

CANADA / JUDGMENT

R. v. Alexander

2020 BCSC 268

COURT

Supreme Court of British Columbia

DECIDED

27 February 2020

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2020 BCSC 268 R. v. Alexander IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Alexander, 2020 BCSC 268 Date: 20200227 Docket: 175319-2 Registry: Victoria Regina v. Peter Anthony Alexander and Danika Dawn Gambles Before: The Honourable Madam Justice Murray Reasons for Judgment on Voir Dire 1: The search of the vehicle Counsel for the Crown: T.J. Corsi Counsel for the Defence: M.J. Munro Place and Date of Hearing: Victoria, B.C. February 25, 2020 Place and Date of Judgment: Victoria, B.C. February 27, 2020

Introduction

- [1] The accuseds are jointly charged with possession of a number of illicit substances for the purpose of trafficking and possession of bear spray and a taser for a purpose dangerous to the public peace.
- [2] In this voir dire the accuseds seek to have evidence found in a vehicle excluded on the basis that their s. 8 rights were breached by police in arresting them in the absence of reasonable and probable grounds to do so.
- [3] At approximately 7:41 p.m. on May 7, 2018 Victoria police received a call reporting the following:
- 1) A vehicle In the McDonald's drive through on Pandora had two guns in it and the people were looking for somebody;
 - 2) The vehicle was a white Pontiac low rider with spoked wheels;
 - 3) There were four people in the vehicle, both male and female;
 - 4) They were drug dealers;
 - 5) One of the occupants was Danika Gambles;
 - 6) Ms. Gambles has a boyfriend named Pete.
- [4] The information was relayed to police by a third party who was standing beside the witness. At the time of the call the information was about 10 minutes old.

- [5] Sergeant Niederlinski, the road supervisor, took the call seriously. In his view, public safety was at risk.
- [6] He attended the McDonald's restaurant arriving there within two minutes of the call. The car was not there. He spoke to a security guard who confirmed that he had seen the car, an Oldsmobile, go through the drive-through. It then took off west on Pandora.
- [7] Sergeant Niederlinski testified that the area on Pandora Street is well known for drug activity. He and a number of other police units began searching for the vehicle.
- [8] Sergeant Niederlinski received on-going information over the police radio:
- 1) Police located the witness but he/she would not talk to them and refused to identify himself/herself;
 - 2) Police ran Ms. Gambles on their system and learned that Danika Gambles was associated to Peter Alexander;
 - 3) A vehicle matching the description, including spoked wheels, was spotted by two police officers who began following it. There were two occupants in the car;
 - 4) Police reviewed security footage from the McDonald's and, while unable to make out the licence plate number, noticed that the front plate was hung in an unusual fashion above the front bumper. It was confirmed that the vehicle being pursued by the unmarked police vehicles had the front licence plate mounted in that manner.
- [9] Sergeant Niederlinski ordered that the vehicle be taken down and the occupants arrested for possession of firearms. He explained his grounds for doing so as follows:
- 1) The information was detailed;
 - 2) The car was unusual;
 - 3) The report was serious: firearms and people actively looking for somebody;
 - 4) The concern for public safety was heightened.
- [10] The vehicle was stopped. Ms. Gambles was the driver; Mr. Alexander the front passenger. Both were arrested.
- [11] The accuseds take the position that Sgt. Niederlinski did not have the requisite reasonable and probable grounds to order their arrest. They argue that, although the evidence regarding the car was detailed, the fact that the witness refused to talk to police should have cast doubt on the veracity of the information he/she provided. The Law
- [12] Counsel agree that the law in this province regarding reasonable and probable grounds for arrest is *R. v. Jir*, 2010 BCCA 497.
- [13] From *Jir* I take the following principles:

- 1) Police must subjectively have reasonable and probable grounds for arrest that are objectively reasonable (para. 24);
- 2) In order to determine whether objective grounds exist, the court should start by looking at the observations of the officer through the lens of someone who has the same experience, training, knowledge and skills as the officer who is making the observations, and then decide if a reasonable person with the same lens would come to the same conclusion as the police officer (para. 24);
- 3) The reasonable grounds standard is not only less than that required for conviction, but is also less than the civil standard of proof (para. 27);
- 4) A reasonable grounds determination involves a consideration of the totality of the circumstances (para. 28);
- 5) When the information comes from an informant whose reliability police are unable to assess, "consideration must be given to a variety of factors including the degree of detail provided by the tipster, information as to the tipster's source of knowledge, and indicia of the tipster's reliability, including confirmation of some of the information provided: *Garofoli* at 1457 [R. v. *Garofoli*, [1990] 2 S.C.R. 1421]. "Weakness in one area may be compensated for by strengths in other areas: *Debot* at 1168 [R. v. *Debot*, [1989] 2 S.C.R. 1140]." (para. 28);
- 6) "The inability to assess the credibility of the informant may be compensated for by the quality of the information as well as by any corroborating or confirmatory evidence" (para. 28, quoting from *R. v. Charlton* (1992), 15 B.C.A.C. 272).

Analysis

- [14] With that law in mind, I turn to analyze the issue.
- [15] The information received by police was urgent. It was virtually real time. People had two guns in the car and were looking for somebody. Public safety was very much at risk.
- [16] The witness, through a third party, gave a detailed description of a unique car as well as where the car was, the number of occupants, that they were drug dealers, the name of one of them, the name of her boyfriend, the fact that there were two firearms, and what the people in the car were doing.
- [17] Does the fact that the witness did not want to talk to police diminish that information? In my view not at all. The witness did not withdraw the information. He or she simply did not want to identify himself/herself or talk to police. It is akin to a situation of an anonymous tipster. At that point, following the law above, police must try to verify as much of the information as possible.
- [18] Sergeant Niederlinski did that. A car matching that unique description went through the drive-through, as the witness said it did. Video showed that the front licence plate of the car was hung in an unusual way. The car that police located not only matched the description

given by the witness, had the licence plate hanging down in the peculiar way. When the vehicle was located, there were only two occupants in it, not four. Does that detract from the information so as to make it questionable? In my view not at all. By that time approximately 15-20 minutes had passed. The vehicle had travelled some distance. People could have left the vehicle. The threat to the public was still present.

- [19] It was on that basis that Sgt. Niederlinski called for takedown and arrest.
- [20] It was a fluid situation. Sergeant Niederlinski had to make a quick decision. He candidly agreed in cross-examination that the fact that the witness would not talk to police caused him pause. He explained that he weighed that against the threat to public safety and the aspects of the information that had been verified and concluded that he had the requisite grounds for arrest.
- [21] This is precisely the kind of situation that was addressed by the Ontario Court of Appeal in *R. v. Golub*, 34 O.R. (3d) 743: .In determining whether the reasonableness standard is met, the nature of the power exercised and the context within which it is exercised must be considered. The dynamics at play in an arrest situation are very different than those which operate on an application for a search warrant. Often, the officer's decision to arrest must be made quickly in volatile and rapidly changing situations. Judicial reflection is not a luxury the officer can afford. The officer must make his or her decision based on available information which is often less than exact or complete. The law does not expect the same kind of inquiry of a police officer deciding whether to make an arrest that it demands of a justice faced with an application for a search warrant. [Emphasis added.]
- [22] Police had to act. To not do so would have been a dereliction of their duty to protect the public.
- [23] Taking all of the circumstances into consideration: the unique detail provided, the level of verification, the urgency of the situation and the serious risk to the public, I am satisfied that Sgt. Niederlinski's belief that he had the requisite grounds to arrest the occupants of the car was objectively reasonable.
- [24] I do not find that the accuseds' s. 8 rights were breached.
- [25] The application is dismissed. "The Honourable Madam Justice Murray"

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