

CANADA / JUDGMENT

R. v. Chan

2020 BCSC 191

COURT

Supreme Court of British Columbia

DECIDED

18 February 2020

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2020 BCSC 191 R. v. Chan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Chan, 2020 BCSC 191 Date: 20200218 Docket: 27984 Registry: Vancouver Regina v. Duke Yin Chan and Lawton Louis Ma Corrected Judgment: This judgment was corrected at paragraph 3 on May 28, 2020 Before: The Honourable Mr. Justice A. Ross Reasons for Judgment (Voir Dire on Passports) 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] As part of the investigation, the police requested passport photos of Mr. Chan and Mr. Ma. Both the accused seek a declaration that their rights under section 8 of the Canadian Charter of Rights and Freedoms were violated when the police obtained the passport photos from the government of Canada without obtaining prior judicial authorization.
- [3] According to the agreed statement of facts: VPD requested a passport photo of Chan. VPD received it January 27, 2017. VPD used the photo as one of the photos of Chan in the ERT report, utilized to brief all the members involved in the searches, which took place on February 3, 2017. VPD requested a passport photo of Ma on January 26, 2017. The request was made on an urgent basis. The passport photo was received by the VPD on February 1, 2017. Investigators never use the photo.
- [4] Relying on the decision of Justice Williams in R. v. Flintroy, 2018 BCSC 1777, the two accused argue that they had a reasonable expectation of privacy in those photos and that the obtaining of those photos by the police without prior judicial authorization was unwarranted and therefore a breach of their s. 8 Charter rights. Justice Williams noted the general principle at para. 5:
- [5] The basic principle applicable to the issue at bar was succinctly spelled out in the decision of the Supreme Court of Canada in R. v. Spencer, 2014 SCC 43 at para. 68:

- [68] A warrantless search, such as the one that occurred in this case, is presumptively unreasonable: *R. v. Collins*, [1987] 1 S.C.R. 265 (S.C.C.). The Crown bears the burden of rebutting this presumption. A search will be reasonable if: (a) it was authorized by law; (b) the law itself was reasonable; and (c) the search was carried out in a reasonable manner: p. 278.
- [5] The Crown takes no position on this application.
- [6] I find the circumstances of this case are indistinguishable from those in *Flintroy*. As such, based on that reasoning, I find that the search process whereby the police obtained the photograph was not authorized by law. The Crown has not attempted to rebut the presumption that the search was unreasonable.
- [7] The issue of remedy will be argued at a later date. "A. Ross J."
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