
CANADA / JUDGMENT

R. v. Parchment

2012 BCSC 2192

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Supreme Court of British Columbia

DECIDED

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2012 BCSC 2192 R. v. Parchment

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Parchment,

2012 BCSC 2192

Date: 20121221

Docket: 74294-2

Registry: Nanaimo

Regina

v.

O'Neil Constantine Parchment

Before: The Honourable Mr. Justice Baird

Oral Ruling on Voir Dire

In Chambers

Counsel for the Federal Crown:

B. Jones

Counsel for the Defence:

C. Sutton

Place and Date of Trial/Hearing:

Nanaimo, B.C.

December 3-6, 2012

Place and Date of Judgment:

Victoria, B.C.

December 21, 2012

- [1] THE COURT: O'Neil Constantine Parchment is charged on Nanaimo Indictment 74294-2 with possession of cocaine for the purpose of trafficking, possession of heroin for the purpose of trafficking, and carrying a concealed weapon, a knife. The charges were preferred after Nanaimo RCMP entered and searched Mr. Parchment's residence on authority of a Controlled Drugs and Substances Act warrant.
- [2] This is a ruling on a Charter voir dire. The question to be decided is the admissibility of narcotics seized from Mr. Parchment's person as a result of a strip search. Mr. Parchment alleges that his s. 8 Charter right to be secure against unreasonable search or seizure has been infringed or denied and seeks an order excluding the evidence pursuant to s. 24(2) of the Charter.
- [3] When it comes to strip searches, the leading case in this country is the Supreme Court of Canada decision in *Golden v. The Queen* [2001] SCC 83. This decision established that strip searches as an incident to arrest will be reasonable within the meaning of s. 8 of the Charter if the arrest was lawful, there were reasonable and probable grounds to conduct the search for weapons or evidence of the offence for which the subject was arrested, and the search itself was conducted in a reasonable manner. If these three conditions are satisfied there will be no violation of s. 8 of the Charter.
- [4] On the subject of whether a strip search has been conducted in a reasonable manner the court in *Golden* held at paragraph 102 that:

Strip searches should generally only be conducted at the police station except where there are exigent circumstances requiring that the detainee be searched prior to being transported to the police station. Such exigent circumstances will only be established where the police have reasonable and probable grounds to believe that it is necessary to conduct a search in the field rather than at the police station. Strip searches conducted in the field could only be justified where there is a demonstrated necessity and urgency to search for weapons or objects that could be used to threaten the safety of the accused, the arresting officers or other individuals. The police would also have to show why it would have been unsafe to wait and conduct the strip search at the police station rather than in the field. Strip searches conducted in the field represent a much greater invasion of privacy and pose a greater threat to the detainee's bodily integrity and, for this reason, field strip searches can only be justified in exigent circumstances.

- [5] Golden also laid down the rule that such searches, because of their intrusive nature, are prima facie unreasonable. Accordingly, the Crown bears the onus of establishing on a balance of probabilities that such a search was reasonable in this case.
- [6] On the present voir dire, counsel agreed that the search warrant was valid and that entry into Mr. Parchment's dwelling was lawful. There was a "hard entry" in which the common law knock and announce rule was not followed. Defence counsel conceded that this manner of entry was not unreasonable or at least did not dispute that issue. It was admitted as well that the accused was lawfully arrested, and it follows that a reasonable search incidental to that arrest for weapons or evidence was justified by the common law.
- [7] Accordingly, the questions to be answered on this voir dire are: (1) did the police have reasonable and probable grounds to conduct a field strip search in the circumstances of this case; and, if so, (2) was the manner in which the search was conducted reasonable.
- [8] The main witnesses for the Crown were Constables Brassard and Wright who together yielded approximately the following narrative of evidence: On November 22nd, 2011, the Nanaimo municipal drug squad received a warrant under the Controlled Drugs and Substances Act to search the home of Mr. Parchment, which is on Cranberry Avenue in Nanaimo. Before the search was conducted, there was a briefing at the RCMP headquarters in which it was decided there would be a hard entry and that the traditional common law knock and announce rule would not be followed. This was on the basis, I was told, of Mr. Parchment's reputation for aggressiveness and weapons possession.
- [9] Constable Brassard used a battering ram to knock in Mr. Parchment's front door. After the door came in, Constable Brassard saw Mr. Parchment in the kitchen area of the residence, which was immediately accessible to the right of the front door. He observed Mr. Parchment reach with his right arm onto a nearby kitchen countertop as if he were grabbing something. Constable Brassard seized Mr. Parchment, forced him to the ground, and observed him employing a "discarding motion", as if throwing an object towards the nearby refrigerator. A short time later, rock cocaine was located on the floor immediately in front of the refrigerator. Mr. Parchment was arrested on the spot. There were seven or eight other people found in the residence, all but one of them, I gather, female.
- [10] Constable Brassard asked Mr. Parchment if he had anything on his person that the police "needed to worry about" to which Mr. Parchment allegedly responded, "I don't think so." Constable Brassard was not satisfied with the ambiguity of this answer and conducted a pat down search of Mr. Parchment, in the course of which, wedged between two pairs of trousers that Mr. Parchment was wearing, he found a hunting knife with a four inch blade. He also found an Exacto knife in the front pocket of the exterior pair of trousers. Constable Brassard asked Mr. Parchment if he had anything else on his person that might cause concern to the police. At first Mr. Parchment did not respond, but a few seconds later he said, "No."

- [11] By this time Constable Wright was standing by. Neither Constable Brassard nor Constable Wright was satisfied that Mr. Parchment was being truthful when he said he had no further weapons on his person, and furthermore both Constables Wright and Brassard testified that Mr. Parchment, who was still on the ground, began moving his body in a curious manner. Constable Brassard called it "fidgeting" and described a ceaseless moving the legs. Constable Wright characterized it as squirming and made a physical gesture in the witness box showing a slight rocking motion from side to side. Interestingly, both witnesses described Mr. Parchment's behaviour as "hinky", a word I had never heard before but which according to the Merriam-Webster online dictionary means "nervous, jittery or suspicious."
- [12] The two constables entered into a brief discussion about this and sought the views of the supervising officer on the scene, Constable Charlebois, who authorized a more thorough search of Mr. Parchment. Their principal concern, or their expressed concern, at any rate, was "officer safety" as it is often called, although Constable Wright testified that he was also interested in searching for contraband. Constable Brassard said he was worried that Mr. Parchment might yet have a weapon or weapons about his person that might be used to harm him or pose a risk to the security of other police officers who might later take custody of Mr. Parchment.
- [13] Together, Constables Brassard and Wright hauled Mr. Parchment to his feet. They removed the exterior of the two pairs of trousers that Mr. Parchment was wearing and conducted a second pat down search. Constable Wright detected a hard object in Mr. Parchment's groin area. He testified that he thought it might be another knife. Constable Wright pulled on Mr. Parchment's front waistband. The trousers were baggy and loose fitting, and Constable Wright now had a clear view of Mr. Parchment's genitalia. He was able to see that Mr. Parchment had a baggie containing what appeared to be a narcotic substance or substances secured to his penis by means of an elastic band. There was controversy over whether or not Constable Wright then pulled Mr. Parchment's trousers down to the level of his knees. For the sake of determining the issues on this voir dire I shall assume that this was the case. Constable Wright removed the elastic band and the baggie from Mr. Parchment's penis. It turned out that the baggie contained 18.9 grams of powder cocaine and 22.4 grams of heroin tightly packed.
- [14] Mr. Parchment testified on the voir dire. He said that he was in the kitchen preparing to make dinner when the police broke his door down. He said he had two knives in his left hand which he was about to put away in a drawer. One was a steak knife, he said, and the other was the hunting knife referred to by Constable Brassard. This knife was not concealed on his person, he said. A number of police officers entered the house, there was a good deal of shouting, and he was directed to lie on the floor. While he was lying face down he glanced around and saw Constable Brassard walking towards him with his gun drawn. Constable Brassard put his gun away, handcuffed Mr. Parchment, and put his right foot on his back. Mr. Parchment was wearing a leather jacket, two pairs of trousers, no underpants, and a button down shirt tucked in between the two pairs of pants. He said Constable Brassard

hauled him to his feet and saw the knives that had previously been in his hand on the floor to his left. Constable Brassard said, "What have we got here?" Constable Brassard took off Mr. Parchment's handcuffs while Constable Wright removed his leather jacket. Constable Brassard put the handcuffs back on. Constable Brassard searched Parchment's jacket pockets and found the Exacto knife. Then Constables Brassard and Wright patted Mr. Parchment down.

- [15] Mr. Parchment testified that, at this point, Constable Wright seemed to notice that he, that is Parchment, was wearing two pairs of trousers. He proceeded to undo the belt and button of the outer pair and remove these from Mr. Parchment's person. Both Wright and Brassard patted him down again, including his legs, and found nothing. Mr. Parchment said that without further ado Constable Wright declared, "We are going to have to do a strip search." He asked for Constable Charlebois' permission to do so which was granted. Constable Wright asked, "Right here?" and Constable Charlebois said, "Sure." Constable Wright pulled Mr. Parchment's pants open, undid the zipper, pulled the pants down to his knees and said, "Here's drugs." He took hold of Mr. Parchment's penis, pulled the drugs off, touching his testicles and pulling some pubic hair along the way. Mr. Parchment said that this procedure caused him some physical discomfort. He was transported to the Nanaimo RCMP detachment within minutes.
- [16] On cross-examination Mr. Parchment denied that he had thrown crack cocaine towards the refrigerator when the police entered his house. He said there were a lot of things in the house that did not belong to him. He said that just before the police entered the house he was talking to his girlfriend, a person named Vanessa, who was standing to his left. He was preparing dinner and had opened the kitchen cupboards above the counter to get some spices. He denied that the hunting knife was concealed on his person between the two pairs of pants. He said that his pants were so loose that any knife put between them would have fallen down the leg.
- [17] He said furthermore that he had come up with the idea of attaching narcotics to the underside of his penis because it was "a good hiding place". When hidden in this location, the police can't feel his product when they pat him down. He said that he had been doing this for a while. He let on that it was somewhat uncomfortable to have contraband hanging from his penis but it was not painful and he had got used to it. He confirmed that all of the other people or found-ins present in the house when the police arrived were friends of his, including a person named Jeff whom he had known for over a decade.
- [18] It will be obvious that the questions raised on this voir dire turn in no small measure on the testimonial credibility of the various witnesses. I find it convenient to start with Mr. Parchment. His criminal record was filed on the voir dire from which I draw the obvious conclusion that he is a career criminal. His record starts in the year 1986 in Toronto, Ontario, and continues uninterrupted to the present day. It is replete with convictions for all kinds of different things, including offences of violence and dishonesty. There are a number of convictions for possession of property obtained by crime, and a raft of B&E convictions.

There are assault convictions, resisting arrest, and a whole slew of trafficking convictions, many of which have been entered since 1998 when I infer that he settled in Nanaimo. To say that I am not impressed by this history is to understate things rather extravagantly.

- [19] Accordingly I approach Mr. Parchment's evidence with a degree of scepticism and instruct myself that I would do well to look for any evidence that might corroborate his testimony before I accept it. Of more concern is that, on this voir dire itself, I consider it probable that the rock cocaine found underneath the refrigerator during the search was thrown there by Mr. Parchment when the police entered in the manner described by Constable Brassard. I have grave doubts about the accuracy of the accused's claims that he did not do this and that the substance did not belong to him. In evaluating his sworn testimony, in other words, I keep in mind that he may well be capable of lying under oath about a material fact when it suits him.
- [20] Constables Wright and Brassard, on the other hand, have no criminal or other nefarious antecedents that would cause me to be suspicious of their credibility in a general sense, and no material fact to which either of them testified on this voir dire seemed to me to be obviously false or misleading. This does not mean that I have accepted their evidence unquestioningly or that I have failed to evaluate it critically. My duty at this stage is to consider the totality of the evidence to determine whether on the balance of probabilities the Crown has discharged the onus of showing that a field strip search was reasonable in this case. Whether I would find beyond a reasonable doubt, for example, that the hunting knife was found on Mr. Parchment's person, or that Constable Wright located the baggie of narcotics during the second pat down search and thought it might be a knife, is beside the point.
- [21] I pause here to deal with a discrete aspect of defence counsel's able argument concerning the search. She contended that the evidence established that Constable Wright intended to conduct a strip search directly after his consultation with Constable Charlebois. I reject this contention for one simple reason. All of the witnesses who were in a position to testify about the second pat down search, that is, Constable Brassard, Constable Wright, and Mr. Parchment himself, agreed that the second search began with the removal of the outer pair of Mr. Parchment's trousers without removing or in any way disturbing the inner pair. Defence counsel properly conceded that this was not a strip search as defined in *Golden*. I conclude, because the same three witnesses were unanimous that the interior pair of trousers were loosely fitting and baggy at the waist, that the business of pulling off the outer pair must have been conducted with a good deal of care, or else the inner pair would have been pulled off with them, especially as the defendant was wearing no undergarments. This is an important point, in my view, as it reinforces the testimony of Constables Brassard and Wright that the second search was a pat down search and they did not proceed directly to a strip search.

- [22] On all of the evidence, I conclude that the police here were engaged in a search incidental to arrest that proceeded along a continuum of intrusiveness resulting in a field strip search, but it did so in permissible stages beginning with totally justified pat-down searches.
- [23] Respecting the location of the hunting knife, I have the straightforward evidence of Constable Brassard that it was found concealed on Mr. Parchment's person wedged between his two pairs of trousers and fastened somehow to his body by means of his belt. For the reasons referred to above I accept Constable Brassard's evidence because I have no particularly compelling reason not to, and I prefer it over Mr. Parchment's evidence.
- [24] Here, I might also refer to an absence of evidence. As previously stated, there were a number of other people in Mr. Parchment's house when the police entered. He testified that they were all friends of his, and that some of them, at least, had previously lived in the residence. He testified that one of these friends, a person named Vanessa, was standing immediately to his left at the kitchen counter at the very moment when the police barged in. He said he had opened the cupboards above the counter and was showing Vanessa his collection of spices. This is a person, in other words, who would be able to confirm what the defendant was doing immediately prior to the arrival of the police, including, quite possibly, what he had in his left hand. Unfortunately Vanessa was not called to testify and I was left with the uncorroborated evidence of the accused, about which I have, as previously stated, distinct reservations, and over which I prefer the evidence of Constable Brassard.
- [25] Then there is, of course, the nature of the knife itself. I have been calling it a hunting knife throughout these reasons because that is what Mr. Parchment called it. And it seemed to me, having seen it myself, to be an apt description of it. It is not a kitchen knife. It is not the sort not the sort of knife typically used to prepare a meal. It is, rather, the sort of knife that is likelier to be found in a sheath or kept on a person's body for use outdoors as a tool or a weapon.
- [26] With respect to the finding of the drugs themselves during the second pat down search, the evidence of Constable Brassard and Wright was corroborative and consistent the one with the other, and again I have no reason in particular to doubt what they told me. As previously stated, I have distinct reservations about Mr. Parchment's credibility, and on this point I am prepared to accept the accuracy of the police witnesses' testimony over that of Mr. Parchment. I accept, again because I have no compelling reason not to, that Constable Wright was sincere in his belief that this "hard object" was possibly another knife secreted on Mr. Parchment's person and that, given what had come before, the prevarications of Mr. Parchment when asked if he had anything on him the police should be worried about, the location of the hunting knife, the unusual behaviour that the police officers noted, this was a reasonable conclusion for him to have drawn.
- [27] In summary, I find that the hunting knife was found on Mr. Parchment's person during the first pat down search. The removal of his outer pair of trousers and the second pat down search was amply justified, authorized by law, and reasonable. Constables Brassard and

Wright did not proceed directly to a strip search after their consultation with their supervisor. During the course of that second pat down search, Constable Wright detected a hard object in the defendant's groin area. Constable Wright reasonably concluded that this hard object may have been another knife. It was reasonable for him to conclude that exigent circumstances therefore existed and an immediate strip search in the field was justified, at least as far as visually inspecting Mr. Parchment's genital area to see what he had down there.

[28] I pause here to note that defence counsel conceded, again quite properly in my opinion, that if these were my findings of fact, a visual inspection of Mr. Parchment's genital area, which according to Golden is in itself a strip search, would have been justified.

[29] I pass on to the second question, namely, whether the strip search was conducted in a reasonable manner. The defendant's position in this connection is set out in his notice of application at paragraphs 3 and 4 which read as follows:

3. Constable Brassard conducted a search incidental to the arrest of the applicant. At the time of the arrest, the applicant was wearing two pairs of jeans and no underwear. Constable Brassard and Constable Wright were conducting a pat down search of the applicant's inner pair of jeans. Constable Wright indicated that he had found something hard. The applicant's pants were then opened and pulled down so Constable Wright could gain access to the object. Constable Wright observed the hard object to be the alleged narcotics securely attached to the applicant's penis with what appeared to be an elastic band. Constable Wright then forcibly removed the attached alleged drugs with his hand from the applicant's penis.
4. The applicant will submit when Constable Brassard and Constable Wright discovered the hard object was not a weapon and there was no longer a safety issue the exigent circumstances that may have justified a field search were no longer present. The officers should have waited until the applicant was at the police station to properly remove the attached alleged narcotics with the help of a medical professional or allowed the applicant to remove the alleged drugs himself, per Golden.

[30] It is clear from this that Mr. Parchment is relying heavily on paragraph 101 of R. v. Golden which reads:

[101] In this connection, we find the guidelines contained in the English legislation, P.A.C.E. concerning the conduct of strip searches to be in accordance with the constitutional requirements of s. 8 of the Charter. The following questions, which draw upon the common law principles as well as the statutory requirements set out in the English legislation, provide a framework for the police in deciding how best to conduct a strip search incident to arrest in compliance with the Charter:

- 1) Can the strip search be conducted at the police station and, if not, why not?

- 2) Will the strip search be conducted in a manner that ensures the health and safety of all involved?
 - 3) Will the strip search be authorized by a police officer acting in a supervisory capacity?
 - 4) Has it been ensured that the police officer(s) carrying out the strip search are of the same gender as the individual being searched?
 - 5) Will the number of police officers involved in the search be no more than is reasonably necessary in the circumstances?
 - 6) What is the minimum of force necessary to conduct the strip search?
 - 7) Will the strip search be carried out in a private area such that no one other than the individuals engaged in the search can observe the search?
 - 8) Will the strip search be conducted as quickly as possible and in a way that ensures that the person is not completely undressed at any one time?
 - 9) Will the strip search involve only a visual inspection of the arrestee's genital and anal areas without any physical contact?
 - 10) If the visual inspection reveals the presence of a weapon or evidence in a body cavity (not including the mouth), will the detainee be given the option of removing the object himself or of having the object removed by a trained medical professional?
 - 11) Will a proper record be kept of the reasons for and the manner in which the strip search was conducted?
- [31] I will attempt to deal with these in order.
- [32] The first question is "Can the strip search be conducted at the police station and, if not, why not?" I have already found on a balance of probabilities that it was reasonable for Constable Wright to conclude that the hard object may have been a weapon, that exigent circumstances could therefore be said to have existed, and in my view, that is a full answer to the question of why a visual search of his genitalia in the field was justified. I reject the idea that the investigators in these circumstances were obliged to wait until they got to the police station.
- [33] The second question is "Will the strip search be conducted in a manner that ensures the health and safety of all involved?" I see no question in this case that there were any health or safety concerns.
- [34] The third question is "Will the strip search be authorized by a police officer acting in a supervisory capacity?" This was apparently done by consultation with Constable Charlebois.

- [35] The fourth question is "Has it been ensured that the police officer(s) carrying out the strip search are of the same gender as the individual being searched?" I am satisfied that the only people involved in the search were Constables Wright and Brassard, both of whom are male.
- [36] The fifth question is "Will the number of police officers involved in the search be no more than is reasonably necessary in the circumstances?" I accept that there were a number of police officers in the house, but they were all doing different things and there was no evidence adduced to show or suggest that anyone other than Constables Wright and Brassard were involved in the search, and I conclude that this was reasonable.
- [37] The sixth question is "What is the minimum of force necessary to conduct the strip search?" I consider that the minimum force necessary was used. The visual inspection itself merely involved looking down Mr. Parchment's pants.
- [38] The seventh question is "Will the strip search be carried out in a private area such that no one other than individuals engaged in the search can observe the search?" I am satisfied that this was done. The search was conducted in the kitchen in circumstances where there is no evidence to suggest that anyone saw what was going on other than Constables Wright and Brassard.
- [39] The eighth question is "Will the strip search be conducted as quickly as possible and in a way that ensures that the person is not completely undressed at any one time?" In this case I am satisfied that the search was conducted with dispatch and without any conduct calculated to humiliate Mr. Parchment, who was never completely undressed.
- [40] The ninth factor is "Will the strip search involve only a visual inspection of the arrestee's genital . . . areas without any physical contact?" This is what happened in this case. There was a visual inspection revealing the presence of narcotics.
- [41] The tenth factor is "If the visual inspection reveals the presence of a weapon or evidence in a body cavity (not including the mouth), will the detainee be given the option of removing the object himself or of having the object removed by a trained medical professional?" In this case, it is important to stress that we are not talking about the intrusiveness of a body cavity search. That is what this paragraph speaks to discretely, and in its absence, in my view, this question is inapplicable.
- [42] The eleventh and final factor is "Will a proper record be kept of the reasons for and the manner in which the strip search was conducted?" I do not consider that this necessarily to be the most important factor enumerated, but in my respectful view, the record kept of this incident in police notes, the Report to Crown Counsel, and taken in sworn testimony and cross-examination of witnesses in open court constitutes an adequate record and has enabled a full and exhaustive review of the lawfulness of the search.

- [43] Section 8 of the Charter guarantees Mr. Parchment the right to be free from unreasonable searches and seizures. Having found that the visual inspection of his genitalia "in the field" was justified in this case, the only issue is whether the immediate seizure of the contraband in Mr. Parchment's kitchen, rather than at the police station, was unreasonable.
- [44] I conclude that it was not unreasonable. The seizure was made in the accused's home in circumstances where, as I have said, it was doubtful that anyone other than Constables Brassard and Wright could see what was going on. All other persons in the house were sequestered in the living room and no evidence was adduced to suggest that any of those other persons witnessed the search or seizure in the kitchen. I reject the unsubstantiated contention that the search or seizure would have been any less intrusive or humiliating if conducted at the police station.
- [45] Furthermore, I find that the seizure was effected by the simple expedient of distending the elastic band on Mr. Parchment's penis and removing the bag. This was obviously done quickly and whatever discomfort may have been caused to Mr. Parchment was trifling and not worth talking about. There was nothing abusive about this seizure.
- [46] I reject as absurd the contention that the baggie ought to have been removed by a medically trained person and I can think of no reason why this seizure would have been any different in quality or nature if done at the police station.
- [47] Having found this contraband on Mr. Parchment's person and having come to the common sense conclusion that it could be seized quickly, safely, and reasonably unintrusively at the very time of its detection, I conclude that it was reasonable for Constable Wright to have done so. Mr. Parchment does not have the right to the most impeccable or clinically perfect search or seizure, merely to be free from unreasonable search or seizure.
- [48] For the foregoing reasons, I have concluded that the Crown has discharged the onus established by Golden. I find that Mr. Parchment's s. 8 Charter rights were neither infringed nor denied and the application herein is dismissed.

"Baird J."

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