

CANADA / JUDGMENT

R. v. Aitken

2008 BCSC 1357

COURT

Supreme Court of British Columbia

DECIDED

9 October 2008

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2008 BCSC 1357 R. v. Aitken IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Aitken, 2008 BCSC 1357 Date: 20081009 Docket: 135927 Registry: Victoria Her Majesty the Queen Against Daniel Christopher Miles Aitken Publication Restriction Notice: During this proceeding, a publication ban pursuant to s. 648 of the Criminal Code was in effect. That publication Ban expired on January 25, 2009 Before: The Honourable Madam Justice Satanove Continuation of Voir Dire #1 Internet Searches Counsel for the Crown: P.A. Juk K.A. Henders-Miller Counsel for the Accused J.M.P. Firestone J.W.D. Mills Date and Place of Trial: 22 September 2008 Victoria, B.C.

- [1] On May 15, 2008, I validated the seven wiretap authorizations issued in this case. In addition to audio intercepts, the police obtained copies of internet searches pursuant to the wiretap authorization. The Crown has collated a series of these intercepted internet searches that Crown alleges were performed by the accused on his girlfriend's, Ahna Kim's, computer. Crown submits that they are admissible to show that:
1. The accused had access to and utilized the computer;
 2. There was a connection between the accused and the type of gun used to kill the victim, Adan Merino; and
 3. The accused's post-offence conduct included consideration of escaping to Korea.
- [2] Defence counsel disputes the relevance of all the internet searches and is particularly concerned about the prejudice of associating the accused with post-criminal offences and firearms. Defence counsel is also concerned about prejudicial references to prior criminal offences and pornography.
- [3] I have dealt with the legal principles to apply in determining the admissibility of intercepted evidence in my Reasons for Judgment dated October 9, 2008 concerning the audio intercepts. The same principles apply to determining which, if any, of these internet searches should be excluded. I have set out in Schedule "A" to this judgment the results of my review of the 56 pages reflecting various searches performed on Ms. Kim's computer.

- [4] The documents at pages 1-9 of Exhibit DD on the voir dire have probative value to show that the accused was using the computer, whereas the prejudicial effect of references to the Gulf War is minimal. I have ruled that group of documents admissible.
- [5] The general Google search of the Victoria Police website at pp. 29-33 and 48-50 of Exhibit DD, or the pornography searches at pp. 35-39 and 56 of Exhibit DD, have little or no probative value and might suggest that the accused was in trouble with the police or of low moral character, so I have excluded them. Similar reasoning applies to pp. 42-46. However pp. 34 and 47 have significant probative value relating to Victoria murders in 2004, the year Merino was killed, and Detective Catto, one of the investigators who had made recent contact with the accused and Kim.
- [6] I have excluded pp. 10-13 of Exhibit DD because they show the accused searching a type of gangster gun; but I have not excluded pp. 14-28 of Exhibit DD because they reflect a search of the same manufacturer that produced the gun that killed Merino.
- [7] I have admitted pp. 40-41 because they reflect the accused's use of the computer and p. 41 can be cross-referenced to audio intercept #49. I have admitted pp. 52-55 because they reflect post-offence conduct of the accused and his consideration of escape to Korea.
- [8] In conclusion, the searches shown at pp. 10-13, 29-33, 35-39, 42-46, 51 and 56 are all excluded. The searches shown on the remaining pages are admissible. "D. Satanove J." The Honourable Madam Justice Satanove Schedule "A" R. v. AITKEN TABLE OF ADMISSIBLE INTERNET SEARCHES Key: ü = Yes X = No NUMBER RELEVANT PREJUDICIAL ADMISSIBLE
1-9 ü X ü 10-13 ü ü X 14-28 ü ü ü 29-33 X X X 34 ü X ü 35-39 ü X X 40 ü X ü 41 ü ü ü 42-46 ü ü X 47 ü X ü 48-50 ü X X 51 X X X 52-55 ü X ü 56 ü X X

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