

CANADA / JUDGMENT

R. v. Sanghera

2012 BCSC 992

COURT

Supreme Court of British Columbia

DECIDED

15 March 2012

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2012 BCSC 992 R. v. Sanghera IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Sanghera, 2012 BCSC 992 Date: 20120315 Docket: 25797 Registry: Vancouver Regina v. Bobby a.k.a. Bobby Barjinder Singh Sanghera Navdip Singh Sanghera Charanjit Singh Rangi Savdip Singh Sanghera Jaspreet Singh Virk Before: The Honourable Madam Justice H. Holmes Oral Ruling on Application to Cross-Examine Sub-Affiants Sergeant Weidman & Detective Constable Richards Counsel for the Crown: Mark J. Sheardown Alisia Adams Samiran P. Lakshman Counsel for the Accused, Bobby Barjinder Sanghera: Brian Coleman, Q.C. Jeremy H. Fung Counsel for the Accused, Navdip Singh Sanghera: David N. Fai Counsel for the Accuseds, Charanjit Singh Rangi and Savdip Sanghera: Colleen Elden Counsel for the Accused, Jaspreet Singh Virk: Adi Glouberman Place and Date of Trial: Vancouver, B.C. Dates ongoing Place and Date of Reasons: Vancouver, B.C. March 15, 2012

- [1] THE COURT: This is an application to cross-examine Sergeant Dale Weidman and Detective Constable Dawn Richards of the Vancouver Police Department (VPD), who are both considered sub-affiants to the affidavit supporting Wiretap Authorization P4/2009. Sgt. Weidman was the lead investigator for the VPD's "Project Rebellion". Det. Cst. Richards was Source Coordinator for the project, and coordinated information about the confidential informants and police agents used in the project. She was also the source handler for a particular police agent whose role is important to a substantial section of the affidavit.
- [2] I referred to the governing law in my reasons granting leave to cross-examine Constable St. Amant, who swore the affidavit. Counsel agree that the same principles apply on this application also, and I will not repeat the summary in these reasons. In short, the test is whether there is a reasonable likelihood that the proposed cross-examination will assist the determination of an issue or issues relevant to the review of the authorization.
- [3] I have concluded that there is no such reasonable likelihood.
- [4] The proposed cross-examination of Det. Cst. Richards seeks to explore whether she failed to pass on to Cst. St. Amant three main pieces of information relevant to the credibility and reliability of the police agent I mentioned earlier, and, if she so failed, the reason that she did so.

- [5] The main pieces of information relate to the following: first, information from the Edmonton Police Service that in previous dealings with the agent, they found him unreliable and manipulative; second, the agent's full criminal record, which included more offences than he recounted in an interview with the VPD, some of the missing offences directly indicating a lack of trustworthiness; and third, an agreement by letter with the VPD under which the agent stood to gain large payments if the investigation led to a trial or other successful outcome -- the affidavit refers only to smaller payments or potential payments open to the agent according to a different version of the agreement.
- [6] Cross-examination of Sgt. Weidman and Det. Cst. Richards about these pieces of information will not assist the determination of an issue relevant to the review of the authorization, because it is already clear from the cross-examination of Cst. St. Amant that they existed and that he did not receive or include them in the affidavit. The effect of the omissions from the affidavit on the validity of the authorization is a matter for submissions at the end of the voir dire. Further cross-examination about the omissions themselves will add nothing to assist the determination of that matter.
- [7] Ms. Elden and Mr. Fai submit that cross-examination of Sgt. Weidman and Det. Cst. Richards will help the Court determine whether the affidavit amounted to an abuse or a subversion of the process for prior judicial authorization of intrusive investigative measures. They submit that senior investigators, including Sgt. Weidman, may have deliberately insulated the affiant from information he should have had about the investigation. However, some eight days of voir dire thus far have disclosed no basis for this position, despite the three and a half days of submissions concerning leave to cross-examine with detailed reference to the affidavit, and four and a half days of cross-examination of Cst. St. Amant. I conclude that the proposed cross-examination on this topic, which may in any event be outside the narrow scope of a Garofoli review, would amount to no more than fishing. I find no basis in the evidence or submissions to think it reasonably likely that cross-examination concerning a potential abuse or subversion of the process would assist determination of a material issue in the review.
- [8] The Garofoli review will allow for the consideration of omissions from the affidavit. However, it does so in relation to the content of the affidavit itself, after excisions, and does not seek to answer every question about the investigative project as a whole or how information travelled within it.
- [9] I also decline the application to cross-examine Sgt. Weidman about the investigative necessity for the authorization. Ms. Elden submits that without Sgt. Weidman's evidence, there can be no review of the investigative necessity precondition to the authorization, but I do not agree. The strengths or weaknesses of the affidavit, as it addresses this topic, are a proper matter for submissions at the end of the voir dire. Cst. St. Amant has been subject to extensive and capable cross-examination on the subject.

- [10] It is true that Cst. St. Amant was not the lead investigator or decision-maker for Project Rebellion or this aspect of it, and was not responsible for making decisions concerning how and by which investigative techniques the investigation would proceed. However, I agree with Mr. Sheardown that Cst. St. Amant was evidently familiar enough with the investigation to outline the events and decisions it involved, and to respond meaningfully to cross-examination about them.
- [11] Cst. St. Amant was unable to answer for a decision to use an undercover police officer to arrange a deal to buy guns from a person or persons said to be associated, either directly or indirectly, with some or all of the accused. However, in my view, cross-examination of Sgt. Weidman concerning that different part of Project Rebellion will not assist the determination of whether the investigative necessity precondition was met in relation to this investigation.
- [12] Leave to cross-examine sub-affiants Sgt. Weidman and Det. Cst. Richards is therefore denied. "H. Holmes, J." The Honourable Madam Justice H. Holmes

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