

CANADA / JUDGMENT

R. v. Buchanan

2023 BCSC 1343

COURT

Supreme Court of British Columbia

DECIDED

17 April 2023

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2023 BCSC 1343 R. v. Buchanan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Buchanan,

2023 BCSC 1343

Date: 20230417

Docket: 33350-1

Registry: Vancouver

Rex

v.

Mark Anthony Buchanan

Before: The Honourable Mr. Justice Coval

On appeal from: Convictions of the Provincial Court of British Columbia,
dated October 19, 2022 (R. v. Buchanan, Vancouver Docket No. AJ21262712-1).

Oral Reasons for Judgment at Summary Conviction Appeal

Counsel for the Crown/Respondent:

S. Bains

The Appellant, appearing in person:

M.A. Buchanan

Place and Date of Hearing:

Vancouver, B.C.

April 14, 2023

Place and Date of Judgment:

Vancouver, B.C.

April 17, 2023

- [1] THE COURT: Mr. Buchanan appeals his October 19, 2022 convictions for using an electronic device while driving, contrary to s. 214.2(1) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, and for disobeying a police traffic direction, contrary to s. 123 of the Act.
- [2] Mr. Buchanan was fined \$368 for the electronic device offence and \$109 for disobeying a police officer.
- [3] On the electronic device offence, the Crown concedes an error of law. The issue on this conviction is only of remedy. The Crown seeks a new trial, whereas Mr. Buchanan seeks an acquittal.

Standard of Review

- [4] Section 686(1) of the Criminal Code, R.S.C. 1985, c. C-46, sets out the standard of review. It says in part:

686 (1) On the hearing of an appeal against a conviction the court of appeal

- (a) may allow the appeal where it is of the opinion that
 - (i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,
 - (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or
 - (iii) on any ground there was a miscarriage of justice;

- [5] My duty on the disobeying conviction is therefore to examine the evidence and reasons to assess whether the trial judge's findings and conclusions were reasonable or were unreasonable or not supported by the evidence.

Background Facts

- [6] The events occurred on February 4, 2022. The two-day trial was June 10 and October 9, 2022.
- [7] On February 4, 2022, Mr. Buchanan was alone in his truck. There was a protest convoy regarding the government's COVID-19 measures travelling in vehicles north over the Burrard Street Bridge. Mr. Buchanan was travelling the other way on the bridge, i.e., south away from downtown.

- [8] The police constable was on duty in his vehicle while travelling within the convoy for purposes of maintaining peace during the protest. He was in uniform and in a marked vehicle. The officer's evidence was that he saw Mr. Buchanan's vehicle moving slowly alongside the convoy, which itself was also moving slowly, and Mr. Buchanan's vehicle was coming towards him in the opposite direction. He says as their vehicles approached one another, he saw Mr. Buchanan driving very slowly and holding a cellphone at the edge of the driver-side window, and pointing the camera lens out towards the convoy which was passing in the other direction.
- [9] As the officer's vehicle came past Mr. Buchanan, the officer told him he could not use a cellphone while driving and must put it down. The officer's evidence was that he then saw Mr. Buchanan do so. The officer's evidence was that he intended to leave matters there but, as the convoy slowly moved forward, in his rear-view mirror he saw Mr. Buchanan promptly doing the same thing again with the cellphone.
- [10] The officer decided he must take enforcement action, so he turned his vehicle around; i.e., he did a U-turn on the bridge, and came up behind Mr. Buchanan's vehicle and beside Mr. Buchanan's vehicle and repeatedly told Mr. Buchanan to pull over. The officer's evidence was that Mr. Buchanan refused, while both vehicles were still moving slowly along the bridge. The officer then pulled his vehicle past Mr. Buchanan's, got out of his vehicle, and stood in the left most southbound lane where Mr. Buchanan was driving and directed Mr. Buchanan's vehicle into stopping on the right-hand lane, still on the Burrard Street Bridge.
- [11] Once Mr. Buchanan's vehicle was stopped, the officer approached and asked for Mr. Buchanan's licence and registration. Once he received that, he directed Mr. Buchanan to pull his vehicle forward off the bridge where it was blocking traffic, so that his ticket could be processed off of the bridge deck. Mr. Buchanan refused to move his vehicle off of the bridge. The officer then decided the best course was to issue the ticket there on the bridge, rather than confront Mr. Buchanan further, and he did so for both offences in issue.
- [12] As the trial judge's oral reasons say, Mr. Buchanan's evidence was that he denied ever having his cellphone in his hand. He claimed it was always lying on the passenger seat beside and connected to Bluetooth.
- [13] Regarding the refusal to obey the officer's traffic direction, Mr. Buchanan's evidence was that he did refuse to pull over when the officer's vehicle was beside him. In his submissions at trial and on appeal, he also acknowledged that he refused to obey the officer's order to pull off the bridge while his ticket was being processed. His justification for that seemed to be that the officer never had turned his emergency lights on and pulled him over, and that he had done nothing wrong.

- [14] The trial judge, in his reasons, acknowledged the societal importance of peaceful protest, but also the importance of complying with the law when doing so. His reasons for convicting Mr. Buchanan on both offences were set out in paras. 26-28 of his reasons which say:
- [26] The second count is very easy. There is no doubt in my mind on the defendant's own evidence that he was receiving a clear direction from the officer to move the vehicle to a safer spot, and he refused to do so. I find the defendant guilty of that charge.
- [27] With respect to Count 1, there is two different versions. The officer's version is that the defendant is holding the cellphone out the window, interacting with the people that are going by. I rather suspect that is true, but I do not have to make that decision. Having a cellphone loose on the passenger seat while your phone is functional and turned on is in itself the offence of holding or using a cellphone while driving, so either on the defendant's own evidence or in the Crown's evidence, Count 1 is made out.
- [28] I find the defendant guilty on Count 1 as well.

Analysis

- [15] On appeal, Mr. Buchanan made various arguments against the credibility of the officer's version of events as he had also done at trial. In his reasons, the trial judge rejected these arguments, saying:
- [22] The defendant has in this case made scathing accusations about the officer lying, being angry and so forth. In my view, there is not a shred of evidence to support any of that.
- [16] In this appeal, as in his evidence at trial, Mr. Buchanan admitted that he disobeyed the officer's order to pull off the bridge by refusing to do so. He argued on appeal that he should not have had to obey the officer because he had done nothing wrong.
- [17] In fact, in the appeal, as in trial, he showed a short video that he took on his phone of the interaction between the officer and himself while he was parked on the bridge. Mr. Buchanan's evidence was that he began recording this video when the officer forced his driver-side window down while standing beside his vehicle. The video shows the officer standing at Mr. Buchanan's driver side window and the officer ordering him to pull off the bridge, and Mr. Buchanan refusing. Mr. Buchanan insists on remaining parked on the bridge while the officer processes his tickets.
- [18] In these circumstances, the trial judge's findings and conclusions regarding disobeying the officer's order were, without question, supported by the evidence and that appeal must fail.
- [19] Regarding the electronic device appeal, the Crown accepts that the judicial justice made an error of law in para. 27, which I have quoted above. The error is that the judicial justice convicted Mr. Buchanan without any finding that Mr. Buchanan was holding or operating his phone while driving. Under the case law, e.g., *R. v. Bleau*, 2021 BCSC 13, and *R. v.*

Tannhauser, 2020 BCCA 155, the use of a phone in a vehicle contrary to s. 214.2 requires holding it in a position where it may be used or operating it by touching its functions or speaking with another person through it.

- [20] I therefore agree, with respect, that the conviction was an error of law when the trial judge made no finding about whether Mr. Buchanan was holding or operating his phone.
- [21] I agree with the Crown that the proper remedy is a new trial on this issue, because the record as a whole admits of a reasonable possibility of conviction on a retrial: R. v. Dhillon, 2014 BCCA 480, para. 248. The best indication of this is para. 27 of the reasons where the trial judge makes it clear that, if he had to choose between the two versions of events regarding Mr. Buchanan's use of the phone, he would have accepted the officer's version and not Mr. Buchanan's. On the officer's evidence as a whole, it appears the offence was committed.
- [22] Added to this is the trial judge's finding that he found not a shred of evidence to support Mr. Buchanan's accusations that the officer was lying. In this appeal, Mr. Buchanan made lengthy similar arguments alleging the officer's evidence was inconsistent or unbelievable regarding the position of Mr. Buchanan's phone, the sensors on the window of his car, whether the officer's siren was on, and whether the officer walked forwards or backwards when guiding Mr. Buchanan's car to the right lane on the bridge.
- [23] None of these arguments was persuasive. The siren, window sensors, and whether walking backwards or forwards are entirely collateral details to the two offences. I saw no real inconsistency or problems in the officer's testimony regarding many of these issues.
- [24] Regarding the position of the cellphone regarding when Mr. Buchanan was holding it, the officer's evidence was consistent that he saw the phone being held by Mr. Buchanan just out of the driver-side window, with the window open. The officer's description was that Mr. Buchanan was driving with his cellphone in his right hand at the threshold of the driver side window. Another time, he described the cellphone as at the edge of the window and out the driver side window.
- [25] Again, despite Mr. Buchanan's detailed submissions on this point, the evidence does not indicate any material inconsistency or difficulty in the officer's evidence.

Conclusion

- [26] The appeal of the conviction for disobeying a police officer is dismissed. The appeal of the use of an electronic device is granted, conviction quashed, and the matter remitted back to the Provincial Court, Traffic, for a new trial.

[DISCUSSIONS]

- [27] THE APPELLANT: And we forgot to talk about costs, remember we were talking about that on Friday, seeing as I am successful in this, I guess I am entitled to costs.

- [28] THE COURT: Well, you were unsuccessful in your appeal regarding the disobedience.
- [29] THE APPELLANT: I understand that, but this one was --
- [30] THE COURT: And on the -- and on the other appeal, the outcome was exactly what the Crown was saying should happened. They would have consented to that outcome.
- [31] THE APPELLANT: She had plenty of opportunity to consent to it. I have emails of her threatening to --
- [32] THE COURT: The way I see it, Mr. Buchanan, is the Crown was successful, in that both of you agreed there was an error in the decision. The Crown was saying there should be a new trial, you were saying there should be an acquittal, and I have agreed with the Crown. So I do not see a lot of success in your position here, I am sorry.
- [33] THE APPELLANT: So when I win in the new trial, then I'll have costs, correct?
- [34] THE COURT: Maybe, if and maybe.
- [35] THE APPELLANT: No, it's a for sure.
- [36] THE COURT: Okay.
- [37] THE APPELLANT: Absolutely.

"Coval J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/23/13/2023BCSC1343.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-buchanan-2023>

Prepared on 27 October 2026 · Esheria