

CANADA / JUDGMENT

R. v. Hollaman

2022 BCSC 2320

COURT

Supreme Court of British Columbia

DECIDED

22 March 2022

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

2022 BCSC 2320 R. v. Hollaman

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hollaman,

2022 BCSC 2320

Date: 20220322

Docket: 91727A-2, 91727A-4

Registry: Kelowna

Regina

v.

Kyle Hollaman

Before: The Honourable Mr. Justice Wilson

Oral Ruling on Voir Dire #3 - Violation of s. 8 Charter Rights

Counsel for the Crown:

J.M. Le Dressay

M.J. Chiu

Counsel for the Accused:

E. Holzman

Place and Date of Trial/Hearing:

Kelowna, B.C.

February 28, 2022

March 1-3, 2022, B.C.

Place and Date of Judgment:

Kelowna, B.C.

March 22, 2022

- [1] THE COURT: This is my decision on voir dire number three.
- [2] The accused, Mr. Hollaman, argues that his s. 8 rights under the Charter of Rights and Freedoms were violated when he was subjected to a strip search at the Kelowna detachment following his arrest.

Facts

- [3] The police attended at the accused's residence at 505 Valley Road on the evening of December 19, 2018, to execute a search warrant. Constable Lukash was part of the team that executed the warrant. When the police went into the residence, most of the officers ahead of her had gone to the left, but she saw two double doors to the right and believed that those who had preceded her may not have recognized or noticed the double doors. So she decided to go into the room behind those doors. She announced her entrance and was followed by Constable Diachok and Corporal Carroll. There was a male sitting on the bed and two males on the porch or balcony.
- [4] Shortly thereafter, Mr. Hollaman came out of the bathroom. When he came out of the bathroom, she observed his sweaty appearance and noted that he appeared nervous. He apologized for the state of the bathroom and said that, in his words, he "needed to take a shit". She was concerned because the washroom had not yet been searched. She did not let him go into the bathroom. She detained him with handcuffs and left him with Corporal Carroll.
- [5] Corporal Carroll was the most senior officer on site and was the most knowledgeable and qualified on the issue of conducting strip searches. Corporal Carroll described the residence at 505 Valley Road as being at the end of a long driveway on the side of a mountain which posed challenges for executing the search warrant, and therefore the manner of approach was an element of surprise.
- [6] Once everyone in the house had been accounted for, Corporal Carroll was advised that there was a delay in opening the bedroom door because it looked like a wall and it was not initially identified as a door. He was also told there had been at least a minute that had passed between the announced arrival and the police actually opening the bedroom door. There was an additional delay in terms of Mr. Hollaman because he did not come out of the bathroom until between 30 and 60 seconds had elapsed from when Constable Lukash first opened the master bedroom door. As such, by the time Mr. Hollaman was seen, up to two

minutes had elapsed from when the police announced their arrival as they opened the door of the residence from the carport.

- [7] Corporal Carroll was told that Mr. Hollaman was sweating and seemed nervous and wanted to use the bathroom. Given the elapsed time, he was concerned that Mr. Hollaman had either flushed drugs or had hidden drugs or weapons including on his person. Corporal Carroll testified it is not uncommon when arresting people for trafficking that drugs could be hidden or concealed on the person, including in the person's crotch area. A pat-down search incidental to arrest will often not reveal concealed drugs on a person. Given the delay and Mr. Hollaman's sweaty and nervous presentation and wanting to go back into the bathroom even though he had just come from the bathroom, Corporal Carroll authorized a strip search of Mr. Hollaman once he had been transported to the detachment.
- [8] A strip search in the detachment is done in a private room. The monitor is blocked and the camera angle shielded and a minimum number of officers will be in the room. Sometimes a second person goes in but on other occasions there is only one officer in attendance. The person is never entirely without clothing. The suspect hands over pieces of clothing one by one, the person is not touched, and there is no internal search. The person doing the search is of the same gender and every step is documented. If an item of contraband is found, it will be removed from the clothing if it can be removed by gravity alone.
- [9] According to Corporal Carroll, if a strip search is authorized it becomes first priority and must be done immediately for everyone's safety. Corporal Carroll explained considerations before authorizing the strip search. These include the safety of the officers and also the safety of the person being searched. The decision as to whether one or more persons is in the room is generally made by the person conducting the search. The strip search in this case revealed nothing of evidentiary value.

Legal test

- [10] The legal test for conducting strip searches incidental to arrest was summarized by the Supreme Court of Canada in *R. v. Golden*, 2001 SCC 83, where the majority concluded that the Crown bears the onus of proving the legality of a warrantless strip search. In this case, the focus is on whether reasonable grounds existed.
- [11] The strip search took place at the police station and I am satisfied, based on the evidence of both Constable Flaman and Constable Leroux, and it is indeed not disputed in this case, that the manner of search itself was reasonable. In so saying, I recognize there is one exception to this general proposition, which is the argument that there was an absence of police notes to justify the search. I will return to this issue later.

- [12] The mere fact that a drug transaction is interrupted will not without more justify a strip search, and a strip search must not be undertaken simply as a matter of policy. In other words, there must be something more. In *Golden*, the Court summarized the principles at paragraph 93 to 95. In *Golden*, the Court said the following at para. 93:
- [93] The reasonableness of a search for evidence is governed by the need to preserve the evidence and to prevent its disposal by the arrestee. Where arresting officers suspect that evidence may have been secreted on areas of the body that can only be exposed by a strip search, the risk of disposal must be reasonably assessed in the circumstances. For instance, in the present case, it was suggested that the appellant might have dropped the drugs on the sidewalk or in the police cruiser on the way to the station and that it was therefore necessary to search him in the field. As we discuss below, however, the risk of his disposing of the evidence on the way to the police station was low and, had the evidence been dropped in the police cruiser on the way to the station, circumstantial evidence could easily link it back to the accused.
- [13] At paragraph 95, the Supreme Court of Canada confirmed that a strip search can be either for evidence related to the grounds for the arrest, or for weapons. The Court commented with regard to routine strip searches as follows:
- [95] The requirement that the strip search be for evidence related to the grounds for the arrest or for weapons reflects the twin rationales for the common law power of search incident to arrest. Strip searches cannot be carried out as a matter of routine police department policy applicable to all arrestees, whether they are arrested for impaired driving, public drunkenness, shoplifting or trafficking in narcotics. The fact that a strip search is conducted as a matter of routine policy and is carried out in a reasonable manner does not render the search reasonable within the meaning of of the . A strip search will always be unreasonable if it is carried out abusively or for the purpose of humiliating or punishing the arrestee. Yet a "routine" strip search carried out in good faith and without violence will also violate where there is no compelling reason for performing a strip search in the circumstances of the arrest.
- [14] The primary issue on this application is whether there were reasonable grounds to conduct a strip search of Mr. Hollaman.

Discussion

- [15] The strip search in this case was authorized by Corporal Carroll. As such, it is therefore his decision that must be reviewed based on all the evidence he had at the time.
- [16] The evidence of the officers was not identical as it relates to the authorization of the strip search. Corporal Carroll indicated that he believed he was asked by Constable Flaman if he could do a strip search. However, Constables Flaman and Leroux both indicated that the direction to conduct the strip search came from Corporal Carroll.

- [17] In my view, the difference in the evidence as to who initiated the discussion is not material. Both Constables Flaman and Leroux were only on site to assist in transporting any arrestees and were each brought into the investigation late in the day. On the other hand, Corporal Carroll was the senior officer on site. Neither Constable Leroux nor Constable Flaman went into the residence, nor did they interact in any way with the accused prior to the handoff in the carport to transport him to the detachment. I therefore conclude that the direction to conduct the strip search came from Corporal Carroll and that he passed on his instructions to Constables Flaman and Leroux.
- [18] Corporal Carroll's evidence as to why he ordered the strip search was based on the behaviour and the comments of the accused. He was aware that Constable Lukash had gone into the master bedroom and had seen a man sitting on the bed, that there were two other men outside, and that the accused only emerged from the ensuite bathroom after a delay. He was also aware that Constable Lukash had observed the accused sweaty and nervous in appearance and had requested to return to the bathroom from which he had just come.
- [19] Corporal Carroll's evidence was that in any search warrant related to drugs there is a concern that drugs may be disposed of, including flushed down toilets. He was also aware, based on his experience in the drug squad, that those involved in the drug trade will often stash drugs on their person, particularly in their crotch area.
- [20] The accused argues these grounds are insufficient to justify what is an extremely intrusive and presumptively invalid search. He points to the following:
- a) there were at least three pat-down searches of the accused prior to ordering of the strip search;
 - b) the genesis of the ITO for the search warrant was an earlier arrest of Mr. Swerhun, a person who was seen at the residence on more than one occasion during surveillance and had been arrested earlier in the day in possession of methamphetamine, cocaine and fentanyl, but that a strip search of Mr. Swerhun earlier in the day had yielded nothing;
 - c) there was no evidence of any observations of the bathroom before the strip search was ordered; and
 - d) the objective evidence is insufficient to justify a strip search.
- [21] The accused relies on an Ontario decision, *R. v. McEwan*, 2017 ONSC 6055, and says that it is factually similar to this case. In *McEwan*, the Court concluded that Mr. McEwan's arrest was unlawful, then went on to consider the grounds for the strip search in the alternative. The accused points to the evidence to justify the strip search in *McEwan* in which three grounds were cited: (1) the nature of the offence was drug trafficking; (2) in the officer's experience drug traffickers often try to hide evidence in places on their person that may elude a pat-down search; and (3) Mr. McEwan was fidgeting with his pants.

- [22] I do not find the McEwan case to be instructive in these circumstances because the background facts are very different. In McEwan, the grounds for arrest, which arrest was found to be unlawful, arose one week before the arrest and therefore the Court concluded there was no basis to assume that a crime was being committed at the time. The Court concluded in McEwan that the accused fidgeting, when coupled with the alleged grounds for the arrest having been one week earlier, did nothing more than demonstrate the possibility that the accused could be concealing drugs.
- [23] The facts in this case are wholly different. The accused was understood to be the primary resident of a property that the police believed was being used as a stash house. The police loudly announced their presence upon entering the residence but there were two delays relating to the accused. First, the bedroom was not initially identified as a room to be searched, and second, even when the police went into the bedroom the accused did not present himself immediately and there was further delay. The accused's physical appearance, sweaty and nervous, coupled with his stated desire to go back to the bathroom from which he had just emerged, and the delays could certainly give rise that there was both incentive and opportunity to either dispose of or conceal evidence.
- [24] I am satisfied that the combination of Corporal Carroll's knowledge of common behaviours associated with those in the drug trade coupled with both the accused's presentation before Constable Lukash and his delay in presenting himself in the bedroom and his wish to return to the bathroom, when viewed in their totality were sufficient to give Corporal Carroll a legitimate basis to be concerned that drugs may have been concealed by Mr. Hollaman, whether on his person or otherwise, and I therefore conclude that Corporal Carroll had grounds to order a strip search of the accused incidental to arrest.
- [25] One aspect of the implementation of the search that gives rise to an argument on behalf of the accused here is with regard to the 11 factors described in Golden at paragraph 101 as to best practices. The first 10 of those 11 factors deal with the manner of search. There is no need to address those here. The eleventh one is, "[w]ill a proper record be kept of the reasons for and the manner in which the strip search was conducted?"
- [26] The accused argues that number 11, the keeping of proper records of the reasons for and the manner in which the strip search was conducted, was not complied with in this case. He points out that Corporal Carroll's notes contain no formal recording of his reasons for the search and for this says that the notes of Constables Leroux and Flaman, which amount to no more than three or four lines in their notebooks, are insufficient.
- [27] The Crown argues that it is not necessarily the paper that matters so much as the evidence with regard to the reasons, and that the 11 factors in Golden should not be interpreted as legislative. The Crown also submits there is no authority for the proposition that the absence of a note in the instructing officer's notebook is necessarily fatal.

- [28] I will start with the notes of Constables Leroux and Flaman who conducted the strip search. There is nothing of concern with regard to the paucity of the notes of those two officers. Their notes reflect a need to document a number of the privacy concerns that are associated with the necessarily intrusive strip search. However, the police officers are required to note their observations. In this case, the strip search yielded nothing of evidentiary value. There was nothing specifically to observe and thus record, other than to note that nothing was found, which is exactly what the notes say. Notes taken by police officers are not required to provide for a blow-by-blow chronology of everything that occurs if what occurs is insignificant.
- [29] I turn now to the lack of any notes from Corporal Carroll for his reasons for ordering the strip search. While there were various factors that Corporal Carroll said informed his decision to order the strip search, they can generally be broken down into two categories:
- a) his knowledge and experience in dealing with persons involved in the drug trade; and
 - b) observations and behaviours of the accused.
- [30] I am not aware of any authority that would suggest that it was incumbent upon Corporal Carroll to make a physical note in his notebook with regard to his knowledge and experience of persons involved in the drug trade based upon his years as a police officer. Notes are taken to record observations, as opposed to prior history and knowledge.
- [31] During cross-examination, Corporal Carroll said that he did not and would not as a matter of general practice record in his notes what he was told by others because he would expect that the observations of the other officers would be in their notes. All of the observations of Mr. Hollaman leading up to and including his initial detention were made by Constable Lukash. In the absence of any independent observations on the part of Corporal Carroll, he was relying on what he was told by Constable Lukash. However, Corporal Carroll is entitled to rely on the observations of one of his fellow officers when forming his grounds to order the search.
- [32] I do not find the officer's notes were insufficient in this case. From my reading of Golden, Corporal Carroll's general knowledge and understanding of the possible behaviours of those involved in the drug trade standing alone would be insufficient to justify the strip search. More was required. The additional information here upon which Corporal Carroll relied was Constable Lukash's observations. However, her observations are noted and indeed her notes are more detailed and more thorough than most, if not all, of the remainder of the team. Ultimately what is important is the ability of the court to assess whether or not Corporal Carroll had reasonable and probable grounds.

[33] I am satisfied that the observations of Constable Lukash, which were properly recorded in her notes, coupled with Corporal Carroll's interpretation of what Constable Lukash had observed through the lens of his years of experience, was sufficient to order the strip search even though the strip search itself yielded nothing and that the recording of salient facts in the officers' notes sufficed.

[34] I therefore find there was no breach of the accused's s. 8 rights on account of the strip search.

[35] That concludes my decision on voir dire number three.

"Wilson 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/22/23/2022BCSC2320.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-hollaman-2022-bcsc-2320>

Prepared on 28 October 2026 · Esheria