

CANADA / JUDGMENT

R. v. Alkhalil

2022 BCSC 1045

COURT

Supreme Court of British Columbia

DECIDED

21 June 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCSC 1045 R. v. Alkhalil IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Alkhalil, 2022 BCSC 1045 Date: 20220621 Docket: 27393-159 Registry: Vancouver Regina v. Rabih Alkhalil (a.k.a. Robby Alkhalil) and Larry Ronald Amero Restriction on Publication: A publication ban has been mandatorily imposed under s. 648(1) of the Criminal Code of Canada, restricting the publication, broadcasting or transmission in any way of any portion of the trial at which the jury is not present. This publication ban applies until the jury retires to consider its verdict Before: The Honourable Justice Maisonville Ruling re Application No. 159 - Admissibility of Expert Evidence of S/Sgt. Foster Counsel for the Crown: M. Sheardown S. Dworkin A. Cochrane N. Gregoire D. Darby A. La Bar Counsel for the Accused, Rabih Alkhalil (a.k.a. Robby Alkhalil): R.S. Fowler, Q.C. K. Blok A. Tolliday Counsel for the Accused, Larry Ronald Amero: M. Rock J. Oppal Place and Dates of Trial/Hearing: Vancouver, B.C. May 16 and June 7-9, 2022 Place and Date of Judgment: Vancouver, B.C. June 21, 2022

introduction

- [1] The Crown seeks to tender S/Sgt. Gregory Foster as an expert witness qualified to give opinion evidence in the interpretation of street and gang terminology, jargon, and coded language. The specific words about which the Crown seeks his opinion are "chopper" and "zap/zapper". Both words appear in the PGP messages.
- [2] Mr. Alkhalil opposes the application on the grounds that S/Sgt. Foster is not qualified to give the opinions sought and because he has failed to identify or disclose the basis for his opinion.
- [3] In the voir dire, S/Sgt. Foster testified that the word "chopper" can have multiple meanings, including a helicopter and a motorcycle but additionally can mean an assault rifle. He similarly testified that "zap/zapper" can also have multiple meanings but that in the context of the PGP messages in this case, "to zap" meant to use a PGP encrypted BlackBerry device and "zapper" was the device itself.

- [4] S/Sgt. Foster is currently employed by the Organized Crime Agency of British Columbia as the Non-Commissioned Officer in charge of the Combined Forces Special Enforcement Unit's covert asset team. The primary basis of his expert opinion is his extensive experience dealing with covert assets, including confidential informants, police agents, and cooperating witnesses. In the course of handling these assets, he came to acquire an understanding of some of the slang terms they used. S/Sgt. Foster did not document these conversations, nor does he have any notes recording when he learned about the meanings of the expressions in question. Legal basis
- [5] The test for the admissibility of expert opinion evidence is set out in *R. v. Abbey*, 2017 ONCA 640 at paras. 48-49:
- [48] The test may be summarized as follows: Expert evidence is admissible when:
- (1) It meets the threshold requirements of admissibility, which are:
 - a. The evidence must be logically relevant;
 - b. The evidence must be necessary to assist the trier of fact;
 - c. The evidence must not be subject to any other exclusionary rule;
 - d. The expert must be properly qualified, which includes the requirement that the expert be willing and able to fulfil the expert's duty to the court to provide evidence that is:
 - i. Impartial, ii. Independent, and iii. Unbiased.
 - e. For opinions based on novel or contested science or science used for a novel purpose, the underlying science must be reliable for that purpose, and
 - (2) The trial judge, in a gatekeeper role, determines that the benefits of admitting the evidence outweigh its potential risks, considering such factors as:
 - a. Legal relevance,
 - b. Necessity,
 - c. Reliability, and
 - d. Absence of bias.
- [49] In short, if the proposed expert evidence does not meet the threshold requirements for admissibility it is excluded. If it does meet the threshold requirements, the trial judge then has a gatekeeper function. The trial judge must be satisfied that the benefits of admitting the evidence outweigh the costs of its admission. If the trial judge is so satisfied then the expert evidence may be admitted; if the trial judge is not so satisfied the evidence will be excluded even though it has met the threshold requirements. DISCUSSION

- [6] I will begin by considering the threshold admissibility of the proposed expert opinion evidence. Threshold Admissibility
- [7] I am satisfied that the proposed evidence has relevance to the issues the jury must decide. For example, S/Sgt. Foster's evidence that "chopper" can refer to an assault rifle may assist the jury in interpreting some of the PGP messages from May 25, 2012 that the Crown contends relate to a plot to murder Suhkveer Dhak. It may also assist the jury in determining the identity of the user of the WrathOfTitans device, who the Crown submits is Dean Wiwchar. Some of these May 25 messages include the following:
- a) In message/conversation 24 from the Birdman device, WrathOfTitans states "I might get him in the car I have a chopper and 45";
 - b) In message/conversation 28, WrathOfTitans states "Ill have hand just in case keep the chopper on semi"; and
 - c) In message/conversation 34, WrathOfTitans states "I'm driving around with fake platers and a chopper for an hour bro".
- [8] The messages are found within a string of messages the Crown alleges reflects a plan to "blow" someone's "brains out". The target is referred to as "suk" or "tad". Moreover, at various times on May 25, 2012, Mr. Wiwchar was either seen by surveillance officers or captured on CCTV carrying a brown duffel bag that contained what a firearms expert described as a rifle that appeared similar to an AK-47.
- [9] As for the expression "zap" or "zapper", S/Sgt. Foster's opinion is that it can refer to an encrypted communication device is also relevant in assisting jurors interpret certain PGP messages; for example, a message from Sideswipe to DUBAI on January 17, 2012, "Habib my zappers down. []". As the Crown submits, to the extent Mr. Alkhalil, who it alleges was Sideswipe, argues to the jury that he did not use the Sideswipe device, this message could help explain to the jury that he used the device temporarily since his own zapper was down.
- [10] In my view, the officer's expert opinion evidence is necessary to assist the jury in understanding the meaning of "chopper" since such street slang is likely to be outside their ordinary experience and knowledge. While that is also the case with respect to "zap/zapper", I note that in admissions of fact signed by the parties in relation to Juanita Hyslop, who was formerly in a relationship with Mr. Wiwchar, there is reference to the fact that he had several encrypted BlackBerry's that he sometimes referred to as zappers. I therefore do not consider S/Sgt. Foster's opinion evidence as it relates to zap/zappers to be necessary.
- [11] As no exclusionary rule applies to the proposed evidence, I turn finally to whether S/Sgt. Foster is properly qualified.
- [12] S/Sgt. Foster acquired the special knowledge at issue on this application through direct interaction with covert assets for over 14 years, as well as another year working on project-based wiretap files and over 20 years of policing more generally. I accept that he has given a

presentation in this area to law enforcement groups, and also monitors social media sites that discuss current trends and matters in relation to organized crime, such as a blog called "Gangsters Out". I do not consider S/Sgt. Foster's lack of recordkeeping in regards to the use or meaning of the contested expressions to be problematic as it is simply not the type of information one would be expected to record. Finally, I do not find that S/Sgt. Foster displays a bias or is not impartial. He readily conceded that in the proper context, the word "chopper" could mean different things.

[13] In all of the circumstances, I am satisfied of the threshold admissibility of S/Sgt. Foster's expert opinion evidence as it relates to the meaning of the expression "chopper". As his evidence is not necessary for the jury to understand what is meant by zap/zapper given the Hyslop admissions of fact, I am not satisfied of its threshold admissibility in that regard.

Gatekeeping Role

[14] Although the proposed evidence meets the threshold requirements for admissibility as it pertains to the expression "chopper", I am ultimately not satisfied that the benefits of admitting the evidence, which are, in my view, modest, outweigh the cost of its admission. S/Sgt. Foster's professional experience is largely in the realm of organized crime and commodity-based trafficking, such as drugs and firearms, and it is in that context that he became familiar with the meaning of the contested expression. Given past rulings in these proceedings excluding evidence relating to gangs and organized crime, I am concerned about the potential prejudice that could arise from the introduction of this evidence. As a result, I decline to admit S/Sgt. Foster's proposed expert opinion evidence notwithstanding its threshold admissibility. "Maisonville J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/22/10/2022BCSC1045.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-alkhalil-2022-bcsc-1045>

Prepared on 28 October 2026 · Esheria