

CANADA / JUDGMENT

R. v. Lee

2003 BCSC 2044

COURT

Supreme Court of British Columbia

DECIDED

27 March 2003

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

2003 BCSC 2044 R. v. Lee

Citation:

R. v. Lee

Date:

20030327

2003 BCSC 2044

Docket:

CC010051

Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Ruling on Application to Exclude or Edit

Certain Intercepted Private Communications

The Honourable Mr. Justice Cullen

March 27, 2003

HER MAJESTY THE QUEEN

AGAINST

SEE CHUN LEE

CHUK FONG TAO

Counsel for Crown

M.M. Devlin

J.K. Torrance

Counsel for Defendant

See Chun Lee

P. Leask, Q.C.

J.D. Jevning

Counsel for Defendant

Chuk Fong Tao

D.B.L. Sokol

Place and Date of Trial:

Vancouver, B.C.

March 27, 2003

BAN ON PUBLICATION AND BAIL REVIEW 648 and 517 CCC

- [1] THE COURT: This is an application by Lee to exclude or edit certain intercepted private communications to be tendered by the Crown.
- [2] In general terms, the basis of the application is that certain calls or portions of certain calls consist of evidence that is either irrelevant or, if relevant, has a prejudicial effect that outweighs its probative value.
- [3] Counsel for Lee submits the test for the admissibility of evidence tending to show bad character or criminal disposition is whether it is relevant to an issue beyond disposition or character and whether, if it is, its probative value outweighs its prejudicial effect. I agree with that characterization of the test: see *R. v. Caster*, [1998] B.C.J. No. 3178 (B.C.S.C.) per Wong J; *R. v. B. (F.F.)* (1993), 79 C.C.C. (3d) 112 (S.C.C.).
- [4] I propose to deal first with the calls counsel for Lee characterizes as irrelevant, but not inherently prejudicial. He points to calls 46, 47, 85, 102, 163, 164 and 228.
- [5] Call 46 has Lee leaving a message for someone called "Shirley" (phonetic), referring to himself as Chun. The Crown says the call's relevance is his self-identification as "Chun" and it ties into other subsequent calls. On that basis, I agree it has some relevance, and there is no apparent prejudice in admitting it.

- [6] Call 47 is a call between Ho and the person said to be Tao on May 11th of 2000. The Crown's submission is that this call assists in establishing an association between Ho, who is, of course, a principal in the conspiracy alleged, and Tao, and further, the Crown says, it provides some evidence of the context of the ongoing plan for importation of heroin. Crown acknowledges there may be other interpretations or other evidence concerning the meaning of the call, but says the meaning is a matter for the jury. I agree it is admissible.
- [7] Call 85 is a call on June 24, 2000, between Ho and an unknown female and Mr. Ngar. The Crown says the call is relevant in that it establishes Ho refers to himself as "Sai Gua Lo" and it ties in with other calls in which he is referred to by that name. It also gives his phone number and it indicates that he is in Vancouver at the time. In my view, the call has some relevance and is therefore admissible.
- [8] Call 102 is July 20th of 2000. It is a call between Ho and Keung. The Crown submits the contents are relevant and relate to the impending arrival of the shipment of heroin. It seems to me, that being the case, that is a matter for the jury and that call is admissible.
- [9] 163 and 164 are two calls between Lee and his uncle, Li Yu Kwong, on August 20th of 2000, after the shipment of heroin, which is at issue in the case at bar, has arrived in Vancouver. Crown says that these calls relate to an increase in the price of heroin and submits that is some evidence of Lee's contemporary knowledge of and interest in such matters and relates back to earlier calls in which there is a discussion, or alleged to be a discussion, of the impending shipment yet to arrive in Vancouver. That being the case, the call has some potential relevance and it is, therefore, admissible.
- [10] Call 228 is a call on September 1st of 2000, between Lee and Vongvilay the day before the arrests took place in relation to the case at bar, of course, after the arrival of the heroin at issue in the country. There is discussion about meeting with Ho between Vongvilay and Lee. The Crown says the relevance of the call is that it "sets up what's going on" and immediately precedes a call between Lee and Ho, which the Crown submits shows, or contributes to showing, Lee's knowledge and involvement in the heroin shipment. That being the case, in my view, the call is not clearly irrelevant and it is admissible.
- [11] The next category of calls characterized by counsel for Lee as irrelevant are a number of calls between Ho and Tan Shi Ming (phonetic) and Hee Jian King (phonetic), which counsel for Lee says relates to Ho's desire to purchase pants and tops. The calls are 58, 59, 61, 68, 69, 79, 97 and 100. Counsel for Lee submits these calls are irrelevant as they relate to the innocent subject of buying knock-off clothing or clothing by Ho and references the commission evidence of Ho to that effect and Crown counsel's apparent acceptance of that evidence of Mr. Ho.

- [12] Crown counsel submits that notwithstanding Ho's assertions in his evidence that the calls in question related to clothing; that in context, given the guarded nature of the calls and the ongoing and various discussions about it, the inference in context of all the calls is that they relate to ongoing heroin activity; and, specifically, the gathering together of money to be sent to Lee for purposes related to the heroin shipment at bar.
- [13] The exchange between Ho and Ms. Devlin for the Crown during her cross-examination of him in the course of his commission evidence, which counsel for Lee relies on to submit that the Crown is "estopped" from relying on the conversations relating to clothing as being a code for heroin or collecting money for the importation at bar, is found at page 48 of the transcript of October 1, 2002. It reads as follows:

Q: Okay. And just so we're clear, Ah Ming is the person who you describe as a friend. He's the former restaurant worker, husband of a woman who you've described as the nanny for your children and the person who got you the sporty-type pants with the elastic bands for your trip over to China?

A: Correct. The clothes are still at Immigration now with my package, and you can actually take -- get them here and take a look at them.

Q: Well, that's okay, Mr. Ho. I'll take your word for that about the clothes. And on this day, that being August the 12th, 2000, the day that you went to the PNE, that was also the day where you met up with Mr. Tao?

A: Yes.

- [14] In my opinion, the intercepts at tab 97 and 100 are affected by Crown's concession, but are not clearly irrelevant. They may or may not cast light on earlier calls, which Ho made with He Jian Qing in which "tops and pants" are discussed and which do not appear to be the subject of the concession made by Crown counsel in the passage cited. Those earlier references by Ho in conversations with He at tab 58, 59, 61 and 79, and the conversations with Tan Shi Ming at 68 and 69 are not, therefore, affected by Crown counsel's concession and are admissible.
- [15] At the end of the day, the concession and the evidence of the call at 97 and 100 may cast some light on the meaning to be given to those earlier calls or may not. The point is that it has some admissible value, but clearly, as counsel for the applicant has submitted, the Crown's position with respect to the call at 97 and 100, is a matter that must go before the jury.
- [16] The next series of calls objected to relate to references in intercepted conversations, which counsel for Lee submits is irrelevant because it relates to Ho's involvement in marihuana trafficking and to an incident in which Chen Wei Bo and others went across the border to collect money for Ho from marihuana sales and were stopped at the border and had the money seized. The calls are 50, 51, 57, 58, 62 to 67, 70, 71 and 74.

- [17] Counsel for the Crown submits call 50 between Ho and Wu Bao Kang on May 19th is relevant because Ho exhorts Wu to call Ming Jai "about that thing," which, in the theory of the Crown, relates to a machine for measuring heroin and ties into the impending shipment said to be coming to Vancouver. Call 51 on May 24th between Ho and Wu refers to the same thing, in the Crown's theory. On that footing, there is some relevance to the calls and they are admissible.
- [18] Call 57 is between Ho and Tan. Crown says it is relevant in that it establishes the nature of the relationship between Ho and Tan and provides context with regard to the sending of money to Lee in Hong Kong and a later surveillance of Ho, Tan and Tao at the PNE in August. Call 58, in the Crown's theory, relates to ongoing heroin activity. In my view, both of those calls are admissible.
- [19] Insofar as call 62 to 64, 65 and 66 and 67 are concerned, Crown counsel say they show the relationship between Chen Wei Bo and Ho. Those involving Chen Wei Bo show that Ho is in a position to provide him directions and that the other calls between Ho and Chan Tat Hei (phonetic) provide a context for the relationship involving Chen and shows that during mid-June Ho was collecting money, and also detracts from Ho's evidence on commission that his contact with Lo Gap involved marihuana because it shows that Ho had other sources of marihuana and was not reliant on Lo Gap. It raises, in the Crown's submission, the prospect that Ho's involvement with Lo Gap was connected to other matters than marihuana and goes to Ho's credibility on that point. In my view, these calls have some relevance for the reasons submitted by Crown counsel.
- [20] Calls 70, 71 and 74 capture what happened at the border and similarly are relevant, if only to complete the picture of the incident in question.
- [21] The final category of calls relate to matters which counsel for Lee submits are highly prejudicial and do not meet the test of admissibility by having probative value which outweighs their prejudicial effect. Those calls are all of call 52; all of call 56; call 60 from page 5, line 6 to page 7, line 6; and call 75, page 1, line 13 to page 4, line 14; and calls 231 and 232.
- [22] Dealing first with the latter two calls, that is, 231 and 232, in my view, they are inadmissible. They are calls from Lee to an unknown male and from Lee to an unknown male and Dai Hau (phonetic), respectively. The calls took place on September 2, 2000, at 6:10 a.m. and 6:24 a.m., respectively. They are very guarded and hard to follow, but appear to involve discussion of arrests taking place in Toronto for drug offences and discussion by Lee intimating his interest in heroin trafficking in the future or otherwise unconnected to the importation at bar.
- [23] Counsel for the Crown submitted that there was some evidence which could be inferred from the conversations in those two calls of at least Lee's awareness of the presence of the heroin shipment at bar in Vancouver. In my view, the evidence relied on by Crown counsel in support of that submission is at best speculative and, thus, the evidence is principally

disposition type evidence with no legitimate basis for admission against which to balance the prejudice which clearly flows from them, and, therefore, as I have indicated, they are inadmissible.

- [24] Calls 52, 56, and those portions of 60 and 75 identified by counsel for Lee are similarly characterized by him as primarily evidence of bad character, that is, involvement in other unlawful activities, specifically the counterfeiting of two dollar coins, or Toonies, and do not address any legitimate issue in the trial and, therefore, should be either excluded or edited as suggested.
- [25] The submissions of counsel for the Crown is that the offending passages have some probative value in that they provide a context to the relationship between Lee and Ho and show how they speak about their various ventures and commodities and, therefore, provide a useful measure of the seriousness of the venture contemplated by the degree of obfuscation employed in the various discussions about the various commodities. In other words, it is the Crown's submission there is more candour when talking about the coins than, for example, the ecstasy or the heroin.
- [26] Crown counsel also submits the need to edit out the impugned passages confuses the evidence, making it less understandable to the jury. She submits, in particular, call number 60 is a very important one and the jury should have the benefit of its full context to gauge and understand what Ho and Lee are talking about.
- [27] Crown counsel also submits that any prejudice that may arise from the reference to the counterfeit coins can be offset by a clear direction from the court.
- [28] Crown counsel also submits that there is no explicit reference to coins in the calls, and, particularly, as I understand her argument, she points to call 75, and she submits it is open to conclude that the discussion in that intercept and in the earlier intercepts concerns heroin and there is a mention in that intercept and in, I think, call 56 by Ho of a deposit of two teils, and Crown submits that could refer to a deposit on the heroin at bar.
- [29] This position is directly at odds with an opinion expressed by the affiant in the affidavit in support of authorization P47/2000, who characterized that portion of the call in 75 as relating to coins and the deposit of two teils as being required for the production of \$500,000.00 in Toonies. The affiant also indicated in an earlier paragraph that "Dai Dang", which is the subject matter of that portion of call 75 identified by counsel for Lee, refers to coins.
- [30] In my opinion, the clear conflict which would emerge within the Crown's evidence concerning the subject matter of paragraphs 75, 60, 52 and 56 significantly reduces any probative value that those portions or calls could be said to have and, thus, the prejudicial effect is, of course, that it is evidence of bad character, that is, of unlawful acts on the part of Lee.

- [31] The question in my mind is whether the conversations said to be about coins are so integral to the context of the overall conspiracy being alleged that they have relevance beyond their prejudicial effect.
- [32] While the discussions concerning the coins do provide some additional evidence of the nature of the relationship between Ho and Lee and furnish some indication of how they communicate over their unlawful activities, it seems to me the potential for prejudice is greater than the probative value as, essentially, the evidence is such as to lure a jury into the impermissible line of reasoning; that is, that because Lee is engaged in other unlawful acts with Ho, therefore, an inference can be drawn that he is engaging in the acts alleged at bar.
- [33] While the evidence has some relevance as to the nature of the relationship and how they discuss various commodities, I am not satisfied that it outweighs the potential prejudice and, hence, those calls are inadmissible to the extent set out above.
-

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/03/20/2003BCSC2044.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-lee-2003-bcsc-2044>

Prepared on 29 October 2026 · Esheria