

CANADA / JUDGMENT

R. v. Lee

2002 BCSC 1934

COURT

Supreme Court of British Columbia

DECIDED

19 December 2002

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

2002 BCSC 1934 R. v. Lee

Citation:

R. v. Lee

Date:

20021219

2002 BCSC 1934

Docket:

CC010051

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Ruling on Bail Application by Defendant Lee

The Honourable Mr. Justice Cullen

December 19, 2002

HER MAJESTY THE QUEEN

AGAINST

SEE CHUN LEE

CHUK FONG TAO

Counsel for Crown

M. Devlin

Counsel for Defendant Lee

P. Leask, Q.C.

D. Jevning

Counsel for Defendant Tao

D. Sokol

Place and Date of Hearing:

Vancouver, B.C.

December 19, 2002

BAN ON PUBLICATION 648 AND 517 CCC

- [1] THE COURT: See Chun Lee applies for a judicial interim release pursuant to s. 523(2)(a) of the Criminal Code. He is before the court on an indictment charging him with a variety of counts relating to the importation of some 93 kilograms of heroin, said to have a street value of around \$17 million.
- [2] Mr. Lee was arrested on September 2nd, 2000, the same day the heroin was seized from a container located in a warehouse in Burnaby. He has been in custody continuously since that time, having four times previously unsuccessfully applied for his release.
- [3] This matter is not yet set for trial. It is hoped that it will be accomplished today.
- [4] Thus far, something in the order of 120 days of court time have been consumed by a voir dire relating, to the admissibility of intercepted private communications -- which concluded on December 5th, 2002, and, as well, some time relating to the taking of commission evidence from Ho Gou Din, a former co-accused whose charges were judicially stayed.
- [5] It is uncontroversial that the ground governing Lee's ongoing detention to date is the tertiary ground set forth in s. 515(10)(c), which reads as follows:

For the purposes of this section, the detention of an accused in custody is justified only on one or more of the following grounds:

- (c) on any other just cause being shown and, without limiting the generality of the foregoing, where the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the prosecution's case, the gravity of the nature of the offence, the circumstances surrounding its commission and the potential for a lengthy term of imprisonment.
- [6] In *Hall v. The Queen*, [2002] S.C.C. 641, the words, "on any other just cause being shown, and without limiting the generality of the foregoing," were struck out of that section as being unconstitutional, leaving the balance of the provision intact as the tertiary ground justifying detention.

- [7] The accused initially sought his release on September 29th, 2000, before Bruce P.C.J. She ordered him detained on the primary and tertiary ground.
- [8] On November 24th, 2000, the accused applied for a review of his bail before Dohm, A.C.J., under s. 520 of the Criminal Code. In dismissing the application, the Associate Chief Justice emphasized the dominance of the tertiary ground in his determination of the matter.
- [9] On January 11th, 2001, the Crown proceeded by direct indictment against Lee and six others. Since then, four of the six have pleaded guilty to some counts on the indictment and have been sentenced, and, as mentioned, the charges against Ho were judicially stayed, leaving Mr. Lee and Tao, Chuk Fong facing trial on the offences before the court.
- [10] The accused next applied for bail before Chamberlist J. on March 22nd, 2001. Chamberlist J. denied bail to the accused, relying on the tertiary ground and also finding related significance in evidence of Lee's apparently continuing interest in involvement with other heroin importations, and in evidence of what Chamberlist J. described as his extended functioning away from his family ties in B.C. It was Chamberlist J.'s view that, although that evidence was not sufficient to engage the primary or secondary ground, it did constitute circumstances requiring consideration under s. 515(10)(c), that is, the tertiary ground.
- [11] Before Chamberlist J., it appears that counsel for the applicant emphasized innocent interpretations that could be put on the intercepted private communications relied on by the Crown in constituting its case, and also suggested that, in any event, the authorizations giving rise to the interceptions would be vigorously attacked in proceedings prior to trial. Notwithstanding those submissions, Chamberlist J. found that the Crown had a substantial case against the accused based on "the interceptions, the interrelationships with Ho and others charged as co-conspirators." It is evident from his reasons that he also found evidence that Ho, from Vancouver, sent Lee, in Hong Kong, a quantity of Canadian and U.S. money which Lee converted to nearly \$1 million Hong Kong, and that Ho's wife was used as courier for that money not long before the heroin at issue was imported into Canada, that Lee had about 10 cell phones associated to him, and that large quantities of cash were found in his house, discordant with his reported income, when the police executed their search warrants, and those circumstances contributed to the strength of the Crown's case.
- [12] Mr. Lee brought an appeal from Chamberlist J.'s decision to the Court of Appeal pursuant to s. 680 of the Criminal Code. It was heard and dismissed on August 14th, 2001. In the course of submissions before the Court of Appeal, it is evident that counsel for the appellant put forward the defence position that there was an innocent explanation for the intercepted communications and that an innocent explanation for the transfer of money from Ho, in Vancouver, to Lee, in Hong Kong, would be advanced. Notwithstanding those submissions, the Court of Appeal found no error in Chamberlist J.'s disposition of the application before him or his consideration of the presumption of innocence.

- [13] The essence of the applicant's position before me is that there has been an alteration in the circumstances of the case such that detention under the tertiary ground is no longer justified. In particular, counsel for the applicant submits that the testimony of Ho taken on Commission attenuates the Crown's case. It is his submission that, as an objective matter, the Crown's case has less substance, given the explanation Ho has given with regard to the various intercepted calls relied on by the Crown as evidence of Lee's involvement with the heroin importation issue and with his evidence that Lee had no such involvement.
- [14] Counsel submits, at this stage, any assessment of Ho's credibility is premature and out of context, but the fact that he has testified, as he did, in effect, crystallizes the submissions made before Chamberlist J. and the Court of Appeal that evidence of innocent explanations for the intercepted calls, the exchange of money, and the associations among the apparent co-conspirators would be tendered.
- [15] Mr. Leask for the applicant submits, in effect, that the fact such evidence actually exists in concrete form, as opposed to representations of counsel, constitutes a material change in the circumstances underlying the tertiary ground, principally relating to the strength of the Crown's case. He submits that if all the facts, including the fact that Ho testified and offered innocent explanations of Lee's apparent involvement with the offences at bar, were known to a reasonable person, that person would not lose confidence in the administration of justice if the applicant were to be admitted to bail.
- [16] Ms. Devlin for the Crown submits that the fact of Ho's testimony by itself does not substantially weaken the Crown's case from what it was on any of the previous occasions when Lee sought his release before the various courts that he did. The Crown submits, in effect, the bare fact that Ho uttered the exculpatory explanations is, without a searching assessment of the credibility of his evidence, having regard for his inconsistencies, his propensity for deceit, his self-interest, and the evidence on the case as a whole, of no more effect than counsel's representations that an innocent explanation would be advanced for the various pieces of incriminatory evidence.
- [17] Ms. Devlin also submits that whatever weight is given to the applicant's position by virtue of the fact that Ho has testified is countered by the fact that there is no longer any issue as to the admissibility of the intercepted communications which the Crown relies on in its case.
- [18] Counsel for the Crown submits the strength of the Crown's case is bound up in the weave of evidence of intercepted communications and surveillance commencing in June of 2000, linking Lee to Ho, Ho to Tao and Chen and others, and Lee and Tao, all with an ongoing enterprise involving, among other things, the transfer of a significant amount of money from Ho, in Vancouver, to Lee, in Hong Kong, and culminating in the arrival in Vancouver of a large shipment of heroin in mid-August.

- [19] It is Crown's submission that the Crown's case, in substance, still exists and there is as yet no basis to regard Ho's evidence as affecting the strength of the Crown's case as a factor under s. 515(10)(c).
- [20] In my opinion, there is not a substantive change in circumstances as submitted by counsel for the applicant. Without in any way prejudging the issue of Ho's credibility, it is clear that he is not indifferent, and some in-depth analysis of his testimony in light of all the evidence yet to be heard will be necessary to determine its effect on the Crown's case. In that analysis, Ho's propensity for deceit, his motivation, his internal consistency, as well as the logic of his evidence, will have to be examined in the full context of the trial. In my opinion, it is as premature to say that Ho's evidence does substantially weaken the Crown's case as it would be to say that it does not.
- [21] That being so, it seems to me the remaining matters, the length of the applicant's pretrial incarceration, and the effect of that incarceration on the family, while clearly factors for the court to consider, are not such as to justify a conclusion that, in the circumstances of this case, he ought to be released.
- [22] I conclude, therefore, that the accused's continued detention on the tertiary ground is justified on the basis of all the surrounding circumstances, including those referred to by Chamberlist J. in his reasons relating to the applicant's existence outside the family ties in B.C., and his apparently ongoing interest in importation matters, and, as well, the apparent strength of the Crown's case, the gravity of the nature of the offence, the circumstances surrounding its commission, and the potential for a lengthy term of imprisonment.

The Honourable Mr. Justice Cullen

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/02/19/2002BCSC1934.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-lee-2002-bcsc-1934>

Prepared on 29 October 2026 · Esheria