

CANADA / JUDGMENT

R. v. Latimer

2020 BCSC 970

COURT

Supreme Court of British Columbia

DECIDED

15 January 2020

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2020 BCSC 970 R. v. Latimer IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Latimer, 2020 BCSC 970 Date: 20200115 Docket: 27798 Registry: Vancouver Regina v. Kyle Latimer, Craig Latimer, Jacob Pereira, Anduele Pikiento, Csongor Szucs Restriction on publication: A publication ban has been automatically imposed under s. 648(1) of the Criminal Code restricting the publication, broadcasting or transmission in any way regarding any portion of the trial at which the jury is not present. This publication ban applies until the jury has retired to consider its verdict. Before: The Honourable Madam Justice Ker Oral Ruling on Admissibility of Exhibit A for Identification on Voir Dire #4 Counsel for the Crown: M. Loda T. Warren Counsel for the Accused Kyle Latimer: J.D. Jevning (as Agent for J. Narwal) Counsel for the Accused Craig Latimer: J.D. Jevning (as Agent for R. Mansoori-Dara) Counsel for the Accused Pereira: J.D. Jevning (as Agent for G.M. Ng) Counsel for the Accused Pikiento: J.D. Jevning (as Agent for J.J. Saulnier) Counsel for the Accused Szucs: J.D. Jevning V.M. Williams Place and Date of Hearing: Vancouver, B.C. January 15, 2020 Place and Date of Judgment: Vancouver, B.C. January 15, 2020

- [1] THE COURT: This is an oral ruling subject to editing for grammar and style if it is transcribed. The result will not change.
- [2] The Court is embarked upon voir dire #4--which is Application #21--a defence challenge to the lawfulness of the accused Csongor Szucs' arrest on June 19, 2017. The defence has tendered Exhibit A for identification on the voir dire, a CD that contains two folders. The Crown objects to the admissibility of the contents of the first folder, entitled "App.21.Videos".
- [3] In that folder are three video clips with file names 00071.wmv ("Video Clip 71"), 00307.wmv ("Video Clip 307"), and 00310.avi ("Video Clip 310"). All video clips are from June 19, 2017. Video Clip 307 and Video Clip 310 are from CCTV surveillance footage of the lobby and elevator bank at the Fairmont Pacific Rim Estates, a residential building on West Cordova Street in Vancouver, BC. Video Clip 71 is video footage taken by a member of the Vancouver Police Department ("VPD") surveillance team who was part of a team following the movements of a male believed to be Jacob Pereira, one of Mr. Szucs' co-accused on this indictment. Video Clip 71 appears to depict Mr. Pereira and Mr. Szucs leaving the Fairmont Pacific Rim Hotel, which is connected to the Fairmont Pacific Rim Estates, approximately eight minutes after Mr. Pereira can be seen waiting to travel up the elevator inside the

Fairmont Pacific Rim Estates.

- [4] All three video clips depict a man who appears to Jacob Pereira wearing a red leather jacket and carrying a beige coloured backpack. The time of the three video clips is between 14:02 hours and 14:13 hours on June 19, 2017.
- [5] The backpack figures in this voir dire as it is the backpack that VPD surveillance members observed being placed by Mr. Pereira into a black Dodge Durango that Mr. Szucs was driving that day. That vehicle was pulled over later on in the afternoon of June 19, 2017, by a member of the Hope, BC RCMP at the request and direction of the VPD.
- [6] The Crown objects to the admission of these three video clips on the basis of relevance. The Crown argues that because the issue on this voir dire is whether Detective Constable Hill had reasonable grounds to arrest Mr. Szucs and because Detective Constable Hill had not seen the video clips before Mr. Szucs' arrest and they did not form the basis for his subjective grounds, the video clips are irrelevant and ought not to be admitted.
- [7] The Crown advanced two other bases for the objection, but at the end of argument, the Crown acknowledged that the real basis for objecting to the admissibility is relevance. Accordingly, I will only address the relevance ground.
- [8] The defence asserts the video clips are relevant to assist the Court in determining the objective reasonableness of Detective Constable Hill's subjective grounds. One of Detective Constable Hill's grounds was that he had been advised by a VPD surveillance team member that the backpack that the man believed to be Jacob Pereira was carrying that afternoon appeared to be "distinctly heavier" after he was seen exiting a vehicle driven by Gurvinder Randhawa at approximately 13:48 hours at Nelson and Richards Street in Vancouver, BC. Mr. Pereira and Mr. Randhawa had a one-minute meeting in Mr. Randhawa's Ford Fusion. When Mr. Pereira left the Ford Fusion, surveillance members described the backpack, as related in the master surveillance reports, as looking "distinctly heavier", "very heavy", and that "[t]he bag was also being pushed out by the contents and was close to full by the volume of the contents."
- [9] Detective Constable Hill believes Mr. Randhawa gave Mr. Pereira drugs at this meeting and that the drugs were from #907-1221 Bidwell Street in Vancouver, BC--a location he believed was a stash site for the Kang group's drug trafficking enterprise. Mr. Randhawa was believed to be one of the drug couriers for the Kang group. Mr. Pereira was believed to be a member of the Red Scorpion group and a close associate of Kyle Latimer, another co-accused on this indictment. On the basis of the observations relayed and the believed associations, Detective Constable Hill formed the belief that the drugs were exchanged between Mr. Randhawa and Mr. Pereira and that Mr. Pereira had the drugs in the beige backpack that was later put into the Dodge Durango driven by Mr. Szucs.

- [10] After Mr. Pereira left Mr. Randhawa's Ford Fusion, he went to a Mercedes vehicle registered in his name, put the backpack in the vehicle, and drove to the Fairmont Pacific Rim Hotel, arriving 10 minutes later at 14:01 hours.
- [11] Video Clips 307 and 310, which are from the Fairmont Pacific Rim Estates, depict Mr. Pereira with a beige backpack slung across one shoulder as he strides through the lobby and with both straps of the backpack over his shoulders as he waits at the elevator. A good view of that backpack can be seen at approximately the 11-second mark of Video Clip 310 when Mr. Pereira is in profile to the CCTV camera and the dimensions of the backpack are readily apparent. A similar view of the backpack can be seen on Video Clip 71 at approximately the 20-second mark.
- [12] In cross-examination, Detective Constable Hill was unable to offer comments about the heaviness of the backpack from Video Clip 310, but he did say that in Video Clips 307 and 71, the backpack did not look that heavy.
- [13] Defence seeks to have the videos admitted not to challenge Detective Constable Hill's subjective grounds with respect to the arrest of Mr. Szucs but to assist in determining the objective reasonableness of those grounds in so far as the "heaviness" of the backpack is concerned after the meeting between Mr. Randhawa and Mr. Pereira in the Ford Fusion at 13:48 hours.
- [14] The defence acknowledges that Detective Constable Hill did not see the video clips at the time they were taken, and they did not form part of his grounds for arrest. What did form part of his grounds was the surveillance team's comments about the change in the weight and appearance of the bag after Mr. Pereira concluded his meeting with Mr. Randhawa.
- [15] The defence argument appears to suggest that the video clips are objective evidence about the actual state of the backpack that Mr. Pereira had after his meeting with Mr. Randhawa and that an examination of the video clips establishes that the backpack was not as described in the master surveillance reports. The defence argues that this goes to the objective reasonableness of Detective Constable Hill's grounds.
- [16] In order for an arrest under s. 495(1)(a) of the Criminal Code, R.S.C. 1985 c. C-46 to be lawful, the arresting officer must subjectively believe that there are reasonable grounds and those grounds must be objectively justifiable: *R. v. Storrey*, [1990] 1 S.C.R. 241 at 250-251 as cited in *R. v. Jir*, 2010 BCCA 497 at para. 18 and *R. v. Luong*, 2017 BCSC 1779 at para. 46.
- [17] In *Luong* at paras. 50 and 51, Mr. Justice Bowden succinctly summarized the concept of reasonable grounds and the objective standard:
- [50] As cited in *Jir*, in *R. v. Luong*, 2010 BCCA 158, Madam Justice Bennett stated:

- [24] The assessment of whether objective grounds exist undertaken by a trial judge is conducted by first looking at the observations of the officer (which the trial judge has found as facts) through the lens of someone who has the same experience, training, knowledge and skills as the officer who is making the observations, and then deciding if a reasonable person with the same lens would come to the same conclusion as the police officer
- [51] The reasonable grounds standard is less than the civil standard of proof and is one of reasonable probability or reasonable belief. (R. v. Debot, [1989] 2 S.C.R. 1140 and Jir). It requires something more than mere suspicion that amounts to "a practical, non-technical and common sense probability as to the existence of the facts and inferences asserted." (Mugesera v. Canada (Minister of Citizenship and Immigration), 2005 SCC 40 at para. 141 and R. v. Sanchez, (1994), 93 C.C.C. (3d) 357 at page 367, as referred to in Jir).
- [18] The Crown asserts that because objective reasonableness or the objective standard is assessed from the perspective of a reasonable person standing in the shoes of Detective Constable Hill and Detective Constable Hill did not see the videos at the time he formed his grounds, the videos are irrelevant to the assessment of the grounds on the objective standard.
- [19] I must, with respect, disagree. While I understand the point the Crown makes, what is troubling in all of this is the fact that the videos of the backpack do not show a heavy backpack or a backpack "pushed out by the contents" and "close to full by volume of the contents".
- [20] In my view, where one officer is forming the grounds for arrest and is relying upon the observations of the surveillance team, then the reporting of the observations ought to be accurate. The video clips in Exhibit A might tend to contradict the accuracy of the observations noted in the master surveillance report as the observations were related to Detective Constable Hill by members of the surveillance team at the time.
- [21] To that extent, in my view, the video clips are relevant. The weight to be attached to the video clips may well be another matter. However, they appear to be relevant and therefore are admissible for that purpose on the voir dire. "Ker J."

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