CANADA / JUDGMENT

R. v. Sanghera

2012 BCSC 995

COURT
Supreme Court of British Columbia

DECIDED
19 April 2012

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

2012 BCSC 995 R. v. Sanghera

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Sanghera,

2012 BCSC 995

Date: 20120419

Docket: 25797

Registry: Vancouver

Regina

v.

Boby 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 Proposed Expert Evidence of

Detective Constable Sangha re Punjabi/English Interpretation

and re Urban Street Jargon

Counsel for the Crown:

Mark J. Sheardown

Alisia Adams

Samiran P. Lakshman

Counsel for the Accused, Boby 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

April 19, 2012

[1] THE COURT:

THE APPLICATION

[2] The Crown tenders Detective Constable Sukhjit Sangha as an expert witness to give opinion evidence in two areas, which the Crown describes as follows:

1. the interpretation and translation from spoken Punjabi to English, and from English to Punjabi; and
2. urban street jargon in the Lower Mainland of British Columbia.

[3] The proposed evidence would relate to the interpretation of numerous intercepted communications between various people, who the Crown alleges to include the five accused, made over the course of about 60 days in early 2009.

[4] The admission of expert evidence is governed by the principles in R. v. Mohan, [1994] 2 S.C.R. 9 at 20, where Mr. Justice Sopinka, writing for the Court, identified the four criteria as:: (a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; and (d) a properly qualified expert.

[5] The defence position engages criteria (b) and (d). The defence submits that Det. Cst. Sangha lacks the necessary qualifications to give expert evidence in either of the proposed areas. In relation to urban street jargon, the defence submits also that the proposed evidence would not meet the necessity precondition for admission, because the trier of fact will be in as good a position as is Det. Cst. Sangha to assess the meaning of the words in question in their specific context.

[6] I will address in turn the two areas in which the Crown asks that Det. Cst. Sangha be permitted to give expert evidence.

OPINION RE URBAN STREET JARGON

A Properly Qualified Expert?

[7] The Crown expects Det. Cst. Sangha to testify that certain words as used in urban street jargon may carry a different meaning from their conventional or dictionary meaning. His evidence would relate to single terms, such as nouns or verbs. It would not involve the translation from urban street jargon to conventional English of entire phrases, sentences, or conversations. Mohan, at 21, explains that:

...the evidence must be given by a witness who is shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify.

[8] The expertise necessary to ground qualification need not have come from academic study of the subject. Mr. Justice Hall recently discussed expert evidence at some length in R. v. Aitken, 2012 BCCA 134. In that case, the witness was a podiatrist, and his expertise in forensic gait analysis had been gained over a period of years through observation and experience in the professional realm.

[9] Hall J.A. noted that while the factors in the well-known Daubert case may apply to proposed opinions that are scientific in nature, experts may also be qualified "based on specialized knowledge acquired through training or experience in a particular discipline" (para. 79). For example, Hall J.A. referred to the following excerpt from R. v. Abbey, 2009 ONCA 624 at para. 109, which concerned the evidence of a sociologist, who was an expert in urban street gang culture in Canada:

[109] Scientific validity is not a condition precedent to the admissibility of expert opinion evidence. Most expert evidence routinely heard and acted upon in the courts cannot be scientifically validated. For example, psychiatrists testify to the existence of various mental states, doctors testify as to the cause of an injury or death, accident reconstructionists

testify to the location or cause of an accident, economists or rehabilitation specialists testify to future employment prospects and future care costs, fire marshals testify about the cause of a fire, professionals from a wide variety of fields testify as to the operative standard of care in their profession or the cause of a particular event. Like Dr. Totten, these experts do not support their opinions by reference to error rates, random samplings or the replication of test results. Rather, they refer to specialized knowledge gained through experience and specialized training in the relevant field. To test the reliability of the opinion of these experts and Dr. Totten using reliability factors referable to scientific validity is to attempt to place the proverbial square peg into the round hole.

[10] Det. Cst. Sangha similarly has gained specialized knowledge about urban street jargon from his observations and experiences over the course of his own personal and professional life. As a police officer since 2003, and with the Gang Squad since August 2009, he has investigated numerous crimes believed to have been committed by gang members. In his current duties, including as a confidential source handler, he deals with gang members and their associates, as well as with complainants, witnesses, and confidential informants. He also seeks out additional confidential sources within the drug dealing and gang communities. As a person designated to listen to intercepted private communications, he often works in the wiretap monitoring room, summarizing intercepted calls for other investigators. In the course of those various duties, he often hears and uses "urban street jargon", meaning the particular vocabulary used by gang members, drug dealers, drug users, and others having contact with those people. Det. Cst. Sangha grew up in southeast Vancouver, and testified that he heard and used urban street jargon in that context as well.

[11] In my view, Det. Cst. Sangha's experience and knowledge in the area of urban street jargon are likely to be "outside the experience and knowledge of a judge or a jury" (Mohan, at 23). He accordingly has the necessary qualifications and experience to give opinion evidence in that area, to the extent I will discuss a bit later.

Necessary?

[12] The above also makes his evidence necessary in the limited sense required in this context. The proposed evidence must be more than merely helpful, but need not meet the strict standard of necessity that some other areas of the laws of evidence require: Mohan, at 23.

Limits on the Evidence?

[13] Hall J.A., in Aitken, made clear that the scope of expert evidence must be appropriately limited (at para. 81):

[81] Abbey indicates that the scope of expert evidence must be appropriately limited to make sure that the proposed opinion does not go directly to the ultimate issue in the case and thus present the jury with a ready-made inference of guilt (paras. 65 and 70). Constraining expert opinion evidence in this fashion responds to the concern identified in Mohan that "experts not be permitted to usurp the functions of the trier of fact" (p. 24). As stated by Major J. in R.

v. D.D., 2000 SCC 43, [2000] 2 S.C.R. 275, "Faced with an expert's impressive credentials and mastery of scientific jargon, jurors are more likely to abdicate their role as fact-finders and simply attorn to the opinion of the expert in their desire to reach a just result" (para. 53).

[14] This principle applies not only to scientific evidence which may, in the traditional language, "overwhelm" a trier of fact, but to other expert evidence as well. Hall J.A. referred specifically in this regard to aspects of the expert evidence in Abbey and recognized, as did Doherty J.A., in Abbey, an important distinction concerning the scope of the evidence that, in my view, applies equally here (at para. 82):

[82] Applying this approach, Doherty J.A. stated in Abbey that it was inappropriate for the expert sociologist in that case to testify that the tear drop tattoo on the face of the accused was related to the murder of a rival gang member. However, he found it was appropriate for the expert to provide evidence as to the possible meanings of a tear drop tattoo on the face of a young male member of an urban street gang, namely that a fellow gang member or family member had died, that the wearer of the tattoo had served a term in jail, or that the wearer of the tattoo had murdered a rival gang member.

[15] In Abbey, Doherty J.A.'s discussion of this issue included the following (at paras. 99, 101-102):

[99] The difference between an opinion on why the respondent put the teardrop tattoo on his face and an opinion on the meanings of that symbol in the street gang culture in which the respondent lived is much more than semantical. The former speaks directly to the issue of the murderer's identity. That opinion, if heard, invites the jury to move directly from accepting Dr. Totten's evidence to a finding of guilt. The latter opinion speaks on a much more general level and provides context in which the evidence of other witnesses, who can speak more directly to the facts of the case, can be placed and assessed.

...

[101] The trial judge, no doubt influenced by the Crown's primary position, failed to properly limit the scope of Dr. Totten's opinion. He addressed the question of admissibility on the assumption that Dr. Totten would speak directly to the reason the respondent had put a teardrop tattoo on his face. The trial judge's only reference to the merits of the Crown's alternative position in the course of his 96-paragraph decision appears in the last sentence of the last paragraph where he states "the same reliability concerns are present in either form of the proposed expert evidence".

[102] I disagree with this assessment. Had the trial judge limited Dr. Totten's opinion to the potential meanings of the tattoo within the street gang culture, Dr. Totten would not have testified about the meaning of the respondent's tattoo. His evidence could not be described as "tantamount to a confession" (para. 1). Nor would Dr. Totten's evidence "present a ready-made inference concerning it [the meaning of the tattoo]" (para. 96).

[16] Applying that approach here, I place the following limits on the expert evidence Det. Cst. Sangha may give. He may testify in general about the meaning of terms used in urban street jargon. However, he may not interpret particular passages of intercepted communications where street jargon may have been used, unless it is first established that his more general evidence about the meaning of street jargon terms will not provide the Court with the contemplated assistance without further context. In that event, leave to take him specifically to particular passages is to be sought from the Court.

[17] Within those limits, I accept Det. Cst. Sangha as qualified to give opinion evidence concerning urban street jargon, as the Crown requests.

[18] I will note also that I view Det. Cst. Sangha's evidence as in any event approaching the situation in Abbey, where Doherty J.A. concluded that certain gang members who were not put forward as experts should , nonetheless have been allowed to testify about the meaning of a teardrop tattoo in the gang culture, based on their personal familiarity with a common understanding of its meaning in that context (at paras. 159-160).

PUNJABI/ENGLISH INTERPRETATION AND TRANSLATION

The Proposed Evidence

[19] The other area of Det. Cst. Sangha's proposed expertise concerns Punjabi interpretation and translation. This would relate to longer portions of the intercepted communications than would the proposed expert evidence concerning street jargon. Whereas the evidence concerning street jargon would address itself to particular terms, usually nouns or verbs, the proposed evidence in relation to the Punjabi language would relate not only to single words, but also to phrases, full sentences, and sometimes verbal exchanges over the course of several lines or even paragraphs of transcript.

[20] Someone else, unidentified in the trial, translated the portions of the intercepted communications which are spoken in another language. Det. Cst. Sangha reviewed the transcripts of the intercepted communications which include those translated portions, while also listening to the audio-recording of the communication. The Crown expects that Det. Cst. Sangha would testify, if accepted to give expert evidence in this area, that the language of those portions is Punjabi, and that the transcripts provide reliable translations into English of what was said.

Properly Qualified Expert?

[21] I have no doubt that Det. Cst. Sangha is fluent and fully competent in both Punjabi and English. His personal and professional history make that entirely clear. Det. Cst. Sangha was born in Vancouver and raised in the South Slope area in the southeast of Vancouver. His first language was Punjabi, but he also learned English at or around the time he attended kindergarten. His elementary and high school education was in English, but he also took Punjabi classes as part of Sikh Cultural Studies every Friday evening during his high school

years. He continued, as he does to this day, to communicate primarily in Punjabi with members of his extended family who speak little or no English. In his work with the VPD, he speaks mainly English. However, he sometimes uses Punjabi in conversation with complainants, victims, or others, and sometimes provides interpretation for other police officers who are dealing with Punjabi-speaking people who do not also speak English.

[22] The interpretation and translation of verbal exchanges, however, involves more than proficiency in the languages concerned. Reliable interpretation and translation of, for example, a full sentence depends on the interpreter or translator selecting the appropriate grammatical structure for the sentence, so as to convey as accurately as possible the tone, tenor, and nuance of the original.

[23] There is no evidence that Det. Cst. Sangha has any training or experience in interpretation or translation of this type. It is a field for which certification standards have been developed and implemented, for good reason. In the interpretation of court proceedings, for example, the importance and value of the interpretation process as such is well-recognized, as contrasted with word-for-word translation from one language to another.

[24] Det. Cst. Sangha has experience preparing summaries in English of intercepted communications in Punjabi. However, summaries -- and there was no detailed evidence about the type of summaries he prepared -- are generally made through a very different process from that which applies to the interpretation or translation of an entire conversation or verbal exchange. A summary seeks to convey the gist. A reliable interpretation or translation conveys the whole, in as complete and accurate a fashion as possible.

[25] These are communications which the Crown attempts to impute to the accused as a significant part of its case. In my assessment, the evidence does not show Det. Cst. Sangha to have the necessary qualifications to provide interpretation or translation of them.

[26] The Crown submits that cross-examination may test the reliability of Det. Cst. Sangha's interpretation or translation, but in my view that process would not suffice, and would fail the cost-benefit analysis discussed by Doherty J.A. in Abbey, at paras. 86-89. Among the dozens of intercepted communications are numerous portions translated from, the Crown says, Punjabi. To require cross-examination to tease out the reliability of all of those translations would expand Det. Cst. Sangha's evidence far beyond its contemplated scope, as reflected in the time allotted for his evidence in the witness schedule. Det. Cst. Sangha was to be the last witness to testify in the trial, and was scheduled to give all of his testimony yesterday afternoon, with that short time allotted for the hearing into his qualifications, as well as his direct and cross-examinations in full.

CONCLUSION

[27] Det. Cst. Sangha is qualified to give expert evidence concerning street jargon, and may give opinion evidence in that area subject to the limits I have articulated.

[28] However, he is not qualified to give expert evidence concerning interpretation and translation from spoken Punjabi to English, and from English to Punjabi.

"H. Holmes, J."

The Honourable Madam Justice H. Holmes

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/12/09/2012BCSC0995.htm

CASE PAGE https://chat.esheria.ai/case-law/canada/r-v-sanghera-2012-bcsc-995

Prepared on 29 October 2026 · Esheria