IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jull v. Victoria (City of),* 2017 BCSC 513

Date: 20170330
Docket: 143837
Registry: Victoria

Between:

Brian Edward Jull

Appellant

And

The Corporation of the City of Victoria

Respondent

Before: The Honourable Mr. Justice Baird

On appeal from: A decision of the Provincial Court of British Columbia, dated September 23, 2014 (*Jull v. Victoria (City of)*, Victoria Court File No.: 12-1027)

Reasons for Judgment

Appearing on behalf of the Appellant:	J. Maddock
Counsel for Respondent:	A. Bookman S. Boyce
Place and Date of Hearing:	Victoria, B.C. March 3, 2017
Place and Date of Judgment:	Victoria, B.C. March 30, 2017

[1] Over four and a half years ago, the appellant, Brian Edward Jull, was stopped by a Victoria City police officer while he was walking along Hillside Avenue. He was briefly detained on suspicion of breaking and entering. A 911 caller had reported that a couple of men were rooting about in an abandoned hotel nearby. Mr. Jull matched the description given of one of the suspects.

[2] Constable Sue McLeod was patrolling in the area and spotted Mr. Jull walking eastbound a block or so from the hotel. The initial information broadcast was that the suspect had loped off westbound, but as she responded Constable McLeod received fresh intelligence that the man was now heading east on Hillside. She drove in that direction and came across Mr. Jull, who was the only person in the area matching the given description.

[3] Constable McLeod pulled alongside Mr. Jull in her cruiser and got out. She ordered him to stop and told him why. Mr. Jull was held up this way for between five and seven minutes, after which Constable McLeod determined that she had the wrong man and let him go. Along the way, however, she had Mr. Jull turn out his trouser pockets and patted him down.

[4] Constable McLeod claims to have apologised to Mr. Jull for the inconvenience, but he denied this and argued, in any event, that such a remedy would not be adequate. Instead he sued the City of Victoria, Constable McLeod's employer, claiming general and aggravated damages to the very limit of the Provincial Court's monetary jurisdiction for what he argued were infringements of his ss. 8, 9 and 10 *Charter* rights. His case was heard before Judge Palmer who dismissed it. The matter is now before me on appeal.

[5] Mr. Maddock is not licenced to practice law. I permitted him to make submissions for Mr. Jull on the basis that he was doing so *pro bono.* The record of evidence taken in the Provincial Court was not produced. The parties agreed that I could deal with the appeal by reading the judgment and reviewing certain other documents handed up to me. The appellant could not afford to pay for transcripts, I was told, and had no basis for requiring the respondent to fund their acquisition: see

Jull v. Victoria (City), 2015 BCSC 617. I adopted the procedure proposed because Rule 18-3 seems broad enough to permit it and no better alternative was suggested.

[6] Having considered the documentation presented, I am unable to say that Judge Palmer made findings of credibility or fact that were not open to him, or that he made any palpable or overriding error in his application of the law. This is not to say that his decision is free from all controversy. Whether Constable McLeod had the lawful authority to search Mr. Jull in the circumstances is a question about which reasonable people might disagree.

[7] It was Judge Palmer, however, who had the advantage of hearing and observing the witnesses, and he decided according to his own lights that Constable McLeod was justified in taking the impugned steps for reasons legitimately related to her physical safety. The limited information given to me for evaluation on this appeal would appear to be capable of supporting this conclusion.

[8] It is well known that my role is not to retry the case or substitute my views for those of the trial judge. To the contrary, especially given the purpose of the *Small Claims Act*, R.S.B.C. 1996, c. 430, which is "to allow people who bring claims to the Provincial Court to have them resolved and to have enforcement proceedings concluded in a just, speedy, inexpensive and simple manner" (s. 2), a generous measure of deference is clearly in order: see *Kelowna Flightcraft Air Charter Ltd. v. Buchanan*, 2010 BCSC 1650.

[9] For the reasons that I explained directly to Mr. Jull during the hearing, I agree with Judge Palmer that Constable McLeod had sustainable grounds for briefly detaining him, and her actions were within the limitations set out in *R. v. Mann*, [2004] 3 S.C.R. 59. There was no arbitrary detention in this case.

[10] The application of *Mann* to the evidence, furthermore, was a matter of judgment in which, particularly absent the trial record, I am unable to say Judge Palmer committed reversible error. There are insufficient grounds for overturning his decision that the search was lawfully justified and reasonably conducted.

[11] Finally, Mr. Jull was promptly advised of the reasons for his detention, the law did not require that he be advised of his right to retain and instruct counsel prior to the security search in question, and in any event, after a few minutes Mr. Jull was released and no longer required urgent legal advice. I can see no error in Judge Palmer's treatment of this issue.

[12] The appeal is dismissed.

"Baird J."