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File No. 47375-C3
Registry: Richmond

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

Reasons for Judgment
Before the Honourable Judge E.D. Schmidt
June 30, 2004

REGINA

v

MARY JEAN DUNSDON

Counsel for the Crown

G. Sair

Counsel for the Defence

J. Conroy, Q.C.

[1] THE COURT: This is an incident that happened at Wreck Beach, the famous clothing-optional beach in the Vancouver area where we hear some one-and-a-half million people troop through every year to take advantage of whatever it is that occurs down there. The police have a presence as well, and there is one police officer assigned each year to go to the beach, and that's where he goes to work, on the beach, and sometimes in an undercover and sometimes in uniform.

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[2] As it occurred, a new officer was to take over this assignment and had, in fact, taken over the assignment a few weeks earlier. In preparation for him taking over the assignment, the officer that had been on the assignment the previous year and for some years, as it turns out, acquainted him with the various things that he believed were occurring on the beach which may have been illegal, and had created some files and photo albums and had a wall of pictures at the detachment for the other officers to view and to gain the knowledge that he had with respect to who might be expected or suspected to be breaking the law at Wreck Beach. Then, as such, the new police officer, Cst. Plowman (phonetic), who had gained that territory, was familiar with the person that was nicknamed Watermelon, and the police officer who had previously had that beat had given him some information that Watermelon was somebody that could be trusted to be breaking the law on Wreck Beach.

[3] Cst. Plowman was expected to go to the beach then on this day, July 12th, 2003, and to oversee the activities on the beach to ensure that nothing illegal would happen, and he did so. He was acting in an undercover manner, meaning that he was pretending to be sunbathing and was watching the goings-on of the other beachgoers, and noticed the person who had been

identified to him by the previous officer as Watermelon. Watermelon was there with a cooler and a number of t-shirts. The officer was familiar with the t-shirts and they depicted Watermelon being arrested on that beach on a previous occasion. He saw this person, who was nicknamed Watermelon, who turns out to be the accused Mary Jean Dunsdon, talking to various people and moving around the beach between groups. He heard her say the words that he took to be said in a manner that was in a vending manner, "crazy cookies", and he also heard her say "t-shirts". He saw her on one occasion kneel down beside a couple but it was a brief exchange and he did not note anything occur on that occasion, but believes that something might have occurred that he was unable to see. He says that he talked to another officer who was there with him, about this person Watermelon and what she might be up to and made a decision that they would not do any further investigation or arrest at that time.

[4] Then the unfortunate thing happened on the beach, and that is it began to rain, which caused many people to head for the stairs. The stairs to the beach are long. All the people bunched together to climb the stairs and in the course of what was described as hundreds of people going up the stairs, all at once the officer happened upon the person that he knew as

Watermelon. He greeted her and she greeted him. Then they got to the top and the police officer made his decision that he shouldn't let her go but that he should deal with her in some way.

[5] At the top, he asked her if she would accompany him over to the washroom section of the top of the beach, I understand that's a few steps away from the trail. She did so, and asked him if she was under arrest and he said no. Then the evidence becomes somewhat mixed up. He told her that she was under detention and then either, depending on which of his notes are correct, either searched her bag and then asked the other officer with him to Charter and warn her because she was under detention, or he asked the other officer with him to Charter and warn her because she was under detention, and while he did that he searched the bag. Upon concluding the search of the bag and discovering a tin that contained cookies, he decided that these must be contraband-type cookies and then arrested her for possession for the purpose of trafficking.

[6] So those are really all the facts, although it's taken a day to get to that point. We are in a *voir dire* at this time because the defence counsel says that there were breaches of at least one or all of s. 8, 9 and 10 of the Charter.

[7] In his evidence, the police officer had some difficulty with the questioning around why she was detained rather than arrested, but I believe he detained her because at the time he thought that in order to arrest her for possession for the purpose of trafficking he would have to see an exchange. He didn't think he had seen an exchange, although he saw something that he thought might have been an exchange, but he was unable to see if it was or not. I think that really is the key to this case.

[8] It appears that the police officer detained her because he was suspicious of her because of what the previous police officer had said about her. His suspicions were heightened because he saw her acting in a manner that was consistent with what the previous police officer had told him regarding her *modus operandi*, but he believed he did not have the grounds to arrest her, although now he says he did.

[9] My finding is that he did not have subjective or objective grounds to arrest her, but needed those grounds and therefore, conducted a search of her belongings that she was carrying in order to gain the subjective or objective grounds to arrest. It's the only way this makes sense. The only thing that occurred between detention and arrest was a search of her bags that she carried with her. There were no

questions asked of her. There was no consent requested to search her bags. He was looking for confirmation of suspicion to give him the subjective grounds for arrest that could be objectively justifiable.

[10] It was only on cross-examination that he said, well, I was really worried about officer safety and that's why I searched her bag. The Court does not accept that because he had no reason to concern himself with officer safety if this was an investigative detention and if there was no grounds to believe that there was anything of concern in her purse or in the cooler that she was carrying.

[11] It went beyond what was allowed by investigative detention. It was a search of her private bags which she was carrying; it was an invasion of her privacy; it was an unlawful search and probably was conducted prior to the right to counsel being read to her, because the notes that he took to ensure that evidence was retained, shortly after the incident, indicate that the search was conducted prior to the Charter right to counsel being read.

[12] Under these circumstances, the breach of the Charter will result in the evidence being excluded under s. 24(2). That's the evidence of whatever was found in the cooler.

(SUBMISSIONS BY COUNSEL)

[13] THE COURT: The charges will be dismissed.

(JUDGMENT CONCLUDED)