

Citation: R. v. Lapoleon
2007 BCPC 0309

Date: 20071002
File No: 175289-2-DC
Registry: Vancouver

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

LORNE MATTHEW LAPOLEON

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE G.M. RIDEOUT**

Counsel for the
Crown:
Berum

R.

Counsel for the Accused:
Cooper Sept. 4, 2007

E.

18, 2007

Withdrew as Counsel Sept.

Place of
Hearing:
Vancouver, B.C.

Dates of Hearing:
14, 17, 18, 20, 21, 2007

Sept. 10,

Date of
Judgment:

October 2, 2007

INTRODUCTION

- [1] On February 16, 2006, a fax transmission was received via an email provider at the Ottawa Headquarters of the Integrated National Security Enforcement Team (INSET).
- [2] The fax disclosed a plot by an Islamic Terror Cell operating in Vancouver in which the Royal Danish Consulate in North Vancouver, and the United States Consulate in Vancouver would be blown up.
- [3] Upon INSET receiving this fax a substantial national and international investigation commenced to determine the legitimacy of the threat. This investigation ultimately led to the arrest of the accused. Police investigation confirmed the fax was not legitimate.
- [4] The accused was charged with three offences: firstly, a hoax regarding terrorist activity contrary to s. 83.231(2) of the *Criminal Code*; secondly, public mischief contrary to s. 140(1)(a) of the *Criminal Code*; and, thirdly, uttering a threat contrary to s. 264.1(i) of the *Criminal Code*.

BACKGROUND

- [5] The world changed dramatically after the destruction of the World Trade Centre in New York on September 11, 2001. Many countries, including Canada, became potential targets for terrorist activity. In response, the RCMP, in conjunction with police forces across the land, established INSET.
- [6] INSET's mandate, in part, is to monitor individuals and groups who may pose a terror threat to our nation or other nations.
- [7] In the exercise of its mandate, INSET also assesses and investigates all communications, transmissions and tips relating to potential terrorist activity to determine the legitimacy of any threat.
- [8] On February 16, 2006, a fax transmission via an email provider was received at the headquarters for INSET in Ottawa. This fax reads in part:

Hi am a Muslim and i have information on Islamic terrorist cell
operating in Vancouver BC the cell members is plotting to blow up
the – Royal Danish Consulate in North Vancouver
United States consulate General. 1075 west Pender Street. Vancouver
I am not sure what time this will happen but here here bits and pieces
In Arabic and Kurdish at some meetings and few party's the time i have been hanging out with
them.

i will give u some names and address of the cell members

I think thy have a dead letter box there.

i am not sure ware the explosives are being kept i think at some storage room

out in Burnaby close to the Rupert sky train

I want just to tell u this i am not good at spelling English

and i want to be kept out of it just to let u no stop the am ...

[9] The fax is short on details, but does give three names and addresses for the purported terrorist plotters. This fax was assessed by a behavioural scientist attached to INSET. It was his opinion the risk threat would be low.

[10] Notwithstanding the low risk threat, a substantial investigation commenced both in Canada and the United States. Police members in Vancouver were assigned to surveillance duty with respect to the three named individuals.

[11] From a number located on the header for this fax, it was determined this fax was relayed through an internet provider on Staten Island, New York. A Grand Jury Subpoena was issued in New York granting to the police authority to seize domain records from the fax server being J2 Global Communications located in Los Angeles, California.

[12] From the seized records of J2 Global Communications it was determined that an inactive Yahoo account for a "Daniel_Jensen" was utilized to send the fax. Investigators in Vancouver determined the accused was using the "Daniel_Jensen" account as an alias. It was also determined that an Internet Café on Robson Street in Vancouver was the point of origin.

[13] With the investigation now narrowed to one suspect, surveillance was put in place on the accused.

[14] Other actions were also being taken by the police in response to the fax. A dog team was deployed in the area of the Rupert Street Sky Station. Approximately five hours were spent by the canine unit to "sniff out" any explosive substance with negative results.

[15] Shortly after receipt of the fax, the Royal Danish Consulate in North Vancouver and the United States Consulate in Vancouver were alerted. Police presence at both Consulates was enhanced.

[16] In the late evening hours of February 22, 2006, police members assigned to the Vancouver INSET Team located and arrested the accused at the Stadium Sky Train Station without incident. The accused was taken to the police station at 312 Main Street and interrogated by the senior RCMP member assigned to the Vancouver INSET Team. I have ruled, following a *voir dire*, that the statement then given by the accused was admissible.

[17] In his statement, the accused admits he was the author of the fax and that much of what is contained in the fax is based upon conjecture or lies, or both.

[18] The accused complained he had volunteered information to the police before in relation to individuals who may be involved in criminal activity, or possible terrorist activity, and little was done in response to this information. He felt if he sent an anonymous tip indicating a possible terrorist act that the police would "check them out". The accused did not like the three persons named in the fax, as it was his

view all three were involved in criminal activity and they “could” or “might” be involved in terrorist activity.

[19] The accused selected the Royal Danish Consulate as a possible target as a result of emotions that flared when certain inflammatory cartoons were published in Danish Newspapers. With respect to the United States Consulate, the accused admitted he made an “assumption, well, they might try to attack the US – basically something to do with the US”.

[20] Respecting the reference to the Rupert Street Sky Train Station as the possible location for the explosives, the accused indicated he picked that location because “it’s what came to my head”.

[21] The accused agreed he had virtually no foundation or facts to support the anticipated terrorist activity. He stated he had a collection of ideas in which he “made up” a profile of the three purported terrorists. At page 44 of the transcript of the interrogation the following exchange took place: (Lines 1734 – 1759):

MC: And you embellished it because you thought, well, if I give the twist of terrorism, and they think things are gonna be blown up, they’re gonna look at these pricks and they’re gonna see what they really are. They’re dope dealing guys, that have a lot of money, and, ah, what re they doing with their money. Is that a fair assumption
–
LL: Yeah, ... be a fair assumption ...
MC: Okay.
LL: Is that wrong what I did? Er
MC: Absolutely, my friend
LL: Yeah.
MC: That is – I – I think you know that to, because -
LL: - ... -
MC: You even admit, you embellished it to make us work on this investigation as if it’s a terrorist cell that ‘s gonna blow up consulates
LL: Yep.
MC: and they have explosives at storage facilities that could kill – a storage facility with fourteen hundred units, that if it blows up it could kill hundreds or thousands of people.
LL: Yep.
MC: What d’you think we’re going to do when we get something like that?
LL: Yep.
MC: What do you think we’re going to do?
LL: Well, look into it, yeah -
MC: Do you think we’re gonna attack it aggressively?
LL: Ah, yeah.
MC: Yeah

[22] At the conclusion of the interrogation, the accused was asked if he would show the police the locations of various computers he may have used to send the fax. The accused cooperated and took them to several Internet Café’s on Robson Street and identified various computers that were seized and submitted for forensic analysis.

[23] As a result of the forensic analysis of the various computers, one computer was identified as the point of origin of the fax that was sent to Ottawa; the account for that computer related to “Daniel_Jensen” at Yahoo; the account was the alias for the accused; evidence located on the accused at the time of his arrest linked the accused to the computer which was utilized to send the fax.

[24] The trial commenced in Vancouver on September 10, 2007. On September 14, 2007, I ruled that the statement given to the police by the accused was admissible and reasons would follow on September 17, 2007. On September 17, 2007, the accused did not attend at Court and a warrant for his arrest did issue.

[25] On September 17, 2007, the Crown applied for an Order that this Court proceed *ex parte* against the accused pursuant to s. 475 of the *Criminal Code*. After hearing evidence concerning efforts to locate the accused, I granted the Crown Application to proceed *ex parte*.

[26] On September 18, 2007, counsel for the accused withdrew as counsel.

[27] Further evidence was called by the Crown to link J2 Global Communications' records to the accused and to the various computers that were identified by the accused.

[28] The Crown concluded the case by calling evidence with respect to the size of the police investigation triggered by the fax. A minimum of 20 police officers were involved in the Vancouver side of the investigation. This did not take into account police officers involved in Ottawa with respect to the investigation or police resources contacted and utilized in the United States. The Vancouver Team Leader, Staff Sergeant Coyle, estimated the financial cost to be in the area of \$100,000 to the tax payer, including overtime costs, travel costs, hotel/meals and the like.

POSITION OF THE CROWN

[29] Crown counsel submits the fax sent by the accused, along with his confession to the police, clearly establishes that the accused did convey the false information to Ottawa not believing the information would be true resulting in the apprehension of terrorist activity. This triggered a substantial police deployment and, as such, he should be found guilty of both the terrorist hoax charge and the mischief charge.

ANALYSIS

Count 1: Hoax Regarding Terrorist Activity

[30] Section 83.231(1) reads as follows:

(1) Every one commits an offence who, without lawful excuse and with intent to cause any person to fear death, bodily harm, substantial damage to property or serious interference with the lawful use or operation of property,

(a) conveys or causes or procures to be conveyed information that, in all the circumstances, is likely to cause a reasonable apprehension that terrorist activity is occurring or will occur, without believing the information to be true; or

(b) commits an act that, in all the circumstances, is likely to cause a reasonable apprehension that terrorist activity is occurring or will occur, without believing that such activity is occurring or will occur.

[31] A terrorist activity is defined in s. 83.01 of the *Criminal Code*. In the context of this case, the following subsections are relevant to my analysis:

(1) The following definitions apply in this Part.

...

"terrorist activity"
«*activité terroriste*»

"terrorist activity" means:

...

(b) an act or omission, in or outside Canada,

(i) that is committed

(A) in whole or in part for a political, religious or ideological purpose, objective or cause, and

(B) in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the public or the person, government or organization is inside or outside Canada, and

(ii) that intentionally

(A) causes death or serious bodily harm to a person by the use of violence,

(B) endangers a person's life,

(C) causes a serious risk to the health or safety of the public or any segment of the public,

(D) causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of clauses (A) to (C), or

(E) causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, other than as a result of advocacy, protest, dissent or stoppage of work that is not intended to result in the conduct or harm referred to in any of clauses (A) to (C),

and includes a conspiracy, attempt or threat to commit any such act or omission, or being an accessory after the fact or counselling in relation to any such act or omission, but, for greater certainty, does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict, or the activities undertaken by military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of international law.

[32] The fax forwarded to INSET clearly indicates the person sending the fax has information respecting an "Islamic Terrorist Cell"; this cell is located in Vancouver; the members of this cell "is plotting" to blow up Consulate property of Denmark and the United States. While the fax does not detail when this event may occur, it does state "this will happen".

[33] If the fax had revealed an actual terrorist plot then the information surrounding the plot in the fax would meet the criteria for terrorist activity as set out in s. 83.01(1)(b)(i)(B). In particular, the information conveyed by the fax demonstrates a present intention by the terrorist cell group to intimidate the public

with regard to its security and had either the Royal Danish Consulate or the United States Consulate, in fact, been blown up that such an intentional act would in all likelihood cause death or serious bodily harm and substantial damage to property.

[34] As the fax does identify an Islamic Terror Cell with three cell members involving a plot to blow up Consulate property on Canadian soil then such would be described as a conspiracy in the event the fax was legitimate.

[35] I note in this particular case that both the United States Consulate in Vancouver and the Royal Danish Consulate in North Vancouver were alerted to the threat and an elevated police presence was put into effect along with other security measures at both Consulates. The information contained in the fax conveyed to INSET would clearly cause people working at both Consulates, the police investigating this matter, and the general public to believe death, bodily harm, substantial damage to property or serious interference with the lawful use or operation of property may result.

[36] In this case the critical element to be established by the Crown relates to whether or not the information contained in the fax would cause the reasonable apprehension that terrorist activity is occurring or will occur contrary to s. 83.231(2) of the *Criminal Code*.

[37] The Compact Oxford English Dictionary of Current English (3rd Edition) defines “apprehension” as follows:

noun 1 uneasy or fearful anticipation.

[38] The American Heritage Dictionary of the English Language: (Fourth Edition) describes “apprehension” as follows:

NOUN: **1.** Fearful or uneasy anticipation of the future; dread.

[39] The word “apprehension” in this charge portends, in my view, anxiety or fear of some future terrorist activity.

[40] The Compact Oxford English Dictionary of Current English (3rd Edition) defines “will” as follows:

Modal verb (3rd sing. Present **will**; past **would**) **1** expressing the future tense. **2** expressing a strong intention or assertion about the future. **3** expressing inevitable events. **4** expressing a request. **5** expressing desire, consent, or willingness. **6** expressing facts about ability or capacity. **7** expressing habitual behaviour. **8** expressing probability or expectation about something in the present.

[41] The American Heritage Dictionary of the English Language: Fourth Edition. 2000, defines “will” as follows:

Inflected forms: Past tense **would**

1. Used to indicate simple futurity: *They will appear later.* 2. Used to indicate likelihood or certainty: *You will regret this.* 3. Used to indicate willingness: *will you help me with this package?* 4. used to indicate requirement or command: *You will report to me afterward.* 5. Used to indicate intention: *I will too if I feel like it.* 6. Used to indicate customary or habitual action: *People will talk.* 7. Used to indicate capacity or ability: *This metal will not crack under heavy pressure.* 8. used to indicate probability or expectation: *that will be the messenger ringing.*

[42] The use of the word “will” in the charging section clearly portends of a certain inevitability of a future terrorist activity taking place.

[43] The fax is drafted in the present tense. The fax clearly identifies there is an Islamic Terrorist Cell Group operating in Vancouver and this cell “is plotting” to blow up Consular property. While the fax does not indicate when the event will take place, it does clearly state that the event “will happen”.

[44] The reference to explosives being kept in storage locker close to the Rupert Street Sky Train Station establishes a sense of urgency and a need for immediate action. This is consistent with the statement given by the accused to the police where he agrees he did embellish the fax by giving it “the twist of terrorism” hoping that those people that received the fax would “think things are going to be blown up”.

(Transcript, Page 44, Lines 1706-1734)

CL: You – you’ve got a collection of ideas.
 LL: - Well(ph), right -
 CL: - more – more so -
 LL: - ... made up a profile ... -
 CL: - ‘ta – ‘ta -
 LL: - yeah, made up the profile -
 CL: - Yeah, but you made up a – your own profile though.
 LL: - Yeah.
 CL: - Right, based on -
 LL: - Why I did is – (what I did is – sending information like that was wrong.
 CL: Yeah, well, you know, you just -
 LL: - Yeah.
 CL: - said y-you didn’t mean for the -
 LL: - Yeah.
 CL: - police to do, I think what – what ended up happening right?
 LL: Well, yeah, I didn’t think it was gonna happen -
 CL: But – but you just – you made up this whole impression of -
 LL: - Yeah.
 CL: - of what you thought these guys were.
 LL: - Yeah, basically.
 CL: And not based on any fact, just on kinda what you thought, right?
 LL: Well, my thoughts, I had a few facts, yeah, like actual facts, that y’know -
 MC: - And we’ve discussed those.
 LL: - Yeah, we’ve discussed that already.
 MC: Okay, but you embellished it all, because the police weren’t taking any action on these individuals when you talked to the police about them. Correct?
 LL: True.

[45] The fax would clearly cause anxiety and uneasy anticipation of a future terrorist activity, not only in the minds of the people at either Consular property, but also cause that same anxiety and uneasy anticipation in the minds of the public at large. This fax further establishes an inevitability this terrorist activity will happen; cell members are in place; Consular property is identified as the target; explosives are involved. There is a clear and present danger and an urgent need for immediate action, and if action isn't taken, the two Consular properties will be blown up.

[46] Accordingly, I am satisfied on the evidence before me the Crown has established beyond a reasonable doubt that the accused was engaged in a hoax regarding terrorist activity and he is guilty of Count 1.

Count 2: Public Mischief Contrary to Section 140(1)(a) of the Criminal Code

[47] The fax sent to INSET galvanized a substantial police reaction. Though the threat risk was determined to be low, significant resources were put in place to determine whether or not the threat was legitimate.

[48] Police authorities in New York became involved in the investigation, as the fax was re-routed via the internet through a location on Staten Island. A Grand Jury subpoena did issue for a search of the books and records relating to the fax number located on the fax header from J2 Global Communications Inc. in Los Angeles.

[49] As that aspect of the investigation was proceeding, a canine unit was deployed to the Rupert Street Sky Train Station area to "sniff out" possible explosives referenced in the fax.

[50] Surveillance was put into place to cover the three named individuals in the fax, and once it was determined the accused was the likely suspect, surveillance was put in place for him as well.

[51] The INSET Project Team in Vancouver included a computer data analysis arm to analyze and interpret hard drive data. An analysis of computer data ultimately did link the fax received in Ottawa to the very computer used by the accused.

[52] In a statement to the police after his arrest, the accused admitted that much of the information in the fax was simply without foundation. An example can be found with respect to the Rupert Street Sky Train Station as a potential location for explosives. The following exchange took place between Staff Sergeant Coyle and the accused at the detachment: (Page 30, Lines 1159 - 1169)

MC: - bomb such and such. -
 LL: - No, I just said it's possible, maybe that's what they're trying to do. Maybe that's what where the stuff is, maybe that's that's what it is.
 MC: What d'you, that's where the stuff is, what did you - tell me exactly what you said.
 LL: Well, I just made bullshit fuckin' location where they might be s- I said, possibly, like, just to make it a little bit, k like, interesting for you guys to pursue it -
 MC: - Absolutely -
 LL: - that's it.
 MC: - so you wanted to kinda flower it up so we would -
 LL: - Yeah.

[53] Near the end of the interrogation, a further exchange took place as follows: (Page 43, Lines 1662 – 1680)

LL: Did you guys search the – post – postage boxes out there? Er -
 MC: What'd you mean postage boxes?
 LL: Or, I'm sorry, the storage facility? (knock)
 MC: Which storage facility?
 LL: The one by, ah, by Rupert?
 MC: What colour is it?
 LL: I don't know, it's red, it's a red storage -
 MC: Is it right next to the Skytrain?
 LL: Yeah.
 MC: Why did you pick that location?
 LL: I don't know, it's what came to my head.
 MC: Okay, well we – yeah, we – we checked that location (chuckles) and we spent hours and hours with police dogs, because it – it just came to your head.
 LL: Yeah. Well, I thought, like, I'm ju- I just picked -
 MC: So you just pick -
 LL: - bullshit -
 MC: - picked it out of the air -
 LL: Yeah.

[54] During the *voir dire*, the accused agreed in cross-examination when pressed by the Crown that he may have lied to the police in relation to details of the purported terrorist plot, and further, he may have been lying to the Court when giving his evidence.

[55] When one looks at all of the evidence and the context of the evidence, it is clear the accused did make a false statement to the Royal Canadian Mounted Police and the named police members in Count 2 in the conveying of the fax which resulted in a substantial police investigation. He was reckless and intended to mislead the police by creating the “twist of terrorism” so the police would deal with the three named individuals, who the accused felt were involved in criminal activity.

[56] Accordingly, I am satisfied that the Crown has established beyond a reasonable doubt that the accused did intentionally mislead the police to embark upon a substantial investigation in the result of which I find the accused guilty of Count 2.

Count 3: Uttering a Threat

[57] The fax forwarded to INSET Headquarters in Ottawa, while containing a component of apprehended terrorist activity, was ultimately designed to bring grief to the three named individuals in that fax. It was not the intention of the accused that terrorist activity would take place, but rather by naming the three individuals the police would investigate these individuals and their purported criminal activity. Shortly put, the threat was ultimately directed at the three named individuals.

[58] Accordingly, I find the accused not guilty of Count 3.

