

CANADA / JUDGMENT

R. v. Violette

2008 BCSC 1214

COURT

Supreme Court of British Columbia

DECIDED

5 September 2008

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2008 BCSC 1214 R. v. Violette IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Violette, 2008 BCSC 1214 Date: 20080905 Docket: 23500 Registry: Vancouver Regina Against Jean Joseph Violette, Ronaldo Lising, Randall Richard Potts and John Virgil Punko BAN ON PUBLICATION THERE IS A BAN ON PUBLICATION WITH RESPECT TO ALL VOIR DIRE RULINGS ISSUED IN THE PRESENT PROCEEDINGS UNTIL VERDICTS ARE RENDERED ON INDICTMENT 23501 AND INDICTMENT 23502, VANCOUVER REGISTRY, OR UNTIL FURTHER ORDER OF THE COURT. Before: The Honourable Mr. Justice S.R. Romilly Ruling on a Voir Dire Seating Arrangements of the Accused Counsel for the Crown Mark K. Levitz Geordie C. Proulx Carol Fleischhaker David Sim The Accused Jean Joseph Violette In Person Counsel for the Accused Ronaldo Lising Gregory P. DelBigio Lisa M. Sturgess Counsel for the Accused Randall Richard Potts Bonnie Craig Patrick Doherty John Esson Counsel for the Accused John Virgil Punko Richard Cairns, Q.C. Larry Fleming Date and Place of Hearing: September 4, 2008 Vancouver, B.C.

A. Nature of the Applications

- [1] Jean Joseph Violette is unrepresented by counsel, and has been permitted to sit apart from the other accused with a desk to keep his books and take notes. He now requests a larger table, one as large as those for counsel, in order that he may keep all of his books and binders close to him. He also requests that he have free access to caucus with defence counsel on various issues during the trial without first obtaining permission from the sheriffs each time.
- [2] The other three accused, Ronaldo Lising, Randall Richard Potts and John Virgil Punko, apply to be permitted to sit beside their counsel at counsel table during the trial.
- [3] For the reasons stated below, the applications are dismissed, with the exception of Mr. Violette's application to have free access to caucus with defence counsel. This latter application is granted. B. Background
- [4] The four accused stand charged on a 28 count indictment arising out of the E-Pandora investigation. They are all alleged to be members of the East End Charter of the Hells Angels. The charges before the Court may be categorized as follows:
1. Possession of guns and/or grenades (4 counts);

2. Possession of guns and/or grenades for the benefit of, at the direction of, or in association with a criminal organization, the East End Charter of the Hells Angels (2 counts);
 3. As a member of a criminal organization, the East End Charter of the Hells Angels, knowingly instructing Michael Plante to possess guns and/or grenades for the benefit of, at the direction of, or in association with that criminal organization (2 counts);
 4. Extortion (4 counts);
 5. Conspiracy to commit extortion (1 count);
 6. Extortion for the benefit of, at the direction of, or in association with a criminal organization, the East End Charter of the Hells Angels (5 counts);
 7. As a member of a criminal organization, the East End Charter of the Hells Angels, knowingly instructing extortion for the benefit of, at the direction of, or in association with that criminal organization (1 count);
 8. Uttering threats (2 counts);
 9. Uttering a threat for the benefit of, at the direction of, or in association with a criminal organization, the East End Charter of the Hells Angels (2 counts);
 10. Possession of firearms (3 counts);
 11. Counselling mischief (1 count); and
 12. As a member of a criminal organization, the East End Charter of the Hells Angels, knowingly instructing mischief for the benefit of, at the direction of, or in association with that criminal organization (1 count).
- [5] Mr. Violette is out on bail on these charges. Mr. Lising, Mr. Potts and Mr. Punko are not.
- [6] Because Mr. Violette is unrepresented by counsel, he has been allowed to sit at a desk apart from the other accused. Mr. Violette and the defence counsel have been provided with bookshelves located next to them to accommodate their books and binders which they will use during the trial.
- [7] The sheriffs who are in charge of security in the courtroom submit that allowing the application of the represented accused to sit at counsel table would be problematic, and, accordingly, they oppose it.
- [8] In order to deal with this application, I will first canvass the relevant legal principles. C. Legal Principles
- [9] The trial judge has discretion as to where the accused sits in the courtroom. This discretion is to be determined in the interests of a fair trial and courtroom security: R. v. Levogiannis, [1993] 4 S.C.R. 475, 85 C.C.C. (3d) 327 [Levogiannis]. In R. v. Faid (1981), 30 A.R. 616, 61 C.C.C. (2d) 28 (C.A.), reversed on other grounds [1983] 1 S.C.R. 265, 2 C.C.C. (3d) 513, the accused

was assigned to the prisoner's box, out of sight of the public. Harradence J.A. stated at para. 53: in a criminal trial the seating and location of the accused lies within the sole discretion of the learned trial judge. That discretion cannot be interfered with unless its exercise manifestly precluded the accused from making full answer and defence to the charge.

- [10] This statement was adopted with approval by the Supreme Court of Canada in *Levogiannis*. See also *R. v. Lalande* (1999), 124 O.A.C. 94, 138 C.C.C. (3d) 441 at para. 19. D. Ruling
- [11] On the basis of the law as enunciated above, I dismiss the application of the three represented accused to sit at counsel table. In exercising my discretion to do so, I am persuaded by the submissions of the sheriffs that to permit this would be problematic from a security perspective.
- [12] I also dismiss Mr. Violette's application for a larger table. In my view, the table which has been allocated to him is more than adequate for this trial. He has also been provided with a bookshelf to store his materials, and together these are amply sufficient to enable him to properly conduct his defence in this matter.
- [13] With respect to Mr. Violette's application to have the freedom to caucus with defence counsel during the trial without first obtaining permission from the sheriffs each time, I consider that to be reasonable in the circumstances. Accordingly, that application is granted. "Romilly J."

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