
CANADA / JUDGMENT

R. v. Deo et al

2006 BCSC 1705

COURT

Supreme Court of British Columbia

DECIDED

3 October 2006

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2006BCSC1705

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Deo et al,

2006 BCSC 1705

Date: 20061003

Docket: 23849

Registry: Vancouver

Regina

v.

Harjit Singh Deo

Sarpreet Singh Johal

Davinder Singh Johal

Jasvinder Singh Mangat

Before: The Honourable Mr. Justice Silverman

Oral Ruling on Voir Dire 4

October 3, 2006

Counsel for Crown

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Counsel for the Defendant, Davinder Johal

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Counsel for the Defendant, Mangat

M.R. Jette

Place of Trial:

Vancouver, B.C.

- [1] THE COURT: This is the fourth voir dire ruling in this trial and, like the other three, it is concerned exclusively with evidence tendered against the accused Deo.
- [2] This voir dire deals with the validity of what is commonly called a DNA warrant and with the admissibility of the consequences of that warrant being: (1) the taking of bodily substances for analysis from Mr. Deo, (2) the comparative analysis of those substances with DNA of unknown origin which was located on various items which may have an evidentiary connection to the crimes, and (3) the opinions reached as a result of those analyses.
- [3] There were no witnesses called on this voir dire by agreement. The evidence on the voir dire is all of the admissible evidence which I have heard at trial together with Exhibit A for Identification on this voir dire which is the Information to Obtain which was sworn and used as the basis for the issuance of the DNA warrant. That warrant was issued May 1, 2006, by a Provincial Court judge. That is almost exactly a year after the commission of the alleged offences with which this trial is concerned and, also, almost exactly a year after the events that were at issue in the first three voir dire. The warrant was obviously executed sometime after that and that is not of concern in terms of the admissibility issues that are before me now.
- [4] Mr. Deo argues that the DNA warrant is unlawful because of weaknesses in the ITO, and that a number of portions of that ITO should be struck. He argues that a number of aspects of the ITO are just plain wrong, in hindsight, based on the evidence I have heard. He argues that the corrected warrant in front of the Provincial Court judge would not have provided reasonable grounds to issue the warrant and, indeed, it would not have been issued. So argues Mr. Deo.

- [5] The Crown, at the risk of oversimplifying their argument, does not argue extremely vigorously with respect to the portions that need to be expunged or even about portions which, when compared to the evidence at trial are, if not wrong, at least not as accurate as they might otherwise be. Rather, the Crown's argument is that, even when viewed with what is left after expunging what needs to be expunged and when considering corrected information, there remain reasonable grounds to issue the warrant.
- [6] For the reasons that follow and the result that I have come to, it is not necessary for me to go into details about what portions precisely need to be expunged and what portions are not precisely accurate. I will consider the warrant in the manner which best favours the arguments made by Mr. Deo.
- [7] The Crown essentially argues twofold: One, they reargue what was argued on voir dire number 3, politely suggesting that I should reconsider, and they argue those same points even more vigorously on this voir dire. In a combination with that, the Crown argues that, in addition to all of the correct information which was before the police officers who were under consideration in voir dire number 3, in addition to that and since that time, there are two significant changes in the evidence which were not known at the time of the events dealt with in voir dires 1, 2, and 3, but were known at the time the ITO was presented to the Provincial Court judge with respect to this DNA warrant.
- [8] The Crown argues that even after striking everything and correcting everything that Mr. Deo says needs to be done, those two significant changes make all the difference. Even if I was correct in voir dires 1 and 3, where I determined there was not reasonable grounds, the Crown argues that these two significant changes raise that to the level where at the time of the DNA warrant there are, indeed, reasonable grounds.
- [9] A general theme that influenced my decisions in the three prior voir dires was that, while there was and is an abundance of evidence to connect the property in question to the crimes in question, there was, in my view, a paucity of evidence connecting Mr. Deo to those alleged crimes. He lived at the property and he was there at the time the police came and, in my view, that was it and it was not enough. I expressed my concern in several if not all three of those voir dires that evidence connecting a piece of property to the crimes without more does not provide reasonable grounds to arrest everybody who happens to live in the house or who happens to be in the house. Even if the evidence suggests that one particular person, but it is not known which person, in the house is connected to the crimes, in my view, that would not be enough if it points equally to everybody in the house. That, in my view, is not reasonable grounds to arrest, search, obtain warrants, and so on.

- [10] In this sense, I clearly disagreed with the evidence and the opinion of, I think it was Staff Sergeant Goerke who said that it is his belief - and I paraphrase - the strong connection of the evidence to the property gave him reasonable and probable grounds and everybody under his command reasonable and probable grounds to arrest everybody in the premises and police did proceed to do that, and not only arrested Mr. Deo but arrested three other family members who were in the home.
- [11] That reasoning on my part resulted in, in voir dire number 1, my finding that the arrest of Mr. Deo was unlawful because there were not reasonable grounds to believe that he was connected to the offence. That reasoning on my part did not have an effect on the validity of the search warrant, which was the subject of voir dire number 2, because it is not a required basis for issuing a search warrant that any particular person, Mr. Deo or anybody else, have evidence pointed at them. It only has to be pointed at the property and, consequently, the search warrant and subsequent search was not affected by that reasoning.
- [12] That reasoning did have a profound effect upon voir dire number 3 wherein I excluded evidence of fingerprints that were taken some 18 hours after Mr. Deo's original detention. I determined, based on the evidence, that there was no new evidence, that there were still no reasonable grounds to arrest, that Mr. Deo continued to be in arbitrary detention and that the fingerprints taken while he was in that state were, therefore, unlawful.
- [13] I am inferring that Mr. Deo was released from detention at sometime between now and then because he is clearly not in custody today, nor was he in custody, I infer, at the time he was served with the DNA warrant or at the time he complied with the DNA warrant. Unlike the situation in voir dire number 3, he was not detained, let alone arbitrarily detained, nor was he at any relevant time with respect to this voir dire.
- [14] This voir dire does require a determination of the same questions, really, as the first three, and that is, what are reasonable grounds to arrest, to search, to issue a warrant? The wording, that creates a requirement for reasonable grounds, is different in each case. Specifically with respect to the DNA warrant, the wording is found in s. 487.05 of the Criminal Code, wherein in addition to a number of other things about which the Provincial Court judge must have also reasonable grounds, he must have reasonable grounds that the person in question was "a party to the offence." Once again, there is no question but that the evidence points to the property in question and that the Provincial Court judge had sufficient evidence before him to come to that conclusion. What is at issue is, once again, whether or not he has reasonable grounds to believe that Mr. Deo was a party.
- [15] In my view, if the evidence had remained unchanged since the fingerprints were taken, the subject of voir dire 3, the result would be the same. And therefore, I must now turn to consider those two aspects of the evidence which I previously referred to, which the Crown says is new in the sense that it was not present at the time that the fingerprints were taken, at the time of the events which are the subject of the first three voir dire, but was present at the time the ITO in this voir dire was sworn and was properly before the Provincial Court

judge.

- [16] Those two aspects of the evidence, in very general terms, and then I will go back and deal with them in detail, are: (1) evidence relating to a bundle of money and (2) evidence eliminating to some extent the other three people in the house as suspects. The first of those, the bundle of money, refers to the same bundle that I remarked upon in voir dire number 3. I considered it significant enough to mention in voir dire number 3, but also considered that the bundle not being significantly large or messy being under a couch in the living room was not overly remarkable and, obviously, it was not remarkable enough to cause a different result than occurred in voir dire number 3. What I commented on at that time was noteworthy about it was that it was under the couch at the precise same moment that there were several bundles of money of much more remarkable size and location and circumstances in the garage. That was the extent of the connection when I had the evidence from voir dire number 3 in front of me.
- [17] However, there is now something new in this voir dire that the Crown asserts and I agree, that does draw a much more clear connection between the particular bundle of money and the offence. At least one of the bills in that bundle - I believe it is one, but it will not matter if it was one or more - has a serial number which clearly identifies it as ransom money. It is a strong connection between that bundle and the offence.
- [18] In voir dire number 3, the bundle was reasonably close to Mr. Deo (although the patio door was between them). Nevertheless, it was only a bundle of money. That did not seem terribly important in voir dire number 3 because there was no evidence that it was marked money beyond the fact that it was a bundle of money under the couch.
- [19] Now it is marked money and there is that connection which has some merit to it. Clearly, it is not a beyond reasonable doubt connection, and possibly not even a prima facie case connection. Nevertheless, it is more of a connection to Mr. Deo than was present in voir dire number 3.
- [20] Of far more significance is the second aspect of the evidence which is now present which was not present or known to the police at the time of the events in voir dire number 3, and that is that the other three members of the household, while not eliminated in a complete sense as potential suspects, all are now shrouded with some evidence which does to some extent eliminate them, and specifically it is this. The ITO states that they each provided bodily substances, that DNA profiles were obtained, that these DNA profiles were compared by the appropriate expert to a number of bodily substances found on a number of pieces of evidence which would seem to be connected to the various crimes, and those three people are eliminated from being the donors of those particular aspects of bodily substance on those particular pieces of evidence.
- [21] That does not mean that they, or some of them, were not involved in this crime. They could have left DNA elsewhere. There could have been DNA which simply was not gathered. By no means have they been eliminated, but there is some evidence which suggests that they

might be eliminated, and that is a very different state of affairs than the state of affairs which concerned me before, a state of affairs which, in my view, had the police acting upon a notion that everybody in the house, without any evidence to differentiate between their involvement, could be arrested. As I previously said, that, in my view, is wrong.

[22] There is now, however, and there was before the Provincial Court judge in this case, a basis upon which some differentiation can be made between the three other people in the house and the only remaining person in the house, Mr. Deo. In my view, on the type of application which is before me where the burden is on Mr. Deo, where the Crown certainly does not have to present compelling evidence, evidence beyond reasonable doubt, or even prima facie case, with all of those considerations, I am of the view that those two new aspects of the evidence to which I have referred do form the basis for reasonable grounds to believe that Mr. Deo was a party. And when I say "do form the basis," I mean at the time that the Provincial Court judge was presented with the ITO and ignoring those aspects of the ITO which Mr. Deo has argued should be expunged or corrected. When I expunge and/or correct those portions in a manner that best suits the argument of Mr. Deo, I am of the view that the Provincial Court judge would still have had the necessary grounds to issue the warrant.

[23] For those reasons, the warrant was properly granted, it is lawful, and the evidence and opinions obtained as a consequence are admissible.

"A. Silverman, J."

The Honourable Mr. Justice A. Silverman

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