

CANADA / JUDGMENT

R. v. Ali

2020 BCSC 2012

COURT

Supreme Court of British Columbia

DECIDED

23 November 2020

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2020 BCSC 2012 R. v. Ali IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Ali, 2020 BCSC 2012 Date: 20201123 Docket: 29405-1; 29405-18 Registry: Vancouver Regina v. Ibrahim Ali Restriction on Publication: Pursuant to 486.5(1) & 486.5(9) C.C.C. Before: The Honourable Mr. Justice Bernard Oral Ruling on Voir Dire re Translation of Statements Counsel for the Crown: D.J. Porte I.A. Keeley J.A. Khan Counsel for the Accused: K. McCullough B.S. Lynskey Place and Dates of Trial: Vancouver, B.C. November 3 and 4, 2020 Place and Date of Judgment: Vancouver, B.C. November 23, 2020

- [1] THE COURT: In the context of a voir dire to determine the voluntariness of a post-arrest statement of the accused, given in the Arabic language, the defence raises objection to the means by which the Crown proposes to tender evidence of the translation of these statements into the English language. More specifically, the defence submits that: a) it is improper for the Crown not to call as a witness the translator and instead tender the evidence through witnesses who were not present for the whole statement; and, b) the statements should be translated by an expert appointed by the Court.
- [2] Typewritten English translations of the video and audio-recorded statements exist and have been disclosed to the defence. These translations were created by a "Special I" employee of the RCMP in Newmarket, Ontario, at the request of the IHIT investigators in the instant case.
- [3] The Crown says its intention is to tender the audio/video recordings of the statements and the translation transcripts of these recordings, through the two RCMP members, Corporal Harfouche and Constable Alam, who were present for, and direct participants in, these post-arrest statements of the accused. These RCMP members are fluent in both English and Arabic.
- [4] The Crown anticipates that each of these police witnesses will give evidence as to the accuracy of their respective portions of the translation transcripts. Each will say that he carefully proofread them using the audio/video recordings as the reference, and that he satisfied himself as to the accuracy of the translation, save for a few corrections which have been noted, disclosed, and to which each will testify.

- [5] The Crown says it does not intend to tender Corporal Harfouche and Constable Alam as expert witnesses because they were parties to the conversations leading up to, and including, the statement in issue for its voluntariness.
- [6] In support of this position, the Crown cites The Honourable S. Casey Hill, David M. Tanovich & Louis P. Strezos, eds, *McWilliams' Canadian Criminal Evidence*, 5th ed. (Toronto: Thomson Reuters, 2019) [McWilliams'] at chapter 22, 10.30, and *R. v. Tan*, 2014 BCCA 9 [Tan].
- [7] In relation to tendering foreign language statements in court, McWilliams' says that where ordinary witnesses testify in English as to the contents of a foreign-language conversation to which they were a party, these witnesses do not do so as experts, but rather as participants in that conversation.
- [8] Consistent with McWilliams', in *Tan*, the court recognized that a police officer who was a participant and contemporaneous listener to a foreign-language conversation with an accused may give translation testimony as to what the accused said. If there are shortcomings in that translation, they go to the weight of the translation evidence and not to its admissibility (at paras. 88-89).
- [9] The defence cited no authority contrary to this relatively recent re-statement of the law by our Court of Appeal, and I am satisfied that it addresses and disposes of the defence's objection. Accordingly, evidence of translation from Arabic to English may be given by Corporal Harfouche and Constable Alam in their capacities as participants in the conversations leading to, and including, the statement in issue for its voluntariness.
- [10] The defence has cautioned the Court that there will be mayhem at the trial if the statement is not translated by an expert appointed by the Court for the purpose of reaching consensus in relation to the translation. While it is always desirable to avoid trial mayhem, so long as what the Crown proposes to tender in its case in this voir dire is not contrary to the rules of evidence, the desire to avoid mayhem at the trial is not a sound basis to sustain the objection.
- [11] For these reasons, the objection is overruled. As it was not necessary to address the defence's position that the court should appoint an expert for purpose of determining, prior to the commencement of the jury trial, what Mr. Ali said, this ruling does not preclude the defence from making a pretrial application for such relief. "Bernard J."

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