
CANADA / JUDGMENT

R. v. Schur

2015 BCSC 514

COURT

Supreme Court of British Columbia

DECIDED

30 January 2015

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2015 BCSC 514 R. v. Schur

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Schur,

2015 BCSC 514

Date: 20150130

Docket: X077501

Registry: New Westminster

Regina

v.

David Michael Schur

Before: The Honourable Mr. Justice Blok

Oral Reasons for Judgment

Counsel for the Crown:

N. Reithmeier

Counsel for the Accused:

M. Swartz

Place and Dates of Trial:

New Westminster, B.C.

January 26, 27 and 28, 2015

Place and Date of Judgment:

New Westminster, B.C.

January 30, 2015

- [1] THE COURT: During the course of an arrest of the accused on suspicion of breaking and entering, an arrest that was violently resisted, a canister of bear spray was discharged into the face of the arresting police officer at close quarters.
- [2] The sole issue on this trial is whether the Crown has proven beyond a reasonable doubt that it was the accused who discharged the bear spray.
- [3] The accused is charged by way of a three-count Indictment. Count 3 is a charge of assaulting a police officer with a weapon. That is the count at issue.
- [4] At the outset of the trial the accused pleaded guilty to Count 2, break and enter to commit mischief. Crown then directed a stay of proceedings on Count 1, break and enter to commit theft.

I. Evidence

A. Background

- [5] In the early hours of November 21, 2013, a resident of a condominium complex located at Richmond Street in New Westminster noticed an exterior door of the premises off its hinges.
- [6] She notified a neighbour and the two of them inspected other areas of the building as well as a garage associated with the building, ultimately arriving at a door leading to some storage lockers. Although they used a key to gain access through that door, the door itself was barricaded in some way and they were unable to open it. Also, there was yellow powder on the floor, which later evidence indicated was the result of a fire extinguisher having been discharged in that area.
- [7] The two residents came to realize that there was someone present on the other side of the door, and so they called 9-1-1.
- [8] Two New Westminster police officers attended short minutes later. As it happened, they were close by when the call came in. One of those officers, Constable Florido, is a trained dog handler and he had Police Service Dog Ando with him.

B. Constable Florido and PSD Ando

- [9] Cst. Florido and PSD Ando went to the locker area, where the access door was eventually opened. Inside the locker area there were signs that the lockers had been ransacked. PSD Ando "indicated" and began a track. This led to an exterior door, just outside of which Cst. Florido located both a bicycle and a hand truck on which some electronics items were stacked. The dog then led Cst. Florido up an interior stairway, past an area where some tools

were on the floor as well as, incongruously, a broadsword. The dog then led to a stairway where, the evidence shows, bear spray or pepper spray had been discharged. There, Cst. Florido's eyes began watering and he found it difficult to breathe. He went outside to recover and, in his words, he "was vomiting a bit". He recovered in the outside air and resumed tracking with PSD Ando.

- [10] I digress for a moment to note that the photographs of that stairway show stains on the wall that were associated with the likely discharge of bear spray.
- [11] The dog followed the track upstairs to a sliding glass door, which in turn led to a rooftop area. The sliding door was opened and both dog and handler went onto the rooftop. The dog continued to track to a patio area adjacent to Suite 301 and which was behind a half-wall or pony wall. The patio was at a level somewhat below the level of the rooftop itself. Cst. Florido saw a male on the other side of the half-wall, face down on the ground with his hands tucked into his chest. This, the evidence establishes, was the accused, Mr. Schur.
- [12] Cst. Florido was unaware at this time that there were in fact two suspects on the patio. PSD Ando jumped over the half-wall and "latched on" to the suspect (Mr. Schur). Cst. Florido identified himself. He was also in police uniform. The suspect turned over onto his back and Cst. Florido saw that he was wearing a white glove on one hand and held a screwdriver in the other. He commanded the suspect to drop the screwdriver. Cst. Florido then went over the half-wall. The suspect dropped the screwdriver. Cst. Florido thought that this was the end of it. He then went to place the suspect in handcuffs, but the suspect started kicking and punching, causing Cst. Florido to fall into one of two tables on the patio, a table I will describe as the "yellow bowl table" to distinguish it from another table that was closer to the pony wall. Cst. Florido then got on top of the suspect and the fight was on.
- [13] Cst. Florido broadcast several times for cover from fellow officers but the condominium complex has a somewhat complicated layout and access to the rooftop is not at all straightforward. This delayed the arrival of other officers on the scene.
- [14] Cst. Florido said he was on top of the suspect (later identified as Mr. Schur), fighting with him and trying to regain control. In his testimony he said, "As I was on top of him, I saw a nozzle from a spray can and that was deployed right against my face." Cst. Florido said that the spray was deployed right between his eyes and he saw the nozzle clearly. It was only an inch or two away. He said he saw the hand holding the canister and said the hand was from the suspect. He did not know if that hand had a glove on it.
- [15] The deployment of bear spray, as it turned out to be, had immediate and serious effects on Cst. Florido. Immediately his eyes were swollen and burning and he found it extremely hard to see and breathe. The officer and suspect stayed in the same positions for a time, continuing the fight. At that point, Cst. Florido detected another individual and felt a strike on his upper back. This was alarming to Cst. Florido because he knew the blow did not come from the first suspect and it did not come from his dog. At that point, he felt he was fighting for his life.

- [16] The bear spray affected the first suspect as well and so in the words of Cst. Florido, "the fight pretty much ended." Cst. Florido then backed himself up against the pony wall with PSD Ando in front of him in protective fashion. He had the dog leash in one hand. He said that because of the effects of the spray, he could only see silhouettes. He continued to call for assistance. At this point, he had enough distance between the suspects to take his gun out so he drew his pistol and, in his words, "kept an eye on the suspects." He said he was physically exhausted. The first suspect was still lying on his back. Cst. Florido could not see the other suspect.
- [17] At that point, cover officers arrived and they took control of the situation.
- [18] In cross-examination, Cst. Florido said that when Mr. Schur's hands first came out from being close to his chest he did not notice anything in his hands other than the white glove on the one hand and the screwdriver in the other.
- [19] During the fight, Mr. Schur was striking back at Cst. Florido with both hands until he used the spray. Cst. Florido did not see where he pulled the canister from. When asked to describe the nozzle, Cst. Florido said "black, round, like a tiny cylinder." Asked for a description of the suspect he was fighting, Cst. Florido said he was "about my build" but the suspect was wearing a bulky jacket so he could not say his weight. He could not identify the clothing or its colour. Asked about the ethnicity of the suspect, he indicated he could not say because it was dark. He agreed, however, he could see a black nozzle. Cst. Florido said at some point a patio light came on, he could not say when, but said, "It must have been before I jumped into the patio area because I could see the screwdriver and glove and I voiced this over the radio." He was not able to say which hand the canister was in. At that point, PSD Ando was biting the suspect. During the fight, Cst. Florido was "whaling on him", striking the top part of his body, his head and shoulders.
- [20] Cst. Florido said he was certain that the bear spay was deployed by the suspect he was fighting.
- [21] Cst. Florido said he had no idea where the canister went afterwards. When asked if he heard it drop, he said at that point he was focused on staying alive. He said he did not remember a lot of what happened after the spray because it affected his ability to observe. His vision was blurred, his senses were incapacitated and he was simply trying to hold on until cover arrived. After the spray was discharged, the suspect he was fighting started slowing his blows and stopping his movements.
- [22] After Cst. Florido moved over to the half-wall, following the fight, he maintained observation of Mr. Schur, but he had no idea where the second suspect went. The corner that the other person apparently occupied was a blur and Cst. Florido could only focus on Mr. Schur, hoping he would not advance. Cst. Florido said he was not sure of Mr. Schur's actions after disengaging as his vision was blurred. He said, "He was on his side [of the patio], and I was on mine." He did not see Mr. Schur leave the corner that he last saw him in.

C. Constable Popke

- [23] Although several officers arrived within a short time of one another, the first assisting officers on scene were Constable Popke and Constable Oliveira.
- [24] On arrival at the rooftop patio, Cst. Popke saw Cst. Florido on the left side of the patio with PSD Ando in front of him, barking and protecting him. Cst. Florido did not have his eyes open. His eyes were very swollen. The effects of the spray were prevalent in the patio area. As she drew closer, she saw a male near the patio doors, behind the yellow bowl table, in a crouched position. This was Mr. Schur.
- [25] The other male, later identified as Nicholas Oquis, was on the far right behind another table that I will call the "black plastic-covered table", curled up in a fetal position. He was complying with police commands by showing his hands. Mr. Schur was not complying in that he was not putting his hands up, he would not stop moving and lie down as commanded, and he was yelling and screaming. His words were indecipherable to Cst. Popke.
- [26] Cst. Popke said there was an open folding knife on the patio floor about halfway between Cst. Florido and the two tables. There was a canister of bear spray on the black plastic-covered table. According to Cst. Popke, the two tables were "two to three feet apart, max". A pair of black leather gloves, described in the evidence as deerskin gloves, was on the black plastic-covered table.
- [27] Cst. Popke was the exhibits officer for this case. She took control of the clothing that was seized from the two suspects; Mr. Schur's clothing was seized at Royal Columbian Hospital by Cst. Ishii. Included in the items seized from Mr. Schur was a white Callaway golf glove.

D. Constable Oliveira

- [28] Cst. Oliveira said that when she arrived, Cst. Florido was crouched in the corner on the west side of the patio. PSD Ando was in front of him, barking ferociously. Two males were on the other side of the patio, one (who was Mr. Schur) curled up against or behind the yellow bowl table, and the other curled up against the pony wall.

E. Constable Russell

- [29] Cst. Russell arrived at the patio area after the first two officers. He said there was a lot of pepper spray in the air in the patio area. He transferred Mr. Oquis from the scene to the police station cells. He described Mr. Oquis as being 5 feet, 1 inch, 150 pounds, darker skin, possibly Filipino, with a shaved head. When asked if he could tell ethnicity when guns were drawn on the patio, Cst. Russell said, "I could have recognized some, but the lighting was poor. I would have been aware he was not Caucasian."

F. Constable Ishii

- [30] Cst. Ishii accompanied Mr. Schur to Royal Columbian Hospital for treatment of the dog bite injuries. Cst. Ishii photographed Mr. Schur's injuries. He said Mr. Schur was wearing a white glove on his left hand.

G. Other Witnesses

- [31] There were some other witnesses but their evidence was not central to the issue at hand. The defence called no evidence.

II. Positions of Crown and Defence

A. Crown

- [32] The Crown submits that all elements of assaulting a police officer with a weapon have been proven. Leaving aside the issue of whether Mr. Schur discharged the bear spray, it is clear that Mr. Schur must still be convicted of the included offence of assaulting a police officer as it is apparent from both the white glove evidence and the bite marks from the police dog that it was Mr. Schur who was involved in the fight with Cst. Florido.
- [33] On the issue of identity of the person who discharged the bear spray, Crown noted that Cst. Florido said that the spray came directly from the person he was fighting. Although Cst. Florido did not see where the canister came from, Mr. Schur was wearing a bulky jacket with pockets that might easily have hidden the canister before it was deployed.

B. Defence

- [34] Defence counsel submits that the Crown has failed to prove that Mr. Schur discharged the bear spray. He says that the conclusion that Mr. Schur did so is not the only reasonable inference that may be drawn from the evidence, and an inference can instead be drawn that it was Mr. Oquis who discharged the spray.
- [35] Counsel submits that the evidence showed Cst. Florido had been impaired by bear spray even before reaching the roof as his eyes were watering and he was vomiting from his earlier encounter with the spray in the stairwell or hallway. Cst. Florido's ability to observe was also limited by the lighting on the patio as he was unable to determine the ethnicity of the suspect he was fighting.
- [36] During the course of the fight, the other suspect also attacked Cst. Florido. Although the suspect who was fighting Cst. Florido was using both hands in doing so, a canister appeared. Cst. Florido was unable to say whether the hand holding the canister had a glove on it or which hand the canister was in.
- [37] Cst. Florido said when he moved away from the area of the tables as a defensive measure, he maintained visual contact and did not see the suspect he had fought move from his position.

- [38] The canister was later located on the black plastic-covered table, the table that was closer to Mr. Oquis. This was the area where Cst. Florido was attacked from behind. Mr. Schur was later seen in the area of the other table. This, it is said, is inconsistent with Mr. Schur having placed the discharged canister on the black plastic-covered table. Also, the deerskin gloves and a hat were found on this table (the assumption apparently being that these must have belonged to the other suspect, Mr. Oquis). Defence counsel submitted that the better conclusion is that Mr. Oquis discharged the bear spray.
- [39] Defence counsel concedes that there is no argument to be made against conviction for the included offence of assaulting a police officer.

III. Analysis

- [40] Defence counsel has put the issue in terms of the inferences that may be drawn from the evidence. He submits that the alternative inference, and perhaps stronger inference, is that it was Mr. Oquis who discharged the bear spray.
- [41] However, this is not a case of circumstantial evidence only and of the competing inferences that might be drawn from circumstantial evidence. Here, there is direct, affirmative evidence from Cst. Florido that it was Mr. Schur's hand that was wielding the canister. The question, then, is whether this evidence should be accepted in light of other evidence that may cast doubt on the accuracy or reliability of Cst. Florido's testimony.
- [42] I will say that I found Cst. Florido to be a truthful witness, so the issue is not truthfulness but reliability.
- [43] Several aspects of evidence are said by the defence to call into question the reliability of Cst. Florido's evidence. The lighting was limited; the opportunity to observe appears to have been fleeting; Cst. Florido could not say where the canister came from; the canister's end location on the black plastic-covered table is said to be more proximate to Mr. Oquis than it was to Mr. Schur; and finally, Cst. Florido did not observe Mr. Schur move from his position.
- [44] Two other factors were also mentioned by defence counsel but I find that they do not assist on the question at issue. The first of these is the assertion by the defence that Cst. Florido's eyesight was impaired before he got to the patio because of his earlier encounter with a sprayed hall or stairway. His evidence, however, was that he recovered and he did not believe that his eyes were still watering by the time he got to the sliding doors leading to the rooftop.
- [45] Second, reference was made to the deerskin gloves being found on the black plastic-covered table, but there is no evidence as to who these belonged to. It seems to have been presumed in argument that these belonged to Mr. Oquis, but there is no evidence to this effect. I note that the tables had various items on them such as flowers, a storage container, a candle and an outside thermometer, and on one of the tables there was a yellow bowl with water and a cloth in it, which was suggestive of recent cleaning activity by the residents, so it is not clear

that the gloves and hat could only have come from Mr. Oquis.

- [46] The argument that Mr. Schur did not move and was in a location somewhat removed from the black plastic-covered table is based in part on very sketchy evidence from Cst. Florido about what he could or could not see after he was bear-sprayed. Cst. Florido himself said he was not sure of Mr. Schur's actions after disengaging because his vision was so impaired. When Cst. Popke first saw Cst. Florido, the latter's eyes were swollen and not open. Cst. Popke saw Mr. Schur behind the yellow bowl table in a crouched position. It is obvious from the evidence that this was not the area where the fight occurred and so it is equally obvious that Mr. Schur moved to that location at some point. He also moved from the position of being on his back during the fight to being in a crouched position when he was behind the table. I am therefore unable to conclude that the end location of the canister was closer to Mr. Oquis than it was to Mr. Schur at all times.
- [47] Finally, the point was raised that Cst. Florido did not see where the canister came from or which hand the canister was in. I am mindful, first of all, of the fact that Mr. Schur was wearing a bulky, puffy-type jacket or coat, an article of clothing that was marked as an exhibit, and this coat could have accommodated a canister of bear spray. I am mindful as well that this was a chaotic, violent scene, in limited lighting conditions, where a full-sized German Shepherd police dog was adding to the noise and physical mayhem. That everything that happened was not seen does not seem to me to be at all surprising.
- [48] Cst. Florido, on cross-examination, was unshaken in his testimony that it was the suspect he was fighting who wielded the bear spray. The question is whether any or all of these other circumstances referred to serve to give rise to a reasonable doubt about Cst. Florido's evidence on this point. I conclude they do not.
- [49] On a consideration of the evidence as a whole I am satisfied beyond a reasonable doubt that Mr. Schur wielded and discharged the bear spray into Cst. Florido's face. I therefore find him guilty on Count 3.

"Blok J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/15/05/2015BCSC0514.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-schur-2015>

Prepared on 28 October 2026 · Esheria