“Client acquitted of obstructing police by giving fake name after Court agreed client should never have been pulled over in the first place.” [COMMENTS BY RICHARD NEARY]

R. v. B

Between
Regina
v.
J B

[2006] B.C.J. No. 1888

2006 BCPC 392

Victoria Registry No. 132521

British Columbia Provincial Court
Victoria, British Columbia

Higinbotham Prov. Ct. J.

Heard: August 17, 2006.
Judgment: August 17, 2006.

(13 paras.)

Counsel:

Counsel for the Crown: Chandra Fisher

Counsel for the Defendant: Richard Neary

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1 HIGINBOTHAM PROV. CT. J.:— Mr. B is charged with obstructing a peace officer in the execution of his duty. The issue on the voir dire is whether by reason of an arbitrary detention, the police officer was not engaged in the lawful execution of his duty.

2 The facts are simple. Cst. Kelleher thought he saw a prohibited driver, known to him, pass by in the opposite direction. He and Cst. Niederlinski, his passenger, turned around to pursue and stop the vehicle for that reason. During the period between the initial observation and the stop, the police officers were able to ascertain through their computer that the vehicle was registered to a woman who was unknown to them.

3 When the two police officers approached the car on foot, one of them noticed a cracked windshield. I reject the evidence that this was noticed prior to the stop, or that it played any role in the decision to stop the vehicle.

4 As soon as Cst. Kelleher was face to face with Mr. B, he realized he was mistaken as to his identity. He was not the prohibited driver he thought he was. Instead of apologizing for the mistake and sending Mr. B on his way, Cst. Kelleher decided, in response to a heated and profane demand from Mr. B that he be given a reason for the stop, to tell him that he was stopped because he was a male driver operating a vehicle owned by a female. This reason was false, and understandably did nothing to calm down Mr. B, who continued to berate the police officers in a profane manner for stopping him. To make matters worse, Cst. Niederlinski decided at this point to refer to the cracked windshield, implying that this gave the police reason enough to stop him.

5 I pause to point out that this may well have given the police a good reason to make the stop, but in fact it was not the reason.

6 In any event, right after Cst. Niederlinski made his comment, Cst. Kelleher requested that Mr. B produce his driver's licence. The response of Mr. B was to say "fuck this!" and accelerate away from the two police officers. He stopped in a parking lot shortly thereafter where the arrest was made.

7 Mr. Neary submits that there was no articulable cause for the detention beyond the point where it became obvious that they had mistaken Mr. B for somebody else, and that the continued detention was arbitrary. Therefore his client could not be said to be obstructing the police officer in the execution of his duty by driving away.

8 Ms. Fisher submits that even if the reason for the stop had evaporated, the unusually angry reaction of Mr. B gave the police officers cause to continue the detention, at least to the point of establishing the identity of Mr. B.

9 In some cases that may be so, but quite frankly, in this case the police officers brought it on themselves. Even though Mr. B was rude, profane and offensive from the very moment he was approached, either of the police officers could have defused the situation by simply telling Mr. B the truth. Instead, they exacerbated the problem by bringing up specious justifications for the stop.

10 I am satisfied that although there existed articulable cause for the initial stop, based upon an honest belief that the driver was prohibited from operating a motor vehicle, that cause evaporated immediately upon Cst. Kelleher's observation that he was mistaken. Given the circumstances of this case, I am also satisfied that no new cause for continued detention arose based upon the reaction of Mr. B to being pulled over. The continued detention of Mr. B became an arbitrary detention in violation of his constitutional rights.

11 I follow Regina v. Guenette (1999) 136 C.C.C. (3d) 311 (Que. C.A.) in holding that if the alleged offence of obstruction arises out of an arbitrary detention, then the charge cannot possibly be made out.

12 In these circumstances it is unnecessary to consider the remedies available under s. 24(2) of the Charter of Rights and Freedoms. Counsel have agreed that if the actions of the police constitute a s. 9 violation, Mr. B is entitled to an acquittal.

13 I therefore dismiss the charge.

HIGINBOTHAM PROV. CT. J.