

CANADA / JUDGMENT

R. v. Lawson

2019 BCCA 109

COURT

British Columbia Court of Appeal

DECIDED

26 March 2019

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

2019 BCCA 109 R. v. Lawson COURT OF APPEAL FOR BRITISH COLUMBIA Citation: R. v. Lawson, 2019 BCCA 109 Date: 20190326 Docket: CA44027 Between: Regina Respondent And Keith David Lawson Appellant Before: The Honourable Madam Justice Stromberg-Stein The Honourable Mr. Justice Willcock The Honourable Madam Justice Fisher On appeal from: An order of the Supreme Court of British Columbia, dated May 4, 2016 (R. v. Lawson, Vancouver Docket 26576). Oral Reasons for Judgment The Appellant, appearing in person: K.D. Lawson Counsel for the Respondent: M.A. Erina S. Manery Place and Date of Hearing: Vancouver, British Columbia March 26, 2019 Place and Date of Judgment: Vancouver, British Columbia March 26, 2019 Summary: Mr. Lawson, who was an educator with the Paradigm Educational Group, appeals from his convictions on several counts of tax-related offences, including tax evasion, on the basis that the trial judge erred in her charge to the jury. At trial, Mr. Lawson argued that he had owed no taxes under the Income Tax Act and the Excise Tax Act because his earnings were all from a self-described "personal endeavour." The trial judge rejected Mr. Lawson's interpretation of the relevant law and refused to put a mistake-of-law defence to the jury, reasoning that the defence had no "air of reality." Held: Appeal dismissed. The trial judge committed no errors in her jury charge that warrant appellate intervention. The tax theory that Mr. Lawson sought to rely upon was wrong at law and rested upon the selective reading of legislation and jurisprudence. The trial judge thus did not err in declining to put this theory to the jury.

[1] STROMBERG-STEIN J.A.: On May 4, 2016, the appellant, Keith David Lawson, was convicted by a jury on four counts of tax-related offences:

- (1) counselling to commit fraud, contrary to s. 464(a) of the Criminal Code, R.S.C. 1985, c. C-46;
- (2) tax evasion, contrary to s. 239(1)(d) of the Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.) (the "ITA");
- (3) making false tax return statements, contrary to s. 239(1)(a) of the ITA; and
- (4) evading compliance with the Excise Tax Act, R.S.C. 1985, c. E-15, contrary to s. 327(1)(c) of that Act.

- [2] Mr. Lawson sets out a number of grounds of appeal in his factum, claiming the trial judge erred by:
1. entering pleas of "not guilty" when he says he did not understand the charges;
 2. leaving the question of whether he received an "income" to the jury because:
 - a. this is a question of law for the trial judge;
 - b. she did not instruct the jury that not all monies received are taxable;
 - c. she did not instruct the jury on the "source of income" test from *Stewart v. Canada*, 2002 SCC 46, to determine whether money received is taxable income; and/or
 - d. she provided an incorrect, vague, or ambiguous definition of "income";
 3. leaving the jury with the question of whether he received a "profit" because this is a question of law or mixed fact and law; and
 4. instructing the jury that they could not consider his intention to engage in a personal endeavour by way of private contract.
- [3] I would re-state Mr. Lawson's main grounds of appeal as follows:
1. whether the trial judge erred in entering a plea of "not guilty";
 2. whether the judge erred by leaving questions of law or questions of mixed fact and law with the jury in respect of matters related to the definitions of "income" and "profit"; and
 3. whether the judge erred in not putting Mr. Lawson's "personal endeavour" defence to the jury.
1. Did the judge err in entering a plea of not guilty?
- [4] On April 7, 2016, Mr. Lawson appeared in court. He asserted that he was a private person, attending by "conditional special appearance under continuing objection for lack of jurisdiction." The clerk read the charges and asked Mr. Lawson how he was pleading. To each count, Mr. Lawson responded that he could not plead because he did not understand the charges. He said he had objections that were not addressed and that certain charges included terms that he took issue with. The trial judge accepted Mr. Lawson's responses as deemed not guilty pleas to each count.
- [5] Section 606(2) of the Code permits a judge to enter a plea of "not guilty" where "an accused refuses to plead or does not answer directly." Mr. Lawson admits that he pleaded neither "guilty" nor "not guilty" to the charges in question. Mr. Lawson's responses clearly fall within the ordinary meaning of "does not answer directly".
- [6] In my view, there is no merit to this ground of appeal.

2. Did the judge err by leaving questions of law or questions of mixed fact and law with the jury in respect of matters related to the definitions of "income" and "profit"?
- [7] Mr. Lawson's submissions about the judge's instructions on the meaning of "income", "source of income", and "profit" are without merit. The judge properly instructed the jury on the elements of each offence, and properly left the jury with the task of finding the facts and determining whether they were satisfied that each element had been proven and that each charge had been proven by the Crown beyond a reasonable doubt.
3. Did the judge err in not putting Mr. Lawson's "personal endeavour" defence to the jury?
- [8] Mr. Lawson was an educator with the Paradigm Educational Group ("Paradigm"). Paradigm claimed to have arrived upon a method for individuals to structure their finances so that they could, legally, not pay income taxes. The basic premise, as taught by Paradigm educators to their students, was that the ITA does not apply to money received under a contract if the receiver describes themselves as a "natural person" and structures their affairs with the person or company for whom they are working in a particular way -- for instance, as a contract for hire.
- [9] At trial, Mr. Lawson did not rely solely on the "natural person" theory, which has been soundly rejected by the courts: see, for instance, *R. v. Klundert*, 2008 ONCA 767 ("Klundert #2"). He also invoked the Supreme Court of Canada decision of *Stewart* in support of his contention that he had received, or believed he had received, no "income" for the purposes of the ITA and the Excise Tax Act. He maintained that he had intended his activities to be a personal endeavour and not a business, for which reason these activities did not count as a source of income. Mr. Lawson said that he had private contracts with students under which they compensated him for his labour and that the amounts received under these contracts were, therefore, private property rather than income. He said he used these funds to support himself and his family.
- [10] It appears that Mr. Lawson's tax avoidance strategy developed as follows. At some point, he realized that the original Paradigm theory, according to which the ITA fails to apply to individuals qua "natural persons," would not succeed in the courts. He accordingly devised a new theory that sought to exploit the possibility of the mistake-of-law defence contemplated by the Ontario Court of Appeal in *R. v. Klundert* (2004), 242 D.L.R. (4th) 644 ("Klundert #1"). Unlike the pseudo-legal arguments at issue in *Klundert #1* and *Klundert #2*, however, Mr. Lawson's revised theory rested on a purported mistake as to the definition of "income" rather than the jurisdictional application of the ITA -- in particular, that "income" does not include moneys earned from self-described hobbies or personal endeavours. I can see no error in the trial judge's treatment of income, which in our view is consistent with *Stewart*.
- [11] The trial judge refused to leave with the jury the limited defence of mistake of law on the basis there was no air of reality to this defence. Relying on the reasoning in *Klundert #1*, the judge found that Mr. Lawson's mistaken belief that the ITA is invalid or otherwise not applicable to his conduct was irrelevant to whether or not the fault requirement was met on

the charges. Further, the trial judge found that even if the defence could apply, Mr. Lawson was aware of, possessed, and taught case law that contradicted his theory that he did not have to pay tax.

- [12] In my view, the judge did not err in rejecting the defence of mistake of law. The Paradigm theory is founded on the erroneous and selective reading of legislation and jurisprudence. It has been revised over time, evolving in response to unfavourable rulings in the case law. It is a bogus, nonsensical theory. In my view, the judge committed no error in not putting Mr. Lawson's "personal endeavour" defence to the jury. In the words of MacFarland J.A. in *Klundert #2* at para. 20, "this kind of mistake of law is irrelevant to the fault requirement of the charge of tax evasion." Additional Issues
- [13] Mr. Lawson has raised a number of other complaints about the content and sufficiency of the jury charge. In my view, none of these complaints have any merit.
- [14] As well, Mr. Lawson has argued the judge failed in her duty to him as an unrepresented litigant. While the judge has a duty to ensure that all possible defences are put to the jury, this only includes those defences that have an air of reality. There is no merit to Mr. Lawson's complaint that he did not get a fair trial.

Conclusion

- [15] In my view, the judge committed no errors in fact or law and made no errors in her jury charge warranting appellate intervention.
- [16] I would dismiss the appeal.
- [17] WILLCOCK J.A.: I agree.
- [18] FISHER J.A.: I agree. [Discussion with appellant and counsel re: sentence appeal]
- [19] STROMBERG-STEIN J.A.: The sentence appeal will be heard on May 27, 2019, for two hours. Mr. Lawson is to file and serve his sentencing statement by May 6, 2019. The Crown will file and serve their response by May 13, 2019. Mr. Lawson will surrender himself at 9:00 a.m. on May 27, 2019. Bail is granted pending sentence appeal. [Discussion with appellant and counsel re: sentencing transcripts]
- [20] STROMBERG-STEIN J.A.: The matter is referred to case management on April 3, 2019, at 9:30 a.m. "The Honourable Madam Justice Stromberg-Stein"

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/ca/19/01/2019BCCA0109.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-lawson-2019>

Prepared on 29 October 2026 · Esheria