

CANADA / JUDGMENT

R. v. Dias

2023 BCSC 1384

COURT

Supreme Court of British Columbia

DECIDED

8 August 2023

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2023 BCSC 1384 R. v. Dias

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dias,

2023 BCSC 1384

Date: 20230808

Docket: 32027

Registry: Vancouver

Rex

v.

Garcia Ribeiro Dias

Before: The Honourable Justice MacNaughton

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Oral Reasons for Judgment

Application under s. 524 of the Criminal Code

Counsel for the Crown:

M. Myhre

Counsel for the Accused:

M. Ritzker

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 4, 2023

Place and Date of Judgment:

Vancouver, B.C.

August 8, 2023

[1] On August 4, 2023, both counsel for the Crown and for Garcia Dias called evidence and made submissions with respect to the Crown's application to have Mr. Dias's release order cancelled pursuant to s. 524 of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. These are my reasons for cancelling Mr. Dias's release order.

[2] On May 2, 2023, the date of which I most recently released Mr. Dias on the indictment he was facing, I set seven conditions of his release. Condition 6 provided:

You must remain inside your residence located at 306-376 West 10th Avenue, Vancouver, BC, at all times.

[3] Condition 6 permitted a number of exceptions. Those exceptions permitted Mr. Dias to be out of his residence on Mondays, Wednesdays, and Fridays between 11:00 a.m. and 1:00 p.m., so long as he stayed in an area bounded by Broadway to the north, 12th Avenue to the south, Ash Street to the West, and Columbia Street to the East. Mr. Dias was also permitted to leave his residence if going directly to or returning from a health care facility because of a medical emergency or scheduled doctor's appointment with the prior permission of his bail supervisor, or going directly to or returning from a scheduled court appearance. Finally, for compelling reasons only, he was permitted to leave his residence with the prior permission of his bail supervisor.

Y.L.'s Police Statement

[4] Y.L. reported to the police that on Tuesday, May 30, 2023, she saw Mr. Dias walking on Commercial Dr., with another man, between Kitchener and Grant Sts. In her report, she described the man Mr. Dias was walking with, the clothing Mr. Dias was wearing, the direction in which they were walking (towards 1st Avenue), and where she was coming from and going to.

- [5] Y.L. said that she was approximately 20 feet from Mr. Dias, her view of him was not obstructed, and he was walking on the right side of Commercial Dr. She described that there was no traffic at the time, and she slowed down to look at him. She said she parked her car and went back to see if she could find out where Mr. Dias was going, but was unable to locate him.

Evidence at the Hearing

- [6] Y.L. testified that she first saw Mr. Dias from the back but, as she slowed down, almost to a stop, she was able to see him clearly, demonstrating that she did so with a sideways look over her right shoulder.
- [7] She was cross-examined about the credibility of her evidence, particularly as it related to traffic conditions, and pedestrian traffic, on Commercial Dr. at 5:45 p.m., and her ability to observe Mr. Dias. She remained firm in her evidence.
- [8] Mr. Dias also testified. He did not contradict Y.L.'s evidence and, in fact, appeared to have very little recall of events on May 30, 2023. He said he had not been on Commercial Dr. since Y.L. and her daughter had seen him on Commercial Dr. on an earlier occasion. He testified that he did not go to Commercial Dr. again after that.
- [9] In cross-examination, Mr. Dias said that after he was released on conditions on May 2, 2023, he did not go out. He described that, if he needed to go to the bank, he got permission from his bail supervisor and that he thought he had done so every month. At one point in his evidence, he said that he believed he had been given permission to be on Commercial Dr. about three or four times since his release on May 2, but was not sure. Later, he said he could not recall whether he had been on Commercial Dr. in May 2023. He agreed that he and his friend "Johnny" liked to spend a lot of time at Joe's Café but could not recall whether he had been there since May 2.
- [10] Mr. Dias also called evidence from Johnny Belmiloud, his friend of 20 years. They had worked together in Northern Alberta before Mr. Dias retired. Mr. Belmiloud sees Mr. Dias frequently.
- [11] Mr. Belmiloud testified that, since Mr. Dias was "punished" for breaching his release conditions, he explained to Mr. Dias the times when he was permitted to go out and drew out on a map the restricted area beyond which Mr. Dias was not permitted to travel. He says that Mr. Dias now understands, suggesting that Mr. Dias did not understand earlier.
- [12] Mr. Belmiloud explained that he was assisting Mr. Dias with various tasks like taking him grocery shopping or to doctor's appointments or the bank. He also assisted in getting permission from Mr. Dias's bail supervisor to attend various appointments.

- [13] Mr. Belmiloud testified that he was with Mr. Dias on May 30, 2023, and he did not take him to Commercial Drive. He took him grocery shopping and was with him until about 3:30-3:45 p.m., after which Mr. Belmiloud went to his own home on the Kingsway.
- [14] In cross-examination, Mr. Belmiloud agreed that he was aware that Mr. Dias was arrested on June 18, 2023, for breach of his conditions. Mr. Dias was arrested on June 18 and released the following day.
- [15] Based on Mr. Dias's bail supervisor's records, which were admitted by agreement between counsel, after the May 2 conditions were put in place, the first time that Mr. Dias obtained permission to go outside his restricted area was on June 20. He also asked for and obtained permission to do so on June 21, July 10, and twice on July 31, 2023. There were no requests for permission prior to June 20. This is consistent with Mr. Belmiloud's evidence that Mr. Dias learned a lesson after his arrest.
- [16] Mr. Belmiloud was cross-examined about why he was certain about the time he spent with Mr. Dias on May 30. He agreed that he had seen Mr. Dias at least 25-30 times since then. Although Mr. Belmiloud was able to recall the events of May 30 with certainty, he was less certain about other dates.
- [17] In cross-examination, Mr. Belmiloud said that he was Mr. Dias's closest friend. He had recently sought permission from Mr. Dias's bail supervisor to take him to a notary public so that he could become Mr. Dias's power of attorney to better understand the legal proceedings.

Applicable Test

- [18] Section 524 of the Code sets out the process for applications to cancel a previous release order. As it applies to this case, s. 524(3) provides that a judge or justice who hears the matter shall cancel the release order if the court finds:
- (a) that the accused has contravened or had been about to contravene the ... release order;
- [19] Cancellation of the release order is mandatory when a judge makes a positive finding that there has been a contravention of it.

Conclusion

- [20] Having considered the evidence and the submissions, I am satisfied that the Crown has established that Mr. Dias contravened the May 2, 2023 release order by being outside of the geographically restricted area on May 30, 2023, without his bail supervisor's permission.

Analysis

- [21] Y.L. was unshaken in cross-examination. She was, in my view, extremely unlikely to be mistaken in her identification of Mr. Dias, whom she had known well for 20 years and was hypervigilant about. She was certain it was him. She described that he was wearing beige pants, a jacket, and a hat, which she said was his usual attire. She observed Mr. Dias with another man on Commercial Dr. within a few blocks of Joe's Café, a place Mr. Dias and Mr. Belmiloud liked to frequent. I accept her evidence that the circumstance that presented on May 30 were such that she could reliably identify Mr. Dias.
- [22] Counsel for Mr. Dias suggested to Y.L. in cross-examination that it was unlikely for there to have been no traffic on Commercial Dr., on that date and at that time, but she was adamant that was the case. Even busy streets at busy times have lulls in the traffic. In any event, the only evidence I have about traffic conditions on May 30 is Y.L.'s. For Y.L. to have been able to slow down to take a look at Mr. Dias as she described, there must have been no traffic at the time.
- [23] Mr. Dias was unable to contradict Y.L.'s evidence.
- [24] Mr. Belmiloud testified that Mr. Dias learned his lesson when he was arrested for breaching the conditions of his release. Following Mr. Dias's arrest on June 18, he has complied with the conditions. The events that form the basis of the Crown's s. 524 application predated his arrest. If, as Mr. Belmiloud suggested, Mr. Dias did not understand his conditions until they were explained to him and drawn out on a map, it is possible that he travelled outside his geographical restrictions on more than one occasion.
- [25] In my view, Mr. Belmiloud's recollection of events on May 30 was not reliable. It was not probable that Mr. Belmiloud would recall with such precision what he did with Mr. Dias on May 30, and at what times, because since then he had seen Mr. Dias at least 25-30 times. There was nothing memorable or remarkable about May 30 to cause it to stand out. May 30 was a Tuesday, a date on which Mr. Dias required permission to be outside his residence, and based on communication from his bail supervisor, no request for permission was made that day or any day prior to June 20.
- [26] Having found that there are reasonable grounds to believe Mr. Dias breached the terms of his release, I am satisfied that the Crown has met the requirement of s. 524(3)(a).
- [27] Accordingly, Mr. Dias's release is cancelled, and he is ordered detained, subject to him satisfying this Court that his detention is no longer justified under s. 515(10).

"MacNaughton J."

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Prepared on 29 October 2026 · Esheria