
CANADA / JUDGMENT

R. v. Dadmand

2016 BCSC 720

COURT

Supreme Court of British Columbia

DECIDED

22 April 2016

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2016 BCSc 720 R. v. Dadmand

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dadmand,

2016 BCSC 720

Date: 20160422

Docket: 26772

Registry: Vancouver

Between:

Regina

v.

Novid Stefano Dadmand

Ban on Publication pursuant to s. 486.4 of the Criminal Code

Before: The Honourable Mr. Justice Pearlman

Oral Ruling no. 1: Vukelich Application

Counsel for the Crown:

D. Montrichard

Counsel for the Accused:

R. Johnson and D. Melville

Place of Trial:

Vancouver, B.C.

Place and Date of Ruling:

Vancouver, B.C.

April 22, 2016

- [1] The accused Novid Stefano Dadmand is charged with six counts of sexual assault. He has applied for an order excluding evidence obtained in breach of his rights to be secure from unreasonable search or seizure, contrary to ss. 8 and 24 of the Canadian Charter of Rights and Freedoms. In seeking to exclude all of the evidence obtained by the Crown following the search of his residence on March 19, 2014, Mr. Dadmand challenges both the facial and sub-facial validity of the search warrant.

Chronology

- [2] On March 17, 2014, a Judicial Justice of the Peace issued the warrant, acting on the information set out in an ITO affirmed on the same date by Sergeant Joung Row, a member of the RCMP Richmond detachment.
- [3] On March 18, 2014, the RCMP arrested Mr. Dadmand at 8:25 p.m. and held him in custody.
- [4] On March 19, 2014, RCMP officers executed the warrant at Mr. Dadmand's residence between 7:30 a.m. and 10:15 a.m.
- [5] At approximately 10 a.m. on March 19, 2014, an information was sworn at the Richmond Registry of the Provincial Court of British Columbia charging 11 offences by Mr. Dadmand, including sexual assaults, breaking and entering, fraud and theft, and involving six female complainants.
- [6] The results of the search were not known until sometime later, and formed no basis for the approval of charges against Mr. Dadmand.

The Warrant and the Search

- [7] The warrant authorized the search for and seizure of the following items from the accused's residence located at number 135 - 8220 No. 2 Road in Richmond, British Columbia:
- (a) documents and templates resembling modelling contracts including electronically stored documents and templates;
 - (b) video, photographs, contact information and correspondence stored electronically; and
 - (c) computers and other electronic information, storage devices, namely cellular phones, smart phones, tablets and flash drives containing lock-down files, video, photographs, contact information and correspondence.

- [8] Pursuant to the warrant, RCMP officers seized laptop computers, tablet computers, a smart phone, portable media players, a digital camera, USB drives and recordable compact discs.
- [9] After March 19, 2014, the seized devices were forensically examined by RCMP specialists, who located digitally stored photographic images and video recordings that the Crown seeks to introduce into evidence at trial.
- [10] The RCMP also seized hard copies of documents from the accused's residence, purporting to be modelling contracts, which the Crown intends to adduce in evidence at the trial of this matter.
- [11] The Crown properly concedes that Mr. Dadmand resided at the premises searched and that he had a reasonable expectation of privacy both in relation to his residence and with respect to the content of the computers and other electronic devices seized and searched by the police.

Positions of the Parties

- [12] Mr. Dadmand challenges the facial validity of the warrant. He says the ITO does not provide reasonable and probable grounds for belief that an offence has been committed, or that the searches for which authorization was sought would reveal evidence of that offence.
- [13] The accused also challenges the sub-facial validity of the warrant on the grounds that the ITO failed to make full and frank disclosure, contained improper opinion and prejudicial statements, and was misleading. The accused submits that the affiant, Sgt. Row, made conclusory statements without factual foundation. Mr. Dadmand says Sgt. Row provided no evidentiary basis to show the accused is a person who would fall within a class of offenders likely to retain photographic or video images for their own gratification. The defence says that "these offenses, in some cases, happened years before the application for the issuance of a search warrant" and that "nonetheless, Sgt. Row says there is evidence that can be located at the residence". The accused contends that Sgt. Row had no more than a suspicion, rather than reasonable grounds, for believing evidence could be found on computers or other electronic devices located at his residence.
- [14] The accused also says the search was overbroad and unreasonable insofar as no limits were imposed on the scope of the search of Mr. Dadmand's computers and other electronic devices.
- [15] The Crown contends that Mr. Dadmand has failed to meet the threshold for establishing an entitlement to a voir dire, and says that all of the matters raised by the accused may be determined without an evidentiary hearing.

Vukelich Hearings

[16] The court may decline to embark on an evidentiary hearing where the party seeking that hearing is unable to show a reasonable likelihood that the hearing can assist in determining the issues before the court: *R. v. Pires*; *R. v. Lising*, 2005 SCC 66 at para. 35.

[17] In *R. v. Vukelich*, [1996] B.C.J. No. 1535 (BCCA), McEachern C.J.B.C., for the Court, held that the trial judge has discretion to determine whether or not to embark upon a voir dire where the accused challenges the constitutionality of a search.

[18] In *Vukelich* at para. 26, the Court held:

it does not follow that an accused is always entitled as of right to a voir dire in the course of a criminal trial in order to challenge the constitutionality of a search. The trial judge must control the course of the proceedings, and he or she need not embark upon an enquiry that will not assist the proper trial of the real issues. I reach that conclusion because it is clear from cases such as *Grant* and *Garofoli* that a warrant remains valid if there is enough left in the supporting affidavit to support the issuance of the warrant after all the impugned portions are deleted. In other words, the trial judge does not revisit the application for the warrant ab initio in the light of subsequent information, but rather considers whether, as stated in *Garofoli* at 1452, "... there continues to be any basis for the decision of the authorizing judge" to issue the warrant.

[19] Where the court does declare a voir dire, the trial judge may limit the voir dire to argument on particular issues, such as the scope of the warrant or the facial sufficiency of the ITO. Each case will depend on its own particular facts: *R. v. Wilson*, 2011 BCCA 252 at para. 63.

[20] The threshold for embarking on an evidentiary hearing is low. The accused must only demonstrate that there is a "reasonable basis" upon which the court could find a breach of a Charter protected right: *R. v. Malik*, 2002 BCSC 484 at para. 4.

[21] Although the threshold is low, the accused must show there is some basis upon which the remedy is sought: see *R. v. Tan*, 2010 BCSC 1948 at paras. 10 and 15.

[22] Where defects in the ITO may be cured by excision, a voir dire will not be necessary: *Vukelich* at para. 24, 27.

Legal Principles for Review of Prior Authorization for Search

[23] Before turning to the accused's request for leave to cross-examine both the affiant and three sub-affiants, I will briefly set out the principles for review of a prior authorization for search. On an application to exclude evidence obtained through the execution of a search warrant, the accused bears the burden of establishing:

1. that the police search was conducted in violation of the accused's right to be secure against unreasonable search and seizure contrary to s. 8 of the Charter, and

2. the evidence seized by the police as a result of the search should be excluded pursuant to the applicable principles under s. 24(2) of the Charter.
- [24] Where the accused challenges the validity of a judicially authorized search warrant, the court's review of the impugned search warrant starts from a presumption of validity. The accused bears the onus of demonstrating its alleged invalidity: *R. v. Sadikov*, [2014] O.J. No. 376 (Ont. C.A.) at paras. 35 and 83.
- [25] The police, in seeking a warrant on an ex parte basis, have an obligation to make full and frank disclosure of the material facts: *R. v. Morelli*, [2010] 1 S.C.R. 253 at para. 40.
- [26] In order to provide a foundation for the exercise of the authority of the Justice of the Peace under s. 487(1) of the Criminal Code, the ITO must set out sworn evidence sufficient to establish reasonable grounds for believing that (1) an offence has been committed, (2) the things to be searched for will afford evidence of the offence, and (3) the things will be found at a specified place: *R. v. Morris* (1998), 134 C.C.C. (3d) 539 at 549 (NSCA).
- [27] In *R. v. Liu*, 2014 BCCA 166, the Court summarized the law applicable to a review of the issuance of a search warrant at para. 39:

I would summarize the main points from this jurisprudence in the following way:

- The trial judge's role in reviewing the validity of a search warrant is to consider whether the material filed in support of the warrant, as amplified on review, could support the issuance of the warrant.
 - The trial judge should examine the information in its totality, not on a piece meal basis, in a "practical, non-technical, and common sense basis".
 - The question is not whether the reviewing judge would have granted the order, but whether there was an objective basis on which the issuing justice could have done so.
 - The appropriate standard is one of "reasonable probability" rather than "proof beyond a reasonable doubt" or "prima facie case". The phrase "reasonable belief" also approximates the requisite standard.
 - Reasonable grounds may be said to exist at "the point at which credibly-based probability replaces suspicion".
- [28] Regarding amplification, on the voir dire, an accused may lead evidence supporting the challenge to the ITO. However the Crown is restricted to amplification aimed at the correction of minor or technical errors made in good faith and derived from information available to the police at the time the warrant issued: *R. v. Scott*, 2012 BCCA 99 at para. 41. The Crown is not entitled to lead amplification evidence that would provide retroactive authorization by circumventing the requirement to obtain approval for the warrant prior to the search: *R. v. Araujo*, 2000 SCC 65 at paras. 54-59.

- [29] The task of the reviewing judge is to examine the record before the authorizing justice, including any exclusions and additions arising from proper amplification on review, and to decide whether on a "practical, non-technical, and common sense basis" the totality of the circumstances demonstrate reasonable grounds for the belief the accused was committing the stated offences and could support the issuance of a warrant: *R. v. Voong*, 2013 BCCA 527 at para. 22, citing *Scott* at para. 42.

Leave to Cross-Examine

- [30] In order to prevent proceedings from being unduly prolix, the accused must obtain leave from the court for cross-examination of the affiant.
- [31] Leave will be granted where the trial judge is satisfied that cross-examination is necessary to enable the accused to make full answer and defence. The accused must show some basis for "the view that cross-examination will elicit testimony tending to discredit the existence of one of the pre-conditions to the authorization, such as the existence of reasonable and probable grounds". When cross-examination is permitted, it should be limited by the trial judge to questions that are directed to establishing there was no basis upon which the authorization could have been granted: *R. v. Garofoli*, [1990] 2 S.C.R. 421 at paras. 88, 89.
- [32] In *R. v. Pires*; *R. v. Lising* at para. 40, the Court explained the Garofoli leave requirement is a means of weeding out unnecessary proceedings that are unlikely to assist in the determination of the relevant issues. As the Court stated:

The reason that the test will generally leave just a narrow window for cross-examination is not because the test is onerous -- it is because there is just a narrow basis upon which an authorization can be set aside. Hence, in determining whether cross-examination should be permitted, counsel and the reviewing judge must remain strictly focussed on the question to be determined on a Garofoli review -- whether there is a basis upon which the authorizing judge could grant the order. If the proposed cross-examination is not likely to assist in the determination of this question, it should not be permitted. However, if the proposed cross-examination falls within the narrow confines of this review, it is not necessary for the defence to go further and demonstrate that cross-examination will be successful in discrediting one or more of the statutory preconditions for the authorization. Such a strict standard was rejected in *Garofoli*. A reasonable likelihood that it will assist the court to determine a material issue is all that must be shown.

[Emphasis added.]

Cross-Examination of Sub-Affiants

- [33] I begin with the request to cross-examine the sub-affiants. Mr. Dadmand seeks leave to cross-examine three sub-affiants. Cst. Tam conducted the initial investigation into D.T.'s complaint of March 15, 2012 of sexual assault. She did not recommend charges. Cst. Robichaud investigated H.S.'s complaint of sexual assault made on February 14, 2013. Again, no charges were laid during the initial investigation.
- [34] The third sub-affiant, Cst. Essery, participated in the re-investigation of the complaints of D.B., and J.D., and was also the initial investigator on O.M.'s complaint of sexual assault made on September 19, 2013. This was the only file where the original investigator recommended charges.
- [35] Mr. Dadmand contends the ITO fails to provide full and frank disclosure of why charges were not laid on the original complaints. The accused submits that cross-examination of the sub-affiants will assist the Court in determining whether or not the police had objectively reasonable and probable grounds to believe the accused had committed the offences alleged in the ITO. Mr. Dadmand wishes to explore how it was that different investigating officers in different detachments independently concluded, on five of the six complaints, that there were not grounds to charge Mr. Dadmand and yet subsequently, the police officers interviewing the same witnesses recommended charge approval.
- [36] There is no dispute that in five of the six initial investigations, the investigating officers determined they would not recommend charges. In the ITO, at paragraph 6, Sgt. Row deposes that "[many] of the original investigators concluded their investigations as it was not clear to them the consent was given when the victims agreed to do these auditions." At paragraph 44 of the ITO, Sgt. Row noted that in "some of the files" the original investigators concluded there was no sexual assault, or not enough evidence to support a charge of sexual assault. Further, at paragraph 25 Sgt. Row deposes that the initial Burnaby RCMP investigation into the complaint of D.B. was concluded because investigators felt that the sex between Mr. Dadmand and D.B. was consensual.
- [37] As the reviewing judge, the question I must consider is "whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued": *R. v. Araujo* at para. 54. In applying that test, the focus of the Court's inquiry is on whether the ITO set out facts sufficient to allow the authorizing justice to conclude there were reasonable grounds to believe the accused had committed at least one of the offences; the things to be searched would provide evidence of the offence; and that evidence of that offence would be found at the place and on the devices to be searched. The conclusions of earlier investigators regarding consent or its absence, the reasons why previous investigators terminated their investigations without recommending charges, the reasons why Sgt. Row decided to renew the investigation, and his reasons for recommending charge approval are all irrelevant to that determination.

- [38] Mr. Dadmand has not shown that cross-examination of the sub-affiants is necessary to enable him to make full answer and defence. In my view, there is no reasonable likelihood that cross-examination of the sub-affiants will assist the Court in determining whether there was a basis upon which the authorizing Justice of the Peace could grant the warrant. Mr. Dadmand's application for leave to cross-examine the sub-affiants is denied.

Cross-Examination of Sgt. Row

- [39] Mr. Dadmand seeks leave to cross-examine the affiant, Sgt. Row, on grounds that he has failed to make full and frank disclosure of material facts in his affidavit, and that some statements are misleading, contain prejudicial material, or assert unfounded opinions.
- [40] In the next section of these Reasons, I excise portions of the ITO that are highly prejudicial to the accused or express opinions the affiant is not qualified to provide. Accordingly, cross-examination on those matters is unnecessary.
- [41] As I have already explained, cross-examination of Sgt. Row on his reasons for re-opening the investigation, or on why he reached different conclusions than the previous investigators regarding the recommendation of charges against Mr. Dadmand will not assist the Court in determining any material issue regarding the issuance of the warrant.
- [42] Mr. Dadmand also seeks to cross-examine the affiant in order to show that he failed to make full and frank disclosure of material facts relating to the offences outlined in the ITO. Counsel for the accused referred to the affiant's summary, at paragraph 15 of the ITO, of the statement that Constable Tam took from D.T. on March 15, 2012. In that summary Sgt. Row, referring to the accused touching D.T., said this:

He had his palm on her vagina. She said no and told him she did not want to do this. He said she needed to do it for the modelling industry. The whole time she said no, he kept touching her. She kept saying she didn't want to do it, then he finally got up, he could tell she was very uncomfortable and said "I guess this interview is over".

- [43] Defence counsel then referred to the following passages from D.T.'s statement to Constable Tam:

I told him, the first time I told him was when he like first put his hand on me and he like was rubbing me with his palm, and I said I don't feel comfortable like I can't do that, and then he like (INAUDIBLE) like oh like we have to do this, this is part of the interview but he also told me it's like sure if you are uncomfortable you can tell me to stop, and I was like, like I already felt uncomfortable but I was like okay, and then he kept going and then I told him to stop again within like a minute.

QT Okay. So, okay, so you said you felt uncomfortable when he was touching you with his palm?

DT Yeah.

QT And but not to stop at that point, but then when he said he was going to put his face in, then you said stop...

DT Wh'...

QT ...and moved away.

DT Yeah no, no I said stop the first time he had his palm on me and when I said stop he put his hands away...

QT Okay.

DT ...and when I said stop like, he stopped touching me and I thought at that point that he wasn't gonna keep touching me, but then as soon as I started talking again, he put his hand there and that's like right away that's when he went in with his face and that's when I said stop again.

[44] Sgt. Row's summary of Cst. Tam's interview with the D.T. was inaccurate to the extent that it suggested that Mr. Dadmand kept his palm on D.T. after she said no and that he entirely disregarded her request that he stop.

[45] With respect to Mr. Dadmand's alleged theft of an iPad belonging to the complainant D.B., defence counsel pointed out that the affiant failed to disclose that Mr. Dadmand had complained to the police about D.B. harassing him and had told the police that the iPad D.B. claimed the accused stole from her had turned up in her brother's possession.

[46] Inaccuracies in an ITO will not, on their own, provide a sufficient basis for a finding of bad faith or an intent to mislead, or a basis to quash a search warrant. While non-disclosure or misleading information in an ITO, together with new evidence, are all relevant to the review of the validity of a search warrant, they are "neither a prerequisite to, nor dispositive of, the review: Sadikov at para. 87, citing Garofoli at 1452.

[47] I also must consider that an officer drafting a lengthy ITO is not held to a standard of perfection. However, he must always act with integrity and reasonable diligence, bearing in mind his duty to make full and frank disclosure in ex parte proceedings, and must take care to avoid making inaccurate statements or exaggerated assertions likely to mislead the authorizing justice: Araujo at paras. 46-47.

[48] If the inaccuracy concerning Sgt. Row's summary of D.T.'s statement stood on its own, I would not grant leave to cross-examine the affiant. However, counsel for the accused has identified at least one instance with the affidavit fell short of full and frank disclosure of material facts relating to an offence alleged in the ITO. The omission of any reference to Mr. Dadmand's exculpatory statement concerning D.B.'s iPad, combined with Sgt. Row's bold assertion that Mr. Dadmand stole the iPad leads me to conclude Mr. Dadmand has met the low threshold of establishing a reasonable likelihood that cross-examination of the affiant will assist the Court on the issue of whether there were reasonable and probable grounds for authorizing the search warrant. Counsel for Mr. Dadmand seeks the opportunity to cross-examine Sgt. Row with a view to establishing additional failures of full and frank disclosure.

- [49] Mr. Dadmand has leave to cross-examine Sgt. Row. That cross-examination will be limited to matters relating to the full and frank disclosure of material facts concerning the offences alleged in the ITO and the factual bases for Sgt. Row's belief that the materials sought on the search could be found at the accused's residence.

Prejudicial Statements and Opinion Evidence

- [50] The defence submits that portions of the ITO should be excised on the basis they contain statements that are highly prejudicial to Mr. Dadmand, assert opinions the affiant is not qualified to offer, or state conclusions for which no factual foundation is provided. The Crown concedes that there are portions of the ITO that should be excised as prejudicial to the accused or as unqualified opinion evidence. However, the Crown maintains that after the exclusion of prejudicial statements and unqualified opinion, the ITO provides reasonable and probable grounds that could properly be relied upon by the justice in issuing the warrant.
- [51] In *Morelli*, Fish J., for the majority of the Court, in the course of holding that opinion evidence of a police psychologist on sexually deviant behaviour ought to have been excluded, commented, at paras. 79 to 82 that to permit reliance on broad generalizations about loosely defined classes of people is to invite dependence on stereotypes and prejudice in lieu of evidence. Further, an evidentiary basis is required to support both a finding concerning the characteristics or propensities of particular offenders, and a finding of reasonable and probable grounds to believe that the alleged offender belongs to the class of offenders whose characteristics or propensities are mentioned in the ITO.
- [52] The observations of Fish J. in *Morelli* are equally apt here, where the affiant expressed opinions for which he has no expertise.
- [53] The following passages will be excised from the ITO on the grounds they are highly prejudicial to the accused, express opinions the affiant is not qualified to give, or state bold conclusions without factual foundation:
- (a) from paragraph 6, the sentences "In reviewing all of these files, it is clear that DADMAND is a sexual predator, fraudulently depicting himself as a modelling agent. He also stole one of the victim's iPads during an audition."
 - (b) from paragraph 50, the sentence "I believe that as a sexual offender these images and video are kept as souvenirs of his sexual accomplishments and that he will replay the images and video for repeated sexual gratification."
 - (c) from paragraph 53, the phrase "I believe he grows more confident because he has avoided prosecution and believes there will be no legal ramifications of his crimes."

- (d) from paragraph 59, delete from the first sentence the phrase "is a serial sexual offender who" and delete the sentence "The fact that he is bold enough to use his own residence to commit some of these offences proves that he would not be afraid to keep these items at home."

[54] Paragraphs 53 and 59 of the ITO, as excised, read:

53. The police have yet to deter DADMAND's actions. A lot of the victims that were interviewed felt embarrassed and ashamed that they fell for DADMAND'S scheme. I believe that there are potentially more embarrassed victims that have not come forward to the police and I believe DADMAND may possess other victims' photographs and videos.
59. I believe DADMAND has kept these photographs and videos as mementos and would keep them close and accessible to him for further use. I do not believe that there is another place where he keeps the photographs and video from the sexual assaults. I believe some of the items (his iPhones) will be in his possession at the time of arrest and the other items sought will be at his residence located at 135 - 8220 No. 2 Road, Richmond.

Complaint of D.R.

- [55] Mr. Dadmand submits that paragraphs 20 through 22 of the ITO, which summarize the investigation of the complaint of D.R., should also be excised. The defence says the police laid no charge relating to D.R., and never intended to do so. In *R. v. Van Eaton*, 2015 BCSC 828 at para. 21, the court observed that the practice of supporting the issuance of a search warrant by reliance upon dismissed charges or circumstances when no charges have been laid is prejudicial and objectionable. The court concluded that such evidence should not be considered as a basis for a warrant to issue.
- [56] Here, on March 22, 2012, D.R. complained that she had been raped during an adult photography shoot in Richmond after she arranged to meet a male named Stephen. When interviewed by the investigating officer, she denied that she had been sexually assaulted. D.R. refused to be examined by hospital staff. When she was approached by another investigating officer on December 28, 2013, she advised that she wanted to cooperate with the police, stated she would provide a statement, but never did so.
- [57] Crown counsel informed the Court that although the police thought their investigation into D.R.'s complaint could go no further, the Crown was still urging the police to attempt to obtain a statement from D.R. at the time Sgt. Row swore the ITO on March 17, 2014. On that basis, *Van Eaton* is distinguishable from the case at bar.
- [58] However, Crown counsel also acknowledged during his submissions that the evidence of a possible sexual offence involving D.R., as set out in the ITO, was much weaker than in other instances. The Crown does not rely on the investigation of D.R.'s complaint in support of its position that the issuing justice had sufficient grounds to issue the search warrant. Accordingly, in these circumstances, I will exclude D.R.'s complaint, and paragraphs 20 through 22 of the ITO for my consideration of whether there was evidence that might

reasonably be believed upon which the authorizing justice could have issued the warrant.

[59] This concludes my Ruling on the Vukelich application.

[60] I will provide my Ruling on both the facial and sub-facial validity of the warrant at the conclusion of the voir dire. The voir dire Ruling will also address the issues of whether as a result of the passage of time since the original complaints were made, information in the ITO was stale-dated and failed to provide reasonable or probable grounds for belief that the objects sought during the search warrant could be located at the accused's residence. The voir dire Ruling will also address the issue of whether the search of the computers and electronic devices was overbroad and unreasonable.

"PEARLMAN J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/16/07/2016BCSC0720.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-dadmand-2016-bcsc-720>

Prepared on 30 October 2026 · Esheria