting any sort of avoidance." As we read his decision, he concluded that, in any event, operating a motor vehicle in the appellant's emotional state presented a foreseeable risk.

[6] The appellant argued that the trial judge materially misapprehended the evidence by concluding that he was in a "state of emotional extremis" at the time of the accident. Leaving aside that this was not a central plank in the trial judge's

findings, we see no error in this characterization. The appellant's emotional state caused by his separation from his son was a major theme in his testimony and his defence. In submissions, his lawyer described how knowing that his son would not be home had a "significant impact" on him and was a trigger "that caused him to become overwhelmed with emotion." When the trial judge used the term "state of emotional extremis", he was not purporting to quote the appellant, nor was it a misleading characterization of the appellant's position or the evidence. He used the term to describe the intense emotional state the appellant was attempting to rely upon to his advantage.

[7] Relatedly, the appellant argued that the trial judge erred by relying on the appellant's emotional state when testifying about his separation from his son "as an evidentiary window to his emotional state at the time of the accident". He submitted that this was an improper use of demeanour evidence. Again, we disagree in the circumstances of this case, even though we understand the risks of inferring that a person's emotional state in one context is probative of their emotional state on another occasion and in another context. Here, the appellant's trial counsel specifically asked the judge to treat his emotional condition as indicative of his emotional state that day: "You had an opportunity to observe his demeanour. Those feelings continue to this day, before this court." We can find no fault with the trial judge's decision to accept the invitation extended by the appellant's trial counsel to treat his emotional state in court as indicative of his

emotional state during the incident that injured Mr. Gol, particularly in a case such as this, where the appellant's emotional state played a secondary role in the conviction.

[8] The appellant also argues that the trial judge grossly exaggerated the foreseeable risk of driving while emotionally upset by comparing it to the risk of driving with epilepsy or narcolepsy. We do not read the trial judge as comparing the intensity of these relative risks. In substance, the point the trial judge was making is that individuals who choose to drive knowing that they are susceptible to personal circumstances that can suddenly impede their ability to drive attentively are undertaking a foreseeable risk and cannot expect that risk to be treated as a circumstance that reduces the standard of prudence that should be expected of them. We see no error in this reasoning.

[9] We therefore dismissed the appeal.

"Paul Rouleau J.A."
"B.W. Miller J.A."
"David M. Paciocco J.A."