

CANADA / JUDGMENT

R. v. Latimer

2020 BCSC 1517

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1517 R. v. Latimer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Latimer,

2020 BCSC 1517

Date: 20200914

Docket: 27798

Registry: Vancouver

Regina

v.

Kyle Latimer

Craig Latimer

Csongor Szucs

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Before: The Honourable Madam Justice Ker

Oral Ruling re Disclosure Deadlines

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Place and Date of Hearing:

Vancouver, B.C.

September 14, 2020

Place and Date of Judgment:

Vancouver, B.C.

September 14, 2020

- [1] This Ruling was delivered as oral reasons. It has since been edited for distribution.
- [2] During this case management conference, counsel for Mr. Szucs requested that the Court direct that a deadline for completion of disclosure on this file be made. The jurisdiction to do so is pursuant to s. 551.3(g)(i) of the Criminal Code, S.C. 1985, c. C-46 ("Code"), under the trial management powers that I have as the case management judge and the trial judge in this matter. The deadline sought by Mr. Szucs is October 15, 2020. Counsel for Kyle Latimer and Craig Latimer adopted the submissions of counsel for Mr. Szucs. All say that they cannot advance further applications, with the exception of a constitutional argument starting tomorrow, until they know that disclosure is complete.
- [3] The Crown's primary position is that no deadline is necessary, but if a deadline is imposed, it should be the end of the year, December 31, 2020. I note that that would be approximately 18 months after CPD-3's deadline for completion of disclosure in a complex criminal case. CPD-3 is this court's Criminal Practice Direction for Complex Criminal Cases.
- [4] By way of background, there are now three accused left on Indictment 27798. The charges were initially laid in August 2018 and the file remained in the Provincial Court of British Columbia until a direct indictment was filed with this court on January 28, 2019. With that, the file became subject to CPD-3, the Complex Criminal Cases Practice Direction. CPD-3 sets out expectations on how a complex criminal case is to progress through this court, with various benchmarks for completion of disclosure, filing of applications, conducting an application screening conference, hearing pre-trial applications, and ideally the timeframe in which a trial should be completed.

- [5] By virtue of CPD-3, s. 8(a), the initial Crown disclosure for a direct indictment, as is the case here, is to be done within three months of the first appearance. With respect to this matter, that date is April 29, 2019. Section 8(b) of CPD-3 provides that all remaining disclosure is to be made within five months of the first appearance; therefore, in this case, approximately June 29, 2019. Of course, the Crown's disclosure obligation is continuous even past those deadlines, but those are the benchmarks for when disclosure is to be completed, subject to something arising unexpectedly or occurring further in the investigation.
- [6] At the first case management conference on this file on March 5, 2019, the Court was advised that disclosure set V-7 and a disclosure chart had been provided by that date, and that a separate hard drive of disclosure in respect of the Part VI affidavit in support of the wiretap authorization, as well as the source material for the affidavit, had been provided on March 4, 2019. The Crown expected that disclosure set V-8 would be provided by March 29, 2019.
- [7] At the second case management conference on this file on April 5, 2019, the Court was advised that disclosure set V-8 had been provided on March 27, 2019. Crown counsel, Ms. Loda, advised the Court at that time that 91 percent of disclosure, or 119,200 files, had been completed by September 2018, within two months of the takedown arrests of all of the subjects of the Project Territory investigation. At that time, the Crown anticipated one more disclosure set, V-9, with approximately 400 files.
- [8] Of course, disclosure delivery begets disclosure requests, which begets more disclosure.
- [9] On the third case management conference on this file on May 17, 2019, the Court was advised that V-10 had been provided on May 13, 2019, and while there were some issues with disclosure, the Court's assistance was not required at that point.
- [10] After the application screening conference was heard the week of August 12-16, 2019, there were three applications in the lineup to address disclosure issues: Application 3 by Craig Latimer seeking disclosure related to when he became known to the investigation as it impacted his known versus unknown Chesson argument on the wiretap challenge; and Applications 24 and 32, filed respectively by Mr. Szucs and Kyle Latimer, which were mirror applications for a Laporte list.
- [11] Application 3 has not been heard, as counsel for Craig Latimer has been pursuing the matter with Crown, and materials continue to be disclosed to him. Applications 24 and 32 were originally set for September 27, 2019, for a half a day. On that day, it was put to October 8, 2019, for one day, as further discussions were occurring. On October 8, the matter was again adjourned to November 18, 2019, because counsel needed more time, as Detective Constable Wu, the disclosure officer, was going to be conducting a review and endeavouring to resolve the issues outstanding in the application process.

- [12] On November 18, 2019, the matter was adjourned to December 6, 2019, as Crown had provided disclosure of another 900 files on November 15, 2019. The December 6 hearing was then rescheduled to December 10 as another voir dire, the Brighthouse voir dire, had to continue on that day.
- [13] On December 10, 2019, Detective Constable Wu testified for the whole day about the disclosure process. Of significance in her evidence was the revelation that only emails of "investigative significance" were forwarded to the file coordination team. Each officer was left to their own devices to determine the meaning of investigative significance. Argument was heard on the Laporte list application on January 29, 2020, and on February 20, 2020, I provided an oral ruling, found at R. v. Latimer, 2020 BCSC 697. I did not order the preparation of the Laporte list at that time, as I was of the view that it was premature. I did, however, pursuant to my trial management powers and case management powers, and pursuant to s. 551.3(g)(i) of the Code, direct that:
- [93] In so far as the emails and electronic communications are concerned, if this has not been done already, I am directing that DC Wu communicate with all officers and civilians involved in Projects Territory and Tantrum and request they forward to her immediately any emails and/or electronic communications in which they communicated about any matter or target related to Project Territory or Tantrum. The Crown can then assist DC Wu and the file coordinators in assessing the materials for clear irrelevance or privilege and develop a standard for disclosure of the materials that should be disclosed.
- [94] The Crown and the file coordinator and/or disclosure officer should provide a list of officers and civilian members to whom requests have been made for electronic communications and include when the request was made, when a response was received, and when the materials sought can be provided. The request by DC Wu should indicate that it is imperative that responses be received as soon as practicable.
- [95] By March 6, 2020, I expect both an update on the progress of this endeavour and to be advised of a projected time for completion of this task.
- [14] I dismissed the application for a Laporte list, but I noted my concern about how the emails had been handled and the need to rectify the situation, by stating at paras. 86 through 88:
- [86] To be frank, DC Wu's evidence that individual investigators were left to their own devices to determine whether their email communications were of "investigative significance" and to forward only those that were to the Tourniquet mailbox is a deeply troubling revelation. One only needs to look at the difficulties that arose in the McKinnon case in respect of electronic communications and their non-disclosure to see the folly in such a course of conduct.
- [87] The seemingly misplaced email DC Unheim sent to Mr. Sandhu on or about June 28, 2017, seeking CCTV surveillance footage and fob access records from the Pacific Rim Residences provides at least one example of the problem that has potentially been created for this case.

- [88] Moreover, the standard of clearly irrelevant, not "investigative significance", is where the divide occurs on the disclosure/non-disclosure line. This has been the governing standard on the withholding of materials contained in the investigative file since Stinchcombe was decided on November 7, 1991--more than 28 years ago.
- [15] The Crown has continued to provide updates to the Court on the email review process between March 6, 2020, and today's date. Regrettably, the magnitude of the problem was not immediately apparent, but has become increasingly focused as updates have been provided. I am not going to outline the number of officers or the thousands of emails involved in the email review and disclosure process. Suffice to say it is enormous and extremely time consuming. It is also not without its complications in terms of how things are being disclosed. For example, attachments have been removed from some emails because they had already been disclosed elsewhere. I understand that that practice has since stopped in mid-summer.
- [16] At the August 13, 2020, case management conference, defence sought a drop-dead date for a disclosure completion deadline. I did not direct one at that point, perhaps on the incorrect assumption that everything might well be completed by the end of September, and that at today's case management conference, Crown would be able to confirm that V-19 would be to the defence by mid-September as had been indicated on August 13, 2020.
- [17] That is not the case. I learned today that a second officer was only added to assist Detective Constable Wu with this monumental task at the beginning of September 2020, notwithstanding the fact that in March 2020, the enormity of the task was beginning to become apparent. While the global pandemic may have brought court proceedings to a halt for a couple of months between March and June 2020, I do not understand that it impacted the disclosure review process.
- [18] Late-breaking disclosure of materials in the possession of the Project Territory investigation - a project undertaken by the Vancouver Police Department (the "VPD") - was once again apparent in the Kwantlen and West Georgia CCTV and fob access records voir dires heard July 27 through August 7, 2020.
- [19] Critically, a statement provided by a civilian, Ms. Blair, given to Constable Opoku in August 2018, was not provided to the defence until the eve of the voir dire in July 2020. No explanation has been provided for the delay. Other applications have had similar late-breaking disclosure of material information that Project Territory has had in its possession, but somehow has not passed it onto the Crown who would then provide it to the defence.
- [20] I was troubled by the disclosure issues that developed in the first two voir dires, the Brighthouse and Pacific Rim voir dires, as well as in Mr. Szucs' arrest voir dire. The problem with late disclosure of Ms. Blair's statement for voir dire Number 6 in July 2020 has done nothing to quell that concern. We are now 14 and a half months past CPD-3's expectation of when disclosure should be complete, and now the Court is learning that V-19 will probably

be done by the end of September 2020. V-19 has 37,843 emails to review and the Crown estimates that approximately one thousand of those emails will be disclosed. V-20 will deal with the emails of other officers, some not core officers, but others like Detective Constables Unheim and Apar, the file coordinators, may be closer to core officers. Their emails are on V-20. The Crown is unable to provide an estimate as to when that disclosure will occur.

- [21] I appreciate that Crown counsel has been working diligently on disclosure issues. The problem is not with the Crown, it is with Project Territory and the VPD. I am not prepared to let disclosure drift along further. The Project Territory investigators have an ongoing obligation to provide Stinchcombe disclosure; that is, anything that is not clearly irrelevant or privileged. Clearly irrelevant is a definition that is pursued from the defence perspective, not the Crown or police perspective. So, basically, most everything should be disclosed unless it is privileged or truly, clearly irrelevant; the disclosure obligation is based on whether something would assist the defence in further avenues of inquiry or in pursuing other investigative tactics.
- [22] Project Territory and the VPD are subject to the provisions of CPD-3 as well, not just the Crown. They are the ones who provide materials to the Crown to disclose to defence. They appear to be about 14 months past due. There are three men detained in custody, who have been since August 7, 2018. Respectfully, the VPD will have to pour more resources into Project Territory's disclosure process immediately.
- [23] Accordingly, I direct that the following deadlines are to be met insofar as disclosure is concerned:
- V-19 is to be completed by October 2, 2020;
 - V-20 is to be completed by November 2, 2020; and
 - all remaining disclosure is to be completed by December 2, 2020.
- [24] Should issues arise on making these deadlines, I expect the matter to be raised and brought to the Court's attention immediately, and definitely before the deadline is looming. Thank you.

"Ker J."

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