

CANADA / JUDGMENT

R. v. Wasfi

2002 BCSC 308

COURT

Supreme Court of British Columbia

DECIDED

28 February 2002

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

Source record

2002BCSC0308

Citation:	HMTQ v. Wasfi
Date:	20020228 2002 BCSC 308
Docket:	CC991290 Registry: VANCOUVER IN THE SUPREME COURT OF BRITISH COLUMBIA HER MAJESTY THE QUEEN AGAINST GEORGE WASFI RULING NO. 2

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE FRASER

Counsel for Crown

Henry J.R. Reiner

Phillip F. Sebellin

Counsel for Accused

Paul S. McMurray

Date and Place of Hearing:

22nd February, 2002

Vancouver, BC

- [1] In this pre-trial conference, the defence seeks a ruling as to the ambit of a voir dire concerning the admissibility of wiretap evidence. This kind of application is what is known in British Columbia as a Vukelich hearing[1], in which the issue to be determined is whether a full-blown voir dire is required. In particular, an important issue in a Vukelich hearing is whether there should be oral testimony or, alternatively, whether the issues properly can be determined on the basis of something less elaborate.
- [2] This is the second time around for the accused, George Wasfi, on the admissibility issue. He was originally charged along with others, including Simon Kwok Cheng Chow. In the course of the trial before Mr. Justice Oppal, a voir dire was held and the wiretap evidence in question was ruled admissible. Later in the trial, Mr. Justice Oppal severed off the charge against Mr. Wasfi, so that this is his first trial on the charge, first degree murder. (The remaining accused were convicted of that crime).

The Background

- [3] There were a succession of authorizations made for interception of conversations granted on the application of the Vancouver Island Drug Section of the Royal Canadian Mounted Police, which was pursuing a narcotics investigation. In completely separate investigations by the Co-ordinated Law Enforcement Unit in the Lower Mainland, involving thefts of vehicles in one instance and a murder conspiracy in another, other authorizations were obtained. During the period of the authorizations, certain conversations were intercepted and recorded which the Crown seeks to tender at this trial in support of its theory that the accused orchestrated the murder.
- [4] Mr. Wasfi was not a target of any of the wiretaps. His conversations were intercepted pursuant to authorizations targeting the conversations of others. But Chow was or became a named target in all of them. A key question seems to be whether, when the police forces were talking to each other before the murder, they told each other or should have told each other about the association between Mr. Wasfi and Mr. Chow, such that the association should have been disclosed to the authorizing Judge for the purpose of seeking to target Mr. Wasfi.

Analysis

- [5] Mr. McMurray, counsel for the accused, was not counsel in the trial before Mr. Justice Oppal. He contends that the admissibility issues remain alive. He concedes that some of the issues are the same -- the issues under s.8 of the Charter -- but says that he wishes to raise new arguments under s.7 and s.11(d).

- [6] Mr. McMurray also points out that since Mr. Justice Oppal made his Ruling, the decision of the Supreme Court of Canada in *R. v. Araujo*[2] was delivered. It held that the decision of the British Columbia Court of Appeal in *R. v. Cheung*³ was wrongly decided. Araujo held that the level of investigative necessity articulated in Cheung was too low.
- [7] The Ruling of Mr. Justice Oppal was made when Cheung was the law, before Araujo. But his Reasons for his Ruling were handed down afterwards. In them, he said that his decision would not have been different if Araujo had been the law when the Ruling was made.
- [8] The defence contends, and the Crown agrees, that the Ruling of Mr. Justice Oppal does not bind the accused.⁴ That the accused is entitled to challenge the admissibility of the wiretap evidence is unarguable.
- [9] We have the benefit for this trial of the existence of the transcripts of the voir dire in the trial before Mr. Justice Oppal. Mr. McMurray, on behalf of his client, has agreed that those transcripts may be looked at in substitution for having the same witnesses come and testify as to the same things. There are only two of those witnesses, William Thompson and Patrick Fogarty, whose attendance he seeks at the voir dire in this trial. He wishes them to testify only on the issue whether his client, Mr. Wasfi, should have been identified to one or more of the authorizing Judges as a "known" person.

Conclusion

- [10] Mr. McMurray has impressed me in the pre-trial conferences so far as striking the right balance by being open to making admissions as to matters not in dispute, thereby promoting the efficiency of the trial, on the one hand, and by showing that he intends to advance the cause of his client vigorously, on the other. Here he has focussed in on a confined, narrow issue, where he contends that fresh, oral testimony is required.
- [11] Given that the testimony of the two witnesses before Mr. Justice Oppal has been characterized as somewhat vague on that issue, my conclusion is that they must attend to testify orally before me.
- [12] Their testimony in the voir dire should be confined to the issue whether the accused should have been classified in one or more of the authorizations as a known person.
- [13] The arguments as to admissibility will be based on the voir dire evidence as a whole. This Ruling only defines what the evidence will be in the voir dire.

"G.P. Fraser, J."

The Honourable Mr. Justice G.P. Fraser

1. *R. v. Vukelich* (1996) 108 C.C.C. (3d) 193 (B.C.C.A.)
2. *R. v. Araujo*, [2000] 2 S.C.R. 992

3. R. v. Cheung (1997) 119 C.C.C. (3d) 507 (B.C.C.A.)
 4. The cases are R. v. Duhamel, [1994] 2 S.C.R. 555; R. v. Van Den Meerssche, [1989] B.C.J. No. 2366 (B.C.C.A.) and R. v. Dempsey, 2001 B.C.S.C. 371.
-

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/02/03/2002bcsc0308.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-wasfi-2002-bcsc-308>

Prepared on 28 October 2026 · Esheria