

CANADA / JUDGMENT

R. v. Sangha

2020 BCSC 466

COURT

Supreme Court of British Columbia

DECIDED

30 March 2020

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2020 BCSC 466 R. v. Sangha IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Sangha, 2020 BCSC 466 Date: 20200330 Docket: X082012 Registry: New Westminster Regina v. Harjinder Singh Sangha Before: The Honourable Madam Justice B.J. Brown On appeal from: An order of the Provincial Court of British Columbia, dated July 26, 2019 (R. v. Sangha, New Westminster File Number AJ05452470-1). Reasons for Judgment Counsel for Crown: N. Reithmeier The Appellant, In Person: H. Sangha Place and Date of Hearing: New Westminster, B.C. February 7, 2020 Place and Date of Judgment: New Westminster, B.C. March 30, 2020

- [1] Mr. Sangha appeals his conviction for using an electronic device while driving.
- [2] Mr. Sangha testified at trial. He said that while he was driving he had to apply his brakes suddenly and a number of items fell to the floor in his vehicle. Among these was his cell phone. It was Mr. Sangha's view that he had no choice but to pick the cell phone up from the floor at his feet, due to safety concerns.
- [3] Mr. Sangha did not deny that he had the cell phone in his hand on his thigh. He said that he was not using it to text. The officer did not suggest that he was. Judicial Justice Baird concluded that Mr. Sangha had committed the offence as set out in the Motor Vehicle Act, R.S.B.C. 1996, c. 318 [MVA] and he was convicted.
- [4] Before me, Mr. Sangha argues that the judge assumed that he was using the electronic device and did not take into consideration his driving safety measure.
- [5] The Crown argues that the appellant on his own evidence held the cell phone in his hand while stopped in traffic. That conduct makes out the offence. As a strict liability offence, once the actus reus is made out the defence could avoid conviction by establishing necessity or due diligence.
- [6] The Crown outlined the defence of due diligence. The defence would apply if: (a) Mr. Sangha reasonably believed in a set of mistaken facts which if true would render the act or omission innocent; or (b) Mr. Sangha took all reasonable steps to avoid the particular event
- [7] The Crown argues the defence of due diligence is not applicable in this case where the act itself, picking up and holding the phone on his lap, is the offence.

- [8] The Crown argues that there are three requirements for the defence of necessity:
1. There must be imminent peril or danger;
 2. The accused must have had no reasonable legal alternative to the course of action he took;
 3. There must be proportionality between the harm inflicted and the harm avoided. The peril must not simply be foreseeable or likely, it must be on the verge of transpiring and virtually certain to occur.
- [9] The Crown argues that a necessity defence fails on all three criteria. There was no imminent peril or danger; there was an available course of action - simply to leave the roadway and retrieve the phone; the harm or potential harm that was created by the distraction of having the phone in his hand outweighed the harm that he was attempting to avoid.
- [10] The Crown submits that the appeal must fail. Discussion
- [11] Section 214.2 of the MVA provides in subsection 1:
- (1) A person must not use an electronic device while driving or operating a motor vehicle on a highway. Use is defined in s. 214.1: "use", in relation to an electronic device, means one or more of the following actions:
 - (a) holding the device in a position in which it may be used;
 - (b) operating one or more of the device's functions;
 - (c) communicating orally by means of the device with another person or another device;
 - (d) taking another action that is set out in the regulations by means of, with or in relation to an electronic device.
- [12] In *R. v. Sangret*, 2019 BCSC 2131 [Sangret], the court said:
- [12] The definition of "use" encompasses a broad range of actions. A driver does not need to physically touch the device to have used it in a prohibited manner. A driver can "use" a device by watching the screen, speaking into it, or otherwise utilizing one of its functions in any way. On the other hand, prohibited use includes the driver simply holding the device in a manner which enables further use.
- [13] In this way, the legislature has balanced the ubiquitous presence of electronic devices in modern life against the dangers of distracted driving. As the Judicial Justice noted, all electronic devices have a latent potential for distraction. A device in plain view is more likely to tempt a driver to distraction than one that has been safely stowed away in a pocket or a glove compartment. To commit an offence, however, the driver must do something to actualize or heighten this latent risk of distraction. In this sense, the offence can be said to require an "accompanying act" on the part of the driver: see *R. v. Partridge*, 2019 BCSC 360: para. 6. As defined in the MVA, that act may be as simple as holding the device in a manner that enables further use. Merely driving within sight of a device, however, is not enough to

constitute use.

- [13] Mr. Sangha admits that he was holding the device in a position in which it could be used. This is a breach of s. 214.2 and supports his conviction.
- [14] I agree with the submissions of the Crown with respect to the defences of necessity or due diligence. Neither applies in the circumstances of this case, as the Crown has argued.
- [15] Finally, to the extent that there is some suggestion in the case law that the decisions of this court *R. v. Partridge*, 2019 BCSC 360 [Partridge], and *R. v. Jahani*, 2017 BCSC 745 [Jahani], are inconsistent with this decision, I disagree. I adopt the reasons of Madam Justice Watchuk in *Sangret*: the accompanying act as referred to in *Partridge* and *Jahani* may be as simple as holding the device in a manner that enables further use. This is consistent with the case law and the plain reading of the section.
- [16] The appeal is dismissed. "B.J. Brown J."

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