

CANADA / JUDGMENT

R. v. Fast

2020 BCSC 2208

COURT

Supreme Court of British Columbia

DECIDED

2 December 2020

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2020 BCSC 2208 R. v. Fast IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Fast, 2020 BCSC 2208 Date: 20201202 Docket: 179140-2 Registry: Victoria Regina v. Derek Ernest Allen Fast

- and - Docket: 179140-4 Registry: Victoria Regina v. Derek Ernest Allen Fast Before: The Honourable Mr. Justice Steeves Oral Ruling on Voir Dire #1 Counsel for the Crown: T. Corsi Counsel for the Accused: D. McKay Place and Date of Trial/Hearing: Victoria, B.C. November 30 and December 2, 2020 Place and Date of Judgment: Victoria, B.C. December 2, 2020
- [1] THE COURT: The defendant, Mr. Derek Fast, has been charged with three counts of possession for the purposes of trafficking under s. 5(2) of the Controlled Drugs and Substances Act and possession of a prohibited weapon, a stun gun, contrary to s. 91(2) of the Criminal Code. In an application filed November 27, 2020, Mr. Fast applies under s. 8 of the Charter to set aside a search warrant under s. 24(2) of the Charter.
- [2] The background is that on April 25, 2019, a cellphone was reported stolen from a courthouse. Video surveillance in the courthouse identified Mr. Fast as a suspect for the theft. The police were at the time investigating him with respect to illegal drug activity. He lives at 2275 Moyes Road, Langford, British Columbia.
- [3] An Information to Obtain was sworn on May 10, 2019, to obtain a search warrant of Mr. Fast's residence. In the ITO, Constable Rowat stated that he had reasonable grounds to believe that Mr. Fast stole the cellphone contrary to s. 334 of the Criminal Code. The purpose of the application was to search for the cellphone, a black and red hooded sweatshirt, and red and black runners with white trim. The ITO summarized the investigation and its details. It also included a section called "Concurrent Investigation," describing a drug investigation (paras. 19 and 20). Constable Rowat stated: I am in no way relying upon the information supplied in this concurrent investigation in support of the grounds for the issuance of this search warrant and have included it in the interests of full, fair, and frank disclosure.

- [4] On the basis of the ITO, a search warrant was issued by a justice of the peace on May 10, 2020, to conduct a search and seizure at 2774 Moyes Road. The search warrant was executed on the same day. No cellphone was found. It is not known if the two items of clothing were found.
- [5] During the search, some drugs were observed. The police withdrew and sought a second search warrant. That warrant was issued and it resulted in the seizing of the substances that are the subject of the counts in the subject indictment. Mr. Fast now applies under s. 24(2) of the Charter to exclude all of the evidence obtained by means of the May 10, 2019, search warrant. He challenges the first warrant because, if it falls, the second warrant will also fall.
- [6] Mr. Fast takes some exception to the ITO sworn by Constable Rowat. It is submitted that there was no evidence that the stolen cellphone was in the residence that was the subject of the ITO and the search warrant. Further, the search for the cellphone was no more than a subterfuge for the real objective to search the residence of Mr. Fast for drugs. On this basis, there was no reasonable basis for the warrant. The defendant does not challenge the decision of the justice of the peace, only the ITO provided to him.
- [7] In *R. v. Nguyen*, 2007 BCCA 264, the Court of Appeal discussed the court's role in reviewing an ITO (at para. 7). It cited another decision which stated that an ITO must contain "some evidence that might reasonably be believed on the basis of which the authorization could have [been] issued." (*R. v. Araujo* (2000), 149 C.C.C. (3d) 449).
- [8] Returning to the evidence here, there is no dispute that a cellphone was stolen, that Mr. Fast was identified by video as a suspect for the theft, or that Mr. Fast lives at the address at Moyes Road. Mr. Fast says it was unreasonable to seek a search of his home because cellphones are small and mobile. As well, according to counsel, stolen items are not held for very long, especially if they are used to get money to buy drugs. I accept all of those propositions could be true, but I also conclude that it was reasonable to search for the cellphone at the residence of the person suspected of stealing it. Other locations could well have been reasonable to search, but the residence of Mr. Fast was certainly one reasonable place.
- [9] The other issue raised by the defendant is that the search for the cellphone was really a subterfuge for a search for drugs and the drug warrant could not be justified on its own. As above, there is no dispute that there was a concurrent investigation of Mr. Fast for illegal drugs at the time of the stolen cellphone. In fact, this investigation was disclosed in the ITO. I have no doubt that the scenario relied on by the defendant would be objectionable, that is, using a specious theft investigation and warrant to find grounds to obtain a drug warrant. That, however, is not what occurred here.
- [10] As a factual matter, Mr. Fast was observed on video at the time of the theft of the cellphone. It was entirely reasonable for the police to investigate his role in the theft including, as above, search his residence in an attempt to retrieve the phone and find other evidence including the two items of clothing. It is true that the search took place about two weeks

after the phone was stolen, but that was explained by Constable Rowat in his evidence when he said it took that long to obtain the video. It is also true that there was no cellphone found at Mr. Fast's residence, but that does not eliminate the reasonable grounds for searching for it.

- [11] There are also previous cases where searches have involved a dual purpose. For example, a traffic stop to investigate a broken taillight in a vehicle does not mean that the peace officer cannot also use the occasion to identify the driver for the purposes of a drug investigation (R. v. Kaddoura, 2009 BCCA 113, at para. 12): The fact that the officer had other reasons to want to identify the driver does not transform a lawful stop into an unlawful one.
- [12] Overall, I conclude that the ITO provided some evidence that demonstrated the peace officer had reasonable grounds to obtain a search warrant to search the residence of Mr. Fast. A concurrent investigation involving him in drugs was underway at the same time and disclosed. Therefore, there was a prospect of drugs being found in his residence. There were, in fact, drugs and a second warrant was used to seize them. There is no suggestion that the theft investigation was contrived or in any way a subterfuge. What happened is that the police had the good luck to have the opportunity to use a valid warrant to search Mr. Fast's residence as a result of the theft investigation.
- [13] The application by Mr. Fast that the evidence obtained on May 10, 2019, is inadmissible under s. 8 of the Charter is denied. "J. J. Steeves, J." The Honourable Mr. Justice Steeves

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