HMTQ v. *Latour*, 2013 NWTSC 15

Date: 20130308
Docket: S-0001-CR 2012000063

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

- and -

HUGUES LATOUR

Applicant

MEMORANDUM OF JUDGMENT (APPLICATION FOR EXCLUSION OF EVIDENCE)

(A) INTRODUCTION

[1] The Applicant is facing charges brought under sections 271, 151 and 152 of the *Criminal Code* and subsection 5(2) of the *Controlled Drugs and Substances Act*.

[2] At the trial, the Crown intends to present evidence that was seized during the execution of a search warrant at the Applicant's home. The Applicant is asking that this evidence be excluded under subsection 24(2) of the *Canadian Charter of Rights and Freedoms*. He submits that this evidence was obtained in violation of his rights and that the admission of it at the trial would bring the administration of justice into disrepute.

(B) THE FACTS

[3] The facts that are relevant for the purpose of this application are not in dispute.

[4] In October 2011, the Applicant lived in a building located on Council Crescent in Inuvik. This building is known as MacDonald Manor. It is also sometimes referred to as MacDonald Apartments. The building has a main entrance and houses several residential apartments. Each apartment has its own number. The Applicant lived in Apartment 205.

[5] As part of the investigation that led to the charges against the Applicant, an officer of the Royal Canadian Mounted Police (RCMP) obtained a search warrant. The warrant described the location to be searched as being "5 Council Crescent, Apartment 205, Inuvik, NT".

[6] The warrant was executed on the same day it was obtained, October 11, 2011. The Applicant's apartment was searched. Various items of evidence were seized from his apartment, including pornographic images from his computers. Some of the images show sexual contact between the Applicant and two young women, B.G. and C.R., to whom the charges brought under sections 271, 151 and 152 of the *Criminal Code* relate. The relevance of this evidence for the trial is not in dispute for the purpose of this application.

[7] Documents filed in evidence show that the legal address of MacDonald Manor is "5-9 Council Crescent". It is this address that appears on the property assessment role of the Government of the Northwest Territories (Exhibit V-4). It is also the address that appears on a sign located in front of the building, as shown in the photographs filed in evidence (Exhibit V-3). A letter signed by the regional assistant manager of the company to which the building belongs confirms this address (Exhibit V-2).

[8] When police officers from the Inuvik RCMP detachment respond to complaints coming from MacDonald Manor, the address they are given is sometimes "5 Council Crescent", sometimes "7 Council Crescent" and sometimes "9 Council Crescent". Regardless of the address they are given, the police officers always go to MacDonald Manor when responding to these complaints.

[9] The RCMP has a computer system to confirm where certain people live (the Police Reporting and Occurrence System [PROS]). The addresses included in PROS are obtained during RCMP investigations. Police officers rely on PROS and believe the information contained in it to be accurate and true. According to the information in PROS, the address of the MacDonald Apartments building is "5 Council Crescent".

(C) ANALYSIS

[10] The evidence establishes that the address that appears on the search warrant does not match the legal address of the building. It is also clear that the addresses "5 Council Crescent", "7 Council Crescent" and "9 Council Crescent" simply do not exist as individual addresses. The only address that exists is "5-9 Council Crescent". Consequently, the address that appears on the search warrant does not legally exist.

[11] The issue is whether this error makes the search warrant invalid. The Crown concedes that if the warrant is invalid, the search and seizure of evidence at the Applicant's is necessarily a violation of his rights under section 8 of the Charter, since no one is suggesting that the circumstances justified a search of his apartment without a warrant.

[12] To dispose of this motion, I must therefore first determine whether the error in the description of the address makes the warrant invalid. If so, I must determine whether, in the circumstances, the evidence seized should be excluded under subsection 24(2) of the Charter.

1. Validity of the search warrant

[13] The search warrant in this case was obtained under section 487 of the *Criminal Code*. This provision requires the warrant to describe the place to be searched.

[14] It is the responsibility of the person applying for a search warrant to provide a very precise description of the place to be searched. This level of precision is essential to prevent abuse. As noted by authors Fontana and Keeshan in their text *The Law of Search and Seizure in Canada*, 8th ed (LexisNexis, 2010) at page 87, vagueness in the description of a place to be searched can have serious consequences: it can lead to a search of the wrong place, including places that have nothing whatsoever to do with the investigation

or the persons being investigated. Such mistakes result in undermining the credibility of the legal framework governing the search and seizure process and respect for *Charter* rights.

[15] The degree of precision required will, of course, depend on the circumstances. A single family home may be described very accurately simply by referring to its civic address. However, if a building houses several distinct apartments, the search warrant must be more precise to accurately describe which part of the building the police officers are authorized to search. In the case of building containing several apartments, as in this case, the apartment covered by the warrant must be clearly identified.

[16] Here, the error was in the civic address of the building housing the apartment that was to be searched. The Applicant submits that this error is fatal.

[17] There is no doubt that an error that results in a vague description of a place to be searched may invalidate a search warrant. There are many examples of this type of situation. In *R. v. Adams*, [2004] N.J. 105 (Provincial Court), the warrant authorized a search of the address "1 Pearl Place", yet the search took place at "1 Pearl Lane". In *R. v. Nickason*, [2004] B.CJ. No. 1827 (Provincial Court), the warrant referred to the name of a road ("9990 Nasko Road, Rural Route, British Columbia") without specifying in which town or county the road was situated. In *R. v. St-Pierre*, [1998] N.B.J. No. 341 (Court of Queen's Bench), the warrant authorized a search at 87 Landeau Road, but the search was carried out at 101 Landeau Road. In *R. v. Wisdom*, 2012 ONCJ 54, the warrant permitted a search of a building located at a specific address, but the building in question was an apartment building and the warrant did not specify the number of the apartment to be searched. Finally, in *R. v. Parent*, [1989] Y.J. No.15 (Y.T.C.A.), the warrant did not provide any address at all.

[18] In all of these examples, the mistakes or missing information in the addresses were errors that resulted in the warrants, on their face, not accurately describing the place to be searched, or very accurately describing a place that was *not* to be searched.

[19] The situation here is quite different. There is no other street called "Council Crescent" in Inuvik, meaning that there is no place that matches the address indicated on the warrant, "5 Council Crescent". There was therefore no

risk that the search would be carried out at the wrong place. And even though, legally, "5-9 Council Crescent" is the correct address of the building, the only building that could reasonably be considered to be "5 Council Crescent" is MacDonald Manor. Moreover, the number of the Applicant's apartment was indicated on the warrant.

[20] This situation is very different from one where one does not know, from reading the warrant, in which town the search should take place; or from one where the street name is incorrect; where the search authorizes a search of a place on the correct street but at a completely different address from the one actually searched; or where no address is provided in the warrant.

[21] Examined in context, the error committed here is a technical one rather than a substantive one. Clearly, a similar error in a contract of sale, or in the registration of security against the property, could have serious consequences in a civil proceeding. However, in my opinion, it does not compromise the degree of accuracy required for the warrant to be valid.

[22] I agree with the conclusion drawn by the court in *R. v. Charles*, 2010 QCCQ 9178. In disposing of such an issue, the court must determine whether the place targeted by the search was described accurately enough by examining the description from a concrete, practical perspective rather than a technical one (*R. v. Charles*, *supra*, at paragraphs 35-36). Unless, of course, the circumstances are such that technical precision is necessary to avoid confusion.

[23] The analysis must be contextual, and *R. v. Charles* illustrates this well. In that case, a mistake was made in the address written on the search warrant. The place to be searched was 491-A Bourbonnais Street, but the search warrant described the address as "491 Bourbonnais Street". The investigators had not seen the sign identifying the basement apartment as being 491-A. However, the warrant described the place to be searched as "the basement flat of 491 Bourbonnais Street" and there was only one entrance to this apartment. The Court concluded that despite the error in the civic number, there was no risk of confusion about the place to be searched. The Court therefore concluded that the error did not invalidate the warrant.

[24] I reach the same conclusion in this case. Despite the error in the technical description of the address, the place to be searched was described with sufficient precision to avoid any risk of confusion. The search warrant is valid

and authorized the search of the Applicant's apartment. Section 8 of the *Charter* was therefore not violated.

2. Exclusion of evidence under subsection 24(2) of the *Charter*

[25] If I am wrong and the error in the address compromises the validity of the warrant, I find that, in the circumstances, the evidence seized during the search should in any event not be excluded under subsection 24(2) of the *Charter*.

[26] Subsection 24(2) of the *Charter* gives trial judges the discretion to exclude evidence obtained in a manner that infringed any rights that it protects. The factors to be examined when exercising this discretion are the seriousness of the *Charter*-infringing state conduct, the impact of the breach on the *Charter*-protected interests and society's interest in the adjudication of the case on its merits (*R. v. Grant*, [2009] 2 S.C.R. 353 (S.C.C.)).

[27] In my opinion, the first factor weighs in favour of including the evidence. The investigators obtained a search warrant. They took care to accurately describe the place to be searched, even if the description used was technically incorrect.

[28] The sign in front of the building did indeed provide the correct address. It is also admitted that the address given to police officers responding to complaints regarding this building is not always the same. In the circumstances, it would have been more prudent for the investigators to make additional inquiries to clarify the building's exact address.

[29] However, when assessing the seriousness of the error made by the investigators, I must, in my opinion, also consider that they relied on a computer system that they use routinely and believe to be reliable.

[30] In my opinion, the evidence in this case does not disclose negligent conduct or a casual attitude with regard to the importance of *Charter* rights. The police officers made an error that could have been avoided but that is not entirely incomprehensible given all of the circumstances. And, for the reasons set out above, the error was not likely to lead to confusion about the place to be searched.

[31] The second factor, as recognized by the Crown, weighs in favour of exclusion: a search in a home is one of the most intrusive gestures the state can make with respect to its citizens and is a serious violation of privacy.

[32] The third factor requires an examination of the importance of the evidence in question and its importance for the prosecution. The Applicant recognizes that the evidence—photos showing the Applicant engaging in sexual activity with the two young girls who will be called to testify at the trial—seem reliable. The Applicant argues, however, that since his defence at the trial will be that he was honestly mistaken about B.G.'s age, the exclusion of the images seized will not significantly compromise the Crown's case.

[33] The Crown submits that, to the contrary, the images in question are an important part of the evidence to be presented to the jury. First, this evidence is important because it corroborates certain statements made by witness C.R., whose credibility will likely be challenged at the trial. The Crown expects this witness to say in her testimony that the Applicant had sexual relations with B.G. and encouraged C.R. to touch B.G. for sexual purposes even after being told that B.G. was only 16 years old. According to the representations made by his counsel at the hearing of the application, the Applicant will deny this, and his position will be that he made an honest mistake about B.G.'s age. The Crown argues that, since the images corroborate C.R.'s version about the circumstances surrounding the sexual activity between the parties, they could enhance her credibility in the eyes of the jury.

[34] The Crown adds that the images could also help the jury in assessing the credibility of the Applicant, if he chooses to testify and states that he believed that B.G. was over 16 at the time the events took place.

[35] In my opinion, the third factor weighs in favour of including this evidence. It is true that its exclusion would not end the prosecution of the Applicant since the Crown has other evidence and could proceed even if the images become the subject of an exclusion order. However, the images are reliable evidence of some importance since they corroborate certain aspects of the version of the facts of a witness whose credibility and reliability will certainly be challenged at the trial.

[36] After considering the three factors developed in *R. v. Grant*, I therefore find that, even if the error made by the investigators in their description of the

address to be searched makes the search warrant invalid, in light of all of the circumstances, the exclusion of the evidence in question is not warranted under subsection 24(2) of the *Charter*.

[37] For all these reasons, the application to exclude evidence is dismissed.

Dated at Yellowknife, NT, this 8th day of March 2013.

« L.A. Charbonneau »
J.S.C.

Marc Lecorre: Counsel for the Respondent
Serge Petitpas: Counsel for the Applicant

This document is an unofficial English translation of the Memorandum of Judgment of the Honourable Justice L.A. Charbonneau dated March 8, 2013. This document is placed on the Court file for information only.

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