

CANADA / JUDGMENT

R. v. Nicholson

2016 BCSC 1267

COURT

Supreme Court of British Columbia

DECIDED

18 May 2016

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2016 BCSC 1267 R. v. Nicholson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Nicholson, 2016 BCSC 1267 Date: 20160518 Docket: 26396 Registry: Vancouver Regina v. Christopher Michael Makoto Nicholson Before: The Honourable Madam Justice B.J. Brown SEALED UNTIL FURTHER ORDER OF THE COURT Reasons for Judgment (Challenge to Production Order "2930") Counsel for Crown: P. Hogg Counsel for Christopher Nicholson: B. Martland Place and Date of Hearing: Vancouver, B.C. May 17, 2016 Place and Date of Judgment: Vancouver, B.C. May 18, 2016

- [1] Mr. Nicholson applies for an order declaring that his right to be secure against unreasonable search and seizure as guaranteed by s. 8 of the Canadian Charter of Rights and Freedoms was violated by the improper issuance of a production order on September 14, 2012, referred to as "PO 2930".
- [2] This application follows on my reasons from Challenge to Production Order PO1.
- [3] I have set out the background in those reasons and do not propose to repeat it here.
- [4] The production order in issue in this application was one of three orders issued by Judicial Justice A. Campbell on September 14, 2012. It relies on the same information to obtain ("ITO") as did PO1. PO 2930 directs Bell Mobility to supply the Vancouver Police Department ("VPD") with:
1. Subscriber information for mobile number ending in 2930;
 2. Certified copies of the billing records including both incoming and outgoing calls/call detail records and cell site locations for 2930 for the period of June 1 to August 30, 2012; and
 3. Credit information and contact information for 2930.
- [5] This production order is directed to the records of communication which police believed to exist between an individual and Mr. Nicholson over a period of three months. It is clear that Mr. Nicholson was the focus of the investigation. Police sought the billing records, etc., for 2930 to support their investigation of Mr. Nicholson.

- [6] The Crown concedes that Mr. Nicholson has a privacy interests in the records at issue, even though they were thought to belong to another individual. The calls investigated would be those between Mr. Nicholson and that individual. As such, the Crown concedes that Mr. Nicholson has standing to make this application.
- [7] Mr. Nicholson does not reargue the issues argued before me on PO1. He argues that in reviewing the ITO, there is no basis to support PO 2930 because it contains no information about the basis for the search of the individual's residences on June 27, 2012, and offers no information supporting any expectation that officers would find drugs in either of those residences.
- [8] I am not persuaded by this argument.
- [9] As I indicated in my reasons with respect to PO1, it is my view that there was sufficient material to support that production order, whether certain paragraphs (i.e. 19.17.1-19.17.6; 19.17.8; 19-17-9 and 19.18.1-19.18.4) or all references to the call details from the Abbotsford Police Department's ("APD") review of their billing records for the phones they issued to Mr. Nicholson are excised from the ITO. My reasoning on that challenge applies equally here and I adopt my reasons from the challenge to PO1.
- [10] With respect to the particular argument raised by Mr. Nicholson that there is no information to support a basis for search in the individual's residences on June 27, 2012, and no information supporting an expectation that officers would find drugs there, it is the fact that the APD was investigating the individual for drug related offences; that they had obtained a search warrant for that individual's residence and his mother's residence and that searches were conducted and nothing was discovered. In the context of the investigation of Mr. Nicholson, that evidence serves to corroborate the information provided by Informant A, discussed in greater detail in Challenge to Production Order PO1. It is for that aspect that it is relevant and significant for the ITO in question. The officer swearing the ITO is not required to and indeed should not set out every possible background detail. As the Supreme Court of Canada said in *R. v. Araujo*, 2000 SCC 65: Looking at matters practically in order to learn from this case for the future, what kind of affidavit should the police submit in order to seek permission to use wiretapping? The legal obligation on anyone seeking an ex parte authorization is full and frank disclosure of material facts [Citations omitted.]. So long as the affidavit meets the requisite legal norm, there is no need for it to be as lengthy as *À la recherche du temps perdu*, as lively as the *Kama Sutra*, or as detailed as an automotive repair manual. All that it must do is set out the facts fully and frankly for the authorizing judge in order that he or she can make an assessment of whether these rise to the standard required in the legal test for the authorization. Ideally, an affidavit should be not only full and frank but also clear and concise. It need not include every minute detail of the police investigation over a number of months and even of years. [Emphasis in original.]
- [11] Accordingly, the application is dismissed. "B.J. Brown J."

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