
CANADA / JUDGMENT

R. v. Terezakis

2005 BCSC 861

COURT

Supreme Court of British Columbia

DECIDED

13 May 2005

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2005 BCSC 861 R. v. Terezakis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Terezakis,

2005 BCSC 861

Date: 20050513

Docket: 22716

Registry: Vancouver

Regina

v.

Anthony Terezakis

Andrew Goosen

Sean Craig Casselman

Before: The Honourable Madam Justice H. Holmes

Ruling on Defence Application to Cross-examine Affiants

and Others re Authorization P20 on Voir Dire

May 13, 2005

Counsel for Crown:

P.W. Hogg

J.S. Kliewer

Counsel for Defendant Terezakis:

P.A Smith-Gander

Counsel for Defendant Goosen:

M.A. Nathanson

Counsel for Defendant Casselman:

D.A Kontou

L.J. Helps

Place of Trial:

Vancouver, B.C.

- [1] THE COURT: Mr. Terezakis, through Ms. Smith-Gander, seeks to cross-examine in several areas the two RCMP affiants, Sergeant R. and Constable H., whose affidavits support Authorization P20, as well as three officers of the Vancouver Police Department and T.C., a layperson who provided information to the RCMP in relation to some of the investigations to which Authorization P20 relates.
- [2] Mr. Casselman and Mr. Goosen, through Mr. Kontou and Mr. Nathanson, seek similar leave. Their applications seek leave to cross-examine, primarily in Mr. Kontou's case and exclusively in Mr. Nathanson's case, as to whether the authorization met the requirements of investigative necessity in s. 186(1)(b) of the Criminal Code.
- [3] In previous reasons, I addressed the existence and possible application of s. 186(1.1) to Authorization P3, which preceded Authorization P20. Consideration of Authorization P20 proceeds as though s. 186(1.1) does not apply, for the reasons that I expressed in the other ruling in relation to Authorization P3.
- [4] In other reasons delivered orally on March 4, 2005, at ¶20 to 23, I outlined the governing authority and the parties' positions in relation to leave to cross-examine in a context such as this, and the decision whether or not a voir dire should be held to consider the validity of a wiretap authorization.
- [5] I am satisfied on the basis of the governing authority and the material and submissions before me that there should be leave to cross-examine as to the matter of investigative necessity.

- [6] In his affidavit in support of Authorization P20, Sergeant R. refers to and indicates his reliance on the description of investigative necessity in his affidavit in support of Authorization P3. He also speaks briefly and in general terms of numerous apparent extortions coming to light since the issuance of Authorization P3, and the inherent risks created by that type of activity. He refers to search warrants and general warrants issued since Authorization P3 and to their results.
- [7] Not mentioned in the affidavit material before the authorizing judge in relation to Authorization P20 is an investigation by the Vancouver Police Department called Project Prism that involved undercover purchases at the American Hotel in Vancouver. I will explain how that investigation relates to the matters under investigation in relation to Authorization P20.
- [8] Authorization P20 responds to investigations of numerous matters, some but not all of which were also in relation to the earlier Authorization P3. Notable among those are the investigations of eight murders. Neither authorization suggests Mr. Terezakis, Mr. Casselman or Mr. Goosen to have been involved in those murders.
- [9] Of the additional alleged offences in relation to which Authorization P20 issued, Mr. Terezakis is said to have been involved in these: an extortion of Mr. W. and Mr. S., an extortion of Mr. M., trafficking in methamphetamine and marihuana, and trafficking in cocaine and ecstasy at the American Hotel. In relation to that last matter, Mr. Terezakis is said to have been running a drug trafficking operation out of the American Hotel.
- [10] The investigation that led to Authorization P20 was called Project Ecu. The main affiants are RCMP officers; however, other agencies, including the Vancouver Police Department, were involved.
- [11] Authorization P20 issued on March 28, 2002, and was effective as of April 2, 2002. The affidavits in support were sworn on March 22 and 27, 2002.
- [12] The Vancouver Police Department's Project Prism started with a tip in February of 2002. The project took some time to be up and running, but effected its first undercover drug buy on about April 3, 2002.
- [13] Detective Constable G. of the Vancouver Police Department was seconded to Project Ecu beginning in January 2002, and was aware of the interceptions under Authorization P3 in which Mr. Terezakis appeared to be speaking of drug trafficking-related activities at the American Hotel. I am told that Detective Constable G. was also aware of Project Prism and received updates as to its status, but he kept the information as to the existence of each of Project Ecu and Project Prism separate from the other until shortly before April 10, when he determined that Project Prism was significant enough that the investigators leading Project Ecu should know of it.

- [14] The defence submits that the existence and apparent success of Project Prism at almost exactly the same time as the currency of Authorization P20 bears on whether it can be said that wiretap was the only investigative measure reasonably practicable in the circumstances. They submit also that Detective Constable G.'s personal knowledge of Project Prism is also the knowledge of Project Ecu to which he was seconded, and that the non-disclosure in the affidavits supporting Authorization P20 of Project Prism's existence has implications for the reliability of that affidavit material as it addresses the matter of investigative necessity and possibly more broadly, and that those implications carry beyond the investigation relating to the American Hotel.
- [15] Whether those submissions will ultimately succeed is another question. What is clear now is that a more than sufficient basis exists to support inquiry into this matter as one capable of generating evidence discrediting the existence of one of the preconditions to the authorization. I grant leave to cross-examine as to that matter, and will return later to the question of which officers that leave will relate to.
- [16] I am not persuaded that there is such a basis for cross-examination into the other areas in which Ms. Smith-Gander seeks leave. Her submissions in relation to those other areas essentially exposed only a wish to inquire or to challenge. Also, there is not a sufficient basis before me for cross-examination of T.C. in relation to whom I denied leave to cross-examine as to Authorization P3.
- [17] There will therefore be leave to cross-examine as to the matter of investigative necessity.
- [18] Counsel have sought leave in relation to about five police officers. At this point I would like to hear further submissions as to whether leave should be given in relation to all five, or whether leave should be given in relation to certain officers first, with liberty to make further application.
- [19] I have in mind -- and this is very much subject to the submissions of counsel -- that I might grant leave in relation to Sergeant R., who swore an affidavit in support that bears on investigative necessity directly, and Detective Constable G., and leave for another day the question of whether there will be leave in relation to the other officers.
- [20] If counsel wish to address me on that now, I am happy to hear their submissions. If they wish some time, that is also available.
- [SUBMISSIONS ON OFFICERS TO BE CROSS-EXAMINED]
- [21] THE COURT: I am going to grant leave in relation to Sergeant R., Detective Constable G. and Officer T. Further applications in relation to the other officers may be brought.

- [22] If the defence feels that their overall approach to cross-examination in this area would be assisted by one of the remaining officers being called before one or two of the officers I have named, then they can certainly bring the further application at an early stage. Do you understand what I am trying to permit? I do not wish to force the defence into cross-examining officers in a certain order if that would prejudice the defence in some fashion.
- [23] It appears to me that a good case is made for the cross-examination of those officers, and I will grant leave in relation to those at this point, and further applications can be brought as and when the defence sees fit to do so.

"H. Holmes, J."

The Honourable Madam Justice H. Holmes

June 24, 2008 - Revised Judgment

This Oral Ruling on Defence Application to Cross-Examine Affiants and Others re Authorization P20 on Voir Dire of Madam Justice H. Holmes dated May 13, 2005 has been edited for publication purposes pursuant to the Inherent Jurisdiction of the Court.

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