

CANADA / JUDGMENT

R. v. Teixeira

2024 BCSC 1413

COURT

Supreme Court of British Columbia

DECIDED

2 August 2024

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2024 BCSC 1413 R. v. Teixeira IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Teixeira, 2024 BCSC 1413 Date: 20240802 Docket: 82939-92 Registry: New Westminster Rex v. Brandon Nathan Teixeira Restriction on publication: There are restrictions on publication of these reasons pursuant to s. 486.5(1) of the Criminal Code of Canada and the Inherent Jurisdiction of this Court. The restrictions remain in place until further order of the Court. Before: The Honourable Madam Justice Duncan Ruling on Continuation of Application #92 Re: s. 24(2) and the Fruits of the ICBC Production Order in Application 35 Counsel for the Crown: V. Toselli Counsel for the Accused: V.M. Williams Place and Date of Trial/Hearing: New Westminster, B.C. May 8, 2024 Place and Date of Decision: New Westminster, B.C. July 30, 2024 Place and Date of Judgment: New Westminster, B.C. August 2, 2024

- [1] THE COURT: On July 30, 2024, I advised counsel that the evidence obtained via production order from ICBC was admitted, with reasons to follow. These are my reasons.
- [2] Application 35 concerned a defence challenge to the facial validity of an Information to Obtain a production order for records in the possession of ICBC relating to Mr. Teixeira. In my reasons for judgment indexed as 2024 BCSC 396, I quashed the production order because the date range for the documents sought exceeded the date range in which those documents could have existed. IHIT investigators asked for driver's licence information starting six weeks before Mr. Teixeira was eligible to obtain a driver's licence.
- [3] The defence seeks the exclusion of the fruits of the production order from evidence pursuant to s. 24(2) of the Charter.
- [4] The test for determining whether evidence obtained as a result of a Charter violation should be admitted or excluded involves an application of the three-part framework in R. v. Grant, 2009 SCC 32. I discussed the Grant framework in some detail in a previous s. 24(2) ruling which encompassed the vast majority of the proven and acknowledged Charter breaches in this case: 2024 BCSC 521. My decision on Application 35 had not been released at that time. I will not repeat what I said in that decision about the jurisprudence surrounding s. 24(2), except where necessary to explain my conclusion.
- [5] The three Grant factors are:

1. the seriousness of the Charter-infringing state conduct ("state conduct");
 2. the impact of the breach on the Charter-protected interests of the accused ("impact of the breach"); and
 3. society's interest in the adjudication of the case on its merits ("adjudication of the case on its merits").
- [6] Each of the three Grant factors engages multiple considerations which must then be assessed and balanced to determine whether evidence should be admitted or excluded.
- [7] The final balancing of the Grant factors is a "qualitative exercise, one that is not capable of mathematical precision": *R. v. Tim*, 2022 SCC 12 at para. 98; Grant at paras. 86 and 140.
- [8] I will start with the seriousness of the state-infringing conduct.
- [9] The ITO in support of the production order for Mr. Teixeira's ICBC records was dense and prolix. The error underpinning the breach was seeking records which could not have existed in the timeframe delineated in the request.
- [10] Ms. Williams for the defence points out that this investigation was rife with Charter errors and sloppy police conduct. While this is a fair observation, the ITO in this instance was separated by a number of years from the timeframe of the most troublesome Charter breaches in this case. For that reason, I find it is not part of a pattern of breaches.
- [11] I am satisfied that the affiant was doing his best to lay out what had become a complex investigation involving many moving parts. The error was at the less serious end of the spectrum of state conduct.
- [12] The impact of the breach on Mr. Teixeira's Charter-protected rights is also at the less serious end of the spectrum. There is no doubt that his information in the hands of ICBC merits Charter protection, particularly where it was gathered by ICBC from Mr. Teixeira when he was a minor. But the information at stake is not deeply personal. It involves addresses and telephone numbers as well as, presumably, records of driving infractions and licence suspensions. It is not medical or lifestyle information, beyond offering insight into whether or not Mr. Teixeira was a prudent motorist and what his residential address and phone numbers were. And it is information pertaining to a highly regulated activity - driving a motor vehicle - which is not a right but a privilege.
- [13] The final consideration is society's interests in the adjudication of this case on its merits.
- [14] The information gleaned from the ICBC records via the production order is not critical to the Crown's case, but it does provide some evidence about addresses Mr. Teixeira used over a number of years. That in turn permits the Crown to seek an inference that variations on those addresses, or those addresses themselves, strengthens the force of the case against Mr. Teixeira, albeit in a peripheral way.

[15] A balancing of the three factors as required by the jurisprudence leads me to conclude the evidence should be admitted. "Duncan J."

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