

CANADA / JUDGMENT

Further Detention of Things Seized (Re)

2022 BCSC 2283

COURT

Supreme Court of British Columbia

DECIDED

30 December 2022

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2022 BCSC 2283 Further Detention of Things Seized (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Further Detention of Things Seized (Re),

2022 BCSC 2283

Date: 20221230

Docket: 33314

Registry: Vancouver

In the Matter of an Application Pursuant to s. 490(3) of the Criminal Code

of Canada for an Order for the Further Detention of Things Seized

Before: The Honourable Associate Chief Justice H. Holmes

Reasons for Judgment

These Reasons for Judgment have been corrected on

the cover page on January 27, 2023.

Counsel for the Attorney General of Canada on behalf of the Royal Canadian Mounted Police:

K. Shelley

Counsel for the Respondent:

J. Allingham

Place and Date of Hearing:

Vancouver, B.C.

November 2, 2022

Place and Date of Judgment:

Vancouver, B.C.

December 30, 2022

INTRODUCTION

- [1] The RCMP applies for an order extending until August 27, 2023 the detention period for \$419,950 in cash seized from a safety deposit box on August 29, 2021.
- [2] The respondent opposes, submitting that the evidence does not adequately explain the delay in the investigation to date, or support further detention for as long as is sought.

DISCUSSION

- [3] The cash was seized by the Joint Illegal Gaming Investigation Team of the Combined Forces Special Enforcement Unit - BC during an investigation into offences of possession of a weapon for a dangerous purpose, keeping a gaming or betting house, and possessing property obtained by crime. Early in the investigation, which began at the end of June 2021, the Team searched under warrant a suspected illegal gaming house on Cooney Road in Richmond, BC, and arrested fourteen individuals who were present, including the respondent. Safety deposit box keys were seized from the respondent's purse, and the safety deposit box holding the cash now in issue was searched under further warrant.
- [4] Subsection 490(3) authorizes this Court to order further detention (after one year, where no charges have been laid or proceedings otherwise instituted in which the seized item may be required) where the applicant shows that the complex nature of the investigation so warrants.
- [5] The Attorney General notes that, whether or not charges are laid, forfeiture proceedings under s. 490.1 may be instituted in respect of the cash now in issue, and the cash will be required for that purpose.
- [6] I do not disagree with the Attorney General's submission that detention for the purpose of eventual forfeiture proceedings under s. 490.1 may properly support further detention.
- [7] However, the issue remains of whether the continued detention of the property is justified by the complex nature of the investigation that may ultimately support forfeiture proceedings. The possibility, however strong, that forfeiture proceedings will be instituted does not allow the investigation to sidestep the obligations imposed by s. 490. Continuing detention (in the absence of charges or other proceedings instituted) even of property strongly suspected to be proceeds of crime must be justified by the complex nature of the underlying investigation.

- [8] The Attorney General submits that this investigation is complex for various reasons. The investigation focuses on offences committed by more than one individual. It has needed the assistance of additional police forces and forensic units. Numerous warrants to search locations, vehicles, and devices were obtained and executed; digital video recordings were also obtained. A significant number of documents required analysis, and some of them also required translation into English. Items seized included 23 electronic devices from the suspected gaming house and the individuals located in it, some of which devices appeared to be used for gaming. The data has been extracted from the devices, many of which were password-protected, and, where necessary, has been translated into English from Mandarin or Cantonese.
- [9] Further detention to the end of August 2023 is necessary, the Attorney General submits, to allow for the following:
- completing the analysis of the data extracted from four of the electronic devices (or possibly three devices -- the evidence is unclear);
 - preparing a report to Crown counsel in an organized and searchable format, including by vetting and redacting information that is subject to informer privilege - this estimated to require a further four months; and
 - Crown counsel assessing the case and approving charges, if appropriate, and/or forfeiture proceedings under s. 490.1 of the Criminal Code - this estimated to require several further months, possibly as many as five.
- [10] The evidence persuades me that analyzing data extracted from the various electronic devices in this case is a complex process, especially since many of the written or oral communications reflected in the data are in Cantonese or Mandarin. The complexity arises less from the simple magnitude of the task--the volume of communications on some of the devices is very large indeed--than it does from the need to identify among the communications those that are relevant to the investigation. I am advised that, for example, written messages on the devices can be filtered for relevance using software translation, but the audio messages must be listened to by a person with the ability to determine which are relevant and which are not.
- [11] The evidence also persuades me that analysis of the data from at least some of the electronic devices analyzed to date has been valuable to the investigation.
- [12] As to why and how data not yet analyzed at the time of the application would also be useful to the investigation, the evidence is not abundant. The affiant simply asserts his general belief that this data will provide further evidence about matters such as the respective roles and financial gains or losses of the individuals who were found in the gaming house, as well as to help establish a context and timeline for the information from other examined devices. However, I recognize that to some extent, this is a logical inference from the circumstances in which the devices were seized.

- [13] More problematic, in my view, is the affiant's failure to explain some of the apparent delays in moving the process for analysis through its various stages. The evidence simply recites when the various devices were each delivered to the technical experts for data extraction, when the extraction process completed, and when, in turn, the analysis of the extracted data was concluded. The evidence does not explain delays of weeks or months in delivering some of the devices; nor does it explain in any detail, except as noted above, why analysis of the data extracted from some of the devices took as long as it did.
- [14] The respondent notes, in particular, that the data that (at the time of the application) remained to be analyzed had been extracted from the four devices as early as in February 2021, April 2022, and June 2022, and yet nothing in the evidence explained why the analysis of that data was still not complete.
- [15] I agree that this weighs against an order for further detention, because the evidence does not make clear that this aspect of the investigation was pursued with reasonable diligence. Section 490 does not place time limits on police investigations. However, a court assessing whether the complexity of the investigation justifies detention of seized property beyond a year will properly consider what investigative work remains to be done, and, in turn, whether some of that work should reasonably have been done earlier.
- [16] Although for the reasons just given the evidence is weak to support further detention to allow the data analysis to conclude, I accept that time will be required for the preparation of a report to Crown counsel and then for the Crown's charge approval process. However, the estimate of up to five months for the latter of those processes seems unduly pessimistic, given that the investigation itself will have concluded within little more than a year and a half.
- [17] In all the circumstances, the evidence supports an order for further detention for a period of six months from the application, which was made on November 2, 2022.

ORDER

- [18] The items seized, as described in the order sought, may be detained until May 2, 2023.
- [19] Counsel should kindly advise within ten days whether or not publication of these reasons gives rise to any concerns. If counsel do not agree, a short hearing before me may be arranged through Supreme Court Scheduling.

"The Honourable Associate Chief Justice H. Holmes"

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