

CANADA / JUDGMENT

R. v. Sharma

2024 BCSC 1864

COURT

Supreme Court of British Columbia

DECIDED

20 September 2024

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2024 BCSC 1864 R. v. Sharma IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Sharma, 2024 BCSC 1864 Date: 20240920 Docket: 36500-1 Registry: Vancouver Rex v. Ajay Kumar Sharma Before: The Honourable Justice A. Ross On appeal from: An order of Provincial Court of British Columbia, dated May 23, 2024 (R. v. Sharma, North Vancouver File No. 2011:EA00502173-1) Oral Reasons for Judgment In Chambers Counsel for the Crown: D. Meagher The Appellant, appearing in person: A.K. Sharma Place and Date of Trial/Hearing: Vancouver, B.C. September 20, 2024 Place and Date of Judgment: Vancouver, B.C. September 20, 2024

- [1] THE COURT: I will provide my oral reasons now. Should either party request a written copy, I reserve the right to amend or edit those oral reasons for grammar and syntax, but the result will not change.
- [2] Mr. Sharma appeals his conviction of speeding under the Motor Vehicle Act, R.S.B.C. 1998, c. 318. He was convicted, after a trial, by Judicial Justice Osborn at North Vancouver Provincial Court and ordered to pay a minimum prescribed penalty of \$196. In his notice of appeal, Mr. Sharma set out only one ground of appeal. Simply put, he says that the constable who issued the ticket made an error in the identity of his vehicle. He denies that he was speeding.
- [3] By way of background, the Crown's evidence at trial was provided by Constable Marsh. She testified that on October 28, 2023, she was working as an RCMP officer and was monitoring traffic northbound on Highway 99. She testified that she is a qualified laser radar operator. She further testified that she was in a position in an area where the speed limit was 60 kilometres per hour. She testified that she saw the appellant's vehicle in the fast lane, travelling at a speed that she estimated, based upon her experience, at 90 kilometres an hour. She then pointed the radar gun at the vehicle and confirmed that it was travelling at 90 kilometres per hour. She then pulled the appellant over and issued the ticket.
- [4] Mr. Sharma cross-examined Constable Marsh and suggested that she was mistaken about the identity of his vehicle. She answered that she was not mistaken.
- [5] Mr. Sharma also testified. His testimony was to the effect that there was no way that he was going 90 kilometres an hour in the zone where the constable saw him. He denied that he was speeding.

- [6] As to the applicable law, the appeal of a conviction or sentence from a violation is governed, among other sections, by s. 686 of the Criminal Code of Canada, R.S.C. 1985, c. C-46. That section states that: 686 (1) On the hearing of an appeal against a conviction the court of appeal
- (a) may allow the appeal where it is of the opinion that
- (i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence, (ii) the judgment of the trial [judge] should be set aside on the ground of a wrong decision on a question of law, or (iii) on any ground [where] there [is] a miscarriage of justice;
- [7] Based on Mr. Sharma's grounds of appeal, he is directing a challenge at the justice's findings of fact. A trial judge's findings and inferences of fact are subject to a standard of palpable and overriding error. They are to be given significant deference. Where there is some evidence to support those findings and inferences, an appeal court will not revisit them, absent an error in principle or a palpable and overriding error.
- [8] With respect to Mr. Sharma's submission on appeal that he followed the traffic and did not speed, that evidence is contradicted by Constable Marsh. In light of Constable Marsh's evidence as to the specific measures she took to record Mr. Sharma's actual speed, which were not shaken on cross-examination, there is a clear basis for the judicial justice's finding that Mr. Sharma was speeding. In particular, Constable Marsh's evidence about her estimate of Mr. Sharma's speed, her testing of the laser device and its readout are, in my opinion, reasonable basis for the judicial justice's finding of fact.
- [9] As a result, there was an evidentiary basis for the judicial justice's finding, and there was no palpable and overriding error. On that basis, I find that there is no basis for me to overturn the decision of Judicial Justice Osborn. As a result of my conclusions, I dismiss Mr. Sharma's appeal against this conviction. "A. Ross J."

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