

Did Environmental Officers Exceed Search Warrant in Seizure of Evidence from Ship?



SITUATION

A Department of Fisheries (DFO) officer asks a judge for a search warrant, claiming the captain of a commercial crab fishing vessel didn't accurately complete his fishing log for nearly two months. The court grants the warrant, which permits DFO officers to seize business records and items, including computerized information, showing fishing activity on the vessel for those two months. Officers execute the warrant and seize two navigational computers and the captain's personal log, which contains information on navigation, fishing equipment and catches that's more detailed than what's in the official DFO log. A specially trained officer later searches the computer drives for information covered by the search warrant, using a program that filters out unrelated files and personal information. The relevant information for the designated time period is in one complete file that also contains information from other dates. He forwards the whole file to the lead officer without editing it so the relevant information was in context. The captain is charged with violations of the *Fisheries Act*. He asks the court to suppress the evidence the officers seized, claiming they exceeded the scope of the search warrant and violated his privacy rights.

QUESTION

Should the court suppress the evidence'

- A. No, because there's no expectation of privacy on a commercial fishing vessel.
- B. No, because the officers didn't exceed the scope of the valid search warrant.
- C. Yes, because the officers had no right to take the captain's log, which was personal.
- D. Yes, because the search of the computers was inappropriate.

ANSWER:

B. Because the officers seized the evidence pursuant to a proper search under a valid warrant, it shouldn't be suppressed.

EXPLANATION

This hypothetical is based on a NL case in which the captain of a crab fishing vessel sought suppression of evidence seized from his ship and being used against him to prove violations of the *Fisheries Act*. The court noted that the DFO officers took steps to minimize access to any personal information on the seized computers. The DFO officer who searched the computers said there was one navigational file that contained information from both the relevant time period and other time periods. He explained that this file was like a book and had 'to be sent as a complete file in order to be meaningful.' The court accepted this explanation as reasonable. As to the personal log, the court found that it was 'no more nor less than a notebook made by the captain during the course of and related to his fishing enterprise.' Thus, the log wasn't actually personal and was properly seized as a business record under the search warrant. So the court dismissed the suppression application.

WHY WRONG ANSWERS ARE WRONG

A is wrong because there *is* an expectation of privacy on a commercial fishing vessel but it's a diminished one. In other words, the captain had some expectation of privacy on the ship but not to the same degree as he would have in, say, his home or car. That's because the vessel is essentially a workplace in a highly regulated industry. And the captain was operating under a licence and so should expect a degree of scrutiny and accountability. The fact the captain had *some* expectation of privacy as to the vessel is why the DFO officers got a search warrant in the first place. Otherwise, they could've proceeded without a warrant. In addition, the computers seized weren't personal computers; they were used for navigation purposes. And the 'personal' log wasn't actually personal; it related to the captain's fishing activity, which was the focus of the warrant.

C is wrong because, despite its name, the captain's log isn't actually personal. It contained information that related to his fishing activities, not, say, his personal thoughts. The log was simply described as 'personal' to distinguish it from the official log the DFO requires licensed fishermen to maintain. In short, because the personal log was made by the captain in the course of and relating to his fishing activities, it's a business document covered by the search warrant and so its seizure was appropriate.

D is wrong because the DFO officers search of the two computers was done appropriately. The search warrant permitted the seizure of computerized information relating to fishing activities. The computers taken were used for navigational purposes. Because of the nature of computerized information, the officers couldn't search them onsite and had to seize them and search them later. The officer who conducted this search took steps to limit the search's scope and avoid accessing any personal information. And although the navigational file he sent the lead officer contained information beyond the relevant time period, that file had to be viewed in its entirety so the relevant information was in context.

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R. v. Noonan, [2013] CanLII 61818 (NL PC), Sept. 27, 2013