

CANADA / JUDGMENT

R. v. Quiliche

2024 BCSC 972

COURT

Supreme Court of British Columbia

DECIDED

30 May 2024

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2024 BCSC 972 R. v. Quiliche IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Quiliche, 2024 BCSC 972 Date: 20240530 Docket: 35032 Registry: Vancouver Rex v. Abraham Huaman Quiliche Before: The Honourable Madam Justice Murray Oral Reasons for Judgment Counsel for the Crown: C.C. Galbraith Counsel for the Accused: A. Cochrane N.D. Chizik Place and Dates of Trial: Vancouver, B.C. April 8-10, 12 and May 7, 2024 Place and Date of Judgment: Vancouver, B.C. May 30, 2024

INTRODUCTION

- [1] Mr. Quiliche is charged with fraud over \$5000 contrary to s. 380(1)(a) of Criminal Code, R.S.C. 1985 c. C-46.
- [2] The Crown says that between June 1, 2018 and May 28, 2020, Mr. Quiliche defrauded the Insurance Corporation of British Columbia (ICBC) of monies by making false representations regarding his ability to work. ICBC relied on these representations and paid Mr. Quiliche \$14,479.35 in total temporary disability benefits (TTD). TTDs are distinct from a claim against other drivers. They are payable regardless of fault and are intended to be a temporary welfare payment for people who are disabled in a motor vehicle accident and are unable to work.
- [3] Defence concedes that there is evidence that Mr. Quiliche made a false statement and received payment. However, the defence argues that there is no evidence, direct or indirect, that ICBC relied on or was misled by Mr. Quiliche's false statement.
- [4] Briefly put, Mr. Quiliche was involved in a motor vehicle accident (MVA) on June 1, 2018. In or about October 2019 he retained counsel who applied for TTD benefits on his behalf.
- [5] The Crown called two ICBC claims specialists to prove their case- Christopher Chambers and Jonathan Yasayko.

- [6] Mr. Chambers assumed Mr. Quiliche's file from another adjuster sometime in 2018. He approved TTD payments to Mr. Quiliche of \$11,688.15 on February 10, 2020 and \$1570.05 on March 25, 2020. Mr. Yasayko took over from Mr. Chambers in around March 2020. He approved a TTD payment of \$1221.15 on May 4, 2020.
- [7] I find that when they approved the payments to Mr. Quiliche, both adjusters were acting on behalf of the complainant insurance company. I will return to this. THE LAW
- [8] Fraud consists of the prohibited act (actus reus), and the state of mind (mens rea). The actus reus is the primary issue in this case.
- [9] The actus reus of fraud is established by proof of:
- 1) The prohibited act whether that be an act of deceit, falsehood or some other fraudulent means; and
 - 2) Deprivation caused by the prohibited act. The deprivation may be an actual loss or placing the victim's pecuniary interests at risk. See *R. v. Theroux*, [1993] 2 SCR 5 at para. 24; *R. v. Riesberry* 2015 SCC 65 at para. 20.
- [10] There must be a causal connection between the act and the deprivation. As stated above, given the theory of the Crown, the actus reus in this case is an act of deceit through a false statement and a loss of money by ICBC as a result of it. ISSUE
- [11] The issue is whether the Crown has proved beyond a reasonable doubt that Mr. Quiliche defrauded ICBC of monies. Given the law above, the Crown must prove that ICBC relied on Mr. Quiliche's false statements and paid him TTDs to which he was not entitled.

ANALYSIS

- [12] Mr. Chambers testified that he approved TTD payments on the basis of the records and documentation he received. Mr. Chambers conceded that he did not look at all of the documentation submitted. He was unable to recall what documents he looked at in order to determine Mr. Quiliche's entitlement to TTDs. However, he agreed that many of the records, including self reports from Mr. Quiliche stated that he was working for the benefit of his company. Given those records, Mr. Chambers acknowledged in cross-examination that he knew that Mr. Quiliche was working for his company. He further acknowledged that he could have asked Mr. Quiliche's counsel for clarification before approving TTDs but he did not. He could not give a reason as to why.
- [13] When Mr. Yasayko took charge of the file from Mr. Chambers he was suspicious that Mr. Quiliche was working. In fact, he immediately had surveillance set up on him. Armed with surveillance showing Mr. Quiliche performing physical labour, Mr. Yasayko sent a number of questions to Mr. Quiliche's counsel. Crown relies on a misrepresentation given by Mr. Quiliche in response to one of those questions as proof of fraud. There is one problem with that: Mr. Yasayko did not rely on the misrepresentation. Mr. Yasayko was clear in his

evidence that he never believed Mr. Quiliche was disabled. As Mr. Yasayko was ICBC's representative/ agent, neither did ICBC.

- [14] Both claims specialists testified about the inner workings of ICBC with respect to approving TTD payments and said that they did not have the final authority to approve payment. Correspondingly, the Crown submits that it does not matter what the adjusters thought. According to the Crown, the crime is proved if Mr. Quiliche makes a false statement and payment issues.
- [15] I have difficulty with that. This is a criminal charge. The onus is on the Crown to prove the essential elements of the offence beyond a reasonable doubt. One of those essential elements is that ICBC relied on the misrepresentations of Mr. Quiliche to its detriment. In order to prove that the Crown chose to call the two claims adjusters. No one else from ICBC was called. No other evidence from ICBC was submitted. The Court did not hear from the person who ultimately issued the cheque.
- [16] If the Crown's logic prevails, an accused would be unable to defend themselves as the person with the ultimate decision-making power was not called to testify and therefore could not be challenged. I have no idea what information the ultimate decision maker relied on. I can assume it was the opinion of the claims adjuster but that is not evidence upon which to base a criminal conviction.
- [17] I must decide this case based on the evidence the Crown has presented. And that is that Messrs. Chambers and Yasayko were agents of ICBC for the purpose of authorizing the TTDs.
- [18] Mr. Chambers' evidence was vague and uncertain. I am left in doubt as to what records he relied on. Accordingly, I am unable to conclude that he relied on false statements from Mr. Quiliche in order to approve payment of the disability payments to him.
- [19] And Mr. Yasayko was not deceived by Mr. Quiliche's misrepresentation. He knew it was false. He did not rely on it.
- [20] The evidence of the Crown may be sufficient for ICBC to assert entitlement to a repayment of benefits but it falls short of proof beyond a reasonable doubt.
- [21] Stand up please Mr. Quiliche. I find you not guilty. "The Honourable Madam Justice Murray"

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