
CANADA / JUDGMENT

R. v. Flintroy

2018 BCSC 1693

COURT

Supreme Court of British Columbia

DECIDED

28 September 2018

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2018 BCSC 1693 R. v. Flintroy

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Flintroy,

2018 BCSC 1693

Date: 20180928

Docket: 27279

Registry: Vancouver

Regina

v.

Charleen Teresa Flintroy

Dennis Alexander Halstead

Jason James Heyman

Cameron Mak

Corrected Judgment: The paragraph numbering throughout the judgment was corrected on May 31, 2019.

Before: The Honourable Mr. Justice Williams

Ruling - Voir Dire #2 - Vernon Apartments

Counsel for the Crown:

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Place and Date of Trial/Hearing:

Vancouver, B.C.

September 26, 2018

Place and Date of Judgment:

Vancouver, B.C.

September 28, 2018

- [1] The defendant Dennis Halstead seeks to challenge a police search by way of challenging certain components of the ITO which was used to obtain the search warrants. In the application at hand, he seeks excision from the ITO of reference to a tenant list for the Vernon Apartments.
- [2] In order to make that challenge, Mr. Halstead is required to establish that he has standing to do so, which necessitates a finding that he has a reasonable expectation of privacy with respect to that document and that information.
- [3] Mr. Halstead has made submissions to the Court, in support of that proposition. The Crown disputes that Mr. Halstead has made out a basis for standing.
- [4] I have heard and considered the submissions of counsel and the authorities to which reference has been made. I have also have reference to materials contained in Exhibit 1, VD 2, and an excerpt from the ITO, as appended to Mr. Halstead's submissions.
- [5] The record at issue is a list of the tenants who were, at the material time, living in the Vernon Apartments. Specifically, that consists of the suite numbers, the names of the tenant and the amounts owed. There are a total of 36 entries on the list. As well, the copy that has been provided to the Court has handwritten notations on the document. I surmise they were principally made by the police officer at the time of an interview with Mr. Halstead, although that seems irrelevant to the present application.
- [6] My findings are that at approximately 8:30 a.m. on April 7, 2014, two members of the VPD, Officers Eng and Edmund went to the Vernon Apartments and met with the manager, Mr. Rutland. Mr. Rutland advised them that there was a new owner, Dennis, who did not reside in the building but had purchased a building a few months prior. Mr. Rutland walked through the building with the two police officers. It was noted that Room 29 had a CCTV

camera and a digital lock, which was different than any other suite in the building. Mr. Rutland told the police that he believed the resident of that suite had recently moved in and that he believed it was a female person. He told the police he had no information as to the identity of the resident, and that Dennis (whom I take to be Mr. Halstead) was the only one who had access to the tenant list.

- [7] One of the police officers contacted Mr. Halstead by telephone and arranged to meet him at the Vernon Apartments later that day.
- [8] At 2:00 p.m., the two police officers met with Mr. Halstead. They sought specifics as to his identity and asked him about the tenant in Room 29. The notation of the police officers is that Mr. Halstead was cooperative.
- [9] I am satisfied that the time of the meeting with Mr. Halstead, the police had in the possession a copy of the tenant list. Noting that, at the morning meeting, Mr. Rutland told the police he did not have a tenant list, and that only Mr. Halstead had access, I am unable to say who produced that list, although the Crown submission indicates it was provided by the building manager.
- [10] As I understand, the specific information sought to be excised from the ITO is with respect to the occupant of the Room 29. My understanding is that the information that was obtained from the tenant list is included in the ITO to provide corroboration for informant information that the police had received, namely that an individual named Kisha/Keisha deals drugs for Sunny (that is, Mr. Halstead) and that she sells drugs in the Vernon Apartments.

Legal Framework

- [11] In order for a party to make a claim of a s. 8 breach, that claimant must first establish that he has a reasonable expectation of privacy in the subject matter of the search. If that is established, the claimant is granted standing and the court will then go on to decide whether the state intrusion was unreasonable.
- [12] I will begin with a general description of the analytical model in determining whether the standing has been established. This essentially replicates my discussion of the model as set out in the Ruling issued on Voir Dire #1(2018 BCSC 1692).
- [13] In deciding whether a claimant has satisfied the court that he has a reasonable expectation of privacy, the court will consider the totality of the circumstances. It is a contextual and fact specific inquiry. The court must consider the nature of the privacy interests implicated and the factors bearing on the expectation of privacy, both subjective and objective, with respect to those interests.

- [14] Generally, there will be three different types of privacy interests that may be considered: territorial, personal, or informational. The latter will most usually involve materials in the possession of third parties.
- [15] The relevant jurisprudence has resulted in an analytical framework which entails four separate factors to consider in assessing whether reasonable expectation of privacy has been established:
1. The subject matter of the search;
 2. The claimant's interest in the subject matter;
 3. The claimant's subjective expectation of privacy in the subject matter; and
 4. Whether the subjective expectation of privacy was objectively reasonable.
- [16] With respect to the first, the subject matter of the search, a consideration will be whether this was personal information. The cases often make reference to whether the information constitutes a biographical core of personal information. Also relevant to the first factor is the tendency of the information to support other inferences. A useful inquiry has been stated as "why do the police want access to this information and what will they use it for?"
- [17] The matter of the claimant's interest in the subject matter is usually straightforward. Often, in the case of informational privacy, the material will be in the hands of third parties. In such circumstances, the notion of actual possession or ownership is of limited value to the analysis.
- [18] The third factor, the issue of the subjective expectation of privacy, has been described as "not a high hurdle". Often, there will be no direct evidence on the matter, and the court will consider whether such an expectation may be inferred.
- [19] The fourth factor looks to the objective reasonableness of the subjective expectation of privacy. In the present case, there is some lack of clarity: the subject of the search is informational as contained in a particular document, and it also involves the actual document. Accordingly, notions of control over the information, access to it and use of the information are all relevant, as are the details of how the document came to be in the possession of the police. In this regard, the court must look to normative values and can consider reasonable expectations as existing along a spectrum: from full secrecy, to confidentiality, to considering that the use of information will be restricted to its stated purpose.
- [20] Speaking generally, it is important to recognize that a reasonable expectation of privacy is not absolute. Depending on the circumstances, what will meet the test will vary. On the basis of the jurisprudence, I am satisfied that the claimant need not necessarily establish that the subject matter meets the high test of "biographical core of personal information".

Positions of the Parties

The Claimant

- [21] Mr. Halstead says that as the owner of the business, he had a direct interest in the material, and that a subjective expectation of privacy can be readily inferred. He argues that control of the document had not been relinquished and that it was not available for public inspection. He says that financial information should be seen as private and personal and should generally be characterized as confidential.

The Crown

- [22] In the submission of the Crown, this is not the claimant's information. Rather, it is a business record belonging to a corporate entity, and the actual information is that of the tenants. Further, the Crown says the claimant spoke with the police about the matter and that is evidence that he had no subjective expectation of privacy in the material.

Analysis

- [23] Applying the analytical framework, I conclude as follows.

The subject matter of the search

- [24] The subject matter of the search is a list which is, on its face, a business record, apparently maintained by Vernon Apartments. It was not personal to Mr. Halstead, although it is apparently a record relating to a business that he personally owned. It does not contain any information that seems particularly personal to him, although it appears to relate to the business he operates and thus is or can be characterized as a private.
- [25] In terms of the tendency of the information to support some other inference, that is, why the police wanted access to the information, it is apparent that they were using it to further investigate their belief that Mr. Halstead was trafficking drugs through the agency of another person who was operating from the Vernon Apartments.

The claimant's interest in the material

- [26] I find that Mr. Halstead had an interest in the material. It related to the operation of all the business conducted by a corporate entity that he owned. On the evidence, the document was not in general circulation.

The claimant's subjective expectation of privacy in the material

- [27] As has been noted, this is not in a particularly high hurdle and it may be inferred. In the present circumstance, although there is some ambivalence in the evidence, it is relevant that, according to what Mr. Rutland told the police, only Mr. Halstead had access to the document. Accordingly, I conclude there is at least a modest level of expectation of privacy.

Whether the applicant's subjective expectation of privacy was objectively reasonable

- [28] In these circumstances, even though none of Mr. Halstead's private information was contained in the record, I consider it objectively reasonable that he, as the operator of the business, would seek to maintain a level of confidentiality in the information contained in the list, both for his own purposes, and as the operator of a business that had the personal information of others, his tenants, for their benefit as well.
- [29] Accordingly, in light of all of the factors, and accepting that a reasonable expectation of privacy is not an absolute matter, I am satisfied that the applicant has demonstrated a sufficiently substantial reasonable expectation of privacy in the list to grant him standing to challenge the police search of the document.
- [30] To be clear, this ruling is with respect only to standing. The Court has been provided no evidence of the actual manner in which the police came into possession of the document. Those circumstances, and whether they constitute a breach of Mr. Halstead's right to be secure from unreasonable search, will have to be determined in another phase of this hearing.
- [31] I conclude that Mr. Halstead has standing.

"J. Williams J."

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