

CANADA / JUDGMENT

R. v. Snider

2014 BCCA 229

COURT

British Columbia Court of Appeal

DECIDED

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2014 BCCA 229 R. v. Snider COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Snider, 2014 BCCA 229 Date: 20140610 Docket: CA040691 Between: Regina Respondent And Jason Edwin Snider Appellant Before: The Honourable Madam Justice D. Smith The Honourable Madam Justice Bennett The Honourable Mr. Justice Harris On appeal from: Supreme Court of British Columbia, December 13, 2012 (R. v. Snider, 2012 BCSC 1906; R. v. Snider, 2012 BCSC 2189, Terrace Registry No. 29669) Oral Reasons for Judgment Counsel for the Appellant: D.E.M. Jenkins, Sr., Q.C. D.E.M. Jenkins, Jr. Counsel for the Respondent: P. Eccles Place and Date of Hearing: Vancouver, British Columbia June 10, 2014 Place and Date of Judgment: Vancouver, British Columbia June 10, 2014 Summary: The police obtained a search warrant for the appellant's residence. In the course of executing the warrant, they saw the appellant in a backyard shed that they were not authorized to search. The police entered the shed and arrested the appellant. They saw a significant amount of cocaine in the shed. Subsequently, the police obtained a second search warrant for the shed. The appellant argued that there was insufficient evidence to support the issuance of the first search warrant and therefore it and the subsequent warrant were invalid. The trial judge accepted that in all the circumstances the first search warrant was valid and that the officers entered the shed on the basis of officer safety. He found that there had been no breach of the appellant's Charter rights. Held: Appeal dismissed. The trial judge did not err in upholding the validity of the ITO. The inferences and conclusions the judge drew were reasonably supported by the evidence.

- [1] BENNETT J.A.: On December 13, 2012, Mr. Snider was convicted of possession of cocaine for the purpose of trafficking. Mr. Justice Grauer found, in two rulings, that the cocaine in question was seized pursuant to valid search warrants and that execution of the warrants did not breach Mr. Snider's rights under ss. 8 or 10 of the Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11. Mr. Snider appeals this conviction, challenging the correctness of these rulings.

Background

- [2] On September 26, 2009, members of the North District Drug Section of the Royal Canadian Mounted Police executed a search warrant at 4826 Walsh Avenue, Terrace, British Columbia. They saw Mr. Snider in a shed at the rear of the property. The shed was not included in the first search warrant. When the police entered the shed to arrest Mr. Snider, they found cocaine in plain view. The police then obtained a second search warrant for the shed. The validity of the second warrant turns on that of the first.
- [3] Mr. Justice Grauer concluded that the first warrant was valid: *R. v. Snider*, 2012 BCSC 1906 (the "first voir dire"). He then considered the validity of the second warrant and whether the execution of the warrant violated Mr. Snider's rights under ss. 8 and 10 of the Charter. He concluded that there were no breaches of the Charter that affected the validity of the search and seizure: *R. v Snider*, 2012 BCSC 2189 (the "second voir dire").
- [4] Following Grauer J.'s rendering of judgment on the second voir dire, Mr. Snider admitted the necessary facts for conviction and elected not to call evidence. The Trial Judge's Reasons
- [5] Mr. Justice Grauer adopted the Crown's three-stage analysis of the evidence. Stage One was evidence that the target of the investigation, "Fred", used 4717 Straume Avenue as a "stash house". This was supported by evidence from Informants A and B. Informant A was a credible informant, known to police. On September 24, 2009, the evidence suggested that the stash house had run out of drugs. The second-stage evidence included Fred's son, Dakota, stopping outside Mr. Snider's residence at 4826 Walsh Avenue on September 24, 2009. Wiretap intercepts had indicated that Fred was anxious about Dakota's failure to meet up with someone possibly called "Jay" or "Jason", and Fred became increasingly frustrated until his wife indicated she had heard from someone and "everything's okay". Approximately half an hour later, Dakota and his associate stopped for three to four minutes in front of 4826 Walsh Avenue, then drove to the stash house. Dakota then sent a text message to Fred, "just got back from pickin pine mushrooms got almost 40 pounds". Since the police had Dakota under surveillance for a long period of time, an inference that he had picked up drugs as opposed to pine mushrooms was made. In response to an inquiry from Fred, Dakota indicated he had not yet seen someone named "Gordy" but was "going there now". The Crown says Fred supplied drugs to a person named Gordie Greycloud. The police found cocaine at the stash house on September 26, 2009.
- [6] The police were unable to maintain continuous surveillance during Dakota's stop at the Walsh Avenue house and thus did not observe anyone leaving or returning to the vehicle. This necessitated the third stage of evidence: Informant C's information. Informant C indicated that "Jason" lived at the Walsh Avenue house and supplied marihuana to Fred. Informant C described the house and identified a photo of Jason Snider as the person he was referring to. The judge found that Informant C was a known informant and, while his/her information could not support the warrant on its own, the information was detailed and corroborated. It was therefore open to the justice of the peace to accord substantial weight

to Informant C's information and find that the totality of the circumstances permitted an inference that Mr. Snider supplied Fred's stash house with cocaine.

- [7] The first warrant was executed on September 26, 2009. Two officers present during the execution of the warrant testified for the Crown. The officers gave evidence that they initially approached the shed because an officer observed someone inside it. When the officers looked through the window of the shed, one of the officers identified Mr. Snider. They entered the shed in order to arrest Mr. Snider and, after arresting him, observed marihuana plants and cocaine bricks in the shed. The judge was satisfied that their reason for entering the shed was to respond to a specific concern for officer safety and then to arrest Mr. Snider. Their observation of the drugs was incidental to the arrest of Mr. Snider, for which there were reasonable grounds, based on the Information to Obtain ("ITO") that was the subject of the first voir dire. There was therefore no breach of s. 8.
- [8] With respect to s. 10, the trial judge found the evidence unclear and thus was unable to conclude Mr. Snider had proven a breach of his s. 10 rights. Even if there had been a breach, there was no attempt to take a statement from Mr. Snider and there was no apparent connection between any delay in warning him of his rights and the finding of evidence relied on by the Crown. Section 10 is not in issue on this appeal. Discussion
- [9] Mr. Snider submits that there is no evidence that links the drug trafficking to the Walsh Street address as the place where the cocaine originated. It was mere supposition. Mr. Snider points to the Court's decision in *R. v. Liu*, 2014 BCCA 166, where this Court set aside an ITO and submits that similarly there is an insufficient connection between the evidence of drug trafficking and the place that was to be searched. In my opinion there is no gap in the evidence here, as summarized in the trial judge's ruling on the second voir dire:
- [39] As noted, the evidence is circumstantial. No one saw Jason Snider participate in any part of what was observed, overheard, or seized. It would not be enough to convict Mr. Snider of anything. But that is not the test. In the situation before me, the question as I apprehend it, is whether on the totality of the circumstances it was open to the judicial justice of the peace to infer that it was probably Jason Snider who returned on the evening of September 24, 2009, and from whom Dakota was able to obtain cocaine for the resupply of the stash house.
- [40] In my view, it was open to the judicial justice of the peace to draw such an inference on the basis of the evidence that was presented, and which might reasonably be believed. That evidence established directly or by reasonably probable inference that: · Fred used the Straume Avenue premises as a stash house for drugs; · he and his son Dakota were awaiting the return of someone whose name sounded like "Jason" in order to obtain drugs from that person to resupply the stash house and to supply Gordy; · just after that person returned, Dakota stopped for a few minutes outside a residence associated with Jason Snider who himself was known as a supplier of drugs to Fred; · after leaving Walsh Avenue, Dakota went straight to the stash house; · shortly after arriving at the stash house, Dakota reported to his father that he had "just got back from pickin pine mushrooms got almost 40 pounds", and

would go to see Gordy; • a significant amount of cocaine was discovered at the stash house a day and a half later.

- [41] Could there have been an innocent explanation? Yes, but not one that in my view was probable. The judicial justice of the peace was entitled to put two and two together, and could conclude that there was not just a mere suspicion, but a credibly-based probability, that cocaine would be found at the residence of Jason Snider on Walsh Avenue.
- [10] In my respectful view, the trial judge carefully analyzed the evidence before him, and the applicable law. Mr. Snider makes the same arguments in this Court that he made before the trial court. The trial judge made no error in the test to be applied on whether the ITO was valid. The ITO was supported by informant evidence, surveillance, wiretap and interception of text messages. The inferences and conclusions he drew were reasonably supported by the evidence. In my respectful view, he made no error in upholding the validity of the ITO.
- [11] The search was therefore valid and the evidence properly admitted.
- [12] I would dismiss the appeal.
- [13] D. SMITH J.A.: I agree.
- [14] HARRIS J.A.: I agree.
- [15] D. SMITH J.A.: The appeal is dismissed. "The Honourable Madam Justice Bennett"

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