

CANADA / JUDGMENT

R. v. Lachmund

2007 BCCA 77

COURT

British Columbia Court of Appeal

DECIDED

7 February 2007

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2007 BCCA 77 R. v. Lachmund COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Lachmund, 2007 BCCA 77 Date: 20070207 Docket: CA033291 Between: Regina Respondent And: Wolfgang Otto Lachmund Appellant Before: The Honourable Madam Justice Huddart (In Chambers) Appearing on own behalf Appellant K. Madsen Counsel for the Respondent Place and Date of Hearing: Victoria, British Columbia 22 January 2007 Place and Date of Judgment: Vancouver, British Columbia 7 February 2007 Reasons for Judgment of the Honourable Huddart:

- [1] The applicant was convicted on 11 January 2005 of having care or control of a motor vehicle while impaired, refusing a demand for a breathalyser test and assaulting a police officer. The incident giving rise to the three offences occurred near the Vesuvius Pub on Saltspring Island on 30 December 2005. The convictions were upheld on appeal to the Supreme Court. Mr. Lachmund now seeks leave to extend the time for filing an application for leave to appeal on a question of law under s. 839 of the Criminal Code and leave to appeal.
- [2] At the opening of the hearing, Mr. Lachmund stated he wanted a new trial on both charges because a police officer lied to the trial judge about what happened that night in December. Later in his submissions he acknowledged he could not appeal the trial judge's rejection of his testimony and acceptance of the police officer's version of the incident. He then put forward the same submission he had made to the summary conviction appeal court, that the verdicts were unreasonable because there was insufficient evidence to support a conviction on either charge. The appeal court judge found no merit in that submission with regard to either count.
- [3] Mr. Lachmund says the appeal court judge erred in convicting him of assaulting a police officer when he failed to recognize the trial judge had failed to turn his mind to the mental state required to be guilty of assault. As counsel for the Crown observed, this submission is somewhat inconsistent with his submission that his ability to operate a motor vehicle was not impaired by alcohol or a drug. On the night in question, he testified he had two vodka "shooter" drinks at the pub. On the second count, Mr. Lachmund argued the trial judge had wrongly found his impairment was by reason of a "drug". He takes lithium, a mineral prescribed for the bipolar disorder from which he suffers and testified he was aware of the potential for "drowsiness" from the interaction of that medication with alcohol.

- [4] This latter argument arises from this passage from the trial judge's oral reasons for judgment: The evidence of Constable Swann, corroborated by Corporal Voller, have also satisfied me beyond all reasonable doubt that he was in fact impaired by alcohol at that time, possibly a combination of alcohol and Lithium, but nevertheless impaired by alcohol or a drug as alleged in the information, so on Count 1 I find you guilty as charged.
- [5] On the evidence the trial judge accepted, this argument with regard to the impaired driving conviction must fail. There was ample evidence Mr. Lachmund was impaired and that alcohol was the cause, whether by itself or added to whatever lithium was in his body. In this passage, the trial judge was not saying Mr. Lachmund's impairment was caused by a drug. He was tracking the words of the count on the information.
- [6] The essence of the alleged error on the assault charge is that the behaviour the police officers described was so bizarre as to give rise to the inference Mr. Lachmund was lacking the necessary intent to commit an assault. He suggested carelessness or a reflex or automatic action, rather than the intentional lunge, kick and grab the police officer described. My review of the testimony of the two police officers and Mr. Lachmund in the light of this argument persuades me there is no merit to it.
- [7] Because the applicant has not persuaded me the Appeal Court judge may have made an error in law, the application for leave to extend the time for applying for leave to appeal is dismissed.
- [8] Mr. Lachmund's underlying concern about having a record for assaulting a police officer with the restrictions on his travel that flow from the conviction can be dealt with by an application for pardon. On that application, he will be able to refer to the evidence of Constable Swann that Mr. Lachmund's behaviour that snowy evening on Saltspring was a "marked departure" from his ordinarily co-operative and polite demeanour. "The Honourable Madam Justice Huddart"

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