

CANADA / JUDGMENT

R. v. Do

2026 BCSC 24

COURT

Supreme Court of British Columbia

DECIDED

8 January 2026

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2026 BCSC 24 R. v. Do IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Do, 2026 BCSC 24 Date: 20260108 Docket: 37206 Registry: Vancouver Rex v. Manh Cong Do Before: The Honourable Madam Justice Murray On appeal from: An order of the the Provincial Court of British Columbia, dated November 6, 2024 (HMTK v. Do, (November 6, 2024), Vancouver (Robson Square), 38776-1) Reasons for Judgment Counsel for the Crown: C. Armstrong The Appellant, appearing in person: M.C. Do Place and Date of Hearing: Vancouver, B.C. November 3, 2025 Place and Date of Judgment: Vancouver, B.C. January 8, 2026

Introduction

- [1] Mr. Do is the registered owner of property located on Rupert Street in Vancouver (the "Property"). His mother lives in the house.
- [2] In March 2021, the City of Vancouver (the "City") became involved with Mr. Do regarding alterations to the Property that he had completed without the necessary building permits - new walls had been constructed converting the living and dining rooms into bedrooms and a canopy had been added to the rear deck.
- [3] Beginning in 2021, Mr. Do made a number of unsuccessful attempts to obtain the required permits. The City repeatedly rejected his applications, saying that they required further information. Throughout the over three years it took him to get the necessary permits, Mr. Do communicated often with officials at the City, including Property Use Inspector Mark Reed, attempting to clarify what the City required from him.
- [4] On April 18, 2023, Mr. Reed issued an order that Mr. Do apply for permits within 30 days or remove the work. Mr. Do failed to comply with the order and was charged with the three breaches of municipal bylaws between May 19, 2023 and May 25, 2023:
 - 1. Count 1: failing to comply within the time prescribed in an order, contrary to a specified section of Vancouver Building Bylaw 12511;
 - 2. Count 2: failing to obtain required building permits contrary to a specified section of Vancouver City Zoning Bylaw 3575; and

3. Count 3: continuing to use or occupy any land or building in which development had taken place without a valid permit, contrary to Vancouver City Zoning Bylaw 3575.
- [5] After he was charged Mr. Do continued to try to get the permits. Finally on October 23, 2024, after several more attempts, Mr. Do successfully obtained the building permits.
- [6] The prosecution continued.
- [7] The trial took place November 6, 2024, in Provincial Court in Vancouver before Judicial Justice Osborn, who found Mr. Do guilty of all three breaches and fined him a total of \$6,000.
- [8] Mr. Do appeals the convictions on four grounds:
- 1) Material misapprehension of evidence by the trial judge;
 - 2) Violation of Crown disclosure obligations;
 - 3) Unreasonable verdict; and
 - 4) Abuse of process.
- [9] In addition, Mr. Do seeks to enter fresh evidence on this appeal, namely emails he exchanged with City Inspector Reed that, in Mr. Do's submission, show that Mr. Reed was not being forthright in his testimony at trial.

Issues

- [10] In my view this appeal comes down to 2 main issues:
1. Did Mr. Do get a fair trial; and
 2. Was the Judicial Justice's decision reasonable?
- [11] For the reasons below I find that the answer to both of these questions is no.
- [12] Given these findings, it is not necessary to consider the other grounds of appeal. Neither is it necessary to consider the fresh evidence motion.
- [13] I will explain the reasons for my conclusions on what I find to be the two main issues in turn. Did Mr. Do get a fair trial?
- [14] The right to a fair trial is protected by Section 11(d) of the Charter. The right to a fair trial encompasses both the right to make full answer and defence and the right to cross-examine witnesses, both of which are also principles of fundamental justice. No accused is entitled to a perfect trial but the question that must be asked, when an intervention at trial may have resulted in trial unfairness, is whether the accused "might reasonably consider that [they] had not had a fair trial or whether a reasonably minded person who had been present throughout the trial would consider that the [appellant] had not had a fair trial": R. v. Redden, 2021 BCCA 230, at para. 102, citing R. v. Valley, 1986 CanLII 4609 (ON CA). Effective cross examination lies at the core of a fair trial: R. v. Henry, 2005 SCC 76, at para. 3.

- [15] I find that Mr. Do was not afforded a fair trial for three main reasons.
- [16] First, I find that Mr. Do's cross examination was unfairly curtailed which affected his right to make full answer and defence. Counsel for the City constantly interrupted Mr. Do's cross examination of the City's sole witness, City Inspector Reed, with questions and objections. The Judicial Justice never gave Mr. Do an opportunity to respond to the objections of counsel for the City before sustaining them. Further, in holding that the majority of the objected to questions were irrelevant, the Judicial Justice failed to consider whether the questions went to the defence of due diligence, which, in my view, the majority did.
- [17] Second, the Judicial Justice failed to give Mr. Do the opportunity to call evidence in his defence. At the end of Mr. Reed's evidence, the Judicial Justice turned to Mr. Do and said: "Mr. Do, is there anything else that you want to say in submissions before I decide?" When Mr. Do sought clarification as to what the Judicial Justice meant, the Judicial Justice said "just stating your position your position with respect to these allegations that you didn't have a permit on the time described in the Information".
- [18] Mr. Do then made some submissions. He did not take the witness stand. Nor was he sworn in or affirmed. After his submissions, he was not asked if he had any evidence to call or exhibits to file.
- [19] Lastly, after Mr. Do's "submissions", counsel for the City filed more exhibits. Mr. Do was not asked if he objected to the exhibits being marked, nor was he given an opportunity to respond to the exhibits. Counsel for the City made no closing submissions. The Judicial Justice then proceeded immediately into her reasons for judgment.
- [20] Overall, the transcript shows that Mr. Do was hurried through a trial in which the Judicial Justice failed to follow proper trial procedure. Mr. Do was not given the opportunity to present evidence and was constantly interrupted and cut off.
- [21] A miscarriage of justice can be based on irregularities in the trial process. If the court is satisfied that an irregularity or error led to a denial of a fair trial for the appellant, an appeal may be allowed based on a miscarriage of justice: *R. v. Khan*, 2001 SCC 86, at para. 27.
- [22] I am satisfied that the irregularity of the trial process led to the denial of a fair trial for Mr. Do and constitutes a miscarriage of justice. Was the Judicial Justice's decision reasonable?
- [23] Pursuant to s. 686(1)(a) of the Criminal Code, the Summary Conviction Court may allow an appeal where it is of the opinion, inter alia, that the verdict is unreasonable or cannot be supported by the evidence.

- [24] The test to determine whether a verdict is unreasonable is whether, on the whole of the evidence, "the verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered": *R. v. Yebe*, [1987] 2 S.C.R. 168; *R. v. Biniaris*, 2000 SCC 15, at para. 36. The appeal judge must consider the trial judge's reasons and may examine and reweigh the evidence to a limited extent, to determine whether the trial judge's decision was unreasonable: *R. v. Burns*, [1994] 1 S.C.R. 656.
- [25] However, due deference must be given to the factual findings of a trial judge: *Housen v. Nikolaisen*, 2002 SCC 33, at paras. 22 and 24. The appeal court must not retry the case or substitute its view of the evidence for that of the trial judge: *R. v. M.B.*, 2006 BCCA 465, at para. 6.
- [26] A judge's reasons, when being assessed on appeal, must be considered in the context of the case and the live issues at trial: *R. v. Sheppard*, 2002 SCC 26, at paras. 42. The reasons must permit meaningful appellate review: *R. v. G.F.*, 2021 SCC 20. It must be discernible what the judge decided and, crucially, why: *G.F.*, paras. 71-73.
- [27] I find that the Judicial Justice's decision was unreasonable for several reasons:
1. The Judicial Justice failed to weigh the evidence and explain why she preferred the evidence of Mr. Reed over the explanation of Mr. Do;
 2. The Judicial Justice misstated or misunderstood key evidence;
 3. The Judicial Justice failed to consider Mr. Do's defence of due diligence; and
 4. The reasons for judgment were inadequate as they failed to explain how the Judicial Justice reached their verdict.
- [28] I will expand on these points.
- [29] Mr. Do told the court, in his "submissions", that he had made nine separate submissions to the City before April 13, 2023 and had, on the advice of Mr. Reed, applied to the Board of Variance (the "BOV"). He also explained to the Judicial Justice that he believed that the Order he was charged with disobeying meant that he needed to go to the BOV within 30 days. He tried to expedite his BOV hearing to meet the deadline. All this evidence is relevant to his defence of due diligence.
- [30] In the reasons for judgment, the Judicial Justice found that Mr. Do was confused about the BOV and that Mr. Reed "cleared up" the confusion. The problem is that the Judicial Justice did not explain how or why they came to this conclusion. Reaching that conclusion involved preferring Mr. Reed's evidence to that of Mr. Do's. As outlined above, the Judicial Justice never gave Mr. Do an opportunity to give evidence. It is unclear whether this is why, in the reasons for judgment, there is no weighing of the evidence of Mr. Reed and (the submissions of) Mr. Do. The Judicial Justice simply accepted Mr. Reed's evidence. It was open to the Judicial Justice to prefer Mr. Reed's evidence but reasons for doing so were required. I pause to note that Mr. Reed's evidence with respect to Mr. Do's efforts to obtain a

building permit was vague. He did not know when Mr. Do made his first application. Nor did he know how many applications Mr. Do made or when.

- [31] Further the Judicial Justice was mistaken about when Mr. Do applied to the BOV. In the reasons, the Judicial Justice stated that, while it was open to Mr. Do to apply to the BOV, he did not do so until after the charges. That was not the evidence. The application to the BOV was well in the works before the charges.
- [32] Additionally, and more importantly, the Judicial Justice failed to consider Mr. Do's defence of due diligence. All the charges are strict liability offences for which Mr. Do, as the property owner, is liable unless he can demonstrate due diligence to absolve himself: *R. v. Sault Ste. Marie (City)*, [1978] 2 S.C.R. 1299.
- [33] Due to the fundamental errors in the Judicial Justice's decision making and the inadequacy of the reasons for judgment, I find the Judicial Justice's decision unreasonable.

Conclusion

- [34] For the reasons above I allow the appeal and quash the convictions.
- [35] The usual order is to send the matter back for a new trial. However, in this case there are many reasons why that would be unjust.
- [36] Mr. Do has been dealing with this permit issue since 2021. The process has impacted him emotionally, consuming much of his time and energy. It has also cost him financially. For example he had to pay \$2505 to file an application with the BOV, which he ultimately did not get to appear before. Plus, the necessary permits were issued before the trial.
- [37] Taking into consideration all of those factors I am satisfied that the interests of justice require a final resolution to this matter.
- [38] Verdicts of acquittal shall be ordered on all counts.
- [39] In conclusion, the appeal is allowed. Convictions are quashed on all three counts and verdicts of not guilty are entered. "Murray J."

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