
CANADA / JUDGMENT

R. v. Perkins

2018 BCSC 308

COURT

Supreme Court of British Columbia

DECIDED

8 February 2018

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2018 BCSC 308 R. v. Perkins

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Perkins,

2018 BCSC 308

Date: 20180208

Docket: 65705

Registry: Chilliwack

Regina

v.

Corey Jim Perkins

Before: The Honourable Mr. Justice Ehrcke

Oral Ruling on Voir Dire #3

re Application to Strike Production Order

Counsel for the Crown:

C. Fast

O. Bick

Counsel for the Accused:

D. Markovitz

Place and Date of Hearing:

New Westminster, B.C.

February 7-8, 2018

Place and Date of Judgment:

New Westminster, B.C.

February 8, 2018

[1] THE COURT: On February 7, 2018, I gave judgment that, based on the redacted version of the ITO that Cst. Davies affirmed December 10, 2014, a production order issued on December 10, 2014, with respect to storage locker #1108 at Trans Canada Self Storage, 2992 Pinegrove Street, Abbotsford, British Columbia, could not be sustained. I found that the ITO, as redacted, could not provide reasonable grounds to believe that Corey Perkins had committed a drug offence.

[2] These present reasons should be read in conjunction with my reasons delivered February 7, 2018. The concluding words of my February 7, 2018 reasons were as follows:

Although I consider this case to be very close to the line, I find that the reasonable grounds for belief standard has not been met on the basis of the December 10, 2014 ITO as currently redacted.

On the basis of the redacted ITO, there were not grounds upon which the justice could properly have issued the production order.

In light of this conclusion, I do not find it necessary to go on and consider whether there were reasonable grounds to believe that the production order would have offered evidence respecting the commission of the offence.

[3] Subsequent to the delivery of those reasons, the Crown applied to have the court consider a partially unredacted version of page 19 of that ITO in accordance with the so-called Step 6 Garofoli procedure, as described in *R. v. Garofoli* (1990), 60 C.C.C. (3d) 161, at pp. 194-195 (S.C.C.).

[4] I examined the partially redacted version of page 19, which was then marked as Exhibit number 2 on this voir dire and sealed as an exhibit. I also approved a judicial summary of the excised material which was given to Mr. Perkins and his counsel. I am satisfied that the judicial summary provides a sufficient basis for Mr. Perkins and his counsel to appreciate the nature of the deletions. A copy of that judicial summary has been marked as Exhibit 3 on this voir dire.

[5] With the new information that was not before me at the time of my ruling on February 7, 2018, paragraph 43(f), (g) and (i) of the ITO may now be understood in this way, as explained in the judicial summary:

- (f) Source E identified a booking photo of Corey Perkins as being [NAME].
- (g) Source E described [NAME] as white and skinny with a long skinny face and had a tattoo on the top of his hand [Cst. Toews observed a tattoo on the top of Perkins' hand]. . .
- (i) Source E picked up cocaine [redacted] directly from [NAME] [Perkins has a criminal record for drug trafficking].
- [6] In the previously redacted version of this material, it was not clear whether Source E was referring to the same individual in clauses (f), (g) and (i). Following the Garofoli Step 6 procedure, it is now clear that he was referring to the same person in each of those clauses. That is, Source E identified a booking photo of Corey Perkins as being a person he referred to by a certain name. He described that person as being white and skinny with a long skinny face, and had a tattoo on the top of his hand and he picked up cocaine [redacted] directly from that person.
- [7] Mr. Perkins points out that he still does not know the specific name that Source E used, and this would have been useful information for him as he then may have been in a better position to know whether Source E was mistaking him for someone else and to narrow the timeframe referred to in clause (i). I agree that there is some validity to that submission, but Crown counsel submits that it cannot reveal the actual name used by Source E without compromising informer privilege, and this is an example of the balancing of interests that must be accommodated in the Garofoli procedure.
- [8] Although there are reasons for scrutinizing the reliability of Source E in light of the short time he had been an informant and the fact that his motivation was money and consideration of charges he was currently facing, I find that some weight can properly be put on the information he supplied. I take into account that the information he supplied previously led to the police seizing illegal drugs. I also take account of the fact that the information he supplied in the present investigation was from personal knowledge. Finally, the information he supplied was relatively specific and detailed.
- [9] Counsel for Mr. Perkins submits that, in any event, this new information does not add anything significant to what was known before. In particular, he points out that no date or timeframe is provided for the drug transaction referred to in clause (i).
- [10] In Mr. Perkins' submission, we already know from paragraph 60 of the ITO that Mr. Perkins had a criminal record for drug offences in 2009, and one could speculate that this was the same transaction referred to in clause (i). In short, he submits that the information obtained in the Garofoli Step 6 procedure is too weak and insignificant to support a finding of reasonable grounds for belief.

- [11] The issue before me is not whether the new material on its own could provide reasonable grounds for Cst. Davies' belief that Corey Perkins was involved in a drug offence, but rather, whether the entire constellation of information, including both the new information and the information that I previously reviewed in my February 7, 2018 ruling, is sufficient to provide reasonable grounds for belief.
- [12] As I noted in my previous ruling, although the redacted ITO that was then under consideration did not meet the reasonable grounds standard, I found the case to be very close to the line. The new information is stronger than the information we previously had from Source D, because Source D said that Phil Aslin supplies Himpfen with drugs and Aslin works for someone named Corey. This left it as a matter of inference that the person he knew as "Corey" was the accused, Corey Perkins.
- [13] This is different from Source E, who identified a booking photograph of Corey Perkins and who correctly described his appearance, including a tattoo on his hand. As well, it tightens the inference about a possible drug transaction on October 21, 2014, when there was a meeting in the parking lot of Twisters Gym where Himpfen exited his car, entered the passenger seat of the blue Mercedes, got out again after 30 seconds, and both vehicles then drove off.
- [14] Counsel for Mr. Perkins previously submitted that even if this was a drug transfer, as Cst. Davies opined, there was no reason to think that Mr. Perkins was supplying to Himpfen rather than the other way around. The new information from Source E provides some reason to believe that Mr. Perkins is someone who supplies drugs.
- [15] Having now reconsidered the adequacy of the grounds in support of the production order in light of the partially unredacted version of page 19, I find that the additional information from Source E is sufficient, along with the other material from the December 10, 2014 ITO to provide reasonable grounds for Cst. Davies' belief that Corey Perkins was involved in a drug offence of trafficking or possession for the purpose of trafficking.
- [16] I turn, then, to the remaining issue of whether the ITO, as redacted, provides reasonable grounds for belief that the documents or data sought from the possession or control of Trans Canada Storage would offer evidence respecting the commission of the offence.
- [17] Counsel for Mr. Perkins submits that the present case is similar to *R. v. Liu*, 2014 BCCA 166. There, the Court of Appeal found that a warrant must be struck down because, although there were reasonable grounds to believe the accused was trafficking drugs, there was no reasonable basis to believe that evidence of drug trafficking would be found at their residence. To similar effect, he also refers to *R. v. Cheng*, 2013 BCSC 1979.
- [18] The present case is different. Here, the place in question is not a residence but rather a storage locker at a commercial facility. The Court of Appeal in *Liu* noted that a person, even a drug dealer, would naturally have reason to come and go from his residence regardless of whether he or she was storing drugs there. In the case of a storage locker, one would not

typically have reason to go there unless one was putting something into storage or taking it out. Although it is, of course, true that many people use storage lockers for completely lawful purposes, the present case has two peculiarities. First, the frequency with which Mr. Perkins attended, and second, the fact that the locker was not rented in his name. As Crown counsel submitted, why would a person who had innocuous things to store do so in someone else's locker rather than renting a locker in his or her own name?

- [19] In addition to this, there is more specific information which points to a connection between the storage locker and drug trafficking. The information in the ITO shows that Mr. Perkins attended at the storage facility on November 19, December 3, December 4, December 5, then a second time on December 5, and then on December 7, 2014.
- [20] Some of the observations established that he not only attended but actually used the storage facility. On December 3, 2014, he came there with two large bags and a blue Rubbermaid or Tupperware tote. On the first December 5 attendance, he brought out a white and brown parcel. On December 7, he brought out a black paper shopping bag with a white logo.
- [21] Moreover, the timing of visits is significant. As described in paragraph 51 of the ITO, on November 19, 2014, police surveillance observed Mr. Perkins' Mercedes leaving the parking lot of Trans Canada Self Storage at 1436 hours. At 1451, he drove his Mercedes into the driveway of the Taylor Road farm where he unloaded a blue cooler and black man-bag from the Mercedes and walked around the north side of the barn. At 15:23 hours, he was seen carrying a yellow package from the barn and entering the Mercedes. A few minutes later at 15:27 hours, he was involved in a suspicious transaction with someone in a red pickup truck in the parking lot of 6418 Mount Lehman Road. The man in the red pickup drove away after a one-minute meeting. Cst. Davies opined that this was consistent with drug trafficking. At 15:46, Mr. Perkins was seen carrying a yellow package to the post office and leaving three minutes later without the package.
- [22] With respect to activities on December 1, 2014, paragraph 52 of the ITO describes Mr. Perkins keying his way into the barn at Taylor Road at 15:20 hours, then exiting the barn, driving to the post office and mailing a large envelope. At 17:24 hours, there was a meeting in a McDonald's parking lot where Perkins' Mercedes parked adjacent to a vehicle with licence 067 RKF. Mr. Perkins entered the passenger seat of that other vehicle, then left and drove away after two minutes. The driver of that other vehicle was someone with a record for possession of a controlled substance for the purpose of trafficking. Mr. Perkins then returned to the Taylor Road farm where he was observed moving two large Tupperware containers in the loft of the barn. Two days later, at 19:41 hours on December 3, 2014, he was observed on video bringing a blue Tupperware tote into Trans Canada Self Storage.
- [23] At paragraph 1 of the ITO, Cst. Davies described his extensive training and experience in drug investigations. At paragraphs 68 to 69, he summarized the basis for his belief that Mr. Perkins was using both the barn at Taylor Road and the storage locker at 2992 Pinegrove Street as stash houses for storing illegal drugs.

[24] On the basis of the material in the ITO as redacted, I am satisfied that there was a proper basis upon which the justice could have found reasonable grounds for belief that Mr. Perkins was involved in a drug offence, and that data in possession of Trans Canada Self Storage would offer evidence respecting the commission of the offence.

[25] The application to strike down the production order is dismissed.

The Honourable Mr. Justice W.F. Ehrcke

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