
CANADA / JUDGMENT

R. v. Vezina

2014 BCSC 1226

COURT

Supreme Court of British Columbia

DECIDED

2 June 2014

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Vezina,

2014 BCSC 1226

Date: 20140602

Docket: 160967

Registry: Victoria

Regina

v.

Kevin Michael Bradley Vezina

Before: The Honourable Mr. Justice Blok

Oral Ruling on Voir Dire

Counsel for the Crown:

R. Fowler

Counsel for the Accused:

M. Allen

Place and Date of Trial:

Victoria, B.C.

June 2, 2014

Place and Date of Judgment:

Victoria, B.C.

June 2, 2014

- [1] THE COURT: The accused in this case alleges breaches of his ss. 8 and 9 Charter rights in and around his arrest for possession of controlled substances for the purpose of trafficking.
- [2] Shortly after 2:00 a.m. on October 11, 2013, Constable Smit of the Saanich Police Department pulled over a vehicle after receiving a report of a possible impaired driver. The car that was the subject of the report had been reported to police as a red 1991 Acura with a specific licence number. The car that was pulled over matched that description.
- [3] Cst. Smit was the officer who initially dealt with the driver of the Acura, but he was soon assisted by Constable Swanson, the officer whose later activities are primarily at issue here.
- [4] The first officer, Cst. Smit, interacted with the driver, who was unable to produce a valid driver's licence. Cst. Smit established that the driver was not the registered owner of the car. Despite not producing a driver's licence, the driver asserted he was in fact licensed to drive. He produced a document that appears to have been a driving record abstract, together with a B.C. identification card, and gave these to Cst. Smit. Cst. Smit relayed the name on that document to his dispatch so that checks could be made. Cst. Smit then returned to his patrol car to carry out inquiries as to whether the registered owner of the vehicle had authorized this use of the car.
- [5] After Cst. Swanson arrived on scene he went to the passenger's side of the stopped vehicle while Cst. Smit was engaged with the driver. There was a female passenger on Cst. Swanson's side, and he had some exchanges with her. She asked Cst. Swanson why they had been stopped, and he told her they had received a report of a possible impaired driver. The passenger explained that they had dropped some CDs and were fishing around for them, apparently by way of an explanation for any report of unusual driving. She identified herself first as "Jessica" and then as Erin McLaughlin.
- [6] While Cst. Swanson was at the passenger's side of the stopped car, he saw the driver reach back to a backpack located between the two front seats and just to the rear of them. The driver pulled out some papers from the top of the backpack.
- [7] When asked about the vehicle ownership -- the question, I took it, coming from Cst. Smit -- Cst. Swanson noted that neither occupant could name the owner. After they pulled out insurance or registration documents they said it was "Kyle's car". Cst. Swanson then heard Mr. Vezina's name when Cst. Smit said it over the radio on a call to dispatch.
- [8] Cst. Swanson said he was very aware of Mr. Vezina's background. He knew that Mr. Vezina was on a recognizance out of Vancouver for a drug offence and had a history of drug involvement. He later added that, at the time of the arrest, he was aware of Mr. Vezina's

history of convictions for drug trafficking and possession, a recent drug arrest in Vancouver, and the fact that Mr. Vezina's name came up frequently in discussions with fellow officers and in muster briefings as a known drug dealer. Cst. Swanson said that Mr. Vezina was very well known throughout Greater Victoria as a drug dealer.

- [9] Returning to the events that evening or early morning, when Cst. Smit went back to his own car, Cst. Swanson moved to the driver's side to act as a cover officer. Mr. Vezina handed to Cst. Swanson the Alberta driver's extract, but Cst. Swanson told him they needed either an actual driver's licence or confirmation that he had one. The abstract, he told Mr. Vezina, did not suffice. The driver then indicated he was looking for his phone so he could establish that he had permission to use the car. The driver reached to his backpack and unzipped the top compartment.
- [10] From his vantage point five feet away or so, Cst. Swanson could see in that compartment a stack of five-dollar notes bound together with an elastic band. He thought it looked like "a tremendous amount of money". I should note that the car was stopped in a bank parking lot and both officers testified that the lighting was fairly good. In his testimony Cst. Swanson indicated by gesture the thickness of this wad of five-dollar bills, a thickness that appeared to me to be about one centimetre, and verbally he said it was between one-quarter and one-half inch thick.
- [11] The driver then went to a side pouch in the lower left side of the backpack and zipped it open. From his vantage point, Cst. Swanson saw another fold of cash, that is bills folded in half, and he was able to see the different colours of \$100, \$50, and \$20 bills. He estimated the total to be in the thousands of dollars. He described it as a fairly thick quantity of money.
- [12] Cst. Swanson formed the view at this point that he had grounds to arrest Mr. Vezina. He said he based his decision on all the circumstances, which included his knowledge and experience in the area of illicit drugs, including recent discussions with a fellow officer who had executed a drug search warrant. That other officer showed Cst. Swanson photos of bundled money in that case, bundled in the same fashion as here.
- [13] Cst. Swanson said that he has been a member of the Saanich Police Department since February 2007, and has been involved with hundreds of cases involving the Controlled Drugs and Substances Act, R.S.C. 1996, c. C-9, both on patrol and as a member of an emergency response team. He explained that the emergency response team is involved in search warrant executions. He said that although he has no specific training in drugs beyond that of his initial training from the Justice Institute, he has taken a keen interest in the area, and if people are taken into custody he looks at the drugs seized to look at the packaging and looks at such other things as how the money is kept. He also speaks to other officers about these matters. He noted that in other cases he has observed how drugs are held and carried, and noted that money is never contained in a wallet. It is folded, placed in pockets, and often bound together with a rubber band.

- [14] He outlined the other circumstances he relied on, in addition to the experience I have just described, in coming to the view that he had reasonable grounds to suspect Mr. Vezina was involved in drug trafficking. These included the time of day, Mr. Vezina's history of drug convictions, the information he had received from fellow officers, as I have described before, the recency of his arrest in Vancouver on a drug offence or drug offences, the quantity of money and the manner in which it was bundled (here, one bundle being held with an elastic band), and the amount of money. As to the latter point Cst. Swanson said he had never seen or heard of a situation where a person carried this amount of cash who was not involved in drug trafficking.
- [15] Cst. Swanson said he relied, as well, on the difficulty or inability of Mr. Vezina to name or at least give the complete name of the registered owner of the car he was driving. He said that often "dial-a-dopers" use someone else's vehicle because of the risks associated with civil forfeiture.
- [16] I will highlight just some of the matters from Cst. Swanson's cross-examination. He acknowledged that once he heard Mr. Vezina's name over the dispatch radio, he changed his focus and now saw this situation as possibly involving drugs. He agreed with the suggestion that at that point it became a potential drug investigation. He said he was looking very specifically at the backpack. The words he used were, "I was looking very acutely because of safety concerns, in the event that a weapon was being accessed." So he was looking very carefully to see what Mr. Vezina was reaching for.
- [17] He agreed with defence counsel's suggestion that he had no basis for arrest until he saw the money. He agreed, as well, that if the stop had taken place at 2:00 p.m. instead of 2:00 a.m., he would also have been suspicious, but said the actual hour of the arrest, which was at sometime after 2:00 a.m., assisted his grounds. He did not agree that it was merely a combination of his observation of the cash and it being Mr. Vezina, but said it was in combination with other things. He said that it did occur to him that Mr. Vezina might have an innocent explanation that he would offer, but said that he thought it better that Mr. Vezina be arrested and properly warned, because he would then have the opportunity to obtain legal advice before he said anything.
- [18] In submissions, defence counsel said this case comes down to an arrest merely based on Mr. Vezina's history and the amount of cash observed by Cst. Swanson. Counsel said that people are allowed to have cash; there is nothing illegal about that. He said that the police officer did not bother to ask for an explanation until after arrest, and says that this question ought to have been posed before the arrest. Counsel said that this was evidence of the precipitous nature of the arrest.
- [19] Defence counsel submits that instead of the officer asking Mr. Vezina for an explanation for the cash, he was predisposed to a conclusion, as evidenced by the Cst. Swanson's testimony that "My focus changed". Defence counsel submitted, in effect, that when the officer saw the amounts of cash he jumped to the conclusion that Mr. Vezina was involved in drugs.

- [20] Defence counsel agreed that Cst. Swanson had subjective grounds to arrest, but submits that these grounds were not objectively reasonable. The arresting officer's view was instead a jaundiced view by an officer overly ready to jump to a conclusion.
- [21] Defence counsel did not say that reputation can never be used, but suggested that there are obvious Charter problems if undue weight is given to mere reputation.
- [22] Crown counsel agreed that the issue here is whether the grounds for arrest were objectively reasonable. He emphasized that in considering whether there are objectively reasonable grounds the assessment must be done through the eyes of a person having that police officer's training and experience.
- [23] Crown said that reputation can be used as part of the overall circumstances, as it informs other grounds. Crown went through all of the grounds (which I will not repeat) that the officer said he had.
- [24] As to the defence argument that Mr. Vezina ought first to have been given an opportunity to give any explanation he might offer for possessing that quantity of money, he said that this is in effect a fruitless exercise, because if an exculpatory explanation is given this still requires the officer to assess the credibility of that information, and if an inculpatory statement is given, it may create Charter problems.
- [25] At the outset, I remind myself that the burden of proving a Charter breach is on the accused on a balance of probabilities.
- [26] Cases included in the Crown's brief do establish that reputation can be taken into account, at least insofar as they may inform other grounds. In *R. v. Debot*, [1989] 2 S.C.R. 1140 [Debot], the Supreme Court of Canada said:

56 The significance of the past record and reputation of the appellant, as well as the background of the other participants, presents a more difficult problem. It is surely beyond question that reputation alone would never provide reasonable grounds for a search. The appellant, however, objects to any use of reputation as a relevant factor. He relies on the United States decision in *Spinelli v. United States*, 393 U.S. 410 (1969), for the proposition that it offends public policy to use reputation to give additional weight to allegations that would otherwise be insufficient to establish reasonable grounds for a search.

57 I am sensitive to the argument advanced by counsel for the appellant that the reputation of a suspect should not be used to buttress an otherwise insubstantial case for searching a suspect. At the same time I find it difficult to accept the proposition that the past activities of a suspect are irrelevant. Indeed, as Martin J.A. points out [in the court below, (1986), 30 C.C.C. (3d) 207] at pp. 220-21 of his judgment:

Evidence of bad character or prior criminal misconduct by an accused is excluded at his or her trial on a criminal charge, not on the ground that the evidence has no probative value, but on policy grounds, because the prejudicial effect of such evidence outweighs its probative value.

58 These policy reasons are obviously not as cogent at the investigatory stage where the liberty of the subject is not directly at stake. Moreover, I think it is somewhat artificial to assume that any one factor, be it reputation or something else, is responsible for turning a previously "insubstantial" case into a sufficient one. Having said that, I add the following caveats to the use of reputation as germane to the issue of a reasonable search. First, the reputation of the suspect must be related to the ostensible reasons for the search. A background of driving offences, for example, has little relevance to drug trafficking. Second, if the reputation of the suspect is based on hearsay rather than police familiarity with the suspect, its veracity cannot be assumed. In the present case, it appears that the police relied on both direct [page1170] experience and hearsay. On the occasion leading to the appellant's conviction for possession of marijuana Constable Gutteridge executed a search warrant on the appellant's residence in which he testified to having found "marihuana traces of speed, scales, debt list, smoking pipes, packaging material, baggies, that sort of thing". He also testified to finding his name on the phone list of another person on whose residence a search warrant was executed and drugs were found. Constable Gutteridge further claimed that he had received information from "other confidential sources" to the effect that the appellant was a user and trafficker in speed. The record does not indicate anything about the reliability of the sources who informed the police of the appellant's reputation; for that reason I am inclined to give greater weight to Constable Gutteridge's first hand observations.

[27] Debot was applied in *R. v. Parchment*, 2007 BCCA 326, 243 B.C.A.C. 161, without particular elaboration, although what I note in *Parchment* is that Mr. Parchment was known to be involved in the drug trade because of several prior drug convictions. It was also known he drove a white van. I will read from the B.C.A.C. headnote:

the officers saw the white van park in a lot. A black SUV, also recognized by the officers from a drug investigation involving Parchment, pulled up alongside Parchment's van. Parchment left his van to go to the window of the SUV. The officers could not see what Parchment did at the window. Parchment returned to his van a minute later and started to drive away. The officers thought they had observed a drug deal, so they decided to arrest Parchment. They stopped the van while still in the parking lot.

[28] So in that case the combination of events was the reputation of the person arrested, combined with a meeting of vehicles, which is otherwise a perfectly legal thing to do. The Court of Appeal determined that this was a sufficient basis for the arrest and search of the accused.

[29] Here, in addition to reputation -- and I accept without question that one must approach that ground cautiously -- there were considerable sums of cash organized in a fashion, on the evidence, consistent with what drug dealers do. There was the time of night. This was not a strong factor, I would not think, but nonetheless it would tend to indicate that it was not for paying rent or some other purposes or transaction that would normally be carried out in the day.

- [30] The other factor that I found telling was that Mr. Vezina was not the registered owner of the vehicle and had apparent difficulty in coming up with the name of that registered owner. Cst. Swanson explained that people involved in dial-a-dope trafficking may use the vehicles of others in order to avoid the consequence of civil forfeiture. The defence here said that this was not given as expert evidence (though here I note defence counsel did not object to this evidence at the time) and we cannot take this as being something that is established generally. I agree, so far as that goes, but what we have here is this officer's experience and this is what he understood. We are to examine objectively whether his grounds were reasonable, based on a police officer that has his training and experience. There is no evidence that his evidence on the matter of what drug dealers do with others' vehicles was incorrect, and, in these circumstances, I find that this informs other circumstances and distinguishes it from the narrow characterization that the defence put on this case of merely combining a lot of bundled cash with a person known to have or thought to have involvement in the drug trade.
- [31] Having regard to all of the circumstances, including those that I have discussed in greater detail but considering all of the circumstances outlined by Cst. Swanson, I conclude that there are sufficient objective grounds to establish the reasonableness of the officer's subjective belief. Therefore, the Charter challenge brought by the defence has not been made out.
- [32] Those conclude my reasons.

"Blok J."

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