

CANADA / JUDGMENT

R. v. Chan

2020 BCSC 190

COURT

Supreme Court of British Columbia

DECIDED

18 February 2020

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2020 BCSC 190 R. v. Chan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Chan, 2020 BCSC 190 Date: 20200218 Docket: 27984 Registry: Vancouver Between: Regina v. Duke Yin Chan and Lawton Louis Ma Before: The Honourable Mr. Justice A. Ross Reasons for Judgment (Voir Dire on Information from Prior Traffic Stops) Counsel for the Crown: D. Meneley Counsel for the Accused Duke Chan: S. Wright Counsel for the Accused Lawton Ma: J. Stowe V. de Jong Place and Date of Trial/Hearing: Vancouver, B.C. February 3-7, 2020 Place and Date of Judgment: Vancouver, B.C. February 18, 2020

- [1] Mr. Chan and Mr. Ma are charged with eight counts of possession of controlled substances for the purpose of trafficking contrary to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c.19. Those charges are set out in Indictment #27984-2.
- [2] Mr. Chan seeks the excision of certain information that was included in an Information to Obtain ("ITO"). That ITO was affirmed in support of a search warrant that was executed on February 3, 2017. Mr. Chan and his co-accused were arrested on the same day.
- [3] This application is one of six separate applications made by the two accused, seeking either excision of information from the ITO or a declaration of a breach of the accused's rights under the Canadian Charter of Rights and Freedoms.
- [4] A voir dire was conducted to determine the issue.
- [5] The evidence for this application was tendered through an agreed statement of facts. According to the agreed statement of facts:
 - a) on February 3, 2017, Duke Chan resided at 303-3162 Riverwalk Avenue in Vancouver ("Riverwalk");
 - b) on February 3, 2017, Vancouver police Department ("VPD") members executed search warrants at Riverwalk and other addresses, including 520 - 4818 Eldorado Mews ("Eldorado"). VPD believed that controlled substances were being stored at Eldorado. Det. Jordan Ginther affirmed an Information to Obtain (the "ITO") to obtain the warrants;

- c) two police reports, one from October 29, 2011, and the other from June 6, 2012, were included in the ITO.
- [6] The information contained in the ITO regarding the two traffic stops is as follows: On October 29, 2011 Police Constable 2392 Leslie WEEKS (PC WEEKS) and Police Constable Jasprit SHAHI (PC SHAHI) conducted a traffic stop with BC License Plate: 982 JSR, a 2006 Honda Accord on Kingsway Ave at Rhodes St and identified the driver as Hien Tran. Tran admitted to consuming alcohol, was administered the ASD demand and provided a breath sample that produced a "FAIL" result. TRAN was issued a ninety (90) day driving prohibition. A subsequent search of TRAN's vehicle resulted in the location of thirteen (13) rocks of cocaine, four (4) flaps of heroin and nine (9) flaps of powder cocaine in a leather pouch located in the centre console. Also located in TRAN's pant pockets were \$340 of bills of various denominations. On June 6, 2012 North Vancouver RCMP Constable 56347 FAA [PC FAA] was requested by the North Vancouver Drug Section by performing a traffic stop with BC License Plate: 982JSR, a 2006 Honda Accord, after the sole occupant was observed participating in a drug transaction. PC FAA identified the driver as Hien TRAN and detained TRAN for trafficking in a controlled substance. A cellular phone and black pouch were located in the in the side of the driver's side door. The pouch contained nine (9) flaps of heroin, eleven (11) flaps of powder cocaine and thirteen (13) rocks of cocaine. TRAN was released on scene without charges.
- [7] The affiant of the ITO indicates that it is his belief that Mr. Hien Tran changed his name to Duke Chan and is the person identified in the ITO.
- [8] The "Narrative Text Hardcopy" of each of these stops is appended to the agreed statement of facts.
- [9] The narrative text relating to the traffic stop on October 29, 2011, indicates that "due to the unlikelihood of charges due to insufficient grounds for the search, PCs seized the drugs for destruction and released TRAN from custody."
- [10] The narrative text further states that Tran received a 90-day driving prohibition and his vehicle was impounded for 30 days. It continues, "a subsequent search of the vehicle revealed a quantity of crack cocaine, powder cocaine and heroin located inside of a black leatherette pouch in the centre console".
- [11] The narrative text relating to the traffic stop on June 6, 2012, indicates that Mr. Tran was arrested for trafficking in a controlled substance. His vehicle was searched "incidental to arrest". Further, Mr. Tran was released at the scene and advised that no charges would be recommended.
- [12] In relation to the stop on October 29, 2011, Mr. Chan says that the search of his vehicle went beyond any permissible search in the circumstances. Mr. Chan was not under arrest, so the search power incidental to the arrest has no application. There is no identified safety concern offered to justify the initial stop. There is no indication that the search was an

inventory search incident to the impoundment of the vehicle. He says that the constable's decision not to proceed with recommending any charges was appropriate given the lack of any grounds for the search. He says that the warrantless search of Mr. Chan cannot be justified and, therefore, it was a breach of his rights under s. 8 of the Charter.

- [13] Mr. Chan argues that the stop on June 6, 2012, raises several issues on the available evidence. First, he argues that a single suspected drug transaction does not form sufficient grounds to arrest without more information. It does not create a credibly based probability that an individual is involved in an indictable offence.
- [14] Mr. Chan further argues that there was no reason offered as to why the officers proceeded from a detention to an arrest of Mr. Chan (then "Tran"). He says there is no evidence of an intervening factor. He says that something must have happened that would have elevated their belief from "reasonable suspicion of criminal activity" needed to justify detention up to the higher standard of "reasonable grounds to believe" needed to justify an arrest. He argues that Mr. Chan's right under s. 9 of the Charter to be free from arbitrary detention was breached when he was arrested without reasonable grounds. Further, his rights under s. 8 of the Charter were breached when he and his vehicle were searched pursuant to that unlawful arrest.
- [15] On the basis of these arguments, counsel for Mr. Chan submits that information relating to those two traffic stops must be excised from the ITO.
- [16] In response, the Crown argues as follows:
- a) Contrary to accused's submission, the search of the vehicle subsequent to the traffic stop in 2011 was an inventory search. The narrative makes that clear on its face. The vehicle was not searched until it was impounded.
 - b) With regard to the traffic stop in 2012, there is no evidence that the detention and arrest were unlawful. There are many reasons that the police may decide not to proceed with charges. The fact that they did not proceed is not an indication that there had been a breach of any Charter rights.
- [17] First, dealing with the 2011 traffic stop, I agree with the Crown's position. The narrative indicates that the search was conducted after the driving ban was imposed and the car was impounded. On the available evidence, the search was an inventory search. I find no breach of Mr. Chan's (then "Tran") Charter rights. That information will not be excised from the ITO.
- [18] I also agree with the Crown's position in relation to the 2012 stop. Mr. Chan argues that there were insufficient grounds to arrest him because there was only one perceived drug transaction. While there is case authority for that proposition, it is also clear that the grounds to arrest in all cases must be decided on their own facts. It is not possible for the court, at this stage, with the information available, to determine whether or not there were sufficient grounds at that time to make that stop, or if there were other factors that led to

police not proceeding with charges. However, the stop was made, and the items were seized. Those events occurred more than seven years ago. I am informed that the officers involved have no independent recollection of the events. We only have the information contained in the narrative.

[19] I do not have any evidence to indicate that there was a breach of Mr. Chan's Charter rights on that occasion in 2012. Hence, the information will not be excised from the ITO.

[20] Mr. Chan's application with respect to the two traffic stops is dismissed. "A. Ross J."

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