
CANADA / JUDGMENT

R. v. Hunter

2014 BCSC 1492

COURT

Supreme Court of British Columbia

DECIDED

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Hunter,

2014 BCSC 1492

Date: 20140124

Docket: 74303-3

Registry: Nanaimo

Regina

v.

Shae Alexander Hunter

Before: The Honourable Madam Justice Power

Oral Ruling on Voir Dire #2 re Grounds for Arrest and

Warrantless Search

Counsel for the Crown:

S. Steele

Counsel for the Accused:

S. Taylor

Place and Date of Trial/Hearing:

Nanaimo, B.C.

January 20-24, 2014

Place and Date of Judgment:

Nanaimo, B.C.

January 24, 2014

- [1] THE COURT: This is a voir dire in which Mr. Hunter alleges breaches under s. 8 and s. 10 of the Canadian Charter of Rights and Freedoms. Specifically, Mr. Hunter alleges that there were no reasonable and probable grounds for his arrest on the 13th of January, 2012. He further argues that there was a breach of s. 8 of the Charter by the warrantless entry to sweep his residence at 155 Strickland in Nanaimo, British Columbia.
- [2] In light of witness availability and scheduling issues, I have proceeded on this voir dire as a blended voir dire. This voir dire has followed a voir dire relating to search warrant authorization relating to 155 Strickland. In that previous voir dire, I have found that there were reliable grounds upon which an authorization could have been granted.
- [3] This voir dire proceeded with the evidence of three police officers for the Crown: Constable Brodeur, Constable Mooney, and Constable Ziegler. In addition, a defence witness, Mrs. Hunter, the accused's mother, testified.
- [4] Turning first to the issue of reasonable and probable grounds for the arrest, Mr. Hunter was arrested outside of his residence at 155 Strickland on January 13, 2012, at approximately 7:15 p.m. At the time of the arrest, Mr. Hunter had just returned to the residence in a Volkswagen motor vehicle. Mr. Hunter was a passenger in that vehicle and he was with a female who was the driver. There were items seized in that vehicle, which are outlined in the information to obtain, and those items were located behind the driver's seat.
- [5] The test for reasonable and probable grounds for arrest is well known and is set out in *R. v. Storrey*, [1990] 1 S.C.R. 241. That is, an officer must have subjectively have reasonable and probable grounds, and those grounds must be justifiable from an objective point of view.
- [6] In this case, the evidence established that Constable Brodeur was the lead investigator and that Constable Mooney and Constable Ziegler attended at his direction to arrest Mr. Hunter and to conduct a sweep of the residence to ensure that evidence was not destroyed and to ensure officer safety, pending receipt of a search warrant authorization which was in progress. Constable Brodeur directed that arrest. The information contained in the ITO, which is Exhibit 1 on Voir Dire 1, was known to Constable Brodeur at the time he gave that direction, and that information was referred to throughout his evidence.
- [7] I adopt many of my reasons in Voir Dire 1 with respect to reasonable and probable grounds for the search warrant. I have noted the confidential source information was compelling, credible, and corroborated, both in innocent detail and in the criminality described, and I reference *R. v. Debot*, [1989] 2 S.C.R. 1140 at page 1168.

- [8] The corroboration is present both in an examination of tip-to-tip or cross-corroboration, and with information available to police, including surveillance observations.
- [9] I accept the argument of the Crown that the arrest of Mr. Pham, the Asian male who was in possession of a large amount of cash in excess of \$50,000, was very significant. I accept the Crown's submission that evidence is a significant piece of corroborating information that ties together the source information and the surveillance observations, and is a concrete tie to drug trafficking behaviour at the address, 155 Strickland.
- [10] It is clear from Constable Brodeur's evidence that, in his view, all of the confidential source information and surveillance information, and specifically the arrest of Mr. Pham with a large amount of cash on his person, was consistent with a drug reload or drop-off having just occurred. It is my view, as I have indicated, that Constable Brodeur had reasonable and probable grounds to arrest Mr. Hunter, and those grounds were objectively justifiable in the circumstances as they existed after Mr. Pham's arrest on January 13, 2012.
- [11] I turn now to the issue of the warrantless entry of the residence on Strickland pending receipt of a warrant to search that address. As I have indicated, I have found that warrant valid as a result of my ruling in *Voir Dire 1*.
- [12] I have considered the authorities cited, including *R. v. Silveira*, [1995] S.C.J. No. 38, and *R. v. McCormack*, 2000 BCCA 57, which was decided after the legislative change to the Controlled Drugs and Substances Act in s. 11(7). I have also reminded myself that the burden is on the Crown in light of the warrantless search.
- [13] I have also considered the authorities cited by the defence, including *R. v. King*, 2006 BCPC, but in my view there are some significant factual differences between that case and the case at bar.
- [14] As I have indicated, I have determined in *Voir Dire 1* that the conditions existed for the obtaining of a search warrant, and in fact a warrant was obtained by telewarrant on the 13th of January of 2012. The question I must decide is whether exigent circumstances existed to justify the warrantless entry and to secure the residence pending receipt of the warrant which was obtained.
- [15] In his evidence, I found Constable Brodeur generally to be credible, and I cannot find bad faith on the basis of his evidence. A critical point when Constable Brodeur made the decision to arrest Mr. Hunter was when Mr. Pham was arrested after he exited a taxi at the Departure Bay ferry terminal. It was at that point where Constable Brodeur directed Constable Brown to go back to the office to complete the ITO. As I have indicated, I am satisfied on the evidence that the discovery of \$50,000 cash in Mr. Pham's duffel bag was objectively sufficient for Constable Brodeur to be subjectively satisfied on the totality of the evidence that a drug delivery or drug reload had occurred, especially in light of all of that information available to him.

- [16] The defence submission with respect to exigent circumstances relates primarily to the argument that, by arresting Mr. Pham in this way at the Departure Bay ferry terminal, Constable Brodeur created the exigent circumstances.
- [17] I reject this argument. I am satisfied, on the evidence, that the arrest of Mr. Pham and the discovery of the large amount of cash in the duffel bag was significant in the development of Constable Brodeur's subjective belief. Constable Brodeur did not create the circumstances surrounding the arrest of Mr. Pham and necessitate the arrest of Mr. Hunter back at the residence. Those circumstances were created by the circumstances of the surveillance of Mr. Pham, including his apparent attempt to leave Vancouver Island to return to Vancouver. Further, as I have noted, those circumstances were significant to Constable Brodeur's subjective belief.
- [18] Constable Brodeur considered the fact that the arrest of Mr. Pham on a Friday night at a busy ferry terminal, where someone who might have been meeting up with Mr. Pham or expecting Mr. Pham to arrive could have easily contacted the persons inside the residence. Surveillance had indicated to Constable Brodeur that two people were inside the residence and two people had left the residence at that point. Because it was dark, it was not clear to the police whether the individuals inside the residence included Mr. Hunter.
- [19] Accordingly, Constable Brodeur and Constable Ziegler attended at the residence to arrest Mr. Hunter.
- [20] Constable Brodeur was of the view, based on all of the circumstances known to him at that point, that a large quantity of drugs was in the residence. He believed that evidence could be easily destroyed by way of flushing those drugs down the toilet, incinerating them, or throwing them away in some other manner.
- [21] In all of the circumstances, I am satisfied that Constable Brodeur's belief and concern around those exigent circumstances were reasonable and made out on the evidence. They were sufficient to justify the sweep of the residence.
- [22] In the result, no breach of s. 10 or s. 8 is found on this voir dire.

"J. A. Power, J."

The Honourable Madam Justice J. A. Power

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