
CANADA / JUDGMENT

R. v. Cai

2004 BCCA 155

COURT

British Columbia Court of Appeal

DECIDED

5 March 2004

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2004 BCCA 155 R. v. Cai

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Cai,

2004 BCCA 155

Date: 20040305

Docket: CA029467

Between:

Regina

Respondent

And

Jian Cai

Appellant

Before:

The Honourable Madam Justice Prowse

The Honourable Madam Justice Newbury

The Honourable Madam Justice Huddart

Oral Reasons for Judgment

Appellant appearing in person with interpreter,

Mr. M. Tu

A. Budlovsky

Counsel for the Respondent

Place and Date:

Vancouver, British Columbia

5 March 2004

- [1] HUDDART, J.A.: Mr. Cai appeals from the order of a Supreme Court judge refusing leave to extend the time for filing an appeal from a deemed conviction imposed on June 29, 2001. As the registered owner of a 1999 VW Jetta, he was deemed to have violated s. 25.15(2) of the Motor Vehicle Act Regulations, B.C. Reg. 26/58 and fined \$575.00 for failing to notify the officer who had required the replacement of two tail light bulbs when that repair had been done. Mr. Cai acknowledges that a police officer had asked his wife, in November 2000, to replace the bulbs.
- [2] Mr. Cai agrees he refused to sign or accept the violation ticket issued on 29 May 2001 that founded this conviction, believing he had complied with the earlier request very soon after it was made, and not appreciating that he had to notify the police officer who had made the request of that repair. On this application he provided a document suggesting the bulbs were replaced in November 2000.
- [3] However, as Mr. Justice Hall noted in granting leave to appeal, "the sometimes inexorable processes of the computer age appear to have swung into action. The original incident was placed 'in the computer' and presumably indicated non-compliance."
- [4] In due course, the deemed conviction was entered into the record. After he received a demand letter from ICBC requesting payment of the fine, Mr. Cai filed a Notice of Appeal in the Supreme Court and an application to extend the time to appeal. When the matter was heard on 25 January 2002, the summary conviction appeal court judge dismissed the application, saying only:

I am going to dismiss your application. There is no merit to this appeal at all. You have simply told me that you thought you received a warning ticket and you refused to accept the other ticket, and that is a deemed conviction. I am not going to extend the time.

- [5] Mr. Cai's difficulties with English and apparent problems with interpretation persuaded Mr. Justice Hall to grant leave so Mr. Cai could make a submission that the Supreme Court judge was under a misapprehension of underlying facts. When the appeal came on for hearing, a division of this Court granted Mr. Cai an adjournment so he might investigate whether:
- (1) a ticket was issued to Ms. Lu at the time she was stopped for not having operating tail lights on her vehicle;

- (2) whether, if there was no ticket, there was an oral direction from a police officer to repair the tail light and to report the repair to the police under s. 25.15(3) of the Regulations, and the substance of any such direction, if one was given; and
- (3) if such an oral order was given, whether the making of that direction was within the provisions of s. 25.15(3) of the Regulations.
- [6] The answers to those questions would help this Court to determine whether Mr. Cai has a defence worthy of a new hearing. Chief Justice Finch suggested the legal issues would include two questions:
- (1) If the order to Ms. Lu did not require the repair or the reporting of the repair to the tail light, does that failure or omission invalidate the ticket that was subsequently issued to Mr. Cai?
- (2) If there was an oral order to Ms. Lu to repair and report the repair, does it apply to Mr. Cai?
- [7] Mr. Cai has not presented any additional evidence to support his submission that his wife did not receive a ticket regarding the two broken car light bulbs, or any verbal direction to report the repair. He did provide two relevant letters to this Court when the matter came on for hearing on 15 January 2004. The first (from ICBC dated December 3, 2002) says nothing about whether a police officer issued a violation ticket or made an oral request. By that letter, Melanie Arthur advised Mr. Cai ICBC did not have any information regarding an incident that occurred on November 12, 2000 with his vehicle. For other information she referred him to the Enforcement Officer and provided a phone number.
- [8] The second letter (from the RCMP dated January 7, 2004) advised Mr. Cai that a Database search did not locate a police record. The search was made by "date, location, or by names of individuals involved," in response to Mr. Cai's letter asking for the police reports concerning Violation Ticket AF08981319, and "regarding a incident happened in the evening of November 12, 2000 which related to my wife Hong Lu." Mr. Cai had included the number of his wife's driver's licence in his inquiry letter. It appears those two letters persuaded a division of this Court to adjourn the matter when it came on for hearing in January to permit the further inquiries I mentioned earlier and potentially a new evidence motion.
- [9] Proving a negative is always difficult. In this case, that is the cost of ignoring the violation ticket. Had Mr. Cai contested that ticket, he would have been able to require the Crown to prove the repair request was made and the advice to report the repair was given in November 2000. However, once the conviction for having failed to report the repair was entered, Mr. Cai came under the obligation to present evidence to give the summary conviction appeal court reason to conclude the conviction might have been based on an error of fact or law.
- [10] From the record before us, it is apparent the summary conviction appeal court judge was not able to understand the full import of Mr. Cai's submission to him. He proceeded without the benefit of the full submission made to us and thereby erred.

- [11] I would allow the appeal, set aside the order dismissing the application for an extension of time to appeal, and remit the application to the Supreme Court.
- [12] PROWSE, J.A.: I agree.
- [13] NEWBURY, J.A.: I agree.
- [14] PROWSE, J.A.: The appeal is allowed, the order is set aside, and the matter is remitted to the Supreme Court to hear the application for an extension of time.
- [15] Now, Mr. Cai, there are some things it is necessary to say to you so that you will be prepared when you go back to the Supreme Court.
- [16] First of all, in my view, you should get legal advice about this. You have had many people try to help you, but what you need is a lawyer. If you do not get legal advice, you may find that you are not able to do what I am now going to suggest you must do in order to present your application for an extension of time properly in the Supreme Court.
- [17] First of all, you have to support your application for an extension of time with evidence. You should have an affidavit sworn by your wife which explains what happened when she was stopped in November, that states what you have told us, that she was not given a ticket, and that states what you have told us earlier, which is that she was told by the police officer to repair the car and what exactly was said to her. She should put in the affidavit what was said to her at that time by the police officer. And of course, this is a sworn document so she must state the truth, the complete truth.
- [18] You should also swear an affidavit which attaches the various documents that you have provided to this Court which you did not provide to the Supreme Court, to Mr. Justice Oppal. And that will help explain to the Supreme Court judge what happened so that they can understand it as we now understand it.
- [19] So the important thing is that you have to have evidence, you have to have sworn evidence. You cannot simply go back to the Supreme Court and hand them all of these papers that you have handed to us. That is not good enough, that is not evidence. Do you understand?
- [20] Well, then what I am going to do is I am going to order a transcript of our decision and also what I have just told you and that will be provided to you. I take it, Madam Registrar, we have an address. We do? And that may assist you in preparing your material to go back to the Supreme Court. When you have all of that material together, the evidence, the sworn evidence which I have just discussed, then you may go back to the Supreme Court Registry and set a new date for the hearing of your application for an extension of time. And all of those documents, all of that material, will have to be served on the Crown.

(discussion with counsel)

[21] PROWSE, J.A.: So you should receive the transcripts within the next couple of weeks of what happened here. Then, in the meantime, you should be putting together your evidence. You should, and I strongly recommend, that when you have all of that material, that you seek advice from a lawyer as to how best to present it. Your wisest choice would be to have a lawyer present it for you. But that is your decision. And then, as I say, you have to serve Crown counsel at their office with the material, and they have to have a chance to respond to it, and then you can obtain a date for the hearing. And that is in the Supreme Court, and just to make it clear, that will be your application for an extension of time to appeal from the deemed conviction. Do you understand that?

(discussion with interpreter)

[22] PROWSE, J.A.: This was an appeal. We allowed the appeal and we have given you the right to go back to the Supreme Court with proper materials to make your argument for an extension of time. So far, you have not presented proper materials. You have to have evidence. You are being given one more chance to present evidence, and that is your responsibility. And that is why, frankly, you should have a lawyer.

(discussion with interpreter)

[23] PROWSE, J.A.: What you have been doing is getting the right to apply for an extension of time to appeal from your deemed conviction. Up until now, you had been denied that right and you had no other rights left with respect to this case. We have simply given you the right to go back to the Supreme Court. And I can see from your face, Mr. Cai, that you are not pleased because you have not succeeded yet in setting aside your ticket, and that is why you need a lawyer.

[24] And there is really nothing more I can tell you because I am not a lawyer and I have gone as far as I can to assist you. And if you still do not understand, again, a lawyer can explain it to you. I cannot explain it any better than I have. And there is really not much more we can say.

"The Honourable Madam Justice Prowse"

"The Honourable Madam Justice Huddart"

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