

CANADA / JUDGMENT

R. v. Hernandez

2008 BCSC 1473

COURT

Supreme Court of British Columbia

DECIDED

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2008 BCSC 1473 R. v. Hernandez IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Hernandez, 2008 BCSC 1473 Date: 20080807 Docket: 23905 Registry: Vancouver Regina v. Jose Hernandez, Anh The Nguyen, Joshua Poncappo, Sam Tuan Vu & Van Van Vu Ban on Disclosure 486.5(1) C.C.C. Inherent Jurisdiction Pursuant to s. 486.5(1) of the Criminal Code, there is a ban on the publication in any document or the broadcast or transmission in any way of any information that could identify the witnesses, identified in these proceedings as "Witness X" and "Witness Y". They are to be referred to as Witness X and Witness Y in any publication. There is a statutory ban, as well as a ban pursuant to the inherent jurisdiction of the Court, on the publication in any document or broadcast or transmission in any way of any information that could identify the person referred to in these Reasons as "Mr. Z". He may be referred to as Mr. Z in any publication. Before: The Honourable Mr. Justice Silverman Oral Ruling on Application to Reopen Wiretap Voir Dire August 7, 2008 Counsel for the Crown K. Murphy, S. Black & E. Duncan Counsel for the Accused Hernandez L. Smith Counsel for the Accused Nguyen K. Bastow Counsel for the Accused Poncappo D. Kontou Counsel for the Accused Sam Vu C. Corriveau Counsel for the Accused Van Vu J. Whysall Place of Trial: Vancouver, B.C.

- [1] THE COURT: I am against you on this Ms. Corriveau. We will not reopen the evidence and permit those witnesses to be called. There are two reasons for that. The second one being more important than the first, but I will note them both in any event.
- [2] The first reason is that this material, the notes which you suggest form the basis for further inquiry, is material which has been in your possession for a long time, I think last December. I realize that there were mountains of material and some things may have skipped various counsel's attention or consideration or at least simply not recognized that it might be of significance. I understand that you acknowledge that and effectively say your client should not suffer as a result of what might be an oversight on your part, these apparently having only come to your attention and the significance that they have, I gather, yesterday.

- [3] They were nevertheless in your possession at the time we were going through the voir dire and it may be that you will have attempted to use them at that time if you had been aware of them to cross-examine various officers, and whether or not I would have permitted it at that time is something I do not need to deal with now.
- [4] It certainly would have been in my view questionable even then, and that is because of the second reason, and the more important reason, why I am not permitting it. The investigation you wish to embark upon simply does not have relevance to this voir dire involving your client here, or frankly any of the five accused.
- [5] The suggestions of wrongdoing that one might infer had occurred when reading the notes I have been handed are troubling. I quickly add that they are only notes, they are notes based on hearsay. It may well be that there is more to them, but certainly superficially they are troubling. Having said that, they are completely restricted to a person who is not an accused here before me, Mr. Tuan Nguyen. They deal with police conduct towards him.
- [6] I understand your argument that if the conduct is as one might infer from these notes, then it is very unfavourable conduct when viewing the police. It would bear heavily on my view on any 24(2) issue, if we were dealing with a Charter issue and an admissibility question with respect to Tuan Nguyen, against whom the apparent conduct was committed. There is no suggestion in the notes, nor anywhere else that you have mentioned, of such conduct towards your client or towards any of the other accused. I note that there were no questions in cross-examination of any of the officers who were called which might suggest that you had reason to suspect that there might have been such conduct towards your clients. When I say that I mean that notes are one source of receiving information from which one determines the course of cross-examination that will be pursued, but there are other sources. It may be that your not asking questions relating to your client about this sort of conduct indicates, it just may be, that there are no sources from which you had any such information, and that the only source from which you now think that might spring is what happened to Tuan Nguyen.
- [7] In my view that just does not get you there. Even if it is all true, even if it came out in the worst possible light about the police conduct towards Mr. Nguyen, it would not assist your client or any of the five here when it comes to the questions of good faith or any other aspects of breaches of the Charter or of 24(2).
- [8] So your application to have those witnesses called, or have me call them, or to reopen the voir dire for the purpose of doing that is denied. "A. Silverman J."

The Honourable Mr. Justice Silverman

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