

**File No: 170674-1  
Registry: Vancouver**

**In the Provincial Court of British Columbia**

**REGINA**

**v.**

**DAVID LEE STAUFFER**

**REASONS FOR JUDGMENT  
OF  
THE HONOURABLE JUDGE MCGEE**

**COPY**

**Crown Counsel: L. Laird**

**Defence Counsel: M. Mines**

**Place of Hearing: Vancouver, B.C.**

**Date of Judgment: November 10, 2006**

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[1] THE COURT: The accused is charged with possession of Methamphetamine, contrary to s. 4(1) of the **Controlled Drugs and Substances Act**. The drug was found on the accused in the course of a search, following his arrest for uttering a threat. The issue is whether there was a lawful arrest, pursuant to s. 495(1)(a) of the **Code**, which provides that:

a peace officer may arrest without warrant  
(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence.

[2] The other issue is, if there was no lawful arrest, should the evidence be excluded under s. 24(2) of the **Charter** as being a breach of the accused's rights under s. 8 of the **Charter**. To determine that issue, the evidence of a peace officer was heard on a voir dire.

[3] The evidence is as follows. At approximately 8:35 p.m. on February 3rd, 2006, Constable Roberts who was on routine patrol received information that a person at the Buster's Towing lot on Granville Street was becoming belligerent and was attempting to get his car out and was about to hit the gate. He had also threatened to burn the place down. Constable Roberts and his partner attended the scene and saw two men in a heated conversation in close proximity to each other. One man was pointing at the other. There was no one

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else around. He concluded, from this apparent verbal confrontation, the accused was the person who, amongst other things, had made the threat and he arrested him for uttering threats. He handcuffed him, searched him for weapons, and in the course of the search found in his pockets tools, which apparently were in his possession in breach of a recognizance, and two grams of Methamphetamine, which forms the basis of this charge.

[4] After the Methamphetamine was found, the accused was advised of this charge and soon after was taken to the jail. Constable Roberts then spoke with the other person, who he referred to as the complainant, about the threat and what constituted a threat. The complainant said he did not want to proceed with charges.

[5] I am not satisfied there was a lawful arrest, because I do not think there were reasonable grounds to effect the arrest. Counsel have been helpful in providing a number of cases and have referred to the meaning of reasonable grounds in the annotations following s. 495 in ***Martin's Criminal Code***.

It reads:

For an arrest to be valid on the basis of reasonable and probable grounds, it is not sufficient for the police officer to subjectively believe that he has reasonable and probable grounds to make an arrest. Rather, it must also be shown that a reasonable

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person, standing in the shoes of the officer, would have believed that reasonable and probable grounds existed to make the arrest. However, the police need not go further and establish a *prima facie* case.

[6] I am satisfied it was incumbent on the officer to at least make enquiries when he arrived at the scene as to who had actually made the threat and to confirm what was said. In the circumstances of this case, I do not think it was sufficient to simply rely on the police dispatch.

[7] In addition to other authorities, Crown counsel in a thorough submission referred to the **R v. Venzie**, B.C.S.C. December 1997 to support her position there were here reasonable and probable grounds. **Venzie** was a case where the arresting officer did not have the grounds but was assisting an officer who did, and in those circumstances, the court found the arrest to be lawful. The situation was different here.

[8] I am satisfied that to admit the evidence in this case, where I do not believe there were reasonable grounds to make the arrest, would bring the administration of justice into disrepute. It's excluded. Are there any further submissions?

[9] MR. MINES: Not for the defence.

[10] MS. LAIRD: No, Your Honour.

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[11] THE COURT: The voir dire is over. The evidence is excluded. The charge is dismissed.

(REASONS FOR JUDGMENT CONCLUDED)