

CANADA / JUDGMENT

R. v. Rutana

2023 BCSC 2196

COURT

Supreme Court of British Columbia

DECIDED

17 November 2023

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2023 BCSC 2196 R. v. Rutana

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Rutana,

2023 BCSC 2196

Date: 20231117

Docket: 34446-1

Registry: Vancouver

Rex

v.

Kristian Marcus Rutana

Before: The Honourable Mr. Justice Edelmann

On appeal from: Provincial Court of British Columbia, July 26, 2023

(R. v. Rutana, Vancouver Docket No. 267655-1)

Oral Reasons for Judgment

at Summary Conviction Appeal

Counsel for the Crown (Respondent):

S. Bains

The Accused (Appellant) appearing on his own behalf:

K. Rutana

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 17, 2023

Place and Date of Judgment:

Vancouver, B.C.

November 17, 2023

- [1] THE COURT: This is an appeal from a Provincial Court finding under s. 117.05 of the Criminal Code, R.S.C. 1985, c. C-46 [Criminal Code] resulting in a firearms prohibition and disposition of seized firearms. Upon application by the Crown under s. 117.05, subsection (4) sets out the orders available to the applications judge in the Provincial Court:
- (4) Where, following the hearing of an application made under subsection (1), the justice finds that it is not desirable in the interests of the safety of the person from whom the thing was seized or of any other person that the person should possess any weapon, prohibited device, ammunition, prohibited ammunition and explosive substance, or any such thing, the justice shall
- (a) order that any thing seized be forfeited to Her Majesty or be otherwise disposed of; and
- (b) where the justice is satisfied that the circumstances warrant such an action, order that the possession by that person of any weapon, prohibited device, ammunition, prohibited ammunition and explosive substance, or of any such thing, be prohibited during any period, not exceeding five years, that is specified in the order, beginning on the making of the order.
- [2] The right of appeal to this Court is set out in s. 117.05(7).
- [3] The facts of the case are relatively straightforward. The police were called to the residence where Mr. Rutana lived with his family for a wellness check due to mental health concerns. In the course of the wellness check, the police were told there were firearms in the residence and ultimately found three firearms and some ammunition.
- [4] The bulk of the testimony at trial and the submissions of the Crown were focused on Mr. Rutana's mental health as a basis for safety concerns justifying an order under s. 117.05.
- [5] The decision of the application judge sets out some of the background as it related to the mental health issues, although the weight given to those issues and the ultimate finding in relation to safety is unclear.
- [6] What is clear from the decision is the finding with respect to the storage of the firearms. The judge notes at paragraph 5 that, according to the police, they were not properly stored. Specifically, none of them had a trigger lock on them. The conclusion on this issue is set out at paragraph 12 of the decision, where the judge says:

[12] Returning to the safety concerns: Mr. Rutana testified that the guns were all stored behind a locked door in his bedroom, and that is confirmed by the evidence of the police officer, Lavoie. Unfortunately, that is not considered safe storage as required by the Firearms Regulations, and my concern is that they were in a house -- in a bedroom -- with other individuals, and the bottom line is that they were not stored according to safety regulations.

[7] The testimony in relation to the storage of the firearms was quite limited. Constable Lavoie testified as follows:

When I entered the bedroom, I observed a rifle next to his bed, which was insecure, had no trigger lock, and it was just standing by the bed, leaning against the wall, and then I also noticed on his desk there was like a pile of clothes. And then I saw another firearm, which was taken apart, two pieces, and then I also saw next to that firearm, which was split in two -- or sorry, like dismantled in two pieces, a magazine loaded with .22 calibre rounds.

[8] Mr. Rutana also testified with respect to the firearms, and he said they were all locked behind a door, stored securely in a room with a bolted lock on the door, and then he said: "It's in the room. It's not necessarily up against the bed, and it was -- it was dismantled in pieces, and where else would it be, in a fridge?" Then he was asked about the other gun and he said that: "They were both behind a locked door in my . . . room, dismantled." The rest of the testimony largely related to allegations or issues related to mental health.

[9] There was no assertion in submissions from the Crown at the application that the firearms were stored contrary to the regulations, nor was Mr. Rutana cross-examined to that effect. The Crown concedes that the issue arose for the first time in the judge's reasons.

[10] In seeking to defend the reasons in submissions before me, the Crown pointed to s. 5 of the Storage, Display, Transportation and Handling of Firearms by Individuals Regulations, SOR/98-209:

5 (1) An individual may store a non-restricted firearm only if

(a) it is unloaded;

(b) it is

(i) rendered inoperable by means of a secure locking device,

(ii) rendered inoperable by the removal of the bolt or bolt-carrier, or

(iii) stored in a container, receptacle or room that is kept securely locked and that is constructed so that it cannot readily be broken open or into; and

(c) it is not readily accessible to ammunition, unless the ammunition is stored, together with or separately from the firearm, in a container or receptacle that is kept securely locked and that is constructed so that it cannot readily be broken open or into.

- (2) Paragraph (1)(b) does not apply to any individual who stores a non-restricted firearm temporarily if the individual reasonably requires it for the control of predators or other animals in a place where it may be discharged in accordance with all applicable Acts of Parliament and of the legislature of a province, regulations made under such Acts, and municipal by-laws.
- (3) Paragraphs (1)(b) and (c) do not apply to an individual who stores a non-restricted firearm in a location that is in a remote wilderness area that is not subject to any visible or otherwise reasonably ascertainable use incompatible with hunting.
- [11] It would appear clear that s. 5(1)(a) did not apply, as there was no indication that the firearms were loaded. In submissions before me, the Crown concedes that there was no evidence led by the Crown that the firearms had their bolts in them, and therefore it was not proven on the evidence before the application judge that s. 5(1)(b) would have applied. Therefore, the question would have turned on 5(1)(c), that the guns were readily accessible to ammunition. The issue then would be with respect to the storage.
- [12] I do not find it to be clear in the findings of the trial judge, nor do I find it to be so clear on the face of the Regulations, that the firearms were improperly stored. The Crown has not taken me to any case law to that effect. The evidence of Mr. Rutana was that the firearms were dismantled and behind a bolted and locked door. As I noted, there was no evidence on behalf of the Crown that the firearms had their bolts in them.
- [13] In my view, the conclusion of the trial judge on this issue is problematic in two ways. First, Mr. Rutana was not given notice that the firearms being stored in contravention of the Regulations was at issue, as no such allegation was made by the Crown. This was particularly problematic given that Mr. Rutana was representing himself.
- [14] Secondly, I find that it would have been incumbent on the trial judge to set out the reasoning that led to the finding that the firearms were stored in a manner contrary to the Regulations. While the Crown's speculation that the reference is to s. 5 of the Regulations may well be accurate, there is no such indication in the decision. More importantly, there is no indication of which findings of fact were made and which reasoning led to the conclusion. On my reading of the reasons, the focus appeared to be on the lack of lock triggers, but the issue of the bolts was not canvassed and was not addressed. The Crown concedes that the decision could not have turned simply on the locking devices or the trigger locks, that there would have had to have been some engagement with subsection (c) relating to ammunition and the overall storage of the firearms. I see no indication on the face of the decision that that issue was engaged with by the application judge.
- [15] I find each of these issues on their own, in the context of this appeal, to be sufficient for the appeal to be allowed. I therefore allow the appeal and remit this matter back to the Provincial Court.

"Edelmann J."

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