

CANADA / JUDGMENT

R. v. Singh

2004 BCCA 428

COURT

British Columbia Court of Appeal

DECIDED

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2004 BCCA 428 R. v. Singh COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Singh, 2004 BCCA 428 Date: 20040820 Docket: CA030922 Between: Regina Respondent And Jagrup Singh Appellant Before: The Honourable Madam Justice Rowles The Honourable Mr. Justice Hall The Honourable Madam Justice Levine P. McMurray Counsel for the Appellant J.M. Gordon Counsel for the Respondent Place and Date of Hearing: Vancouver, British Columbia 25 June 2004 Place and Date of Judgment: Vancouver, British Columbia 20 August 2004 Written Reasons by: The Honourable Mr. Justice Hall Concurring in by: The Honourable Madam Justice Rowles The Honourable Madam Justice Levine Reasons for Judgment of the Honourable Mr. Justice Hall:

- [1] On 16 January 2003, the appellant Jagrup Singh, sometimes known as Jagrup Singh Gakhal, was convicted of being in possession of an unlicensed handgun at Surrey on 8 April 2002 and of possessing a firearm and ammunition while he was prohibited from doing so by a previous order of a judge made on 16 November 1993. These charges arose out of a police search that was conducted on the evening of 8 April 2002 at residential premises in Surrey. The appellant and his family lived in a downstairs suite in a house. This suite was described by witnesses as being a relatively small dwelling unit. The search pursuant to a warrant was related to a homicide investigation then being conducted by the police. The appellant had been arrested for the homicide in the afternoon prior to the search. The appellant was subsequently convicted of that homicide.
- [2] The residence where the search occurred contained one main floor living unit and what are described as two basement suites. The wife of the appellant opened the premises with a key to allow investigators in after a search warrant had been obtained. The handgun that was discovered, described as a .380 calibre Bernadelli handgun, was contained in a bag inside a toolbox located in the living room between a loveseat and an end table. Some ammunition was also discovered in the suite although none of it was ammunition for this handgun. A .40 calibre S&W round was found in the top left hand drawer of a dresser in the master bedroom, a .22 calibre round was found in a drawer of the bedside table in the master bedroom and 12 shotgun shells were found in a cardboard box underneath the end table close to the toolbox. The living room, the kitchen area and the dining area comprised one general open area of the suite. The suite also contained two bedrooms, one being a master bedroom for the parents and the other for the children. The evidence disclosed that the

appellant and his family had occupied this suite for approximately five years prior to April 2002.

- [3] The occupant of the main portion of the house, Mrs. Gakhal, testified at the trial. She said that she had resided in the premises for several years with her husband and four children. The appellant, who is apparently a nephew of her husband, was the adopted son of Mrs. Gakhal and her husband. The basement suite occupied by the appellant and his family is connected to the main part of the house by a doorway but according to Mrs. Gakhal that door had always remained locked. There is no access between the two basement suites. The other basement suite was occupied in April 2002 by a sister of Mrs. Gakhal. The sister and her family had just moved there a few days prior to the search. Before that another family had occupied this suite. Although Mrs. Gakhal had a spare key for the suite of the appellant she said she never used it to enter the suite. The suite was a rental premises and the appellant paid rent for it to Mrs. Gakhal.
- [4] It seems a fair inference from the evidence given by Mrs. Gakhal that there was not a great deal of interaction between the family of Mrs. Gakhal and the family of the appellant. She stated in her evidence, "they don't bother us and we don't bother them". She noted in her evidence that a friend of the appellant, Mr. Bal, often visited at the suite of the appellant and his family. It was suggested in argument by counsel for the appellant that perhaps Mr. Bal or some other visitor might have left the weapon that was found in the toolbox. In effect, it was suggested that the gun might have been deposited there without the knowledge or consent of the appellant. The same argument would be applicable to the items of ammunition that the police found.
- [5] A number of grounds of appeal were advanced. It was suggested that the Information to Obtain the search warrant was deficient and that the warrant had not been validly issued. Therefore it was submitted that the search was in effect a warrantless search. At the hearing of the appeal we advised counsel that it did not appear that the argument that the search warrant was not properly issued had any particular substance.
- [6] The Information to Obtain the warrant set out that the police were investigating a homicide that had occurred at a place called Delaney's Pub in Surrey on 5 April 2002. On that date three East-Indian males had been escorted out of the pub by staff because one of them had been causing difficulty in the establishment. After they were outside, one of them brandished a handgun and later fired shots at the doorway of the pub, fatally wounding an occupant of the premises. The Information to Obtain the search warrant disclosed a reasonable amount of detail linking the appellant to the crime as the possible shooter, including his fingerprints on a glass located at a table where the men had been seated in the premises. Portions of the Information to Obtain were blanked out in order to protect the identity of an informant. According to a summary of this material, the informant had advised investigators that "Jag", the name of the appellant, had had a gun at Delaney's that night.

- [7] In my opinion, the material contained in the Information to Obtain the search warrant sufficed to permit the justice of the peace to issue the warrant to search the suite of the appellant. I consider that Stewart P.C.J. was correct in his assessment that the appellant had not demonstrated a breach of s. 8 of the Charter. I would therefore not give effect to this ground of appeal.
- [8] The more substantial argument in this case revolved around whether or not the trial judge erred in concluding that the Crown had proven beyond a reasonable doubt that the appellant had possession of the handgun and the ammunition discovered at various locations in the suite. A number of authorities were cited on this point by counsel for the appellant including: *R. v. Fong*, [1993] B.C.J. No. 1737 (C.A.); *R. v. Iturriaga* (1993), 43 B.C.A.C. 161, [1993] B.C.J. No. 2901; *R. v. Anderson* (1995), 67 B.C.A.C. 311, [1995] B.C.J. No. 2655; *R. v. Amado*, [1996] B.C.J. No. 1943 (S.C.); *R. v. Black*, [1996] B.C.J. No. 3148 (C.A.); and *R. v. Egresits*, 2002 BCCA 163, [2002] B.C.J. No. 483. Counsel also referred to the recent case of *R. v. Bauer*, 2003 BCCA 138, [2003] B.C.J. No. 505, wherein this Court distinguished a number of the cases relied upon by counsel in this case.
- [9] This was a case of circumstantial evidence, there being no direct evidence linking the appellant to the items that were discovered in the suite. As noted above, the evidence of the landlady, Mrs. Gakhal, established that the appellant and his family had occupied this suite for some five years. This was not therefore an instance of transitory occupation of a vehicle as in cases such as *R. v. Fong*, *supra*, *R. v. Iturriaga*, *supra*, and *R. v. Anderson*, *supra*.
- [10] The case is also distinguishable from *R. v. Black*, *supra*, where an individual was found asleep in his cousin's house when a search warrant was executed. A grow operation was found in the basement and the owner of the house had pleaded guilty to the offence of growing marihuana. Fingerprints of the appellant had been found on some lamps used in the grow operation. The owner testified at trial that the appellant was not living full-time at the residence but rather only was staying at the house for a day or two prior to the search. His evidence in effect exonerated the appellant of any relationship to the grow operation. This Court found that the evidence was not sufficient to register a conviction against the appellant. In that case there was evidence in the record that the accused was not a full-time resident of the premises and had no control over the premises. No such evidence exists in the record of this case.
- [11] In the more recent case of *Egresits*, *supra*, a grow operation was discovered in a house as a result of a search of the house pursuant to a warrant. Certain documents relating to the appellant were discovered in the house. His mother testified he had keys to the house and occasionally stayed there. The police also found documents in the house relating to the appellant's brother and to another individual. The mother apparently had a key to the grow room, and had opened the door for the police to enable them to execute the warrant. This key was a different key from the house key. There was in the record considerable evidence connecting other parties to the house including the mother of the appellant, his brother and another individual. This Court found that the circumstantial evidence linking the appellant

to the offence was not greater than that linking the other persons so as to exclude them from the realm of persons who could have been the perpetrators of the offence. An acquittal was ordered. A significant circumstance that differentiates that case from the instant case is that the basement of those premises where the grow operation was discovered had a separate entrance and a separate key. There was no evidence of control and occupation of the area by the appellant.

- [12] In the present case the gun was discovered concealed in the toolbox located in plain view in the main living area of this suite. This was, as I noted, a compact living area that the appellant and his family had occupied for several years. There was clear evidence of exclusive occupancy by the appellant. The submission that the weapon might have been placed there by a visitor to the suite seems to me purely speculative. This was not some remote outbuilding on a large property nor was it a separate part of an occupied home as was the case in *Egresits*. Rather, this was the central living area of a rather small residential premises. In my respectful opinion, in the circumstances of this case, in the absence of any evidence to the contrary, it was eminently reasonable for the trial judge to infer that the weapon found in the toolbox was an item that was in the possession of the appellant. I do not consider that it has been shown that this finding was in error and I would not interfere with it.
- [13] As concerns the count relating to possession of the firearm plus the ammunition while under a prohibition order, there were two adults who lived on these premises, the appellant and his wife. His wife was the individual who had let the officers into the suite by use of a key. While it might be considered that the gun discovered in the toolbox could perhaps be more naturally linked to the appellant since males are somewhat more likely than females to be concerned with such an item as a toolbox, the shells which were found in various locations in the living room and the master bedroom might be thought to be less exclusively linked to the male appellant. As regards these items, it seems reasonable to me that they could be considered on the facts in this case to have been in the joint possession of both husband and wife. That will not necessarily be the case for any item found in premises shared by two persons. If for instance, one or more of these items of ammunition had been discovered in a cosmetics case or a pocket of an item of female apparel in a closet, that might tend to favour a finding of possession by the adult female occupant of the suite. But, in this case, the ammunition was not found in any such location; it was discovered in various locations in the shared living areas of the premises. Therefore, on all of the evidence, I do not consider that it was unreasonable for the trial judge to make a finding of possession of these items against the appellant. Indeed, I consider that it was entirely reasonable for the judge to so find having regard to the circumstances that the appellant had occupied this compact living unit for several years as the residence of himself and his family. There was in the record no evidence of any other rational conclusion and thus the classic test to be applied to a case of circumstantial evidence was met: see *R. v. Bauer*, *supra* at paras. 22-23.

- [14] It was also submitted that there was no proof that these items, the shotgun shells and the bullets, were ammunition as defined in s. 84 of the Criminal Code. That section defines "ammunition" as meaning "a cartridge containing a projectile designed to be discharged from a firearm and, without restricting the generality of the foregoing, includes a caseless cartridge and a shot shell". The appellant submitted that expert evidence ought to have been adduced to demonstrate that the items fell within this definition.
- [15] The police officer who discovered the items in the bedroom described them as a .40 calibre bullet and a .22 calibre bullet. The officer who discovered the shells in the cardboard box described them as shotgun shells. Police officers are quite familiar with what ammunition looks like. Having regard to the evidence given by the police witnesses who discovered these items, it seems to me that this was not a case in which there was any necessity for any additional evidence to be called from an expert to establish that these items were ammunition as that terminology is used in the Criminal Code.
- [16] As Chief Justice McEachern pointed out in *R. v. To* (1992), 16 B.C.A.C. 223 at 230, a case where the issue was possession, courts must approach cases with a certain degree of realism. It seems to me that it is only common sense to hold that when experienced police officers describe the items found as being bullets and shells, as they did in this case, that it is a fair inference that they are talking about the type of items that the Criminal Code definition of ammunition encompasses. Of course, evidence might be adduced to rebut such an inference. But as the evidence stood in the instant case, it seems to me that it was proper for the trial judge to conclude that these items were ammunition. Accordingly, in my view, he did not err in convicting the appellant of the offence of having in his possession this ammunition contrary to the order that was made in 1993 prohibiting him from possessing firearms and ammunition.
- [17] Since I am of the view that these convictions were properly registered against the appellant by the trial judge, in my view, this appeal ought to be dismissed. "The Honourable Mr. Justice Hall" I Agree: "The Honourable Madam Justice Rowles" I Agree: "The Honourable Madam Justice Levine"

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