
CANADA / JUDGMENT

R. v. Catinas

2015 BCSC 2610

COURT

Supreme Court of British Columbia

DECIDED

2 December 2015

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2015 BCSC 2610 R. v. Catinas

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Catinas,

2015 BCSC 2610

Date: 20151202

Docket: X077468

Registry: New Westminster

Regina

v.

Felician Ioan Catinas

Before: The Honourable Mr. Justice Smith

Oral Reasons for Judgment

Counsel for the Crown:

R.J. Antonuk

Counsel for the Accused:

J.V. Myers

Place and Date of Trial/Hearing:

New Westminster, B.C.

November 30, 2015

December 1 & 2, 2015

Place and Date of Judgment:

New Westminster, B.C.

December 2, 2015

- [1] THE COURT: The accused, Mr. Catinas, is charged with one count of theft of a motor vehicle and one count of possession of property obtained by the commission of an offence, that property being the same vehicle.
- [2] The vehicle was leased by a company controlled by Mr. Ajay Hans, who said he parked it outside his home in New Westminster at about 7:00 p.m. on February 4, 2014. He said he took out the garbage at about 10:00 p.m. that night, at which time the location where he had parked the car would have been in his direct line of sight. Although he did not specifically notice or recall noticing that the car was still present, he believed he would have noticed if it was missing at that time. Mr. Hans' wife, Monica, said she had used the car earlier in the day on February 4th and was subsequently unable to find her keys.
- [3] In any event, the car was found to be missing on the morning of February 5th, and at approximately 2:30 p.m. that day was found in a parking lot on Agnes Street in New Westminster. From the map that was entered into evidence, it appears that location was some 10 to 12 blocks from the Hans residence. Constable Cecil testified that the parking lot in which the car was found was attached to two high-rise buildings at the Agnes Street location.
- [4] Approximately six weeks before the offence, the accused told his conditional sentence supervisor that he lived at an address on 10th Street, about two and a half blocks from where the car was recovered.
- [5] The car was examined for fingerprints and the print of the accused's right ring finger was found on the seat belt clasp at the driver's seat. Mr. and Ms. Hans both testified that they did not know and had never seen the accused.
- [6] Four other fingerprints were found on a snack-food bag on the floor behind the driver's seat. The Hans testified that as far as they were aware, that bag was not in the car when they last drove it. The prints on the bag were identified as belonging to a Mr. Kay, whose prints were found in the police database. The Hans also testified that they did not know Mr. Kay.
- [7] Two other fingerprints were found on the inside of the rear passenger side window. These prints are unidentified, except for the fact that they do not belong to either the accused or Mr. Kay.
- [8] The accused did not call evidence.

- [9] A portion of the trial was taken up by a voir dire on the issue of the accused's statements to the CSO supervisor, six weeks before the offence, that he lived at the 10th Street address. I ruled the evidence admissible, but I find that no relevant inference can be drawn from it. Standing alone, that evidence does not point to the guilt of the accused, any more than it does to the guilt of anyone else who lived in that area, including some living closer than the accused did to the location where the car was found. In the context of all of the evidence, in my view, it really adds nothing to whatever inference can be drawn from the presence of the accused's fingerprint.
- [10] On that point, the Supreme Court of Canada said in *R. v. Lepage*, [1995] 1 S.C.R. 654 at para. 25, that whether or not the inference of possession from the presence of fingerprints can be drawn is a question of fact that depends on all of the circumstances of the case and all of the evidence adduced. At para. 29 of the same case, the court said that the court may take into account the lack of any alternate explanation for the presence of fingerprints.
- [11] The Crown relies on the presence of the fingerprint and the doctrine of recent possession to prove Count 2, that is possession of the property obtained by commission of the offence, and if that is proved, to also prove Count 1, that of the actual theft.
- [12] Count 2 deals with property obtained by commission of an offence. The essential elements that the Crown must prove beyond a reasonable doubt are possession of the property and knowledge that it was obtained by commission of the offence: see *R. v. M.A.M.*, 2005 BCSC 1515 at para. 23.
- [13] I am satisfied the Crown has proved the first element. The presence of the fingerprint in the location where it was found leads to an inescapable inference that Mr. Catinas drove the car at some point between the time it was last seen by the Hans and the time it was found. I say that notwithstanding the evidence that it is impossible to tell how long the print had been there and that the car was, from time to time, left in the control of individuals at repair shops, car washes, or valet parking services. There is no evidence that the accused ever worked in such an occupation.
- [14] The doctrine of recent possession was described by the Supreme Court of Canada in *R. v. Kowlyk*, [1988] 2 S.C.R. 59, and I quote here:
- Upon proof of the unexplained possession of recently stolen property, the trier of fact may -- but not must -- draw an inference of guilt of theft or of offences incidental thereto.
- [15] The doctrine of recent possession can be used to infer the guilty knowledge that is the second element of the offence in Count 2.

- [16] That is the inference I might have been prepared to draw if the accused's fingerprint was the only one found in the vehicle. However, the presence of other prints, particularly those found on the snack bag, supports an inference that at least one other person not authorized to be in possession of the vehicle was in fact in it at some point between the time Mr. Hans last saw it and the time it was recovered.
- [17] That certainly raises a reasonable doubt on Count 1 as to whether it was the accused or someone else who actually stole the vehicle. It also raises a reasonable doubt about whether the accused had the guilty knowledge necessary for the possession count.
- [18] In the absence of other evidence, the inference permitted by the doctrine of recent possession cannot be drawn if the circumstances are at least consistent with the accused having come into possession of the vehicle from someone else who had stolen it.
- [19] In short, the circumstantial evidence in this case falls short of establishing guilt beyond a reasonable doubt and I must acquit Mr. Catinas.

"N. Smith J."

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