

CANADA / JUDGMENT

R. v. Advincula

2025 BCSC 1662

COURT

Supreme Court of British Columbia

DECIDED

27 August 2025

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2025 BCSC 1662 R. v. Advincula IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Advincula, 2025 BCSC 1662 Date: 20250827 Docket: 37930 Registry: Vancouver Between: His Majesty the King Respondent And Michael Justin Advincula Appellant Before: The Honourable Justice Thompson On appeal from: An order of the Provincial Court, dated May 9, 2025 (R. v. Advincula, Vancouver Docket EA00527663) Reasons for Judgment Counsel for the Respondent: D. Meagher The Appellant, appearing in person: M. Advincula Place and Date of Hearing: Vancouver, B.C. August 22, 2025 Place and Date of Judgment: Vancouver, B.C. August 27, 2025

- [1] This is an appeal from a traffic court conviction for operating a motor vehicle on a highway without insurance, contrary to s. 24(3) of the Motor Vehicle Act.
- [2] On 7 January 2024, the appellant was observed by Constable Kim to be atop an electric powered one-wheel skateboard moving along West Waterfront Road in Vancouver. The appellant was ticketed. He filed a dispute. Constable Kim prosecuted the case, and the appellant appeared without counsel as I am quite sure is typical in that court. Following a brief trial, he was convicted by a judicial justice, and ordered to pay a \$568 fine.
- [3] Broadly speaking, the appellant's grounds of appeal fall under two heads. The first of these is shortcomings of procedural fairness, and his submissions relate to bias or a reasonable perception of bias. The second group of arguments focus on what the appellant says is the unfairness of being ticketed, convicted, and fined in circumstances where it is impossible to acquire insurance for his micro-mobility device. Because I conclude that the appeal must be allowed on procedural fairness grounds, I will not address the second group of arguments.
- [4] The appellant has not persuaded me that the record demonstrates actual bias. His contention that there is a reasonable apprehension of bias is arguable; however, I have decided that the appeal must be allowed on the basis of a significant omission at the start of the trial that infected the fairness of the hearing - an error that logically precedes the question of whether there is a reasonable apprehension of bias.
- [5] About six months before the appellant's trial, the same judicial justice was sitting on a trial in the matter of R. v. Peng, Vancouver Registry EA00483298, on a ticket issued for the same offence by the same police officer, Cst. Kim. Ms. Peng was operating an electric unicycle on

Earles Street in Vancouver when she was stopped and ticketed for driving that vehicle without insurance. In the midst of Ms. Peng's evidence, she made the point that enforcement of this law was encouraging the dangerous practice of using such vehicles on the sidewalk.

- [6] The judicial justice intervened immediately. He advised the parties that he had been hit twice by skateboarders while he was on sidewalks, and he said "my mind is biased." The judicial justice related that the first collision caused a concussion resulting in persistent vertigo which in turn caused him to have to give up hiking, one of his passions. The judicial justice said that four months later he was struck by another skateboarder and suffered multiple fractures, and was bedridden for months. He told Cst. Kim and Ms. Peng: "I may not be more open minded than you would like a judge to be in order to hear your case so you may not want me to try your matter." Ms. Peng said: "But I have no choice, right?" The judicial justice said: "You have a choice. I have told you that I have a bias and it's not good for you so I can put this -- I can declare a mistrial, put this matter over before another colleague. Maybe they'll give you [a] fairer hearing. Okay?" Ms. Peng said "Yes". Then, the judicial justice carried on: "Because I am not a good person to hear a case like this, although you were not -- the facts are different, you are not -- officer didn't say that you were riding on the sidewalk. He said you were riding [on] the pavement, so those are different facts."
- [7] The judicial justice told Ms. Peng: "So I think you will be better off having this matter heard by somebody else. My thought is this, you are the boss lady. You will make the determination on what you want to do but I think I should not be the person to hear this case," although shortly thereafter the judicial justice clearly recused himself when he said: "I cannot hear your case" and directed Ms. Peng to go to the registry and get a new date.
- [8] Returning to the case at bar, after the appellant's case was called, Cst. Kim quite properly raised the subject of what had occurred in the R. v. Peng case, but not in a way that would have alerted the appellant to an issue of possible bias: The Court: The Crown is alleging that on the 7th of January last year, when you were driving in the City of Vancouver, the vehicle in your care and control did not have insurance. Cst. Kim: Sorry, Your Worship, if I may interrupt for just a minute. The Court: All right. Cst. Kim: I just wanted to advise you that this matter is in regards to the type of electric device. So I don't know if you'd like to hear this matter or to -- The Court: Yes, I will hear the -- Cst. Kim: Okay The Court: I have heard those matters [indiscernible]. Cst. Kim: Okay. Okay. Wonderful. Thank you. My apology. The Court: I mean, those are vehicles they have been determined that though case law. Mr. Advincula: Your Worship, may I see the photo -- The Court: Go outside, have a word with him and see [indiscernible] . . . [T]he case law is quite substantial in this area. If someone was driving that device and it's proven in court and there was no insurance, you'll be convicted. Just [to] let you know. Mr. Advincula: Your Worship, can you state which case law you're referring to? The Court: Well, there are how many -- I don't even remember how many cases out there. I can give you the citations if you want, but there are cases from this court that have been previously pursued that deem those items that are propelled through

electric power as vehicles. Mr. Advincula: That's not what I'm disputing here. That's a vehicle. It's the issue of the insurance that -- The Court: If it's a vehicle, you have to have insurance. Mr. Advincula: I agree with that, but the law does not give me the opportunity to obtain insurance. The Court: Well, that's the reason then -- Mr. Advincula: And I don't -- The Court: -- you shouldn't be having these vehicle[s] here. Mr. Advincula: It's not a -- The Court: It is a very [indiscernible] of the state telling you that don't use this device.

- [9] Because of his involvement in the Peng matter six months earlier, Cst. Kim appreciated the close parallels between that matter and the trial that was about to commence. He knew that six months earlier, the judicial justice had expressed strong views and recused himself on bias grounds. Cst. Kim presumably remembered the judicial justice telling Ms. Peng that he had a bias and it was "not good for her." Cst. Kim raised this potential bias issue with the judicial justice. It was fair and proper that he did so. The judicial justice indicated that he was prepared to carry on with the trial.
- [10] In my respectful opinion, it was necessary at that time for the judicial justice to acquaint the appellant with the issue raised by Cst. Kim so the appellant could consider his position and, if he was inclined to do so, make a submission about recusal on the basis of reasonable apprehension of bias. Having considered the matter, I think the judicial justice erred more seriously than falling short of best practices: fairness dictated that the appellant not be left in the dark on what Cst. Kim recognized was a subject important enough to raise with the presider. The appellant was deprived of the right to be heard on this significant issue.
- [11] The appellant argued this appeal on closely-related procedural fairness grounds, but I appreciate that he did not frame his argument as a deprivation of his right to be heard. However, I think it is properly within the scope of my obligation to assist a person without counsel to consider the appeal on the basis of this shifted focus. This is especially so when it involves a subject as important as the right to be heard on the potential partiality of a presider. During the oral hearing of the appeal, counsel for the respondent was given the opportunity to address this point, and in the course of his able submissions he said all that could fairly be said in response.
- [12] The trial was procedurally unfair to a fundamental degree. I am satisfied there was a miscarriage of justice. The appeal is allowed. The conviction is set aside and a new trial ordered. "Thompson J."

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