Her Majesty The Queen v. Mark Andrew Twitchell
(091027300Q1; 2010 ABQB 693)

Indexed As: R. v. Twitchell (M.A.)

Alberta Court of Queen's Bench
Judicial District of Edmonton
Clackson, J.
November 17, 2010.

Summary:

The accused was charged with first degree murder. The accused's laptop computer, found in his vehicle, was seized and searched pursuant to a search warrant. The Crown's theory was that the accused decided to become a serial killer and that deleted and password protected information retrieved from his laptop computer supported that theory. The accused sought exclusion of the evidence under s. 24(2) of the Charter, arguing that the search of the contents of his laptop computer constituted an unreasonable search and seizure (Charter, s. 8).

The Alberta Court of Queen's Bench held that the accused's s. 8 Charter rights were not violated and, in any event, the court would not have excluded the evidence under s. 24(2).

Civil Rights - Topic 1646

Property - Search and seizure - Unreasonable search and seizure defined - [See both **Criminal Law - Topic 3045**].

Civil Rights - Topic 8368

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Exclusion of evidence - [See both **Criminal Law - Topic 3045**].

Criminal Law - Topic 3045

Special powers - Search warrants - Scope of - A search warrant authorized a search of the accused's personal property, including personal records, and specifically any computer - The warrant also permitted the assistance of civilian personnel from the police technological crimes unit - Police seized and searched a laptop computer found in the accused's vehicle - The Crown's theory was that the accused decided to become a serial killer and that deleted and password protected information retrieved from his laptop computer supported that theory - The accused argued that the scope of the warrant authorized only the seizure of the laptop computer, not a search of its contents - He argued that a further judicial authorization was required to search the computer's contents after it was seized - The Alberta Court of Queen's Bench held that the warrant authorized a search of the laptop computer's contents - Although the warrant did not specifically reference the laptop computer and did not specifically authorize a forensic analysis of any computer, the analysis of the contents of any computer seized was contemplated by reference to obtaining the assistance of the technological crimes unit - The word "computer" in the warrant was broad enough to include any kind of computer - The court stated that "it is plain that the goal was not simply to seize computers for whatever

forensic evidence might be found on the exterior of such devices, but to examine and analyze the contents of such computers" - As the warrant authorized the forensic examination of the laptop computer, the search was lawful and the accused was not subjected to an unreasonable search and seizure (Charter, s. 8) - In any event, the court would not have excluded the evidence under s. 24(2) - See paragraphs 9 to 16, 33 to 38.

Criminal Law - Topic 3045

Special powers - Search warrants - Scope of - A search warrant authorized a search of the accused's personal property, including personal records, and specifically any computer - The warrant also permitted the assistance of civilian personnel from the police technological crimes unit - Police seized and searched a laptop computer found in the accused's vehicle - The Crown's theory was that the accused decided to become a serial killer and that deleted and password protected information retrieved from his laptop computer supported that theory - The accused argued that the scope of the broad general warrant could not authorize the examination of the contents of the entirety of the laptop computer; that those areas which contained deleted or password protected information required an additional, more specific search warrant - The Alberta Court of Queen's Bench held that "where a warrant specifically contemplates a search of the computer's contents, in the absence of some limitation, the warrant implicitly justifies the search of the entire contents. ... in this case, once the warrant authorized the search, absent some form of limitation in the warrant, the entirety of the computer's contents could be examined. Accordingly, a new warrant was not necessary to overcome levels of security, encryption, fragmentation, password protection or deletion in relation to the information the laptop contained." - There was no unreasonable search and seizure contrary to s. 8 of the Charter - In any event, the court would not have excluded the evidence under s. 24(2) - See paragraphs 17 to 38.

Cases Noticed:

R. v. U.P.M. (2010), 399 N.R. 200; 346 Sask.R. 1; 477 W.A.C. 1; 2010 SCC 8, refd to. [para. 22].

R. v. Morelli - see R. v. U.P.M.

R. v. Little, 2009 CarswellOnt 8024 (Sup. Ct.), refd to. [para. 26].

R. v. Vu (T.L.), [2010] B.C.T.C. Uned. 1260; 2010 BCSC 1260, refd to. [para. 30].

R. v. Grant (D.) (2009), 391 N.R. 1; 253 O.A.C. 124; 2009 SCC 32, refd to. [para. 33].

Counsel:

Avril Inglis and Lawrence Van Dyke (Crown Prosecutors' Office), for the Crown; Charles B. Davison (Abbey Hunter Davison), for the accused.

This matter was heard on October 14, 2010, before Clackson, J., of the Alberta Court of Queen's Bench, Judicial District of Edmonton, who delivered the following judgment on November 17, 2010.

Order accordingly.

Editor: Steven C. McMinniman

Civil Rights - Topic 1646

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Civil Rights - Topic 8368

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Exclusion of evidence - A search warrant authorized a search of the accused's personal property, including personal records, and specifically any computer - The warrant also permitted the assistance of civilian personnel from the police technological crimes unit - Police seized and searched a laptop computer found in the accused's vehicle - The Crown's theory was that the accused decided to become a serial killer and that deleted and password protected information retrieved from his laptop computer supported that theory - The accused argued that the scope of the warrant authorized only the seizure of the laptop computer, not a search of its contents - He argued that a further judicial authorization was required to search the computer's contents after it was seized - The Alberta Court of Queen's Bench held that the warrant authorized a search of the laptop computer's contents - Although the warrant did not specifically reference the laptop computer and did not specifically authorize a forensic analysis of any computer, the analysis of the contents of any computer seized was contemplated by reference to obtaining the assistance of the technological crimes unit - The word "computer" in the warrant was broad enough to include any kind of computer - The court stated that "it is plain that the goal was not simply to seize computers for whatever forensic evidence might be found on the exterior of such devices, but to examine and analyze the contents of such computers" - As the warrant authorized the forensic examination of the laptop computer, the search was lawful and the accused was not subjected to an unreasonable search and seizure (Charter, s. 8) - In any event, the court would not have excluded the evidence under s. 24(2) - See paragraphs 9 to 16, 33 to 38.

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