
CANADA / JUDGMENT

R. v. Pryce

2020 BCSC 2107

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 2107 R. v. Pryce

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Pryce,

2020 BCSC 2107

Date: 20201117

Docket: 30124

Registry: Vancouver

Regina

v.

Robin Landrew Pryce, also known as Robin Pryce

Before: The Honourable Mr. Justice Edelmann

Oral Reasons for Judgment

Counsel for the Crown, appearing in person November 2 to 6, 2020 and by teleconference
November 17, 2020:

T.J. Cockfield

Counsel for the Accused:

J.M. Davidson

S. Janicki

Place and Date of Trial:

Vancouver, B.C.

November 2-6, 2020

Place and Date of Judgment:

Vancouver, B.C.

November 17, 2020

[1] THE COURT: In the early morning hours of November 12, 2018, two or more individuals went onto a commercial property on Keith Road in Gibsons, BC, breaking into several vehicles and storage containers. They left the site with a truck, trailer, tools, and equipment with a total estimated replacement value in the tens of thousands of dollars. Robin Pryce is before the court, charged with two offences related to the incident.

Issue

- [2] The principal issue before me is whether the Crown has proven beyond a reasonable doubt that Mr. Pryce was one of the individuals involved in the thefts in question. The only evidence connecting Mr. Pryce to the incident consists of fingerprints on two pieces of tape which were found laying on the ground outside the main office on site. The Crown's theory is that the tape was taken from one of the storage containers in the course of the thefts and used by the thieves in some manner, such as to cover up company logos on the stolen trailer.
- [3] I will begin by outlining the manner in which the Keith Road site is used, before turning to the evidence specific to this case and the inferences the Crown seeks to have drawn.

Use of the Keith Road Site

- [4] The property in question is a large industrial site with an active gravel quarry and is home to a number of construction-related businesses.
- [5] Julian Burtnick is the owner or has a controlling interest in several of the companies which use the property in one capacity or another. He described four of those companies in his testimony.
- [6] Maycon is a civil construction firm working primarily on infrastructure projects. It would have between 12 and 15 employees in November 2018, in addition to which it would use a regular subcontractor for asphalt and another for concrete. Mr. Burtnick estimated each subcontractor had around 15 employees. Although Maycon had another location in Sechelt it would use for its operations, Maycon employees would regularly come and go from the Keith Road property.

- [7] Caerus is a firm specializing in commercial and large residential construction projects. In November 2018, Caerus would have had between 10 and 12 employees who were mainly responsible for managing a large number of subcontractors. Caerus would rely on between 15 and 20 companies for various aspects of its projects. Each of those companies would have a varying number of employees, depending on the nature of the subtrade.
- [8] Mr. Burtnick estimated that, over time, the total number of individuals working for Caerus through its contractors and subtrades would likely be in the hundreds, although the number of individuals working on any given day would be lower than that. For each of its projects, Caerus would have a container or office trailer on site where they would keep various supplies and first aid equipment. The supplies would include the things needed on a project, including things like greases, oils, tapes, and bales.
- [9] It was not unusual for both Caerus and Maycon to use the Keith Road property, as there were always, and I quote, "various sundries" brought back for storage.
- [10] The third company, Fiedler Brothers, is specialized in concrete and landfill work, primarily at the local pulp mill. Fiedler Brothers uses the Keith Road property as its main base for operations and has between 10 and 12 employees.
- [11] The fourth company, Elphinstone Aggregates, operates a gravel quarry on the Keith Road property and has about five employees who work on the site. A large number of clients would come onto the property, taking between 30 and 150 truckloads of gravel on an average business day.
- [12] In addition to the companies described by Mr. Burtnick, the site appears to be used by at least one other company involved in paving. The property also serves as storage for a wide range of construction-related vehicles, along with a number of personal vehicles, boats, and trailers.

November 12, 2018

- [13] November 12, 2018, Monday, was a civic holiday as November 11 Remembrance Day fell on a Sunday. Mr. Burtnick testified that he closed the gate when he left the Keith Road site on November 9, 2018. Mr. Burtnick said that people would occasionally be on the site on the weekends, but that he was not scheduled to be there on the weekends. The policy was that the gate would be locked on the way in and on the way out on the weekend. He estimated that there were 10 to 12 other people in his companies who would have a key.
- [14] Dana Bystedt worked for Fiedler Bros. as a welder and arrived at the site just before 6 a.m. on November 12, 2018. When he arrived at the front gate, he noticed that the gate was open and the lock was missing. In his experience, the gate was locked when he arrived in the morning. As he drove into the yard, he noticed that his truck was missing and that three storage containers in front of the shop had been broken into.

- [15] After some further investigation, he called the police and Mr. Burtnick. RCMP Cst. Stewart met Mr. Bystedt a short distance from the site where Mr. Bystedt had found a Ford F550 flatbed truck which belonged to Maycon. The logo on the driver's side door of the truck had been peeled off and the passenger's side door appeared to have been spray painted grey covering the logo. The ignition of the vehicle had been punched in a manner consistent with starting it without keys. Cst. Stewart would later search the truck and find a used can of grey spray paint and blue nitrile gloves in the cab.
- [16] When Cst. Stewart arrived at the main building on the Keith Road site, he noted a white cube van in front of which there was some debris. The debris included a grey paint can lid, blue nitrile gloves, and pieces of tape. Behind the building there was some debris which appeared consistent with pieces of the Maycon logo having been peeled off from the F550 flatbed truck.
- [17] Reviewing photographs of the debris taken by Cst. Stewart, Mr. Burtnick testified that it was not normal for workers to leave garbage or debris laying around the site in that manner at the end of the day. Mr. Burtnick identified some of the items visible in the photographs as black foam tape and a tin-type tape, as well as some white backing off those types of tape. His companies would often have both types of tape in inventory and would have stored them on site in one of the sea-containers that had been broken into. The foam tape is primarily used for sealing, while the tin-type tape is used for heating and ducting, as well as for equipment repair. Mr. Burtnick did not inspect the pieces of tape on the ground closely enough to say whether there were any brand markings. He agreed both types of tape are commonly used in civil construction projects and could be purchased at any standard building supply store, including Rona or Home Depot.
- [18] Once they had inspected the site, Mr. Burtnick and Mr. Bystedt concluded that, in addition to the F550 flatbed truck, a Fiedler Bros. trailer and a large number of tools and equipment were missing. They compiled an inventory of the items, along with estimated replacement values totalling approximately \$95,000.
- [19] Mr. Burtnick and Cst. Stewart reviewed surveillance video from the site. It appears evident that two or more individuals were on the site in the early morning hours of November 12, 2018. They broke into a number of vehicles and storage containers, eventually leaving the site with the Maycon F550 flatbed truck towing the Fiedler Bros. trailer. The video is quite grainy and is of little or no assistance in identifying the individuals responsible for the thefts.
- [20] Aside from the F550 flatbed truck, neither the trailer nor any of the missing equipment has been recovered.

The BC Ferries Evidence

- [21] On November 28, 2018, Cst. Stewart reviewed three videos obtained from BC Ferries recorded in relation to the 6:20 a.m. sailing from Langdale to Horseshoe Bay on November 12, 2018. Mr. Burtnick reviewed the videos during his testimony and clearly identified the Fiedler Bros. trailer being towed by a truck apparently unrelated to the Keith Road site as it disembarked from the ferry.
- [22] Upon reviewing the video on November 28, 2018, Cst. Stewart also noticed that a marked RCMP vehicle also happened to be on the ferry on November 12, 2018. At Cst. Stewart's request, Cst. Hrynyk wrote a police report recording his recollection on December 9, 2018. Cst. Hrynyk testified that at some point he came to know that the investigators believed tape had been used to cover a logo on the trailer. Neither Cst. Hrynyk nor Cst. Stewart could say for certain whether Cst. Hrynyk had been informed about the investigators' theory prior to the preparation of the report. Both officers agreed it was possible Cst. Hrynyk had been informed about the investigators' theory prior to preparing his report.
- [23] Cst. Hrynyk testified that he was on his way to the Lower Mainland for training and arrived at the Langdale ferry terminal on November 12, 2018, for the 6:20 a.m. sailing, driving his marked RCMP vehicle and wearing his full uniform. He was directed to Lane 1, which is for priority boarding and large vehicles.
- [24] Cst. Hrynyk testified that when he was driving down Lane 1, he noticed a black box trailer in Lane 2. He says it caught his attention because he noticed the large area of black tape and weather stripping on the back and driver's side of the trailer. He described an area about a foot high and a few feet long, consisting of a combination of black foam, weatherstripping, and black tape. He says he noticed the stripping had started to peel off from the trailer. He remembered thinking the driver had brushed against a tree and was trying to cover some damage. He said the piece of weatherstripping hanging off the driver's side of the trailer was at least four to six inches, but less than a foot in length. He did not have a good recollection of where the tape was located on the back of the trailer, as he was mainly focused on the tape on the driver's side of the trailer.
- [25] As he was driving past the trailer, the driver of the trailer was looking at Cst. Hrynyk. In his experience, Cst. Hrynyk did not find this unusual as many people would look at him when he was in uniform in a marked car.
- [26] After driving past the driver's side on the trailer, Cst. Hrynyk was able to see the trailer in his rear view mirror as they were waiting for the ferry. He noticed the passenger exit the vehicle while the driver remained in the vehicle. He described the driver as middle-aged, bald or balding, with a darker complexion. He was shown a photo lineup and identified an individual with high confidence who was not Mr. Pryce. He said he briefly saw the passenger, but was mainly focused on the driver. He described the passenger as having a lighter complexion, narrower face, and very short, shaven hair, bald or balding.

- [27] When they boarded the ferry, the trailer was in the same lane as Cst. Hrynyk's vehicle, but there was a vehicle between them so he could not see the truck or its occupant during the sailing. He lost sight of the truck and trailer quite quickly upon disembarking from the ferry.
- [28] Three videos from BC Ferries were entered as an exhibit and played for various witnesses. The first two videos show the vehicles loading onto the ferry at the Langdale terminal from different vantage points, and the third video shows the vehicles disembarking at Horseshoe Bay. In the first video, the driver's side of the black trailer is visible. The vehicle passes by the operator's booth as it loads onto the ferry. The area is lit and defence has suggested that the reflective surface of the aluminum side of the trailer is visible and inconsistent with a large area being covered by matte tape or weatherstripping.
- [29] Cst. Hrynyk agreed that the tape was not visible on the video, stating that the video was unclear.
- [30] Counsel for the defence suggested that if a large area on the side of the trailer were covered with matte black tape or weatherstripping, one would expect there would at least be some form of distortion or discolouration in the video. However, the black side of the trailer appears to smoothly reflect the light. Having reviewed the video in question, I agree with the defence that there does not appear to be any of the discolouration or hanging tape one would expect. However, given the distance and the quality of the video, I accept the Crown's submission that the video on its own, while certainly not confirming the Crown theory, is not conclusive that there is no tape on the driver's side of the trailer.
- [31] It is notable that there is a small white square visible in the upper rear corner on the driver's side view of the trailer. Although the video is unclear, the white square is not inconsistent with the Fiedler Bros. logo. As Mr. Burtneck did not testify as to the size or location of the logo on the driver's side of the trailer, I cannot conclude on the evidence before me that the logo on the driver's side of the trailer has been covered or obscured in any way.
- [32] The second video is from a much closer vantage point and shows the passenger's side of the trailer. This is the same side of the trailer which is visible in the high quality image of the Fiedler Bros. trailer which is also in evidence, and the white square visible in the video is consistent with the logo. I am satisfied on the evidence before me that at the time the trailer boarded the ferry at Langdale, the logo on the passenger's side was not obscured or covered up. There is no tape, foam, or weatherstripping visible on the passenger's side of the trailer.
- [33] In all of the circumstances, I do not find Cst. Hrynyk's evidence with respect to his memories of the trailer to be reliable. Both Cst. Hrynyk and Cst. Stewart concede that Cst. Hrynyk may have been informed of the investigators' theory prior to recording his memories several weeks after a routine ferry ride. I find that the video evidence not only does not confirm the observations of Cst. Hrynyk, it is inconsistent with the investigators' theory about the use of the tape to obscure the logos on the trailer.

- [34] I therefore do not find the testimony of Cst. Hrynyk that he observed tape or weatherstripping on the Fiedler Bros. trailer on the morning of November 12, 2018 to be reliable. While the reason his testimony on this issue was unreliable is not evident, the confidence he expressed in the course of his testimony about it leads me to approach the rest of his testimony with some caution. I, therefore, give little weight to the rest of his testimony, including in relation to his observations of the occupants of the vehicle.

The fingerprint Evidence

- [35] Sgt. Romanuik is a long-time RCMP member specialized in forensic identification. He was qualified as an expert in the lifting, preservation, identification, and comparison of fingerprints.
- [36] Sgt. Romanuik attended the Keith Road property on November 12, 2018. Accompanied by Cst. Stewart, he searched for prints and directed the seizure of various items for further inspection in the laboratory. In the end, Sgt. Romanuik was able to lift seven fingerprints from the site, five of which were either of insufficient clarity for comparison or he concluded were not Mr. Pryce's fingerprints.
- [37] The other two fingerprints labelled R6 and R7 play a central role in the Crown's case as the only evidence connecting Mr. Pryce to the offence. The prints were lifted from two pieces of the tape that were on the ground outside the main building in front of the cube van. When the prints were run in an RCMP data base, the system returned a possible match to Robin Landrew Pryce. Sgt. Romanuik compared R6 and R7 to the print that was in the system and informed Cst. Stewart of the possible match.
- [38] Cst. Stewart obtained new fingerprints from Mr. Pryce in May 2019. Upon comparing R6 and R7 to the fingerprints taken by Cst. Stewart, Sgt. Romanuik was of the opinion that R7 was a match, but his comparison of R6 was inconclusive.
- [39] In February 2020, Sgt. Romanuik was provided with another booking sheet on which Cst. Bentham had taken Mr. Pryce's fingerprints some years earlier. He was able to compare this set of fingerprints to R6 and conclude that there was a match. Det. Romanuik prepared a report that outlined in some detail the methodology and comparison between R6 and the print taken by Cst. Bentham. The report included an outline of the portions of the print which he considered clear enough for comparison, as well as the number and location of the relevant elements he considered.
- [40] The situation with respect to the R7 print was somewhat more problematic. For reasons that are unclear, the report from Sgt. Romanuik that was before the court was not a comparison of R7 to the fingerprint taken by Cst. Stewart, but a comparison of R7 to the fingerprint from the RCMP data base upon which the Crown is not relying for identification as the source of the fingerprint was not in evidence.

- [41] Unlike the detailed comparison of R6 to the print taken by Cst. Bentham which was in evidence, I am left with only a conclusory opinion from Sgt. Romanuik about R7 and a general statement that he used the same methodology to arrive at his conclusion.
- [42] However, while there were weaknesses in the evidence presented by Sgt. Romanuik as it related to each print individually, taking into consideration the evidence he presented as a whole, I am nonetheless satisfied that one or both of the R6 and R7 prints were those of Mr. Pryce. In my view, the question of whether Mr. Pryce's fingerprints were on one piece of tape or two pieces of tape is not decisive, as I will address in my conclusion.
- [43] Sgt. Romanuik was unable to say how old fingerprints R6 and R7 were, or when they would have been deposited on the tape. He agreed that the prints could have been deposited on the tape during manufacture, during transportation to a retailer, or by workers handling the tape.

Analysis and conclusion

- [44] The Supreme Court of Canada summarized the approach to be taken in circumstantial cases in *R. v. Villaroman*, 2016 SCC 33 at para. 35:
- [35] The issue with respect to circumstantial evidence is the range of reasonable inferences that can be drawn from it. If there are reasonable inferences other than guilt, the Crown's evidence does not meet the standard of proof beyond a reasonable doubt.
- [36] I agree with the respondent's position that a reasonable doubt or theory alternative to guilt is not rendered speculative by the mere fact that it arises from a lack of evidence. A certain gap in the evidence may result in inferences other than guilt, but those inferences must be reasonable, given the evidence and the absence of evidence, assessed logically and in light of human experience and common sense.
- [45] The Crown submits that the only reasonable inference for the presence of Mr. Pryce's fingerprints on the pieces of tape is that he was a party to the theft.
- [46] There are two inferences required for me to come to the conclusion the Crown seeks to draw from the evidence. The first is that the tape was used in the commission of the offence. Given the overall circumstances, although I do not find the tape was used to cover the logos on the van, I am prepared to draw the inference that the individuals involved in the thefts left the tape and other debris. I come to this conclusion based on the fact that the tape was of the same kind as would have been found in the locked storage containers, was left in a manner inconsistent with the practices of Mr. Burtnick's employees, and with other debris that was connected to the Maycon truck, including the blue nitrate gloves and the lid of a grey spray paint can.
- [47] While I recognize there were three days between the last time Mr. Burtnick observed the parking lot and the date of the offence, I find that other inferences would be speculative in the circumstances.

- [48] The second inference the Crown seeks to draw is that the fingerprints on the tape must have come from one of the individuals involved in the thefts. Even taking the Crown's case at its strongest and accepting that the tape on the ground was taken from the storage container and used in some manner to further the thefts, I find that there are other reasonable inferences available on the evidence before me.
- [49] The fundamental problem for the Crown is the lack of evidence about the source of the tape that was in the storage container. It is simply unclear on the evidence before me whether the tape in the storage container was new or was tape that had been returned from one of the many projects Mr. Burtneck's companies were involved in. I find the possibility that one of the workers or subcontractors would have handled the tape when it was being used on a worksite is more than mere speculation.
- [50] On the evidence before me, there were dozens, if not hundreds, of people who could have used or handled the tape before it was put into the storage container at some unknown time. Given the lack of evidence on the source of the tape that would have been in the storage container, I am left with a reasonable doubt that the fingerprints on the tape are those of one of the parties to the offence.
- [51] I therefore find Mr. Pryce not guilty on both counts in the indictment.
- [52] I would like to thank counsel for their cooperation and civility throughout the proceedings which allowed for a very efficient and well-run case on both sides.

"Edelmann J."

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