Citation: ☼

Date: ☼
File No: 88396
Registry: Kamloops

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

CAROL HAUGHTON

REASONS ON VOIR DIRE
OF THE
HONOURABLE JUDGE S.D. FRAME

Counsel for the Crown:	Christopher M. Balison
Appearing on their own behalf:	Carol Haughton
Place of Hearing:	Kamloops, B.C.
Date of Hearing:	July 6, 2011 and July 14, 2011
Date of Judgment:	July 28, 2011

[1] This voir dire is pursuant to applications by Ms. Haughton under s. 8 of the *Charter of Rights and Freedoms (Charter)* essentially challenging the issuance and execution of the search warrant obtained by the Society for Prevention of Cruelty to Animals (SPCA). Ms. Haughton alleges three breaches:

a) An SPCA employee unlawfully trespassed on her property for 15 minutes resulting in a warrantless search to gather information subsequently used to obtain the search warrant.

b) The information used by Special Police Constable (SPC) Wiltse to obtain the search warrant was not based on reasonable and probable grounds because only one complainant was relied upon. That complainant had unknown reliability and she did not investigate or check his credibility. Furthermore, SPC Wilste did not have personal knowledge of any facts stated in the Information to Obtain the Search Warrant; there was no basis to obtain the search warrant by telewarrant; and not all of the evidence (49 photographs) was attached to the Information to Obtain.

c) The scope of the warrant was pursuant to s. 13(2)(a) which only authorized the SPCA to enter the property "to determine whether any action authorized by the *Act* should be taken to relieve the animals' distress and to take such action". Instead, photographs and film were taken of the premises, including documents and binders in Ms. Haughton's office.

WARRANTLESS SEARCH:

[2] SPC Wiltse received information from Dennis Copeland that he had attended Ms. Haughton's property with its co-owner, James Haughton. She was advised that Mr. Haughton did not live on the property. Mr. Copeland and Mr. Haughton had gone into the property and in the home out of concern for the wellbeing of animals they knew to be on the property. Mr. Copeland provided SPC Wiltse with 49 colour photos that he said were taken during the visit to the property. SPC Wiltse considered this evidence to be of sufficient reliability that an investigation ought to ensue. The next step in such an investigation is to make contact with the animal owner.

[3] SPC Wiltse said that she was unable to attend at the property to make such contact. Instead, she sent Risa Leake, who is the manager of the Kamloops SPCA, but is not a special police constable. Ms. Leake attended the property as requested to contact the owner of the animals. She had no other purpose of going there. As she drove up to the property she was able to see into it from the road. As she drove along the driveway, she was able to see more of the property. She was able to see even more of the property as she walked from the vehicle to the door of the residence. The door of the residence was left open and she could see partway into the home through the open door. No one was present in the home so she posted a notice to contact the SPCA.

[4] Ms. Haughton said that neither she nor her son saw a notice posted on the door. However, SPC Wiltse testified that she saw the notice, although no longer posted, when she attended the property.

[5] Ms. Haughton's primary complaint under this heading is that Ms. Leake was not a proper person to attend the premises for the purposes for contacting her and that she trespassed on her property without a warrant in order to obtain information to further the investigation. That was not the purpose of Ms. Leake's attendance. It was clear that the only purpose of Ms. Leake's attendance was to make contact with the owner which was a necessary first step. Everything that Ms. Leake observed driving up to the property, driving along the driveway, and walking to the door of the residence was observable without making any search of the property.

[6] Ms. Haughton challenges the purpose of Ms. Leake attending the property in the first place because the SPCA had been told that Ms. Haughton was in Alberta. She argued they could have obtained telephone numbers for her and did not. It was reasonable, however, for the SPCA to expect that someone would be attending the property at some point in the notice period to tend to the animals. There was no further obligation to try to track down the animal owner given that entry was not even determined yet, and certainly wasn't imminent. I find that posting the notice was reasonable and adequate contact.

[7] While there is a reasonable expectation of privacy on one's own property, it is also accepted that there is an implied invitation to approach a home to communicate with the occupants. This is considered an invitation to knock. What is not permitted is to enter the property to obtain evidence or what is known as a "knock knock" search, where the true purpose of attendance is to obtain evidence.

[8] What Ms. Leake viewed as she drove up to the property was incidental to her purpose being there. She did not drive by the property in order to obtain evidence but only for the purpose of making contact with Ms. Haughton. It was not a perimeter search, which would not be permissible.

[9] What Ms. Leake observed as she drove along the driveway and walked toward the house were, similarly, incidental observations and not the purpose of her attendance at the property. In other words, her attendance at the house was not a "knock knock" search for the purpose of gathering evidence, but an attendance for the purposes of making contact with the animal owner.

[10] Ms. Leake did not take any photos or video during the course of her attendance which further emphasizes that the purpose of her visit was to make contact only.

[11] Ms. Haughton complained that Ms. Leake was not trained to be a special constable and therefore ought not to have been tasked with attending her property. Again, this emphasizes that Ms. Leake was there to make contact only. It is irrelevant whether she was trained to be a special police constable because her attendance was not for the purpose gaining evidence or performing the functions of a special police constable.

[12] I dismiss the s. 8 application on this basis.

WARRANT OBTAINED BY TELEWARRANT:

[13] Ms. Haughton complains that SPC Wiltse improperly obtained the search warrant by telewarrant. A telewarrant requires the material to be faxed to a Judicial Justice of

the Peace sitting at the Justice Centre. The hearing is conducted by telephone as opposed to in person.

[14] As Mr. Balison said, the test of whether a warrant is obtained by telewarrant is whether it is impracticable to attend in person. The *Prevention of Cruelty to Animals Act* has a warrant section which adopts the telewarrant provisions of the *Offence Act*. It is a permissible method so long as personal attendance is impracticable.

[15] The question of impracticability is one of fact. In this case, SPC Wiltse attempted to obtain her warrant through the sitting Judicial Justice of the Peace in Kamloops. On calling the Kamloops Court Registry, she was advised that the JJP was on holidays. She was referred by the Registry to the Justice Centre. I am satisfied that the test is met on the evidence justifying the pursuit of a telewarrant in this case. I dismiss the s. 8 application in this regard.

INFORMATION USED TO OBTAIN THE WARRANT:

[16] Ms. Haughton argued that SPC Wiltse did not determine whether the photographs had been doctored or whether the witness who made the complaint, Dennis Copeland, was a credible witness. SPC Wiltse was not required to make an investigation to determine whether the photographs had been doctored. If the photographs had the appearance of reliability, she was not required to pursue their veracity any further. Further, she was entitled to rely upon the information given to her by Mr. Copeland as a basis for determining whether a further investigation ought to be pursued. Having determined that she was satisfied that the evidence was reliable from a person who had attended the property with a non-resident co-owner, SPC Wiltse was

entitled to rely upon that information not only to pursue the investigation but to support her warrant.

[17] The nature of the complaint and its full particulars were included in SPC Wiltse's Information to Obtain. Ms. Haughton also argued that SPC Wiltse did not include all 49 photographs in the application for the warrant. SPC Wiltse disclosed in the application that there were 49 photographs. SPC Wiltse only included nine of the photographs. The nine were not included on the basis that they were the worst of the lot. In fact, some of the photographs included are fairly innocuous. There is no evidence that SPC Wilste left out any photographs or any other evidence in her Information to Obtain the Warrant that would have disinclined the JJP to issue the warrant.

[18] Ms. Haughton also argued that SPC Wiltse based the Information to Obtain the Warrant on what Ms. Haughton argued was a false representation of personal knowledge. However, the Information to Obtain discloses the source of all of the evidence SPC Wiltse submitted in support of her application. It also specified that she based her application on personal knowledge and on information she received from sources she believed. I dismiss the application under s. 8 with respect to the foregoing arguments.

SCOPE OF SEARCH WARRANT WAS EXCEEDED:

[19] Ms. Haughton argued that the search warrant only extended to determine whether any action should be taken to relieve an animal's distress, and to take such action. She argued that the warrant was exceeded because the SPC Wiltse and others took photographs and video of the property and animals and because they went through

her book case, looked at books and records of her cattle and sheep and went through her refrigerator.

[20] In dealing first with the photographs and video, the Crown argued that this is akin to making observations and writing notes during the course of the execution of the search warrant and therefore is not unlawful search or seizure. The Crown argued there was in fact a seizure of nothing from the property apart from the animals in distress.

[21] Photographs and videos taken by parties executing a search warrant are not "seized". They are the same as naked eye observations. The purposes of taking photos and video are to assist in the investigation and execution of the search warrant; and to document the scene for liability purposes. The photographs and videos are not items seized and could not be excluded as such. If the warrant has been improperly obtained, the evidence might be considered tainted. This warrant was not improperly obtained and therefore I make no determination in that regard.

[22] Searching the refrigerator to observe whether there is proper food and medication available for the animals falls within the purview of a warrant issued under s. 13(2)(a) in that it assists the SPCA to determine whether any action should be taken to relieve distress. The SPC and her team would not have been authorized to take anything from the refrigerator, but she did not do so in any event.

[23] The warrant did not extend to permit SPC Wiltse or her team to review the records or documents in Ms. Haughton's office. This clearly exceeds the scope of the

warrant. However, while the scope of the permissible search was exceeded, the search itself was only cursory and transient. No information was obtained or seized.

[24] It was largely incidental to the proper execution of the warrant. There is nothing to exclude under s. 24(2) of the *Charter* even if I found that there was a breach under s. 8. Given the disarray in the office, and the primary focus of the attendance for the purposes of identifying animals, I am not satisfied that the cursory search of the office documents constitutes a breach under s. 8 of the *Charter.* However, if there is a breach, it was of such a trifling nature, was conducted in good faith, and resulted in no unlawful seizure, and it does not attract a remedy under s. 24 of the *Charter.*

[25] I therefore dismiss all of the applications under s. 8. All of the evidence heard on the *Charter* voir dire is now rolled into the trial proper except for the *vive voce* evidence given by Ms. Haughton on the voir dire. The trial will continue on August 24, 2011 at 9:30 am in Courtroom 2D.

[26] I note that Ms. Haughton raised even more *Charter* arguments she hoped to make at the conclusion of this voir dire. As I stated to Ms. Haughton, no *Charter* arguments will be permitted where they were known or ought to have been known prior to the commencement of the trial when proper *Charter* notice ought to have been delivered to the Crown office. Only those *Charter* arguments which arise in the course of the trial and which were not discernable before the commencement of the trial will be permitted.

[27] Ms. Haughton said that she wishes to bring an application for delay. Ms. Haughton is permitted to bring that application if she chooses to do so. It must be brought on the proper evidence as clearly set out in the case law.

[28] Ms. Haughton has also indicated that she wishes to bring an application under the *Charter* on the basis of double jeopardy because she has been charged under both Provincial and Federal legislation. I have explained to Ms. Haughton that she may make that application in the event that there is a conviction under both pieces of legislation.

[29] Ms. Haughton alleges that there has been a breach of her *Charter Rights* by reason of the Crown's failure to disclose documents. The Crown established at the hearing that disclosure complained of had in fact been made three times. Ms. Haughton is entitled to bring that application on at the trial since the Crown is aware of the specific allegation.

S.D. Frame
Provincial Court Judge