

Citation: R. v. Spencer

Date: 20040907

File No: 65715-1

Registry: Port Coquitlam

**IN THE PROVINCIAL COURT OF BRITISH COLUMBIA**

**REGINA**

**v.**

**HUGH WESLEY SPENCER**

**EXCERPT FROM PROCEEDINGS  
RULING ON VOIR DIRE  
OF THE  
HONOURABLE JUDGE BULLER BENNETT**

Counsel for the Crown:

C. Osborn

Counsel for the Accused:

J. Conroy

Court Recorder:

J. Franklin

Transcriber:

M. McEachern

Place of Hearing:

Port Coquitlam, B.C.

Date of Hearing:

September 7, 2004

Date of Judgment:

September 7, 2004

[1] **THE COURT:** This is a ruling on a *voir dire*. In this case, Mr. Spencer is facing charges of, amongst other things, what is commonly called cultivating marihuana and possession for the purpose of trafficking in marihuana. Mr. Spencer says that his s. 8 **Charter** rights have been breached and, as a result, the evidence seized pursuant to a search warrant should be not allowed as part of the case against him.

[2] The evidence that I have heard on the *voir dire* is as follows. On the evening of October 12th, 2002, several members of the Ridge-Meadows detachment of the RCMP were dispatched to the residence at 10235-222nd Street in Maple Ridge. Apparently, there had been a 9-1-1 call reporting something in the nature of a home invasion or shooting.

[3] Constable Hislop, who was one of the first members on the scene, arrived at the residence at about 11:02 in the evening. She saw, as she approached the residence, a man laying on the ground in front of the residence. There was a woman who was quite hysterical standing over the man. The man, I gather from Constable Hislop's evidence, was bleeding profusely and he appeared to be pale and going in and out of consciousness. The man, of course, was Mr. Spencer.

[4] A Constable McLean was present for part of the conversation, as well, but Constable Hislop was able to determine from Mr. Spencer that his name was Hugh Wesley Spencer. Constable Hislop was also able to get Mr. Spencer's date of birth, his address and telephone number. She was also

able to get information from Mr. Spencer that he was rented the residence on 222nd Street, he lived there alone, he was alone in the residence at the time when the shooting happened, that he had been visited earlier in the evening by a female, but he was on the phone to this female when someone came to the door. He answered the door. There was, I gather, a brief conversation and Mr. Spencer was shot twice by one of the people at the front door. Apparently, there were three people at the front door, in total. According to Mr. Spencer, the assailants, the three people, had already left the scene. He had seen or was aware of a brown or taupe-coloured car leaving the scene very shortly after the shooting. Constable Hislop was concerned about getting as many details from Mr. Spencer as she could because she was concerned, based on what she saw of Mr. Spencer, that he might pass away.

[5] An ambulance attended the scene and paramedics dealt with Mr. Spencer. They removed Mr. Spencer from the front of the residence at about 11:15 in the evening and he was taken to the hospital. Constable McLean went in the ambulance with Mr. Spencer to the hospital.

[6] Shortly after this time, Constable Hislop spoke with a Corporal Rempel, who was also present by this time at the scene. They decided that they should enter the residence to clear the residence, as they were not sure where the suspects were. They wanted to see if there were other victims in the residence because they were not even sure if there were other victims of

the shooting. According to Constable Hislop, they cleared the house, as she described it, because of public safety and she wanted to make sure that there was no one in the building or the house that they did not know about. She said that she would clear the residence in the circumstances anyway because serious crimes had been committed at the residence; specifically, a break and enter and a shooting.

[7] So Constable Hislop and Corporal Rempel entered the residence. They proceeded through the top floor of the residence and did not find suspects or victims. They went to the lower part of the residence and essentially, in plain view, they saw several large marihuana plants. They discussed their observations, left the residence and, outside of the residence, passed those observations on to a Constable Rain, who then used those observations as part of his appendix to his application or Information to Obtain a search warrant. The search warrant was granted on the basis of the grounds provided by Constable Rain. The search warrant authorized entry to the residence between 9:30 a.m. and 5:00 p.m. on October 13th, 2002.

[8] However, between the time Constable Hislop and Corporal Rempel left the residence and the warrant entry, by my calculations, four other police officers entered the residence. I just should state for the record that because the back door of the residence could not be secured, Constable Hislop remained inside the residence just to make sure that the residence remained secured until the warrant was obtained. But, according

to the evidence of witnesses, Constable Aschenbrenner, a Sergeant Wakely, a Corporal Carswell from Ident, a Constable Kent and a dog master, who would actually be the fifth member, came in and out of the residence between what would be approximately 12:15 and about five o'clock in the morning on the 13th of October. The evidence does not disclose any **Criminal Code** warrants, or any authority, for that matter, for those other police officers coming and going from Mr. Spencer's residence.

[9] Constable Rain was granted the search warrant at about 9:20 in the morning on October 13th, 2002, just to state that for the record. Later on in the morning of the 13th, various members of the Drug Section of the Ridge-Meadows detachment entered the house and seized a variety of marihuana plants and related items.

[10] The entry by Constable Hislop and Corporal Rempel was without warrant. Of course, a warrantless entry is, *prima facie*, unreasonable, and I am mindful of the burden on the Crown to show that the entry by the two RCMP members was lawful and reasonable.

[11] Both counsel have referred to a variety of cases and I have read those cases. I may not refer to many of them, but I must say they have been helpful as a review of the appropriate law.

[12] One of the first issues I have to address is whether or not the RCMP members' entry into the residence was one authorized by law. There are two authorities under which they could enter the

residence. One is s. 11(7) of the *Controlled Drugs and Substances Act* which allows warrantless entry in exigent circumstances. The other authority is, of course, a police officer's common-law authority to enter a residence to protect life and property.

[13] The first issue, then, is whether there were exigent circumstances. Crown says, of course, I should look at the totality of the circumstances. Serious offences had been committed. There was obviously a shooting. Mr. Spencer was bleeding profusely on the front lawn of the residence. He had to be dealt with by ambulance attendants. There was some evidence of forced entry, there was blood on the threshold of the front door. There were several circumstances, in other words, that would raise concerns of police officers that something very serious and life-threatening had occurred, and it certainly was prudent on the part of the police officers to enter the house to see if there were other victims or suspects.

[14] In my view, the evidence does not support those submissions. There is no evidence that anyone was in the residence at the time the police officers entered. In fact, there was evidence to the contrary; in other words, that the house was empty. The police officers had information from Mr. Spencer that he was alone in the residence when the assailants came to the door. The two police officers also knew from Mr. Spencer, or at least Constable Hislop knew, that the assailants had fled the scene. In my view, of course, this was a

warrantless search. It was unlawful because it was not authorized by s. 11(7) or any common-law duty. As a result, in my view, it was an unreasonable search and a breach of Mr. Spencer's s. 8 **Charter** rights.

[15] By removing the observations of Constable Hislop and Corporal Rempel from Constable Rain's Information to Obtain, in my view, there are insufficient remaining grounds upon which a warrant could be properly issued. Further, there is a defect, in my view, on the face of the warrant. Section 11 of the **Controlled Drugs and Substances Act**, specifically subsection (1), says that, amongst other things, a justice may issue a warrant authorizing a peace officer at any time to search the place for any such controlled substances, et cetera. That is paraphrasing s. 11(1), of course.

[16] The search warrant which has been marked as an exhibit in these proceedings reads as follows:

Pursuant to section 11 of the **Controlled Drugs and Substances Act**, two Royal Canadian Mounted Police peace officers in the Municipality of Maple Ridge, in the Province of British Columbia, whereas it appears on the sworn Information of Constable Elija Rain that there are reasonable grounds to believe that there is a controlled substance or precursor, a thing in which such a controlled substance or precursor is contained or concealed, offence-related property or a thing that will afford evidence in respect of an offence under the **Controlled Drugs and Substances Act**, to wit...

[17] And it is listed.

... in respect of which one or more offences have been committed contrary to the following sections of the **Act**, namely 7(1) and 5(2), is or are in place, namely the residence situation at 12035-222nd Street, Maple Ridge, in the Province of British Columbia. This is, therefore, to authorize any peace officer, between the hours of 9:30 a.m. to 5:00 p.m. on the 13th day of October, 2002 to enter said place and thereafter to search and seize...

[18] Et cetera.

[19] In my view, the search warrant does not authorize a peace officer to enter the residence. Rather, one interpretation is that it allows the whole Ridge-Meadows Royal Canadian Mounted Police to enter the residence. In my view, that is not contemplated within s. 11(1) of the **Controlled Drugs and Substances Act**. In my view, a specific member of the police has to be named.

[20] Alternatively, if a whole detachment can be named, in my view, the Ridge-Meadows detachment is not properly named in the search warrant. In my view, the search warrant should read, "To members of the Ridge-Meadows detachment of the Royal Canadian Mounted Police". In my view, as I have stated, the warrant is invalid on its face and the search pursuant to that warrant, not only taking out the grounds of the two officers who committed the warrantless search but also considering that the warrant is invalid on its face, the search done by the Drug Section members, in my view, was a warrantless, unlawful and unreasonable search and a breach of Mr. Spencer's s. 8 **Charter** rights.

[21] Mr. Spencer has sought to have the evidence seized excluded from these proceedings.

[22] I am mindful, of course, of the factors set out for such an analysis under the decision of *R. v. Collins*, of course, the analysis of the admissibility of evidence under s. 24(2) of the *Charter*. In my view, these are the relevant factors. This was a residence, a private residence, that was entered without warrant at night. There were warrantless searches not only by Constable Hislop and Corporal Rempel, the entries by the other officers who I gather had something to do with the shooting investigation were made without warrant of any sort. If there was a warrant, I was not made aware of it in the course of the evidence. In my view, the conduct of the other investigating officers, the ones who entered after Constable Hislop and Corporal Rempel, amount to nothing short of bad faith. I cannot, however, go so far as to say the actions of Constable Hislop and Corporal Rempel amounted to bad faith. I think it was more inadvertence and lack of attention to detail on their part. But I think it is important to consider the presence of the other officers entering the residence without a warrant of any sort.

[23] Mr. Spencer faces serious offences. There is no doubt that marihuana cultivation is a serious problem in this area. However, in my view, a warrantless, unreasonable and unlawful entry into a house, a private residence, is a serious breach.

True, the items seized by the police officers would amount to real evidence and could have been found otherwise, I suppose.

[24] Given the totality of the circumstances, the seriousness of the breach, given that there was no 9-1-1 emergency ongoing to justify warrantless entry into a private residence and a defective warrant, I think that the admission of the items seized pursuant to the warrant would bring the administration of justice into disrepute. These are serious breaches and the evidence ought to be excluded, and I so rule.

[25] Will there be further evidence?

[26] **MS. OSBORN:** No, Your Honour.

[27] **THE COURT:** You are inviting me to dismiss the charges?

[28] **MR. CONROY:** Dismiss the charge, yes.

[29] **THE COURT:** Certainly. Mr. Spencer, the charges outstanding against you, sir, on Information 65715-01 are dismissed, and I am waiving any surcharges if there are any in the circumstances, sir.

[30] **MR. CONROY:** Thank you, Your Honour.

(EXCERPT CONCLUDED)