

CANADA / JUDGMENT

R. v. Lloyd

2019 BCCA 25

COURT

British Columbia Court of Appeal

DECIDED

15 January 2019

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2019 BCCA 25 R. v. Lloyd COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Lloyd, 2019 BCCA 25 Date: 20190115 Docket: CA45046 Between: Regina Respondent And Joseph Ryan Lloyd Appellant Before: The Honourable Mr. Justice Harris The Honourable Madam Justice Stromberg-Stein The Honourable Madam Justice Fenlon On appeal from: An order of the Provincial Court of British Columbia, dated September 18, 2017 (conviction) and January 5, 2018 (sentence) (R. v. Lloyd, Vancouver Registry 233735-2-C). Oral Reasons for Judgment Counsel for the Appellant: D.N. Fai Counsel for the Respondent: J.N. Walker Place and Date of Hearing: Vancouver, British Columbia January 15, 2019 Place and Date of Judgment: Vancouver, British Columbia January 15, 2019 Summary: Appeal of convictions on basis that an arrest search incidental to arrest that produced evidence on which some of the convictions depended was unlawful and the search unreasonable. Appeal dismissed; the judge did not misapprehend the evidence critical to her conclusion that the arrest was lawful, the search was reasonable, and the evidence was admissible.

- [1] HARRIS J.A.: Mr. Lloyd appeals his conviction of multiple counts of possession of controlled substances for the purposes of trafficking, carrying a concealed weapon (a knife), possession of a weapon for a purpose dangerous to the public peace, obstructing a peace officer, and assaulting a peace officer with a weapon.
- [2] Critical to his convictions was the result of a voir dire held to determine the admissibility of evidence seized in a search incidental to his arrest. Mr. Lloyd contended that his arrest was unlawful and accordingly the search was unreasonable.
- [3] It is not necessary to recount the facts in detail. In short, Mr. Lloyd was approached by two plain clothes police officers as he sat with another man outside a coffee shop. The judge accepted that the officers advised the men that they were police officers investigating a bylaw infraction for smoking within six metres of a doorway. They advised them that they were not free to leave. They asked for their names and dates of birth. The accused was uncooperative but eventually gave his name. One of the officers queried both names on the computer in the police car. Before the process was complete, the other officer noticed a bulge in the accused's clothing that he suspected to be a weapon. He called a warning to the police officer in the vehicle, who returned to the scene.

- [4] The officers were concerned that the accused was about to run. They advised him again that he was not free to go and warned him of the offence of obstructing police. One officer attempted to grab his arm. A fight ensued and the accused attempted to draw a knife. The police knocked it out of his hand and a bystander retrieved it. The fight was intense. The accused was arrested and searched while handcuffed, lying on the ground, and still struggling. He was found to be carrying a leather purse under his shirt which contained 25.7 grams of cocaine, 56.59 grams of methamphetamine, and 51.29 grams of heroin and fentanyl in combination. The drugs were in small plastic bags. The accused was also carrying a digital scale, two knives, and \$1,780 in cash.
- [5] The defence argued that the evidence should be excluded because the whole police interaction was a ruse for the purposes of interacting with the accused. Alternatively, the defence argued that the arrest for obstruction was unlawful, because the officers had already completed the identification of the accused: they had learned his name and one of them recognized the name. Therefore there was no further reason to detain him, the arrest was unlawful, and the ensuing search violated s. 8 of the Charter. The defence also argued that the police tried to conceal, in their initial report to Crown counsel, the original purpose for their surveillance, and that this should cast doubt on all their evidence.
- [6] The judge concluded that the arrest was lawful, the search was reasonable, and the evidence was admissible. She found that the police did not try to conceal the initial purpose of their investigation. She found the facts as I have set them out above. In so doing, she rejected the position on the facts taken by Mr. Lloyd's counsel. She accepted that the police had not completed their confirmation of Mr. Lloyd's identity. The officers were still engaged in the execution of their duty to identify the accused at the time of the obstructive conduct. She concluded that the arrest was lawful. The search conducted incidental to that arrest did not violate s. 8 of the Charter. There was justification for a safety search, as the officers had reason to believe the accused was carrying a weapon and was backing away while blading his body away from the officer.
- [7] The evidence from the voir dire was admitted as evidence at trial. The findings of fact made in the voir dire reasons formed the foundation of the reasons for conviction. Mr. Lloyd contends that the judge made multiple errors in the conclusions she reached, but, in my view, they boil down to the proposition that the judge misapprehended the evidence in ways that contaminated her critical finding that the arrest was lawful.
- [8] As is well known, this Court shows deference to the findings of fact made by a trial judge in the absence of demonstrable error. In this particular case, I do not think the appeal can succeed unless Mr. Lloyd can demonstrate that the judge committed palpable and overriding errors of fact through misapprehending critical evidence. If the facts, as found by the trial judge are accepted, there is, in my view, not other basis to interfere with the convictions.

- [9] I do not think that Mr. Lloyd has done more than reargue his case at trial. He has not demonstrated any reversible error in the judge's findings or reasoning. What he has done is attempt to persuade us that the judge ought to have reached different conclusions, for example, by taking a different view of the credibility of the officers or in her assessment of whether subjective and objective grounds existed for the arrest. I am satisfied that the judge did not misapprehend the evidence in the manner required to justify appellate intervention. All of the material findings of fact made by the judge were open to her on, and well-supported by, the evidence. On that basis, I would dismiss the appeal substantially for the reasons given by the judge.
- [10] STROMBERG-STEIN J.A.: I agree.
- [11] FENLON J.A.: I agree.
- [12] HARRIS J.A.: The appeal is dismissed. "The Honourable Mr. Justice Harris"
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Prepared on 29 October 2026 · Esheria