

CANADA / JUDGMENT

# R. v. Kaiser

2014 BCSC 801

## COURT

Supreme Court of British Columbia

## DECIDED

7 May 2014

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2014 BCSC 801 R. v. Kaiser IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Kaiser, 2014 BCSC 801 Date: 20140507 Docket: 94333 Registry: Kamloops Regina v. Richard Lee Kaiser Before: The Honourable Mr. Justice Rogers On appeal from: An order of the Provincial Court of British Columbia, dated May 3, 2012 (R. v. Kaiser, Kamloops AH54047438). Reasons for Judgment Appearing on his own behalf: R.L. Kaiser Counsel for the Respondent: T.A. Livingston Place and Date of Trial/Hearing: Kamloops, B.C. April 25, 2014 Place and Date of Judgment: Kamloops, B.C. May 7, 2014

## Introduction

- [1] Mr. Kaiser appeals his conviction on a traffic ticket. His offence was failing to slow while passing a police car while that car's emergency lights were activated.
- [2] Mr. Kaiser maintains that the learned trial judge's reasons are inadequate to permit appellate review and that the learned trial judge erred in his findings on this the mixed law and fact issue of what constitutes an "official vehicle" as that term is used in the relevant traffic regulation. Judicial History
- [3] This matter went to trial before His Honour Judge Takahashi on April 30, 2012. Two witnesses testified: Cst. Butler and Mr. Kaiser. The court heard evidence that on November 30, 2011, Cst. Butler was a member of the RCMP and that he was operating a marked police vehicle equipped with, among other things, red and blue emergency lights. Cst. Butler was on traffic duty on the Trans Canada Highway near Kamloops, B.C. He had stopped his police vehicle on the shoulder of the highway and had activated the vehicle's emergency lights. Ahead of him was a car he had stopped for speeding. Cst. Butler wrote up a speeding ticket for the driver of that car, gave the ticket to the driver, and returned to his police vehicle to make his notes of the incident. Cst. Butler left his emergency vehicle's lights activated so that the speeder could safely pull away from the shoulder and back onto the highway. He testified that at that moment in time there was no emergency in progress. Cst. Butler was sitting in his police vehicle making his notes when he observed Mr. Kaiser's pickup truck approaching from the rear at a high rate of speed.

- [4] Cst. Butler activated his vehicle's rear facing radar and saw that Mr. Kaiser was travelling at 102 kilometres per hour. Mr. Kaiser maintained that speed as he went by Cst. Butler's still stationary vehicle. The latter's red and blue emergency lights were still activated. Cst. Butler pursued and stopped Mr. Kaiser and issued to him a traffic violation ticket. The offence was failing to slow for an official vehicle contrary to the Motor Vehicle Act Regulation 47.02.
- [5] In his evidence, Mr. Kaiser admitted that he was travelling at approximately 100 kilometres per hour when he passed by Cst. Butler's stationary police vehicle while the latter's emergency lights were activated.
- [6] In submissions, Mr. Kaiser's counsel advanced two arguments: that the Regulation offended s. 7 of the Charter of Rights and Freedoms on the ground that it was too vague, and that Cst. Butler was engaged in a kind of virtue testing at the side of the highway and that he had entrapped Mr. Kaiser. In the course of submissions, counsel for the Crown and Mr. Kaiser discussed those issues and they also discussed the question of whether an emergency existed which would have justified Cst. Butler's use of his vehicle's red and blue lights, and, finally, whether, as Mr. Kaiser went by, Cst. Butler was operating the vehicle "in discharge of his duties" as a peace officer.
- [7] After several days of deliberation, the Honourable Judge Takahashi delivered his reasons for judgment. The learned trial judge summarized the evidence in the case, referred to the Regulation, and then considered the positions taken by the parties at trial. The learned trial judge dismissed Mr. Kaiser's submission that the Regulation was too vague. In doing so, the learned trial judge observed that the Regulation was enacted to enhance the safety of peace officers and other personnel who, from time to time and in the course of their duties, must stop their vehicles at the side of a highway. The learned trial judge found that stipulation in the Regulation that an official vehicle's lights be activated together with the requirement that the lights be activated in the course of the operator's duties provides a clear and unambiguous foundation for the offence. The court found that the Regulation was not too vague to be enforceable.
- [8] As for entrapment, the learned trial judge accepted Cst. Butler's evidence that he had not left his red and blue lights on in order to randomly check the virtue of passing motorists. He accepted Cst. Butler's evidence that the Constable left his lights on while he completed his notes of the previous traffic stop. The learned trial judge concluded that making notes is part of a peace officer's duties. It followed that conclusion that Cst. Butler had not entrapped Mr. Kaiser.
- [9] In the result, the court convicted Mr. Kaiser of the offence charged. The Offence
- [10] The relevant portions of s. 47 of the Regulations to the Motor Vehicle Act provide as follows: 47.01 In this Division, "official vehicle" means

- (a) a motor vehicle operated by a peace officer, constable or member of the police branch of Her Majesty's Armed Forces in the discharge of his or her duty, 47.02 (1) Subject to subsection (2), if an official vehicle with illuminated flashing red or blue lamps or lights, or both, or flashing amber lamps or lights is stopped on or on the side of a highway, a person driving a motor vehicle on the highway in either direction must drive the motor vehicle at the following rate of speed when approaching or passing the official vehicle:
- (a) 70 km/h if signs on the highway limit the rate of speed to 80 km/h or more; Issues on Appeal
- [11] In the present appeal, Mr. Kaiser has not pursued the two arguments he advanced at trial. Instead, he makes two new arguments. Mr. Kaiser says that the learned trial judge's reasons for judgment are too brief to permit meaningful appellate review and that the learned trial judge erred in his definition of the meaning of discharge of a peace officer's duties.
- Discussion
- [12] Mr. Kaiser's attack on the sufficiency of the learned trial judge's reasons has no merit. The reasons are succinct, it is true, but when read in conjunction with the record of the evidence and submissions at trial, the reasons describe the path the learned trial judge followed to arrive at his conclusions. These are not the sort of reasons that leave one asking, "Well, why did that happen?"
- [13] In support of his second attack on the trial result, Mr. Kaiser says that the learned trial judge erred when he found that Mr. Kaiser overtook an official vehicle. This was an important finding: in order to be convicted, Mr. Kaiser had to have overtaken an official vehicle as that term is used in the Regulation. According to the Regulation, an official vehicle is: first, a motor vehicle; second, operated by, among others, a peace officer; and third, the officer's operation must be in the discharge of the officer's duties.
- [14] Mr. Kaiser concedes that the learned trial judge was correct when he found that Cst. Butler was operating a motor vehicle and that Cst. Butler was a peace officer. Mr. Kaiser takes issue, though, with the learned trial judge's conclusion that Cst. Butler was operating the vehicle while discharging his duties.
- [15] Mr. Kaiser says that there is a difference between an officer being "on duty" and "discharging his duties". Mr. Kaiser proposed a simple example to illustrate his point. He postulated a police officer entering a donut shop in response to a call concerning an altercation. A person who deliberately trips the officer under those circumstances could be liable on a charge of obstructing a peace officer. On the other hand, if the officer is in the middle of his shift and heads for the donut shop for a snack, the person who trips him might be liable for assault, but, because the officer was acting to satisfy a non-police need, the tripper would not be guilty of obstructing the officer.
- [16] Mr. Kaiser says that when he overtook Cst. Butler's police car, Cst. Butler was not discharging his duties but was, rather, simply on duty doing paperwork. Paperwork is not, according to Mr. Kaiser, something a peace officer must do in order to discharge his duties.

- [17] In support of his position, Mr. Kaiser referred at length to s. 18 of the Royal Canadian Mounted Police Act.
18. It is the duty of members who are peace officers, subject to the orders of the Commissioner,
- (a) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody;
- [18] Mr. Kaiser points out that this provision does not define sitting at the roadside making notes as one of the duties of an RCMP officer. Mr. Kaiser says that because Cst. Butler was doing paperwork rather than discharging his duties, the vehicle he was operating was merely a police car and that it was not an official vehicle.
- [19] The flaw in Mr. Kaiser's position lies in his assumption that the Royal Canadian Mounted Police Act exhaustively lists a peace officer's duties to the exclusion of all else. Like the learned trial judge, I have no difficulty taking judicial notice of the fact that one of the duties of a peace officer is to provide admissible evidence should a matter proceed to trial and that taking contemporaneous notes is a very good way to ensure that one's viva voce evidence will be accurate, complete, reliable, and admissible. The learned trial judge did not, therefore, err in his conclusion that it is one of a peace officer's duties to take notes shortly after a police incident, whether that incident was a traffic ticket or a multiple homicide. It follows that the learned trial judge did not err in his finding that Cst. Butler was operating an official vehicle at the material time.
- [20] For these reasons, I cannot accede to the second of Mr. Kaiser's challenges to his conviction.

## Conclusion

- [21] The appeal is dismissed. "P.J. Rogers J." The Honourable Mr. Justice Rogers

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Prepared on 25 October 2026 · Esheria