
CANADA / JUDGMENT

R. v. Parmar

2019 BCSC 782

COURT

Supreme Court of British Columbia

DECIDED

16 May 2019

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2019 BCSC 782 R. v. Parmar

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Parmar,

2019 BCSC 782

Date: 20190516

Docket: 27784

Registry: Vancouver

Regina

v.

Tejveer Singh Parmar

Before: The Honourable Madam Justice Murray

On appeal from: An order of the Provincial Court of British Columbia, dated December 7, 2018 (R. v. Parmar, Richmond Registry No. AJ05651593).

Reasons for Judgment

Counsel for the Crown:

K. Gagnon

The Accused, Appearing in Person:

T. Parmar

Place and Date of Appeal:

Vancouver, B.C.

May 8, 2019

Place and Date of Judgment:

Vancouver, B.C.

May 16, 2019

Introduction

- [1] Mr. Parmar appeals his conviction in traffic court for speeding on the basis that his trial was unfair as the Judicial Justice of the Peace (JJP) did not "listen to his whole case".

Background

- [2] On May 9, 2018 at approximately 1:07 p.m. Mr. Parmar was ticketed for speeding on Kittson Parkway in Delta, a high speed area where people routinely drive 10-20 kmh over the posted speed limit of 50 kmh.
- [3] At trial, Cst. Din testified that he observed Mr. Parmar's vehicle as it approached him. About 150 meters from where the officer was standing the two lanes merge into one. At the merging point the officer testified that Mr. Parmar sped up to merge ahead of a vehicle in the curb lane. The officer clocked his speed at that point at 81 kmh so the officer pulled him over.
- [4] At trial Mr. Parmar testified that the car in the curb lane had been causing him trouble before the merge - continually changing lanes to get in front of him and then braking. Mr. Parmar decided that the only way to safely merge was to speed up so he could get in front of this car. He believed that to slow down to let the other car merge in front of him was not a safe option as the other car was being driven so erratically.
- [5] He argues on this appeal that the JJP did not listen to his explanations for why he sped up.
- [6] While I accept that traffic court trials have to be expedient the transcript shows that the JJP interrupted Mr. Parmar continually throughout his evidence. Despite this Mr. Parmar was given a chance, although perhaps not as fully as he would have liked, to explain why he did what he did. However in his reasons for finding Mr. Parmar guilty the JJP failed to consider Mr. Parmar's explanation resting only on his admission that he was at that point exceeding the speed limit as follows:

He went over 50 kilometres and that is the only finding I have to be satisfied with

- [7] In reaching this conclusion the learned JJP failed to consider the defence proffered by Mr. Parmar, namely that he had to speed up in order to drive safely.

[8] This court in *R. v. Morris*, [1994] B.C.J. No. 1253 held that the defence of necessity for the strict liability offences of speeding is available. In reaching that decision Sigurdson J. stated the following:

3 The appellant appeals on the ground that the learned justice of the peace misdirected himself as to the law and that necessity should have been considered as a possible defence in these circumstances. Crown counsel on the appeal, correctly in my view, concedes that the defence of necessity exists but she submits it is not available on the evidence at trial.

4 The defence of necessity is that the conduct of the accused was involuntary, that she had no real choice but to break the law. The essence of the defence of necessity is the perceived injustice of punishing violations of the law in circumstances in which the person had no other viable or reasonable choice available.

5 The leading case on the defence of necessity is *R. v. Perka*, [1984] 2 S.C.R. 232, 42 C.R. (3d) 113, [1984] 6 W.W.R. 289 [hereinafter *Perka* cited to C.R.].

6 Dickson J. (as he then was) said at p.133: ... The question to be asked is whether the agent had any real choice: could he have done otherwise? If there is a reasonable legal alternative to disobeying the law, then the decision to disobey becomes a voluntary one, impelled by some consideration beyond the dictates of "necessity" and human instincts.

The importance of this requirement that there be no reasonable legal alternative cannot be overstressed.

Even if the requirements for urgency and "no legal way out" are met, there is clearly a further consideration. There must be some way of assuring proportionality. No rational criminal justice system, no matter how humane or liberal, could excuse the infliction of a greater harm to allow the actor to avert a lesser evil. In such circumstances we expect the individual to bear the harm and refrain from acting illegally....

7 In summarizing some of the preliminary conclusions on the defence of necessity, Dickson J. said at pp.138-139:

...(8) the existence of a reasonable legal alternative similarly disentitles; to be involuntary the act must be inevitable, unavoidable and afford no reasonable opportunity for an alternative course of action that does not involve a breach of the law; (9) the defence applies only in circumstances of imminent risk where the action was taken to avoid a direct and immediate peril; and (10) where the accused places before the court sufficient evidence to raise the issue, the onus is on the Crown to meet it beyond a reasonable doubt.

8 *Perka* involved a charge of importing cannabis and possession for the purposes of trafficking. The decision of *R. v. Walker* (1979), 48 C.C.C. (2d) at 126 (Ont. Co. Ct.) considered whether the defence was available for a breach of a provincial statute. That case involved a police officer going through a stop sign after being dispatched to a bank because of a possible robbery. The conviction was upheld by Zalev J. who said at p. 143:

It is clear from *Morgentaler v. The Queen* (1975), 20 C.C.C. (2d) 449, 53 D.L.R. (3d) 161, [1976] 1 S.C.R. 616, that necessity is a common law defence which remains preserved in criminal proceedings by the operation of s. 7(3) of the Criminal Code. A majority of the Supreme Court accepted the formulation set out in Kenny's *Outlines of Criminal Law*, 19th ed. (1966), p. 73 [at p. 477]:

Probably no such defence can be accepted in any case (1) where the evil averted was a lesser evil than the offence committed to avert it, or (2) where the evil could have been averted by anything short of the commission of that offence, or (3) where more harm was done than was necessary for averting the evil. Hence it is scarcely safe to lay down any more definite rule than that suggested by Sir James Stephen, viz. that 'it is just possible to imagine cases in which the expediency of breaking the law is so overwhelmingly great that people may be justified in breaking it; but these cases cannot be defined beforehand.'

Laskin, C.J.C., at p. 476 referred to this as the strict view. His Lordship then went on to set out what he termed a more liberal view, being that set out in Glanville Williams, *Criminal Law*, op. cit., pp. 729-30. Necessity is also a defence in tort: see *London Borough of Southwark v. Williams et al.*, [1971] 2 All E.R. 175. If necessity is a defence to both civil and criminal proceedings, it seems to follow logically that it may also be a defence to an offence under a provincial statute.

[Emphasis added.]

- [9] In *R. v. Beheshti*, 2017 BCSC 1725, Greycliff J. held that the defence of necessity was not available to the accused, a doctor, who raised as a defence that he was speeding in order to get to the hospital to deal with a medical emergency. In coming to that decision Greycliff J. relied on a Quebec case of *Neumann v. Pierrefonds (City)*, [1993] Q.J. No. 313 in which a doctor raised a similar defence. The court in that case held that "doctors are not singled out to place urgency above the law".
- [10] I disagree with the Crown that Beheshti is contrary to Morris. Beheshti does not stand for the principle that necessity is not available as a defence to speeding. Rather it is confined to doctors rushing to medical emergencies.
- [11] In a recent decision, the Federal Court of Appeal in Canada (*Attorney General*) v. Klevtsov, 2018 FCA 196, confirmed that common law defences including necessity, mental disorder and abuse of process are available defences to absolute liability offences: para. 5.
- [12] Given the above I am satisfied that Morris is good law and that the defence of necessity is available on a charge of speeding.
- [13] The issue is whether this defence is made out in this case.
- [14] I accept the appellant's evidence that in an effort to avoid the car that was being driven dangerously he sped up so he could merge in front of him. I further accept that the other option, to slow down and let the other car merge in front of him, was unsafe given that the driver of the other car had moved in front of him and braked.

[15] As per Dickson J. as he then was in Perka (quoted above), in order to bring the defence of necessity "the accused places before the court sufficient evidence to raise the issue, the onus is on the Crown to meet it beyond a reasonable doubt."

[16] I am satisfied that Mr. Parmar has raised the defence of necessity. I am further satisfied that the Crown has not met that defence beyond a reasonable doubt.

Conclusion

[17] In conclusion, having regard to all of the circumstances of this case I am satisfied that the learned JJP erred in failing to consider Mr. Parmar's defence of necessity.

[18] For the reasons above, I allow the appeal, quash the conviction and enter an acquittal.

"The Honourable Madam Justice Murray"

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