
CANADA / JUDGMENT

R. v. Watson

2018 BCCA 74

COURT

British Columbia Court of Appeal

DECIDED

16 February 2018

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

2018 BCCA 74 R. v. Watson

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Watson,

2018 BCCA 74

Date: 20180216

Docket: CA44063

Between:

Regina

Respondent

And

Alan Kenneth Watson

Appellant

Restriction on Publication: Section 16(4) of the Sex Offender Information and Registration Act: This section provides that no person shall disclose any information that is collected pursuant to an order under SOIRA or the fact that information relating to a person is collected under SOIRA.

Before:

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Goepel

The Honourable Madam Justice Fenlon

On appeal from: An order of the Provincial Court of British Columbia, dated

July 15, 2016 (R. v. Watson, Richmond Registry 59691).

Oral Reasons for Judgment

Counsel for the Appellant:

D. Markovitz

Counsel for the Respondent:

J.A. Dickie

Place and Date of Hearing:

Vancouver, British Columbia

February 15, 2018

Place and Date of Judgment:

Vancouver, British Columbia

February 16, 2018

Summary:

The appellant appeals from conviction on one count of possession of child pornography. The materials on which the conviction were based were seized from his home after investigators in British Columbia were advised that investigators in the United States had been informed by Microsoft Corporation of pornographic images of children uploaded to a Microsoft storage service by a user associated to the address in British Columbia. It turned out the appellant resided at that address. Held: appeal dismissed. In the police interview, after police had provided the appropriate advice and warnings and after the appellant had spoken to a lawyer, the appellant asked to speak to a lawyer again. The police declined the request. As the judge concluded, the appellant's s. 10(b) Charter right was not breached because the circumstances in which a second call must be allowed, set out in *R. v. Sinclair*, 2010 SCC 35, were not met. No error was made in admitting the appellant's subsequent statements to the police. Nor did the judge err in concluding from her own observation that the subjects of the photography images were children.

[1] SAUNDERS J.A.: Mr. Watson appeals from conviction of possession of child pornography contrary to s. 163.1(4) of the Criminal Code, R.S.C. 1985, c. C-46. A conditional stay was entered on a second count, accessing child pornography, on the principles of *Kienapple v. R.*, [1975] 1 S.C.R. 729.

[2] Mr. Watson contends the judge erred in:

1) admitting a statement he made to the police, which statement he says was not voluntarily made and was obtained in violation of his rights under ss. 7 and 10(b) of the Canadian Charter of Rights and Freedoms [Charter];

- 2) finding that persons depicted in the images and videos provided to the court were under the age of 18; and
 - 3) finding that the images and videos provided to the court were representative of the larger collection of images and videos obtained from Mr. Watson's home.
- [3] Mr. Watson was arrested after investigators in the United States were informed by Microsoft Corporation that pornographic images had been uploaded to a Microsoft storage service by a user associated with an address in Richmond, British Columbia. The lead investigator in British Columbia obtained a search warrant and attended the Richmond address on January 22, 2015 to conduct a search. This was Mr. Watson's residence and he was at home when the police arrived. The officers seized 49 exhibits from his home, including two USBs and a number of optical disks. A search of one of the USBs recovered 663 images of what one of the officers considered to be child pornography. Some of the exhibits were later analyzed by a civilian member of the Royal Canadian Mounted Police ("RCMP") and evidence from him is the subject of the third ground of appeal.
- [4] Mr. Watson was arrested at his home on February 12, 2015. By then he had retained a lawyer. Upon being arrested and informed of the charges, he immediately advised the police that he wished to speak to his lawyer. The police officer advised Mr. Watson of the reason for the arrest and gave him the standard Charter advice and warning. The police then transported Mr. Watson to the police detachment, where he was given the opportunity to speak with counsel, and did so. Shortly after the police officer conducted an interview of Mr. Watson of approximately four hours' duration. The interview was audio and video taped.
- [5] Before the interview began the interviewing officer confirmed that Mr. Watson had spoken to his lawyer and understood the advice he had been given. Part way through the interview Mr. Watson asked to speak to his lawyer again. The police officer denied the request, saying Mr. Watson had already spoken to his lawyer. Mr. Watson stated that his lawyer had told him not to discuss anything with the police. The police officer told him words to the effect "that was fine" but he, the police officer, would continue talking.
- [6] During the interview, Mr. Watson asserted his right to silence a number of times and said his lawyer had told him not to discuss anything with the police. He said he knew that anything he said could be used against him. In the course of the interview Mr. Watson made several admissions, including that he was the owner and only user of the computer the police had seized, that on the morning of the search he had been looking at pictures on a USB the police had found inserted into his computer desktop tower, that he knew the images he collected were illegal but that he could not stop himself from looking at them, and that he agreed with the police officer that the only reason to keep such a collection was for sexual gratification.

- [7] The judge held a voir dire on the admissibility of the statement. She ruled that it was both voluntary and compliant with Mr. Watson's rights under ss. 7 and 10(b) of the Charter, and admissible. The judge provided thorough reasons for her conclusion, in which she stated she had watched the entire video tape of the statement and found there was no atmosphere of oppression during the interview, or inducements. She found she had no concerns about the manner in which the police officer had questioned Mr. Watson.
- [8] The judge described Mr. Watson in the interview as an articulate man who understood his right to remain silent. She held that the Crown had proved Mr. Watson possessed an operating mind at the time he made his statement, that the statement had been made freely and voluntarily, and that the statement had not been obtained by breaching Mr. Watson's s. 7 rights.
- [9] With respect to Mr. Watson's allegation of breach of s. 10(b) of the Charter, the judge found that although Mr. Watson had expressed a wish to speak with counsel again part way through the interview, he had a right to do so only if there were changed circumstances resulting from new procedures, a change in the jeopardy he faced, or a reason to believe that the first information that Mr. Watson had received was deficient. The trial judge found that none of those factors arose, and there was no breach of Mr. Watson's s. 10(b) right.
- [10] At trial, the Crown tendered the civilian member of the RCMP as an expert in computer forensics. He testified that he had examined the hard drive from the computer seized on search of Mr. Watson's premises, and it was his opinion that Mr. Watson had used his account to upload files to a drive that he, the civilian member, considered to be child pornography. The civilian member testified he found many thousands of such images and six video files on the USB the police had found inserted into the tower at the time of their search and on the optical disks and other USB that had been seized from Mr. Watson's computer room.
- [11] This witness provided the Court with a sample disk of the images and video clips he had viewed during his analysis. This disk was entered at trial as Exhibit 9.
- [12] The trial judge concluded that because of poor image quality of some of the video clips on Exhibit 9, she could not conclude beyond a reasonable doubt that those clips constituted child pornography. She was satisfied, however, that the other video clips on the exhibit, being the majority on it, and all of the still images, clearly depicted "children under the age of 18 in nude, erotic poses or engaging in sexual activity". In reaching this conclusion she noted the children's small childlike features and their lack of certain physical development. The trial judge accepted the civilian witness's statement that the sample of images and video clips were representative of the large collection of images he had analyzed.
- [13] The judge found Mr. Watson guilty of possessing child pornography and accessing child pornography, the latter being the count stayed on the basis of Kienapple.

- [14] In his first ground of appeal, Mr. Watson contends the video statement was not admissible. He says that the judge erred in her consideration of voluntariness and the alleged Charter breaches. He says that the police officer created confusion as to the nature of Mr. Watson's jeopardy when he was warned because the police officer told Mr. Watson he was being arrested for possession of child pornography and accessing child pornography, and at the same time advised Mr. Watson that he was under "investigation for the distribution of child pornography".
- [15] I would not accede to this submission. I see no basis to interfere with the judge's characterization of the interview as non-oppressive. I agree that none of the statements by the police officer can reasonably be taken as coercive, threatening, or offering an inducement. The judge commented on the consideration extended to Mr. Watson in his various requests going to his physical comfort. No confusion is demonstrated by Mr. Watson on the subject matter of the interview. Nor was any change established such as discussed in *R. v. Sinclair*, 2010 SCC 35: there were no new procedures involving Mr. Watson; no change to the jeopardy he was facing; and no reason to believe that Mr. Watson had not understood his initial legal advice. In particular, the judge's conclusion that Mr. Watson understood his right to remain silent throughout the interview negates his submission of confusion; no additional charges were layered into the interview that were not first mentioned to him at its beginning; no further investigative methods or other matters were employed that would have engaged his right to consult a lawyer again.
- [16] I would not accede to this ground of appeal.
- [17] The second ground of appeal challenges the judge's conclusions that the subject matter of certain pornographic videos and still photographs was children.
- [18] The judge gave cogent reasons for concluding that the subject of the images was children. There is no merit at all to the proposition that the judge was unable to reach that conclusion on viewing the exhibits presented to her. I note we have not been directed to any particular image that counsel for Mr. Watson says demonstrates an erroneous conclusion on the part of the judge. Rather counsel has simply invited us to review all of Exhibit 9, on the proposition that we will come to a different view than the judge who found as a fact that the images on the disk were of children.
- [19] The third ground of appeal addresses the judge's reference to the evidence of the civilian witness that the sample of videos and photos he provided on Exhibit 9 is representative of the large collection of child pornographic images he analyzed.
- [20] Cases of child pornography pose particular challenges for counsel and the court. Where tens of thousands of images are collected, as here, there is a practical problem of how to receive them into evidence in a form that is manageable. It is for that reason one would expect the admissibility of such evidence to be dealt with at the trial court, as part of the disclosure process or in objections to admissibility of certain summary type evidence.

[21] In any case, this is not an issue that that bears upon the conviction of Mr. Watson. The conviction rests firmly on Exhibit 9, reviewed by the judge and found to unequivocally contain images sufficient to support the conviction.

[22] Accordingly, I would dismiss the appeal.

[23] GOEPEL J.A.: I agree.

[24] FENLON J.A.: I agree.

[25] SAUNDERS J.A.: The appeal is dismissed.

"The Honourable Madam Justice Saunders"

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/ca/18/00/2018BCCA0074.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-watson-2018-bcca-74>

Prepared on 29 October 2026 · Esheria