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R. v. Broughton

Between
Dr. R.G. McPherson, plaintiff, and
Colin Garth Broughton, defendant

[1996] A.J. No. 970
DRS 97-01893
Action No. 9603 2019C3

Alberta Court of Queen's Bench
Judicial District of Edmonton
Kent J.

November 7, 1996.
(4 pp.)

Evidence — Witnesses, attendance and oath — Attendance, subpoena duces tecum — Setting aside, grounds.

Application to quash a subpoena duces tecum issued by the defendant. The defendant was charged with speeding. His defence depended on certain information found in a technical service manual for a speed detection unit. The manual was not in possession of the Crown or of the police. The subpoena required the applicant to attend at a Provincial Court traffic hearing and to bring the manual. Applicant's counsel contended that the applicant had no material evidence to give and that he would only be called to produce the document. The Crown was not present at the application.

HELD: Matter adjourned. Presumably the police purchased the unit and should have been provided with the technical manual. In order for the defendant to make full answer and defence, he was entitled to challenge the reliability of the equipment. As such, the Crown should have produced the appropriate technical information on its operation.

Counsel:

Michael Lippe, for the applicant.
C. Kenneth W. Kolthammer, for the respondent.

Memorandum of Decision

¶ 1 **KENT J.**:— This is an application to quash a subpoena duces tecum issued by Colin Broughton to Dr. R.G. McPherson. The subpoena requires Dr. McPherson to attend at a Provincial Court traffic hearing and to bring the technical service manual for the LTI 20/20 laser unit and any correspondence to and from Mechatec and/or Laser Technology Inc. The evidence of Mr. Broughton is that he himself has some experience in electronics and computer programming. He was charged on December 19, 1994 with speeding. He does not think that he was speeding. To make full answer in defence he requires access to the technical data for the LTI 20/20. Further Dr. McPherson, who has been an expert for the Crown on several occasions on the operation of the LTI 20/20, has the written technical data which Mr. Broughton says his experts need. He further testifies that

his counsel has attempted to obtain the information from the manufacturer of the laser equipment, the Edmonton Police Service and from the Crown. The Crown and the Police have responded that they do not have access to the information and the manufacturer has refused to provide it.

¶ 2 Because the Crown and the Police do not have the technical data the Defendant's experts say they require, the Defendant's only alternative is to subpoena Dr. McPherson who admittedly has the technical data. Dr. McPherson's counsel argues that since Dr. McPherson will only be called to produce the documents he has no material evidence to give. Furthermore, his attendance at court every time a defendant challenges the operation of a laser gun is an inconvenience to him.

¶ 3 The short answer to this problem may be that, as inconvenient as it is for Dr. McPherson to attend at court, he may well have relevant evidence simply by being in possession of the technical data much like the clerk at a hospital has material evidence when he or she is subpoenaed to bring the medical records for a complainant on a charge involving bodily harm.

¶ 4 The curious fact however is that both the Crown and the Police say they do not have access to this information. The laser gun presumably was purchased by the Police. Common sense suggests that the purchaser of electronic equipment should be able to have the technical information that goes with it. When you buy a VCR from a department store, then you should be given the manual which will show you how the VCR operates. The same principle should apply. The difficulty during the application is that although the Crown was advised of the application, no one appeared.

¶ 5 In my view, to make full answer in defence where the Crown is relying on a piece of electronic equipment that has no statutory sanction, defence may wish to challenge the reliability of that piece of equipment and in so doing may be entitled to have the appropriate technical data to make that challenge. If that conclusion is correct, then the Crown should be producing it. However, since the Crown was not present to argue the case, I am simply adjourning this application to a date to be arranged by counsel for Mr. Broughton. Notice is to be given to the Crown by Mr. Broughton's counsel along with a copy of this decision. It will be the Crown's decision whether or not to respond to the questions which I have raised.

KENT J.