
CANADA / JUDGMENT

R. v. Hunt

2003 BCCA 434

COURT

British Columbia Court of Appeal

DECIDED

18 July 2003

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2003BCCA0434

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Hunt,

2003 BCCA 434

Date: 20030718

Docket: CA030196

Between:

Regina

Respondent

And

David Wayne Hunt

Appellant

Before:

The Honourable Madam Justice Ryan

The Honourable Mr. Justice Oppal

The Honourable Mr. Justice Lowry

Oral Reasons for Judgment

B. Hickford

Counsel for the Appellant

R. Flannigan

Counsel for the (Crown) Respondent

Place and Date:

Vancouver, British Columbia

July 18, 2003

- [1] OPPAL, J.A.: The appellant was found guilty of robbery of a bank by a jury. The police arrested him a short distance from the bank approximately 15 minutes after the robbery. They searched him and found in his sock and other parts of his clothing 30 \$100 bills which corresponded to the sum that was taken from the bank.
- [2] The appellant has argued that the search was illegal. More specifically, it is argued that there was no articulable cause for the investigative detention to justify the search and seizure of the money. It is argued that the search contravened s. 8 of the Charter and that the evidence ought to have been excluded under s. 24(2) of the Charter.
- [3] I will review the evidence in more detail. On March 30, 2001, the Bank of Montreal in Saanich was robbed by a single person. The robbery took place at approximately 3:20 p.m. The police attended moments after the robbery had taken place. The description that was given to the police was as follows. The person was a white male in his early 20s with either dirty brown or sandy blonde hair. He was wearing a light blue or a bright blue jacket along with a baseball cap. He was seen to be running westbound on Pear Street immediately after the robbery. There is a golf course which is situated west of the bank. The appellant was arrested in the northwest side of that golf course some 15 to 20 minutes after the robbery had taken place. According to the police, he matched the general description of the person who robbed the bank. It was there that the police searched him. They said they did so on the grounds that they believed that the person who robbed the bank had a weapon. That information had been conveyed to them by the persons in the banks. While they were conducting that search they found the 30 \$100 bills.
- [4] It is not in dispute that one Steven Beaulieu and not the appellant actually committed the robbery. The Crown's theory in this case was that the appellant was a party to the robbery under s. 21 of the Criminal Code in that he was said to be an aider and an abettor. Beaulieu pled guilty. He then testified for the Crown. He said that he and the appellant formulated a plan to commit the robbery. He said that as they spoke about the plan he showed the appellant a note that he had drawn up. The appellant apparently made light of the note that Beaulieu had prepared and told Beaulieu that he could write a better note (I am paraphrasing). In any event, the appellant then wrote a note. It should be noted that it was admitted that the note that was used in the robbery was a note written by the appellant. The note was an exhibit before the jury.

- [5] Beaulieu also testified that a short time before the commission of the robbery he and the appellant attended at a thrift store wherein they purchased clothing. The plan was to purchase clothing that was less conspicuous and to discard that clothing after the robbery was committed. As part of the plan they arranged to meet at the golf course where Beaulieu would give the proceeds of the robbery to the appellant. He testified that that is, in fact, what took place.
- [6] When the appellant was detained he was walking in a westbound direction on the golf course at the northwest section of the course. According to the police he was looking over his shoulder, and was looking from side to side. He did that a number of times. He was 1.5 kilometres from the bank.
- [7] The issue here relates to the extent to which police are entitled to search persons during an investigative stage. The leading case on that issue is *R. v. Ferris* (1998) 126 C.C.C. (3d) 298 (B.C.C.A.), a decision of this Court. The facts are worth noting. The police stopped a vehicle with stolen licence plates. The driver fled. The police then conduct a search on the occupants. One of the occupants had a backpack that the police searched. The court held that the search was justified on the basis that it passed the "reasonable necessity" test. Madam Justice Ryan delivered the reasons at paras. 53-55 wherein she said the following:
- [53] Applying the *Waterfield* test to a search as an incident of detention the first question is whether such conduct falls within the general scope of any duty imposed by the common law. In the case of an investigative detention based on articulable
- cause the answer would be yes, it does. The next question is whether the search is an unjustifiable use of powers associated with the duty. To answer that question one must ask whether it meets the reasonable necessity test - is the interference with
- liberty necessary for carrying out the particular police duty, and if so, is it reasonable having regard to the nature of the liberty interfered with and the importance of the public purpose served by the interference?
- [54] If the police have the duty to determine whether a person is engaged in crime or is about to be engaged in crime they should not be obliged to risk bodily harm to do so. It is my view that the police are entitled, if they are justified in believing that the person stopped is carrying a weapon, to search for weapons as an incident to detention. The question for the court must be whether the search was reasonably related
- in scope to the circumstances which justified the interference in the first place.
- [55] I have concluded that in proper circumstance the police are entitled to search for weapons as an incident to an investigative stop. The seriousness of the circumstances which led to the stop will govern the decision whether to search at all, and if so, the scope of the search that is undertaken. As

Chief Justice Warren put it in *Terry* (at p. 905), the search must be "reasonably related in scope to the circumstances which justified the interference in the first place." Questioning an elderly shopper about a suspected shoplifting would not ordinarily require a search for weapons; questioning someone

after a bank robbery might require a search of the detainee and his or her immediate surroundings. In other words, such a search can meet the reasonable necessity test depending on the circumstances.

[8] The Ontario Court of Appeal in an earlier case, *R. v. Simpson* (1993), 79 C.C.C., dealt with a similar issue. Mr. Justice Doherty made similar comments in that case wherein at p. 498 he stated that:

The justifiability of an officer's conduct depends on a number of factors including the duty being performed, the extent to which some interference with individual liberty is necessitated in order to perform that duty. The importance of the performance of that duty to the public good, the liberty interfered with and the nature and extent of the interference with the liberty of the individual.

[9] More recently this Court, in *R. v. Johnson* (2000), 32 C.R. (5th) 236 (BCCA), held that a search incidental to investigative detention is a search for weapons and not for contraband. In this case, in my view, the search was justified and it passes a test set out in the authorities that I have discussed. The police reasonably suspected that the person that they stopped was involved in the robbery. Mr. Hickford, in a forceful argument, has submitted that what the police did here could lead to abuses in that it could lead to the search of innocent persons. With respect, I do not think that that really is the issue. The issue here is whether the police had reasonable grounds and whether they satisfied the reasonable necessity test. I find that they did. I will reiterate that in this case the police were armed with the following information. A robbery had taken place at 3:20 p.m., the person who committed the robbery was a white male wearing a blue jacket, sandy brown or dirty blonde hair and going in a westerly direction. The robber was seen running west. The golf course is in a westerly direction. The appellant was found there fitting that general description. He was looking from side to side over his shoulder. In the circumstances the police clearly had articulable cause to search him for an investigative purpose.

[10] Accordingly, in the circumstances, I find that the trial judge was correct in determining that there was no violation of s. 8 and that the evidence obtained as a result of the search was admissible. For those reasons the appeal must be dismissed.

[11] RYAN, J.A.: I agree.

[12] LOWRY, J.A.: I agree.

[13] RYAN, J.A.: The appeal is dismissed.

"The Honourable Mr. Justice Oppal"

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