

CANADA / JUDGMENT

R. v. Seraji

2020 BCSC 1417

COURT

Supreme Court of British Columbia

DECIDED

23 September 2020

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2020 BCSC 1417 R. v. Seraji

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Seraji,

2020 BCSC 1417

Date: 20200923

Docket: X082095

Registry: New Westminster

Regina

v.

Aria Seraji

Corrected Judgment: The front page of the judgment was corrected on September 28, 2020.

On appeal from: A decision of the Provincial Court of British Columbia, dated February 19, 2020

(R. v. Seraji, Port Coquitlam Docket No. AJ12325727)

Before: The Honourable Mr. Justice Williams

Reasons for Judgment

Re Summary Conviction Appeal

Counsel for the Crown:

N. Reithmeier

The Respondent, appearing on his own behalf:

A. Seraji

Place and Date of Trial/Hearing:

New Westminster, B.C.

August 20, 2020

Place and Date of Judgment:

New Westminster, B.C.

September 23, 2020

- [1] This is a Crown appeal from a decision made following a trial held before a judicial justice of the Provincial Court (the "justice").
- [2] In these reasons, I will deal with two issues. The first concerns a jurisdictional question regarding the Crown's right to appeal. The second is the substantive issue on appeal - the decision of the justice.

History of Proceedings

- [3] The respondent, Mr. Seraji, was charged with the offence of excessive speeding. The trial came on before the justice on February 19, 2020. The Crown called one witness, the police officer who issued and served the traffic violation ticket. The respondent testified in his own defence.
- [4] At the conclusion of the hearing, the justice found as follows:

Having given due consideration to both prosecution and defence assertions on speed, I can safely conclude that Mr. Serai was indeed speeding, but I cannot find speeding excessively as charged. I find him guilty of speeding.

- [5] In effect, the justice declined to enter a conviction for the offence charged, excessive speeding contrary to s. 148(1) of the Motor Vehicle Act, R.S.B.C. 1996, c. 318, but found that the offence of speeding simpliciter, contrary to s. 146(1), had been proven and convicted him accordingly.
- [6] The Crown filed a notice of appeal against acquittal and the matter came on for hearing before a justice of this Court. At the outset of that hearing, the presiding justice raised with the Crown an issue of jurisdiction: whether the Crown can appeal in circumstances where the defendant has been convicted of speeding simpliciter when charged with excessive speeding. The appeal hearing was adjourned in order to permit the parties to research and prepare submissions addressing that issue.

- [7] The matter has now come before this Court. Both the Crown and the respondent have provided their submissions.
- [8] As well, in the interests of avoiding a possible third appearance in respect of this appeal, it was agreed that the parties would also make their submissions regarding the substantive issue at the same time, to be considered in the event the Crown position prevailed on the jurisdictional point.
- [9] It is the position of the Crown that it is entitled to have its appeal from the acquittal of the excessive speeding charge considered and decided by this Court. Further, the Crown says that the justice erred in law when he found the prosecution had not proven the more serious charge and instead convicted the respondent of the lesser charge, speeding.
- [10] The respondent contends that the Crown does not have the right to appeal the lower court decision because it has neither statutory nor common law authority to do so. With respect to the substantive issue, the respondent says that the justice committed no reversible error in concluding that the prosecution evidence only established the offence of speeding, not excessive speeding.

The Relevant Statutory Structure

- [11] The province has authority to prescribe offences with respect to matters within its jurisdiction. In addition to the Motor Vehicle Act, other examples of provincial enactments that create offences include the Environmental Management Act, S.B.C. 2003, c. 53 and the Wildlife Act, R.S.B.C. 1996, c. 488. In fact, there are many. Provincial offences are summary conviction offences.
- [12] The Offence Act, R.S.B.C. 1996, c. 338 is a provincial statute which provides a comprehensive code governing provincial offences. Among other matters, it deals with the commencement of proceedings, trial procedure and penalties. The Offence Act also contains a number of provisions (s. 101 and following) setting out the appeal process. Those provisions include the designation of the Supreme Court as the appeal court in respect of such offences (s. 101) and the rights of the parties to appeal decisions (s. 102). Section 102 provides:

Appeal

102 Unless otherwise provided by law,

- (a) the defendant may appeal to the appeal court
- (i) from a conviction or order made against the defendant, or
- (ii) against a sentence passed on the defendant,
- (b) the informant, the Attorney General or the Attorney General's agent in proceedings under this Act may appeal to the appeal court

- (i) from an order dismissing an information, or
- (ii) against a sentence passed on a defendant, and
- (c) a person in respect of whom a confirming order or an order of detention is made under section 91, 92 or 93 may appeal to the appeal court from
 - (i) the confirming order, or
 - (ii) the order of detention.

[13] I pause to note that the Criminal Code of Canada, R.S.C. 1985, c. C-46, Part XXVII, sets out the law respecting summary conviction offences created by federal enactment.

[14] I also note that a number of provinces in Canada have essentially adopted Part XXVII of the Criminal Code as their procedure in respect of provincial summary offences. British Columbia is not among those, although the provincial Offence Act does adopt certain sections of the Code. For example, s. 109(1) of the Offence Act provides as follows:

109 (1) If an appeal is taken under section 102 in respect of a conviction, acquittal, sentence or order, sections 683 to 689, except section 686 (5), of the Criminal Code apply.

Nevertheless, it is the provincial Offence Act which applies in appellate proceedings arising from the prosecution of provincial offences.

[15] As a final observation concerning statutory structure, s. 148 of the Motor Vehicle Act, setting out the offence of excessive speeding, also contains a provision which effectively creates a lesser included offence: that is, where the court finds the charge of excessive speeding has not been proven, but the evidence permits, a conviction may be entered for the offence of speeding simpliciter:

- (1) A person who drives a motor vehicle on a highway at a speed greater than 40 km/h over the applicable speed limit set under the authority of an enactment commits an offence and is liable on conviction to not less than the aggregate of the fine amount and the applicable supplemental fine amount, if any, prescribed under section 148.1 for this offence and, subject to those amounts, section 4 of the Offence Act applies.
- (2) If a person is charged with an offence under subsection (1) and the evidence does not prove the offence but does prove a contravention of section 140, 146 or 147, the person may be convicted of contravening section 140, 146 or 147, as the case may be, and the person is liable on that conviction to not less than the aggregate of the fine amount and the applicable supplemental fine amount, if any, prescribed under section 148.1 for that offence.

[16] To my knowledge, this provision is unique. I am not aware of any other section of the Motor Vehicle Act which provides for a lesser included offence.

Analysis of the Jurisdictional Issue

[17] The issue to be addressed is accurately and succinctly set out in the Crown's written submissions:

The discrete question to be resolved is whether what occurs via section 148(2) constitutes "dismissing of an information" thereby vesting a right of appeal flowing from its application. That is to say, is the Crown barred from appealing matters where the result is a conviction for an included offence?

[18] The issue appears to be one of first impression. Neither Crown counsel nor the respondent were able to provide the Court with any authority on the specific point.

[19] The right of a party to appeal a decision is created by statute. The common law may inform the analysis, either specifically by way of decisions that other courts have made with respect to relevant issues, or by way of the more general pronouncements that may be relevant to the particular issues. However, the scope of appellate jurisdiction is essentially circumscribed by statute.

[20] A necessary first step in the analysis at hand is to correctly characterize what occurred in the court below.

[21] As noted, the respondent was convicted of the lesser included offence of speeding, an outcome enabled by s. 148(2). The justice declined to enter a conviction for the excessive speeding charge because he was not satisfied it had been proven.

[22] Relevant to a proper analysis of the matter is the definition of "information" found at s. 1 of the Offence Act:

"information" includes

- (a) a violation ticket,
- (b) a count in an information or in a violation ticket, and
- (c) a complaint in respect of which a justice is authorized to make an order;

[Emphasis added.]

[23] In the proceeding below, what occurred, conceptually, is straightforward:

- i. With respect to the offence charged, the justice found it had not been proven and accordingly dismissed that charge.
- ii. Nevertheless, by virtue of s. 148(2), it was open to the justice to convict for the lesser included offence of speeding, which he did.

[24] Accordingly, notwithstanding that the respondent was convicted of speeding simpliciter, it is also true that the charge of excessive speeding was dismissed - the respondent was acquitted of that charge.

- [25] This view of the matter accords with common sense. It finds support as well in comments made by Chief Justice Lamer in *R. v. Keegstra*, [1995] 2 S.C.R. 381.
- [26] Keegstra involved a Crown appeal from a decision of the Alberta Court of Appeal, which had allowed Mr. Keegstra's appeal from his conviction at trial. In the Supreme Court of Canada, Mr. Keegstra, although he was a respondent, sought leave to appeal certain issues that had been raised in the Court of Appeal, some of which were constitutional in nature and others which were not.
- [27] None of the concerns that were specifically at issue in Keegstra are before this Court in the instant matter. Indeed, the issues in Keegstra are largely characterizable as interpretations of Criminal Code provisions and matters of Supreme Court practice.
- [28] However, after setting out his decision in respect of the specific issue before the Court, Chief Justice Lamer offered certain observations clarifying the nature of arguments that may be raised by respondents in criminal appeals. Specifically, at para. 35, he made reference to "the principles which are to govern permissible arguments and appeals relating to included offences", which he described as being contained in the general rules. He then wrote:

When an accused is convicted of an included offence, he or she has been acquitted of the offence originally charged. The accused can appeal the conviction and the Crown can appeal the acquittal.

Later in that paragraph, he said this:

There are no special or additional rules which apply in the case of included offences. What is required, rather, is a careful consideration of which party has the right to appeal the implicit and explicit rulings of the trial court.

- [29] Although the Crown had proceeded against Mr. Keegstra by way of indictment and the appeal was governed by Part XXI of the Criminal Code, it bears repeating that Chief Justice Lamer's comments in para. 35 about included offences were made with reference to "the general rules".
- [30] With that understanding, I turn to consider the application of s. 102 of the Offence Act to the facts at hand.
- [31] As I have concluded, the verdict rendered below constituted an acquittal or a dismissal of the charge of excessive speeding (contrary to s. 148(1)) and a conviction on the included (and statutorily alternate) charge of speeding simpliciter.
- [32] The right of the Crown to appeal that acquittal seems to me to be clearly and unequivocally provided by s. 102(b)(i), given that the definition of information includes a count in the violation ticket. That is, the acquittal on a count in the violation ticket is captured by the wording of s. 102 which affords the Crown the right to appeal from "an order dismissing an information".

- [33] In my respectful view, there is no ambiguity. And in the absence of any ambiguity, this Court must avoid an approach to interpretation that seeks to add ambiguity.
- [34] Both the Crown and the respondent make reference to the fundamental principle of statutory interpretation that the words of an act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of Parliament: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21. I see nothing in the application of that principle which would lead to a conclusion different than the one I have reached.
- [35] The essence of the argument that there is an ambiguity is, as I understand, the propositions that:
1. The Criminal Code contains provisions governing both indictable and summary conviction proceedings, including appeals.
 2. Part XXI of the Criminal Code, dealing with appeals in respect of indictable offences, at s. 676(2) makes specific reference to convictions for included offences being "appealable" by the Crown:

For the purposes of this section, a judgment or verdict of acquittal includes an acquittal in respect of an offence specifically charged where the accused has, on the trial thereof, been convicted or discharged under section 730 of any other offence.

3. Section 813 of the Criminal Code dealing with summary conviction appeals, which is essentially the equivalent of s. 102 of the Offence Act, does not make reference to included offences (although I observe that the section of the Code commences with the words "except where otherwise provided by law").
- [36] While these Code provisions may be of some interest, s. 102 of the Offence Act standing on its own is not ambiguous, and it seems to me both unnecessary and, in fact, counterproductive for this Court to essentially import ambiguity into the section by taking these Code provisions into account. Neither the plain wording of s. 102 nor any apparent policy issues support this approach.
- [37] This also answers the Crown's concern that the ruling this Court makes may have wider implications given the parallels between the language of s. 102 of the Offence Act and s. 813 of the Criminal Code. I do not find it necessary to resort to the Criminal Code provisions to interpret the provision at issue in this case. I also take the view that this Court should not purport to decide matters that are not raised by the instant facts unless there is a necessity to do so.
- [38] To conclude my discussion of the jurisdictional issue, I acknowledge two other submissions advanced by the respondent:

1. Because s. 148(2) uses the word "conviction" twice, what occurred in this case is not properly characterized as a dismissal of an information.
 2. There are policy implications to this matter. It would be reasonable to infer that the legislature's purpose in limiting appeals of convictions is consonant with the goal of finality in court proceedings, particularly given that provincial statutes deal with less serious regulatory offences.
- [39] In my respectful view, neither of those propositions supports an outcome other than the one I have concluded is appropriate.
- [40] In the circumstances, I find that the Crown is entitled to appeal the decision of the justice because it is an acquittal and falls within the scope of s. 102 of the Offence Act.

Analysis of the Substantive Issue

- [41] The Crown says the justice erred in his interpretation of the essential elements of the offence and/or misapprehended the evidence. The respondent contends that there was no error in the justice's interpretation of the essential elements of the offence and that the justice did not misapprehended the evidence at the hearing.

Standard of Review

- [42] There is no dispute between the parties as to the appropriate standard of review. Both appear to accept that it is accurately set out in *R. v. Bassi*, 2019 BCSC 1224:
- The Crown may raise questions of fact or law, or both.
 - The standard of review for findings of fact is that such findings are not to be reversed unless it can be established that the trial judge made a palpable and overriding error, or made findings of fact that are clearly wrong, unreasonable or unsupported by the evidence. The appellate court approach should be one of deference, based on the propositions that the trial judge is in the best position to determine matters of fact and is presumed to know the basic law.
 - The standard of appellate review concerning a question of law is that of correctness.
 - The application of the law to a given factual matrix, that is, whether a legal standard is met, amounts to a question of law and attracts a correctness standard.

Discussion

- [43] In the matter at hand, it is my view that the justice demonstrated a fundamental misapprehension of the evidence. In addition, the findings suggest that the justice erred in his interpretation of the essential elements of the offence.
- [44] The oral reasons for judgment were brief. After summarizing the evidence that had been adduced, the justice said this:

- [5] Having heard the evidence of both prosecution and defence I am quite unable to accept prosecution's stance that prior to the posted sign the speed was as alleged to be 80 and 79. It is quite clearly established that past the sign the speed was recorded at 79 kilometres per hour. There is no indication in this court as to what distance the vehicle had passed beyond the sign when the observation was made and the laser reading was taken.
- [6] Having given due consideration to both prosecution and defence assertions on speed, I can safely concluded that Mr. Seraji was indeed speeding, but I cannot find speeding excessively as charged. I find him guilty of speeding in the second tier of \$196, contrary to section- the second tier is under section [146(1)].
- [45] As I shall explain, the analysis articulated in paragraph 5, when considered in the context of the trial evidence, simply does not provide a reasonable or viable pathway to the conclusion reached in paragraph 6.

The Evidence

- [46] The evidence at the hearing was not extensive: only two witnesses testified. There were also a number of questions that the justice asked of the prosecution witness. Because of the significance of that exchange, I will reproduce it verbatim in these reasons.
- [47] The sole prosecution witness was the investigating officer. He testified that at 7:30 a.m. on July 9, 2019, he was conducting speed enforcement in Port Moody, BC. He was parked on Noons Creek Drive, facing northbound, observing traffic proceeding toward his position, i.e., traffic travelling southbound on Noons Creek Drive. The officer said he was making both visual estimates of vehicle speed and also "clocking" those vehicles with a laser speed measuring instrument.
- [48] The officer described observing a white Lexus automobile approaching his position, that is, from the north. He said he visually estimated the vehicle's speed at 80 km/h. His laser measurement of the speed was 79 km/h, taken at a distance of 111.8m from the police vehicle.
- [49] The witness testified that he maintained visual continuity of the vehicle and then signalled for it to stop, which it did. The sole occupant of the vehicle was the driver, who produced a driver's license in the name of the respondent. There is no dispute that the respondent was driving the vehicle at the material time.
- [50] A violation ticket was issued and because the offence was excessive speeding, the vehicle was impounded and towed from the scene.
- [51] With respect to the speed limit and posted signage, the officer testified that the limit on Noons Creek Road, at the point where the respondent's vehicle was observed, is 30 km/h. He explained that a 30 km/h sign is posted approximately 300m north of the location where his police vehicle was parked, and that the sign was not visible from the location where he was parked because there is a curve in the road. He explained that Noons Creek Road, north of

his location, is not straight, but rather curves, such that motorists travelling southbound pass a 30 km/h speed sign before they pass through the bend.

[52] The witness also described there being a functioning radar display board (speed reader) by the side of the road that was indicating the speed of vehicles near the 30 km/h sign.

[53] The officer tendered a number of photos that he had taken, including the respondent's driver's licence as produced at the time of the stop, a photo of the laser instrument display with the speed and distance indicated, a photo of the speed limit sign, a photo of the radar display board located on the side of Noons Creek Road, and a photo of the site of the stop with the tow truck removing the respondent's automobile.

[54] The respondent did not cross-examine the officer. However, the justice had a number of the questions for the officer.

[55] As noted, the officer testified that he was only able to see vehicles once they had passed the 30 km/h sign, notwithstanding that the sign was not within his sight when he made his observations of the traffic.

[56] In the course of the questions being asked by the justice, the following exchange occurred:

Q Now, when you say in your evidence in chief, "I observed a vehicle, a white Lexus, downhill, coming around the bend" and then you said, "I can only see vehicles as they pass the 30 kilometre sign."

A Yes, Your Worship, I could only see a vehicle if it had already passed that 30 kilometre an hour sign. It's -- it would be impossible -- what I'm trying to say, I'm just trying to prove the essential element that the vehicle was at that time past that 30 kilometre an hour sign. Vehicles that are in this shot that are parked here would have not been in range or in my sight line -

Q Okay.

A -- from where my police vehicle was parked -

Q And -

A -- so they would have to have passed that sign in order to - for me to clock them.

Q What distance beyond the sign could you see?

A Sorry, Your Worship?

Q Past the 30 kilometre sign what distance past the sign did you see this vehicle?

A I see, Your Worship. Yes, it would have been approximately - my police vehicle would have been parked approximately 300 metres past this sign and, like I said, the reading was at about 111 kilometres -

Q Yes -

A -- or 111 metres.

Q -- I know you were 111 from the posted speed limit sign.

A No, Your Worship, my vehicle was parked probably about 300 metres from the posted limit sign.

Q Mm-hm?

A The reading on the laser was 111 -

Q Okay.

A -- metres.

Q Okay. So, how do you come to the conclusion that, let's say, at the sign that shows 30 kilometre per hour his vehicle was going at 79? How do you come to that conclusion?

A Come to the conclusion that he was within that 30 kilometre an hour zone? Yes, Your Worship, as I mentioned, there's a curvature in the road, so down the road it bends to the left and then to the right. You have to get past that - that 30 kilometre an hour zone and then it becomes a straight - a straight stretch of road where my police vehicle was parked. That's approximately 300 metres down the road from where this sign is. So, as I mentioned, when I clocked this vehicle I was confident, absolutely confident that it had passed that 30 kilometre an hour sign and that was what the evidence was pointing towards was that the vehicle had to have passed the 30 kilometre an hour sign in order for me to have clocked it. It was not before that sign.

Q Could you see the sign from where your location was, where you're parked?

A No, Your Worship, the sign is not -

Q You can't see the sign.

A -- the sign is not visible from where my location was. It was around the corner.

[57] Following the exchange between the justice and the police officer, the respondent testified. The essence of his evidence was that on the occasion in question, he was late for work, and thought that he was in a 50 km/h zone. He admitted speeding.

[58] He then described certain personal circumstances and made mention of the implication of the ticket for him.

[59] The respondent was briefly cross-examined by the officer. In that cross-examination, the respondent stated that he believed his vehicle speed was "70". He agreed that he had not seen the 30 km/h sign, nor had he observed a functioning radar electronic display board by the side of the road.

Analysis

- [60] In order to prove the offence of excessive speeding, the prosecution is obliged to establish, beyond a reasonable doubt, that the defendant drove a motor vehicle on a highway at a speed greater than 40 km/h over the lawfully posted speed limit, set under the authority of an enactment (s. 148). With respect to the lawfully posted speed limit, s. 146 of the Motor Vehicle Act prescribes a default limit of 50 km/h within a municipality, but also authorizes a municipal government to vary the limit and to erect signage posting that limit. If that is done, then drivers must not exceed that indicated speed.
- [61] Thus, in the matter at hand, to prove the respondent guilty of the offence of excessive speeding, the prosecution was required to prove that he was driving the motor vehicle at the time and location alleged in the violation notice, that the lawful posted speed limit was 30 km/h, and that he was travelling at a speed of 71 km/h or more.
- [62] The evidence, in my view, establishes those elements.
- [63] There is no dispute that the respondent was driving his vehicle on Noons Creek Road at the relevant time.
- [64] The officer's uncontradicted testimony was that the speed limit at the portion of road where the respondent was observed by the officer and where his speed was measured by the laser device was 30 km/h, and that the necessary signage was posted.
- [65] There was also evidence from the police officer that the respondent's speed at that time and place was visually estimated at 80 km/h and was measured by the laser device at 79 km/h. In fact, it seems that, in the second sentence of para. 5, the justice found this to have proven.
- [66] As regards the evidence of speed, no challenge was made to the officer's evidence, other than that the respondent testified that he believed his speed was "70". I note that the officer's evidence was that he had tested his laser instrument at the start of his shift and it passed.
- [67] The clear import of the officer's evidence was that the respondent, travelling southbound on Noons Creek Road, would have passed the sign and entered into the 30 km/h zone approximately 300m north of the police vehicle's location. Accordingly, he would have been in that zone when the speed observations were made.
- [68] Against that background, I turn now to the reasons of the justice.
- [69] Frankly, the reasoning process is somewhat perplexing and unclear.
- [70] I will examine each of the three sentences in para. 5, which I take to be the analysis.
- [71] Having heard the evidence of both prosecution and defence I am quite unable to accept prosecution's stance that prior to the posted sign the speed was as alleged to be 80 and 79. It was not the "prosecution's stance" that, prior to the posted sign, the speed was as alleged to be 80 and 79. As I understand the evidence of the officer, he did not allege that the respondent had been travelling at that speed prior to the posted sign. Rather, his testimony

was that the respondent was observed to be driving at that speed after he had passed the sign. (Indeed, for the prosecution to allege the respondent was driving at 79 or 80 km/h prior to the sign would not support the charge and would make no sense).

- [72] It is quite clearly established that past the sign the speed was recorded at 79 kilometres per hour. As noted above, this finding would seem to constitute proof of the charge of excessive speeding, assuming the prosecution had established that the speed limit at that point was 30 km/h.
- [73] There is no indication in this court as to what distance the vehicle had passed beyond the sign when the observation was made and the laser reading was taken. This seems a curious comment. On one hand, that would have been quite readily calculated by taking the distance that the respondent's vehicle was from the police car at the point the speed reading was taken (111m) and subtracting that from the total distance between the police car and the 30 km/h sign (as stated by the officer to be approximately 300m). More importantly, that distance seems quite without any relevance to the decision the justice was called upon to make.
- [74] With respect, it appears to me from the very brief reasons that the justice was in a state of some confusion as to the facts and particularly the physical aspects of the situation described by the prosecution. That conclusion is supported, I would suggest, by the questions posed by the justice to the officer in the excerpt set out above.
- [75] In the result, I find that the final conclusion reached by the justice is fundamentally at odds with the evidence at trial, and that his analysis does not show how his conclusion properly flows from that evidence. Accordingly, it follows that the trier of fact has made a palpable and overriding error, or made findings of fact that are clearly wrong, unreasonable or unsupported by the evidence.
- [76] In considering this issue, I have instructed myself that it is not for this Court to rescue the prosecution from its own ineffectiveness or deficiency in proving its case. If the evidence, reasonably understood, leaves doubt, uncertainty or confusion, then it is entirely proper that the charge be dismissed as not proven.
- [77] In the matter at hand, that is not the explanation for the outcome. For the reasons stated, the Crown appeal must succeed.
- [78] The respondent makes a further submission, which I reproduce here:
- [24] In the further alternative, policy reasons should support a dismissal of this appeal. The guidelines for Crown Counsel posted in the British Columbia Prosecution Service Crown Counsel Policy Manual read:

An appeal against acquittal or judicial stay of proceedings will only be approved where the following conditions are met: (1) it involves a question of law, mixed law and fact, or the decision is unreasonable and unsupported by the evidence; (2) a reasonable argument can be made that the verdict would not necessarily have been the same if the error had not been made; and (3) the public interest requires an appeal.

[25] These guidelines are provided for Crown counsel appealing an acquittal - which is not the case here as I was found guilty of a lesser included offence. Assuming the guidelines apply equally to this kind of situation (and not more stringently, which I should hope they would), the preceding argument I submitted suggests that the judgment against me was both reasonable and supported by the evidence. Therefore, I focus only on the public interest reasons on why this appeal should be allowed.

[26] The Crown Counsel Policy Manual provides a definition of when it is in the public interest to pursue an appeal (again, of an acquittal, but I diverge):

Whether [the appeal is in the] public interest concerns, taking into account the nature of the offence and the circumstances of the offender, warrant a reconsideration of the case.

[27] The nature of the offence is a provincial regulatory offence in the MVA. It is fair to characterize this offence, in the grander scheme of criminality, as not a serious offence as it is not in the Criminal Code. In saying this I am not diminishing the wrongfulness of my action in any way. I have accepted responsibility for my actions and have not appealed the guilty verdict of the fine of \$196.

[28] In terms of my own circumstances, this proceeding has affected me and my family greatly. As I testified at the trial:

I'd like to say that this greatly impacts me because I'm the only person that can drive in my family. My mom does not drive, my sister does not drive. I'm a fulltime student and I work as a server 'til 3:00 in the morning, so the implications of this ticket could lose me my job, as well as cause a lot of issues for my family 'cause I won't be able to do any of those thing to -- sorry, to be able to help my mom out and whatnot and it will cause a lot of pain for her and that's why I'm here.

[29] I come from a low-income background and my family left everything to come here as refugees in 2009. I have spent the last 3 months of my life preparing my defence for this case because cases like this are not covered by legal aid. The financial burden of hiring a lawyer would be devastating to my family as my single mother is on disability income and we recently got off welfare.

- [30] I am putting myself through school, and I pay for all of my bills myself. My guilty verdict has not been withdrawn so my insurance rates have gone up for the year, and I am currently on license probation by ICBC regardless of whether the decision was appealed. Crown counsel did not consider my financial circumstances or the fact that this was my first and only offence, these are all things that are important in the eyes of the public.
- [31] Beyond my own circumstances, there are broader policy reasons why granting this appeal is not in the best interest of the public. At a time when access to justice is a priority for all those involved with the courts and COVID has serious charges getting stayed because of an inability to hold trials within a reasonable time, the courts would be incredibly clogged if Crown has the opportunity to appeal every guilty verdict where they did not agree with the exact outcome. The public does not need to pay for three separate court hearings over a regulatory offence, where guilt has been determined.
- [79] Respectfully, and for the reasons I have set out, I see no basis in that position to conclude that this appeal should not be allowed.
- [80] As regards the actual remedy, because the finding of guilt for the offence of speeding simpliciter was the result of the acquittal on the excessive speeding charge, and in light of my finding that the justice erred in ordering that acquittal, the appropriate disposition is that the trial results (both acquittal and conviction) are vacated and a new trial is ordered.
- [81] Whether the Crown elects to proceed with the excessive speeding prosecution is not for this Court to decide. I would observe that the respondent has been subjected to a number of consequences to date, including the fact his vehicle was impounded from the site of the traffic stop, as well as the fact that the appeal of this matter has necessitated his attendance in court on at least two occasions. However, that decision is for the Crown to make.

"Williams J."

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