2010 CarswellOnt 6035

R. v. Williams

Her Majesty the Queen v. Jermaine Williams

Ontario Court of Justice

W.P. Bassel J.

Heard: August 5, 2010
Judgment: August 5, 2010
Docket: None given.

Counsel: Ms J. Bruno, for Crown

Mr. S. Pieters, for Accused

Subject: Criminal

Criminal law.

Statutes considered:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Generally — referred to

Criminal Code, R.S.C. 1985, c. C-46

s. 515(10)(b) — considered

s. 515(10)(c) — considered

***W.P. Bassel J.*, (orally):**

1 This gentleman has been in custody since July 13th, when he was arrested. It is unfortunate that only today his bail hearing was conducted. I do not know the background.

2 I have heard this matter. The evidence and the submissions are fresh in my mind. In fairness to the accused and to his family and to the administration of justice, it is necessary for

me to deliver my reasons at this time while it is fresh. I am in another court tomorrow that would not allow me to do that. I do have the freshness of the evidence and the submissions, so, I am going to do it from the bench here.

3 The defendant, we heard, is 18 years of age. He is charged from July 13th, 2010. One information has possession of marijuana not exceeding 30 grams. There is another information, an eight count information. I am not going to repeat all of the counts, but they are relating to the possession of a prohibited weapon, carrying a weapon in a careless manner, possessing, a firearm with the serial numbers not ascertainable, having been altered, carrying a firearm when he was not the holder of a registration certificate. He was allegedly on a term of probation from August 2009, from His Honour Judge Otter that he not possess any firearms etcetera, and possession of a firearm knowing it was obtained in the commission in Canada of an offence, and being in possession of a firearm while prohibited from doing so by reason of a court order from August 26th, 2009.

4 It is agreed that this is a reverse onus situation. In brief, the allegations are that the defendant was under surveillance from the police regarding a firearm, and that surveillance included watching him near a bus stop at Don Mills. Police allegations are that he was favouring his waistband, perhaps had his hand near his side at his waistband. He gets on the bus with his right hand on his waist. The police move in, and upon his arrest he is allegedly found to be in possession of a black semi-automatlc handgun in his waist, which the Crown is alleging was a Taurus Millenium 45 calibre with one bullet in the breech, 10 rounds in the magazine, and a black sock on his person that in it had 7 more rounds of bullets, 6 of the 45 calibre, and one 9 millimetre. It is part of the Crown's allegations, as I said, that he was on probation, and a court order prohibiting possession of a firearm. Me heard that on August 26th, 2009, he was found guilty as a young person of robbery and discharging a firearm. It is alleged the facts there were that a person was shot at the school. He was put on probation.

5 This is a reverse onus. Mr. Pieters is quite right, I remind myself that these are allegations at this time, and allegations only. There is a presumption of innocence. This is a young man. The *Charter* tells us, and fairness tells us, no person should be denied reasonable bail without just cause. Mr. Pieters is quite right, just because charges are serious, just because something is a reverse onus, it does not mean we close the book. It requires examination of all of the circumstances, including whether there is a plan in place. In other words, is there a plan put forward that can be fashioned to protect the public?

6 The Crown relies on the secondary grounds and the tertiary grounds. The fact that there might not be an individual victim or an individual complainant really begs the question, because as wo know the secondary grounds talk about the protection or safety of the public, including any victim or witness and consideration of the substantial likelihood that the accused will, if released from custody, commit an offence or interfere with the administration of justice. I have just summarized 515(10)(b). I am not going to repeat 515(10)(c), but I will make some references to it.

7 We heard in support of the proposed plan from Mrs. Gayle, who is a very nice person. She is the 75-year-old grandmother of the defendant. She had some awareness of the problems

that her grandson was labouring with. She told us that in terms of the proposed plan, "Well, I am in a seniors' home. He could come a few times and I'd try and find a place for him," but the essence of the message was that while he might be able to come over and maybe perhaps stay overnight, that was not going to be the place, in my view, that would constitute a viable plan for him to be out in the community. In terms of monitoring or supervising, she told us that the defendant has lots of cousins, aunts and uncles who can supervise. She knows about the girlfriend, who she told us was in court. She knew he had gotten in trouble before. She did not know the exact details. He had talked to her about some problems with the police, but she did not know a great deal about it. She had seen it in the newspaper about her grandson being shot. We had heard an allegation that some months ago he was shot in the right thigh. The Crown alleges that the accused told the police that he possessed the gun for his protection. Mr. Korchinski, another surety, his information was that the discharge from a few months ago was an accident, whereas we heard from Mr. Taylor that the defendant had said to him he did not really know who shot him. Anyway, there is the grandmother, who is a nice person, but in terms of ability to supervise, she is a well-intentioned nice person. Just because she is 75 years old, it does not mean a 75-year old cannot do it, but this lady is in a seniors' home and has limited contact with the defendant. Other than being really well intentioned, in my view, in terms of being able to be a viable part of a supervision plan, I do not believe that that really assists my inquiry.

8 Mr. Korchinski is the father of the girlfriend of the defendant. He works for CN and has for nine years. This is not necessarily a criticism, but I was a little troubled by the dates that he said he did, and did not have contact with the defendant because it was all over the place. I give him the benefit of the doubt, at this point. It is not a trial, that he was confused. Some of his responses as to when he last saw the defendant do not make sense to me. That bears on the issue of supervision and the ability to supervise. I found it rather concerning that in cross-examination he told the Crown that he had not seen the defendant since he had been shot, which was a few months ago. He also said he had been seeing him right up to this date or thereabouts. I found it a little troubling that with regard to the shooting that Mr. Korchinski, and he is not on trial, but that he meant to talk to the defendant about the shooting but he was busy. On the other hand, he did say he tried to talk to the defendant about guns and not getting involved in guns. He believed that the defendant was drawn into the wrong crowd. That is sort of a troublesome aspect. Mr. Korchinski is working from 8:00 a.m. to 4:00 p.m. or there-abouts, five days a week. Other than his son at home, and his daughter, there is really no plan other than to call in and see what the defendant is doing.

9 Garnett Taylor is 23 years of age. He is a cousin with no record. None of these people have criminal records. In my opinion they are all fine members of the community. He cares about his cousin, "We're all family," as he says. But he tells the Crown, "Well, he has to come to me and then we will discuss things. I didn't really talk to my mother about being a surety, but I'm pretty sure she'll be okay with it, pretty sure mom will agree." He was evasive on that issue, frankly. He said, "Well, we keep in communication more than the number of fingers on my hand," in response to the question as to how often in the last year they had seen each oth-er. He just did not answer. He just kept talking about more than 10 fingers, which was rather odd. He made it clear he does not stick his nose into his cousin's business because he is an

adult. That builds into the issue of supervision and the commitment to supervise.

10 So, in my view, first of all, on the secondary grounds, there are issues including that this man is on probation. I know they are only allegations, these charges, but he is on probation for related and similar very serious charges involving a loaded firearm. This is an issue that allegedly happened on a TTC bus with a loaded gun in a waistband, readily available as the Crown pointed out, with bullets loaded, an arsenal of bullets in the breech, and in the magazine, and in his pocket. The fact that he was under a court order, both a probation order and a prohibition order not to possess firearms, in my view there is not a plan in place that gives me any comfort. He has not shown cause as to justifying his release because although these sureties are well intentioned, it is unrealistic, and it would be naïve of me to think that they could have meaningful contact. In all cases of all three sureties there has not really been any meaningful contact over the last number of months, in addition to conflicts of their even knowing, as the Crown pointed out, what school he is at, the location. Mr. Taylor would not nose in unless "he comes to me." There is not meaningful monitoring. Nobody even inquired about him getting shot, what it was all about.

11 This case is different than the case Mr. Pieters referred to me, *Brandjes*. In that case the defendant there apparently had a minor prior record, and it was a given that the sureties were acceptable, and capable and ready to step up to the batter's box. So, in my view, on the secondary grounds there are serious concerns in my mind of a substantial likelihood of a repeat of a matter that allegedly repeats something that happened 11 months earlier in August 2009. Here we are at July 13th, 2010.

12 In terms of the tertiary grounds, Mr. Pieters referred me to the other decision *Steele*. Of course I am aware of the decision of *R. v. Hall*, from the Supreme Court of Canada, about the narrow application and use of the tertiary grounds. I do not remember the name of the case, but there is a decision of Chief Justice Winkler in the last year or two with regard to the application of the tertiary grounds. In this case, as I look at the tertiary grounds from the point of view of the public, being aware of all of the circumstances, while this is not the trial, the Crown's case at this point appears to be very strong. Identification is....

MR. PIETERS: The case was *R. v. David*.

THE COURT: Chief Justice Winkler's?

MR. PIETERS: Yes.

THE COURT: Thank you very much, Mr. Pieters.

THE COURT: In any event, in this case there is no issue about identification. The defendant allegedly is in possession of this loaded high calibre firearm. He is already prohibited. It is in a public area. In ray view the Crown's case apparently is quite strong. It is a very serious offence. The circumstances surrounding it, i.e., the firearm, was in his possession and it was a firearm that was involved in the prior shooting of which he was found guilty. Finally, this case, I regret to say this, but if Mr. Williams is found guilty he will be facing

a significant jail sentence, which includes a minimum three years in the penitentiary.

13 So, on both the secondary and the tertiary grounds the defendant has not shown cause. The protection of the public is paramount in this case, in my view, at this point. I regret it because he is a young man. I am aware of the fact that in the time to get to trial there are issues and so on, but there has to be a detention order in the circumstances. The defendant has not show cause. There will be a detention order.

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