
CANADA / JUDGMENT

R. v. Menzies

2017 BCSC 377

COURT

Supreme Court of British Columbia

DECIDED

30 January 2017

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2017 BCSC 377 R. v. Menzies

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Menzies,

2017 BCSC 377

Date: 20170130

Docket: 79402-2

Registry: Nanaimo

Regina

v.

Helen Marguerite Menzies

Before: The Honourable Mr. Justice Baird

Oral Ruling on Voir Dire

Counsel for the Crown:

S. Simpson

Counsel for the Accused:

K. Bradshaw

Place and Date of Voir Dire Hearing:

Nanaimo, B.C.

December 6-8, 2016

Place and Date of Ruling:

Nanaimo, B.C.

January 30, 2017

INTRODUCTION

- [1] On Thursday, March 5, 2015, at around 12:40 a.m., Helen Marguerite Menzies was pulled over in her motor vehicle by Nanaimo RCMP Constable Ryan Koskela, who was patrolling the old downtown section of our city.
- [2] Ms. Menzies claims on this Charter voir dire that Constable Koskela and other police officers violated her rights, starting with an unlawful arrest. This set in train, she says, a sequence of rights violations justifying the exclusion from evidence of narcotics found in her vehicle.

BACKGROUND

- [3] The evidence on this application came entirely from police witnesses who were only lightly cross-examined. Ms. Menzies did not testify or call other evidence, and in the end the facts were not much disputed.
- [4] Constable Koskela started following Ms. Menzies on Milton Street, which is a two-lane highway divided by a single yellow line. He observed Ms. Menzies drift over the yellow line on two occasions as she approached the intersection of Milton and Albert Streets, where, in addition, Ms. Menzies failed to stop at a stop sign while making a right-hand turn.
- [5] Constable Koskela followed Ms. Menzies along Albert Street, where once again on two separate occasions he saw her drift over the yellow dividing line. He activated his lights and siren and Ms. Menzies came to an abrupt stop at a diagonal, in the middle of the roadway, about 10 feet from the curb.
- [6] Constable Koskela got out of his marked unit, and could hear Ms. Menzies screaming obscenities at him. He asked her to open her window, which at first she refused to do. After a while she cracked it open a few inches, still cursing and hollering. Constable Koskela thought Ms. Menzies might be impaired by alcohol or drugs, but his testimony was clear that this suspicion never developed into reasonable and probable grounds to believe that she was committing an offence under s. 253 of the Criminal Code, R.S.C. 1985, c. C-46.
- [7] Eventually Ms. Menzies was arrested, but it wasn't for impaired driving. Constable Koskela readily conceded, in fact, that he detected no odour of alcohol, no apparent dysfunction of speech or fine motor control, no pupil dilation, shaking, sweating, or any of the other well-known physical symptoms of drug or alcohol impairment. It seems that it was only Ms. Menzies' foul mouthed ranting and raving that caused him to wonder about the possibility of impairment.

DISCUSSION

- [8] I think most reasonable people would sympathize with Constable Koskela in the circumstances. Here he had pulled over a motorist with perfectly good cause, and a routine traffic stop had unexpectedly turned into an absurdly profane confrontation. I watched this witness carefully as he testified. I got the distinct impression that Constable Koskela was genuinely taken aback by Ms. Menzies' hostility, and was at something of a loss about how to deal with her.
- [9] He asked Ms. Menzies to produce her driver's licence. He was authorized to do this by s. 33 of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 and Ms. Menzies was lawfully obliged by the same provision to comply. Instead she refused, and continued berating him. Constable Koskela had to repeat his demand a number of times. He seemed rather a mild-mannered person, by the way, who by no means lacked patience, and although Ms. Menzies finally handed over her licence, when she was put to her statutory obligation under s. 73 of the Motor Vehicle Act to correctly state her name and address, she memorably replied, "Helen Fuck You Menzies," and left it at that. She would not confirm her residential address and refused to produce her insurance and vehicle registration documents.
- [10] The power of arrest conferred by the Motor Vehicle Act is restricted by s. 79 to circumstances in which a peace officer has reasonable and probable grounds to believe that a motorist is a prohibited driver, is not insured, or has committed a hit-and-run. Constable Koskela's evidence referred to none of these circumstances. Section 495 of the Criminal Code, meanwhile, does not authorize a warrantless arrest for provincial statute violations except to establish identity, secure or preserve evidence, or prevent continuation of an offence, none of which may be said to plausibly apply here.
- [11] In Ms. Menzies' submission therefore, Constable Koskela ought not to have made an arrest. Instead, he should have written her a violation ticket for Motor Vehicle Act infractions including, presumably, crossing the yellow line, s. 151; failing to stop at a stop sign, s. 186; failing to correctly state her name and address, s. 73; and failing to produce insurance, s. 33, and thereafter permitted her to proceed on her way.
- [12] I will deal with this fairly succinctly. Constable Koskela was plainly engaged in the lawful conduct of his duties when he stopped Ms. Menzies for moving infractions. Her driving was bad and the pull over was perfectly justified. Constable Koskela issued routine and uncontroversial demands for information and documentation with which Ms. Menzies was statutorily obliged to comply. Instead of doing so, she obstructed Constable Koskela at every turn. She refused to discharge simple and straightforward duties imposed on her by the Motor Vehicle Act, and Constable Koskela was not obliged to permit her to proceed on her way in the absence of compliance.
- [13] What he did instead, and what the Crown has submitted he had every lawful authority to do, was to arrest Ms. Menzies for obstructing a peace officer in the lawful execution of his duties. This is an offence under s. 129 of the Criminal Code, for which a person may be

arrested without warrant: *R. v. Moore*, [1979] 1 S.C.R. 195. I agree completely that in the circumstances Constable Koskela had reasonable and probable grounds to believe that this offence had been and was in the process of being committed. In my view, Ms. Menzies' arrest was sustainable from both subjective and objective viewpoints: *R. v. Storrey*, [1990] 1 S.C.R. 241, at para. 16. There was nothing in the least bit arbitrary about Constable Koskela's conduct, and Ms. Menzies' arguments under s. 9 of the Charter fall well short of the mark.

- [14] As the Supreme Court of Canada observed in *R. v. Nolet*, [2010] S.C.R. 851, at para. 4, roadside stops can develop in unpredictable ways. My duty here is to proceed step by step through the interactions of the police with Ms. Menzies to determine whether, from the point of view that I have presently identified of a lawful arrest or detention, the police stayed within the ambit of their lawful powers and authority as matters progressed. I have concluded that they did.
- [15] Constable Koskela, in the midst of his bizarre interaction with Ms. Menzies, radioed for some backup. A number of his colleagues showed up. Before long there was a reasonable crowd of local police officers curiously milling about Ms. Menzies' car. After advising Ms. Menzies that she was under arrest for obstruction, Constable Koskela stood back, while one of his colleagues, Constable Kay, took a turn at attempting to reason with her. By that stage, true to established form, she was refusing to get out of her vehicle.
- [16] My impression, frankly, was that Constable Koskela had run out of ideas for dealing with Ms. Menzies, and he was relieved that someone else was prepared to have a go. Eventually the shift supervisor, Constable Henning, arrived on scene. He came across as a no-nonsense senior man who rapidly decided, and I agree with him, that all of this foolishness had gone quite far enough. After getting a quick run-down from Constable Koskela, Constable Henning marched directly to Ms. Menzies' driver's window and told her in plain, unvarnished English that she had been lawfully arrested, and that she would either get out of the car at once or be forcibly removed.
- [17] Ms. Menzies finally yielded to the inevitable and emerged on to the roadway. She stood beside the open doorway, but this was not good enough for Constable Henning, who asked her to step away from the vehicle for "officer safety" reasons. No doubt this claim is sometimes made in cases where it might not be apt, but here I note that in short order an unsheathed knife was discovered in an open driver's door console.
- [18] Naturally, Ms. Menzies refused to budge from her spot by the door, and so, as any person with even a nodding familiarity with nocturnal police interactions could have confidently predicted, Constables Kay and Henning eventually put the grasp on her, and a struggle ensued in which Ms. Menzies was forced to the ground, handcuffed and shoved, kicking, screaming and swearing, into the back of a police car.
- [19] With Ms. Menzies successfully stowed away, Constable Koskela went to have a look in her vehicle through the windows. He saw her open purse on the passenger seat and what appeared to be narcotic drugs in plain view within it. In particular, he could see what looked

to be rock cocaine nestled within a coffee filter on top of some other things. Referring once again to Nolet, this was the next development or step in the police interaction with Ms. Menzies that needs to be evaluated. In my view, it meant that there were now reasonable and probable grounds for a narcotics arrest, and common law authority for a reasonable search incidental to it.

- [20] Constable Koskela went over to the police car in which Ms. Menzies was confined and advised her in addition to being under arrest for obstruction that she was now under arrest for possession of a controlled substance. He then performed a search of Ms. Menzies' vehicle and contents, and he found rock cocaine, powder cocaine, heroin, and crystal methamphetamine in her purse. Constable Henning assisted him and discovered the knife, as I have said, in the driver's side door. A black pouch was seized from the passenger side foot well that was found to contain various types of drug paraphernalia, including glass tubes, a rubber tourniquet, small plastic baggies, syringes and a digital scale.
- [21] The various substances found in the purse were weighed, and later analyzed. There were 19.1 grams of crack cocaine, 6.4 grams of powder cocaine, 3.5 grams of crystal meth, and 1.4 grams of heroin. Ms. Menzies had \$565 on her in Canadian currency, mostly in twenties and fifties. She was advised of her right to speak to counsel, and exercised that right at the police station. Later on she was strip searched in police cells to ensure that she had no other narcotics concealed about her person.
- [22] I have already rejected Ms. Menzies' argument that her arrest was arbitrary. She also claims that she was subjected to an unreasonable search or seizure on the basis, first of all, that the search of her vehicle exceeded what was lawfully permissible as an incident to an arrest for obstruction, and secondly, that she was subjected to a strip search at the police station that ran afoul of the rules laid down by our highest court in *R. v. Golden*, [2001] 3 S.C.R. 679. She maintained finally that she was denied the right to retain and instruct counsel without delay.
- [23] I mentioned at the outset that Ms. Menzies called no evidence on the voir dire, and thus Constable Koskela's evidence is undisputed. He testified that he saw narcotics in plain view from outside Ms. Menzies' vehicle. If the vehicle search had been conducted on the bare justification of a motor vehicle stop or because an arrest had been lawfully made for obstruction, that would be one thing, but more than that was going on here. This was not a case involving an unfounded general inquisition on specious grounds. The present investigation developed in measured steps that I consider to be perfectly logical and admissible.
- [24] There is nothing at all forbidding a police officer, or anyone else for that matter, from looking into the windows of a car stopped on a public highway. As a matter of law, such a thing does not even qualify as a search: see, for example, *R. v. Grunwald*, [2010] B.C.J. 1088 (C.A.). I have been provided with no reason to doubt Constable Koskela's testimony concerning his observations of narcotics in plain view during his wholly uncontroversial visual inspection of Ms. Menzies' vehicle. Solid grounds for Ms. Menzies' arrest arose from

it, and the vehicle search incidental thereto was authorized by the common law and was reasonably conducted. I find that there was no infringement of s. 8 of the Charter in any of these activities.

- [25] The only reason why Ms. Menzies' s. 10 Charter rights were read to her at the police station rather than at the roadside was because she was yelling and carrying on so consistently that Constable Koskela could not get a word in edgeways. I am satisfied that he advised her of her s. 10 Charter rights as soon as he could make himself properly understood and facilitated her implementation of those rights immediately thereafter. I have concluded that in the present circumstances this was good enough. Ms. Menzies' behaviour throughout this interaction made communication with her challenging, if not impossible. If there was a brief delay in providing her with the information required by s. 10 and granting her access to counsel, it was caused by her own wilful misbehaviour and she has no just cause to complain about it.
- [26] Somewhere along the way, as no female officers were presently on shift, Constable Kitchen was summoned from her home to perform a strip search on Ms. Menzies. Constable Kitchen testified that she considers it to be a matter of routine to strip search prisoners who have been arrested for drugs possession. It is common experience, she testified, that drug dealers hide narcotics in their underclothes and bodily cavities. They are searched to detect and secure evidence and to safeguard the health and safety of the detainee, her jailers and fellow prisoners.
- [27] Constable Kitchen testified that she had the authorization of the officer in charge to conduct the strip search, which was performed in a private setting with no one else present or watching. As these things go, the search was not terribly intrusive and care was taken to trespass as little as possible on Ms. Menzies' privacy and dignity. Constable Kitchen searched Ms. Menzies' brassiere, then had her partially take down her trousers and squat briefly to determine if contraband would fall out of her anal or vaginal cavities. The whole business took a matter of minutes and yielded no further evidence of drug offences.
- [28] The Supreme Court in *Golden* decreed that strip searches are inherently degrading and humiliating and for this reason they cannot be carried out as a matter of routine policy. They are only constitutionally valid at common law where (1) they are conducted as an incident to a lawful arrest for the purpose of discovering weapons in the detainee's possession or evidence related to the reason for the arrest; (2) the police establish reasonable and probable grounds to justify the strip search in addition to reasonable and probable grounds justifying the arrest; and (3) the strip search is conducted in a manner that does not infringe s. 8 of the Charter.
- [29] Here, Ms. Menzies was lawfully arrested, and the reason for the strip search was directly and rationally connected to the grounds for the arrest, namely drug offences. Constable Kitchen candidly testified that she was following detachment routine, and if this were the only justification for the search, I would find it to be unreasonable. But she also referred to the

well-known fact that drug traffickers often hide narcotics in their bodies, and she conducted the search for this reason as well. This was recently held to be reason enough in *R. v. Johal*, 2015 BCCA 246, and I would draw the same conclusion here.

- [30] Golden makes it clear, as well, that different considerations apply when a detainee is going to be lodged in cells or required to enter a prison population. In such circumstances, I would hold that a superordinate vigilance is required to ensure that hidden cargos of contraband are not permitted to compromise health or discipline within supposedly secure settings. In this case, I doubt that Ms. Menzies was detained in cells for any great length of time, and it may be that this concern was not as pressing as it might have been had she been poised for a stay of some duration. The point, I believe, is nevertheless an important one: preventative measures to ensure that toxins are not imported into jails and lockups are not unreasonable.
- [31] Moreover, I find that the strip search was conducted in good faith and in a reasonable manner not calculated to degrade or humiliate Ms. Menzies. No evidence was gathered thereby, the narcotics evidence forming the basis of the present charges had already been seized in a lawfully authorized search, and the strip search was not, as Ms. Menzies alleged, the apogee of a sequence of rights violations justifying the exclusion from evidence of narcotics previously found in her vehicle.
- [32] It follows that Ms. Menzies' application for orders that her Charter rights had been infringed or denied is dismissed.

"Baird J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/17/03/2017BCSC0377.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-menzies-2017-bcsc-377>

Prepared on 26 October 2026 · Esheria