

CANADA / JUDGMENT

R. v. Terezakis

2006 BCSC 670

COURT

Supreme Court of British Columbia

DECIDED

20 April 2006

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2006 BCSC 670 R. v. Terezakis IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Terezakis, 2006 BCSC 670 Date: 20060420 Docket: 22716 Registry: Vancouver Regina v. Anthony Terezakis Ban on Publication 517(1), 631(6), and 648(1) CCC Inherent Jurisdiction Before: The Honourable Madam Justice H. Holmes Oral Ruling on Defence of Mistaken Belief in Consent re Count I April 20, 2006 Counsel for Crown P.W. Hogg J.S. Kliewer Counsel for Defence P.A. Smith-Gander C.L. Corriveau Place of Trial: Vancouver, B.C.

- [1] THE COURT: Ms. Smith-Gander submits that the jury should be given instruction as to mistaken belief in consent in relation to Count I in the List of Charges. Count I relates to Jimmy, and in the indictment is Count 12.
- [2] In the videotape evidence it appears that after Mr. Terezakis administers some blows to Jimmy, he is told that Jimmy is not the person who Mr. Terezakis intended to confront. Mr. Terezakis appears to express frustration at the confusion.
- [3] I have considered Mr. Terezakis' evidence, the evidence as a whole, and counsels' submissions, and I do not find there to be an air of reality to the position that Mr. Terezakis may have mistakenly believed Jimmy to have consented to the application of force.
- [4] As it is grounded in the videotape evidence of the scene and in Mr. Terezakis' testimony, the confusion or mistake relates entirely to the identity of the person to be confronted; it does not relate to the identity of a person who may have consented to participate in a scene and to be subjected to blows or other force. Mr. Terezakis' belief as to Jimmy's identity may be a mistaken belief, but it does not relate to consent to the application of force.
- [5] There is some very general evidence, both from witnesses and in the videotape evidence, that certain people may have assisted Mr. Terezakis by setting up scenes and arranging for people to take part in them. That evidence is not directed to the Jimmy scene specifically. In my view, the nonspecific suggestion that someone may have arranged for another person who Mr. Terezakis confused with Jimmy to consent to the application of force has no air of reality to it when it is considered in light of the specific evidence of Mr. Terezakis and others about the events in the Jimmy scene and the following, related scene with Wade (which is the subject of Count 13). That evidence made no mention of a confusion that would ground a

defence of mistaken belief in consent.

- [6] There is no air of reality to a defence of mistaken belief in consent in relation to Court 12 (re Jimmy) and I will decline Ms. Smith-Gander's invitation to instruct the jury as to such a defence. "H. Holmes, J." The Honourable Mr. Justice H. Holmes
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