
CANADA / JUDGMENT

Pereverseff v. City of Vancouver

2007 BCSC 1907

COURT

Supreme Court of British Columbia

DECIDED

30 November 2007

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2007 BCSC 1907 Pereverseff v. City of Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pereverseff v. City of Vancouver,

2007 BCSC 1907

Date: 20071130

Docket: S071572

Registry: Vancouver

Between:

Warren Pereverseff

Plaintiff

And:

City of Vancouver

Defendant

Before: The Honourable Mr. Justice Myers

Oral Reasons for Judgment

November 30, 2007

Appearing on his own behalf

W. Pereverseff

Counsel for Defendant

T. Zworski

Date and place of trial:

November 29 and 30, 2007

Vancouver, B.C.

Introduction

- [1] This trial concerns the February 6, 2007 detention of the plaintiff by the Vancouver police. The plaintiff was detained because he matched the description of the perpetrator of an armed robbery at a convenience store. During the detention the plaintiff was handcuffed and brought to the ground. He suffered cuts and bruises to his face and back of his neck.
- [2] The plaintiff, who is self-represented, issued a writ against the City of Vancouver. Attached to the writ are a number of pages which contain a mixture of argument and allegations.
- [3] Although the writ is clearly defective, the City takes no objection to it and has filed a statement of defence. It was agreed that the action should proceed as one alleging assault and battery, false imprisonment and breach of Charter rights.
- [4] During the course of the trial, it became apparent that the plaintiff also wanted to advance a claim that a 911 call he made after he was released was not responded to. I heard the plaintiff's evidence on that point and argument from both sides, and in these reasons I will deal with that claim.
- [5] I should state at the outset that the City and its counsel have been extremely accommodating to the self-represented plaintiff. The City did not object to me construing the plaintiff's pleading in a manner most advantageous to him. Although the plaintiff had not served the City with adverse party witness notices, the City offered to have further police officers appear as witnesses. Finally, the City did not object to the plaintiff's request to call a further witness after he closed his case. Although the plaintiff chose not to follow either of these two latter avenues, it does not detract from the latitude that was given to him.

Facts

- [6] At approximately 9:50 p.m., a call went out to all Vancouver police units reporting a robbery at knifepoint at a convenience store at the corner of 4th Avenue and Maple.
- [7] Available units were asked to set up a quadrant of the vicinity in an effort to "run the suspect to ground".
- [8] Constable Chipperfield took up position at the intersection of 7th Avenue and Cypress, and so advised the dispatcher. This was four blocks from the store which was reported to have been robbed.

- [9] The dispatcher broadcast a description of the suspect as a white male, 25 years in age, blond hair in a short ponytail, wearing a black sweater and black jeans. The suspect was last seen moving southbound on Maple Street. A few minutes later, the dispatcher broadcast that the suspect had told the robbery victims that he had a gun, but that the gun was not seen.
- [10] Several minutes later, Constable Chipperfield noted the plaintiff walking eastbound on 7th Avenue. He was wearing a yellow jacket, black pants, a black shirt and had a pony tail. He was wearing a backpack.
- [11] Constable Chipperfield radioed the dispatcher, said he had a possible suspect and asked for a better description, if available. The dispatcher said:

A white male. Five-Four. Twenty-five years. Blonde hair in a shorter pony tail. Shoulder length, kinda curly. Black sweater, black jeans. Got twenty bucks in cash. That's all I have for a description.

- [12] Constable Chipperfield drove up beside the plaintiff and advised him to stop. The constable exited the vehicle and informed the plaintiff that he closely matched the description of a robbery suspect who had black pants and a pony tail.
- [13] At about this time, another officer - Constable Deziel - pulled up. He had been manning another corner of the quadrant at 3rd Avenue and Cypress.
- [14] Constable Chipperfield said the plaintiff looked confused. The plaintiff did not make eye contact and asked where the robbery occurred. Constable Chipperfield said he could not tell him, and the plaintiff repeated the question to Constable Deziel, who reiterated the response that Constable Chipperfield had given.
- [15] The principle concern of both police officers was the possibility that the plaintiff had a knife and a gun.
- [16] One of the officers - it is not clear which one - did a pat-down search of the plaintiff.
- [17] The plaintiff's backpack was taken from him and placed on the ground to his right. Constable Chipperfield bent down to check the backpack. When he started to open the main pocket, the plaintiff began moving around. Constable Deziel testified that the plaintiff reached out between the two police officers towards his backpack three times. Constable Deziel told him not to do that.
- [18] The plaintiff says that he reached for his iPod, which he says was on the ground a few feet away from the backpack.
- [19] Because the plaintiff was reaching for his backpack and not standing still and because of the concern that weapons might be in the plaintiff's backpack, Constable Chipperfield decided to handcuff the plaintiff. He and Constable Deziel took hold of the plaintiff's arms. The plaintiff heard one of them say to the other to get the handcuffs. The plaintiff heard the officers tell him not to fight.

- [20] The plaintiff says he did not offer any resistance. The officers both say he stiffened his arms and did not cooperate with them. Using the arm bar technique (which refers to a hold and not a physical object) they forced him to the ground, face down.
- [21] The plaintiff was instructed to put his hands behind his back but Constable Deziel said he assumed a "turtle position", meaning that he tucked his hands under his stomach. Constable Deziel told the plaintiff to put his hands behind his back. Constable Deziel says the plaintiff refused, so he gave the plaintiff one knee strike to his head.
- [22] The plaintiff denies he assumed a turtle position and says that the police placed a steel bar behind his neck. Constables Chipperfield and Deziel deny the use of a steel bar.
- [23] Constable Chipperfield searched the backpack.
- [24] Nothing untoward was found in it, and the plaintiff was sat up.
- [25] The cuffs were removed and Constable Chipperfield made a call for an ambulance so that the plaintiff's cuts could be attended to. The medics arrived and cleaned the cuts.
- [26] Two sergeants arrived on the scene and said they were sorry that the plaintiff's encounter had been unpleasant. The plaintiff was given a file number and Constable Deziel's business card.
- [27] The plaintiff telephoned 911 and asked for another police officer to be sent so that he could make a complaint with respect to his detention. The plaintiff says he was told that he would have to make use of the police complaint procedure. He said they asked him if he had been drinking, then they hung up.
- [28] According to the police dispatch records, the whole incident lasted about half an hour.
- [29] As I indicated above, both police officers said they were very concerned about the possibility that the plaintiff might be carrying a knife. They say they used standard police procedure and used the absolute minimum of force to secure the plaintiff.
- [30] The City of Vancouver called Corporal Gillis, who was qualified as an expert in the use of force by police. This included the training of police with respect to the use of force and industry standards with respect to the use of force by police. I will refer to this evidence later.

Analysis

- [31] The City acknowledged that it had the onus of establishing that the detention and the use of force was lawful.
- [32] It says the police had reasonable grounds to detain the plaintiff and to search his backpack and that reasonable force was used.

[33] Tysoe J., as he then was, recently reviewed the basis for lawful detention in *Ward v. City of Vancouver*, 2007 BCSC 3. He said as follows:

[53] Counsel for Mr. Ward submits that it was necessary for Constable Cope to have reasonable and probable grounds to detain Mr. Ward. I do not agree with this submission. The phrase "reasonable and probable grounds" is more properly associated with the prerequisite for an arrest by a peace officer without a warrant: see *R. v. Storrey*, [1990] 1 S.C.R. 241. This is derived from s. 495 of the Criminal Code, which provides that a peace officer may arrest without warrant a person who, on reasonable grounds, the officer believes has committed or is about to commit an indictable offence.

[54] The basis upon which police officers may detain persons for investigative purposes was discussed in *Mann*, at ¶ 45:

To summarize, as discussed above, police officers may detain an individual for investigative purposes if there are reasonable grounds to suspect in all the circumstances that the individual is connected to a particular crime and that such a detention is necessary. In addition, where a police officer has reasonable grounds to believe that his or her safety or that of others is at risk, the officer may engage in a protective pat-down search of the detained individual. Both the detention and the pat-down search must be conducted in a reasonable manner. In this connection, I note that the investigative detention should be brief in duration and does not impose an obligation on the detained individual to answer questions posed by the police. The investigative detention and protective search power are to be distinguished from an arrest and the incidental power to search on arrest, which do not arise in this case.

This requirement has also been expressed as "articulable cause" and "reasonable grounds to detain": see also *Storrey* and *R. v. Simpson* (1993), 12 O.R. (3d) 182 (C.A.). In *Mann* at ¶ 27, the Supreme Court of Canada referred to *Simpson* in specifically stating that the threshold for articulable cause is clearly lower than the reasonable and probable grounds required for lawful arrest.

[34] In my view the police had ample grounds upon which to detain the plaintiff. There is no doubt that the police were looking for a robbery suspect.

[35] There was sufficient resemblance between the plaintiff and the description of the robbery suspect to provide reasonable grounds to detain. Although the perpetrator's hair was described as blond, and the plaintiff's was brown, as Constable Chipperfield testified, that is something about which the victim of the robbery could have been confused.

[36] Further, the police are not limited to detaining only persons who bear an exact match to a description they have been given. See *R. v. Clayton*, 2007 SCC 32 at para. 37.

[37] For similar reasons, I also find that the police were authorised to search the plaintiff's backpack incidental to his detention.

[38] Did the police use more force than was reasonable under the circumstances? I think not.

- [39] The first concern of the police constables was the plaintiff reaching for his backpack. The plaintiff says he was reaching for his iPod, which he says was near his backpack. Even if the plaintiff's version was accepted, a reaching in the direction of the backpack would be sufficient to cause the police to move to the next level of restraint, given the concern over the gun and the knife.
- [40] The evidence between the police and the plaintiff varies with respect to whether the plaintiff cooperated with the attempt to handcuff him.
- [41] I accept the police officers' version of events. First, at the time of his apprehension the plaintiff seems to have been focussed or almost obsessed with where the robbery occurred rather than on what was happening with the police. I think that detracted from his attention to what was being said to him. Second, the officers' evidence was - with some minor inconsequential differences - consistent with one another. Third, the plaintiff acknowledged that he was told "not to fight it"; that is consistent with resistance having been offered.
- [42] Constable Gillis testified that even with two officers holding the arms of the plaintiff as he was being brought down, it would have been feasible for him to assume a turtle position. This is so because in order to maintain the arm bar grip over a suspect when he is being forced to the ground, the police must descend at the same pace and correct angle. That is not easy to do in practice. If the grip is lost, the suspect gains the physical advantage and it is relatively easy for him to tuck his arms under his torso.
- [43] I do not think that the plaintiff was intentionally trying to be misleading in giving his evidence. Rather, I find his recollection is not as reliable as the two police constables.
- [44] Corporal Gillis testified that Constables Chipperfield and Deziel acted in accordance with standard police practice and training. With respect to the kneeling of the plaintiff, Corporal Gillis said that such a technique is used to stun the person.
- [45] I do not think I need the balance of the opinion evidence of Corporal Gillis to reach the conclusion that the use of force was reasonable. It is hard to imagine what else the officers could have done, short of what they actually did do, in order to restrain the plaintiff.
- [46] But, in any event, I do accept Corporal Gillis' evidence.
- [47] Further, the courts have recognised that the use of force cannot be precisely measured: see *Parrett v. Vanderford et al.*, 2001 BCSC 23 at para. 86.
- [48] I said initially that the plaintiff's claim was not clear because of the pleadings. But whether the claim is one for assault and battery, false arrest, or a violation of Charter rights, it must be dismissed.

[49] Any claim relating to the lack of response by 911 must also be dismissed. There is no evidence before me as to whether that service is run by the City of Vancouver. Further, the plaintiff suffered no damages as a result of the alleged lack of response; he called not for medical help, but to make a complaint about the police. He was referred to the complaint procedure.

[50] Therefore the plaintiff's action is dismissed.

"THE HONOURABLE MR. JUSTICE MYERS"

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